

### The Gender Dichotomy in Pakistani Social Context

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#### Abstract

This article introduces Gender Dichotomy in Pakistani context and Pakistani constitutions regarding family laws. This chapter will provide a historical perspective on Gender discrimination in Pakistan. Although it is significantly forbidden, gender discrimination has historically been one of Pakistan's biggest challenges. Gender discrimination is still deeply rooted in Pakistan. Though the Pakistani Constitution guarantees women's rights, it's crucial to observe how state legislation and other establishments carry out these legal protections for women. Because of the patriarchal society and socially constructed customs, gender violence against women in Pakistan caused numerous issues for the women. The advancement of rights for women and female empowerment is a major focus of Pakistani society. This chapter analyzed how family laws empowered women. However, it is essential that the state and its institutions address these laws and guarantee that they are applied fairly. Furthermore, the issue of gender discrimination needs to be securitized by the government of Pakistan as an issue of strategy. Additionally, create committees to address concerns based on gender and provide each gender equal rights.

**Keywords-** Gender Dichotomy in Pakistani Social Context

#### Historical Perspective on Gender Discrimination in Pakistan

Although it is extremely prohibited, gender discrimination has always been one of Pakistan's biggest challenges. Gender inequality prevails when women have less power and this starts from home when both genders are extended differential treatment such as the male members being given preference over the female ones. Through education, this gender imbalance could be erased.<sup>1</sup>

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<sup>1</sup> Lenny Farnon, Martin Thomas, Muhammad Jaffer Hassan, "Gender Discrimination through Stereotype Role Depictions: Conger Analysis of a Textbook used in a Developing Country" p 116

Pakistan is a recognized country with diverse cultures, distinct customs, and a vast diversity of topographies. It came into being after India was split between areas where the majority population was Muslim and Hindu and the British left India in 1947. Muhammad Ali Jinnah, founder of the country, died unexpectedly in 1948, which at first contributed to particular administrative and constitutional problems. Because Islam was affirmed only the Muslims on the Subcontinent, its role in the newly formed country was not well defined; hence, there was friction between the modern authorities and the old mullahs. The nation was developing as well as having a society that was progressive and equal opportunities for women prior to the Bhutto regime of the late 1970s. Military dictators tried to utilize Islam and the Mullah's power to achieve their own political goals because Islam had no official place in state politics. In Pakistan, modernity's pulling and pushing patterns—industrialization and the contemporary emphasis on achieving human potential—collided with redefined traditions, such as Islamization. The primary causes of the suffering experienced by many women in Pakistani society are the ruling junta's (the ruling military or political group) astute interpretation of Islam and the dominance of a repressive religious interpretation in society, which led to the creation of laws and policies and established harmful traditions. The three-opposing socio-historical currents that have shaped its worldview are religious dogmatism, British colonization, and Islamic governance.<sup>2</sup> Inequalities between men and women in Pakistan will be examined, with a focus on the rights of women throughout its history from its creation.

1947 saw the end of British authority in India and the birth of Pakistan. Few new laws were required, and the majority of existing laws were passed by British mutates mutandis. For a long time, these laws were seen as an intrusion by the British into Muslim families' private matters.<sup>3</sup> The progressive founding founders of Pakistan, Jinnah and Iqbal, envisioned women having an equal role in managing the state and society. The fight for an independent nation with equal opportunities both men and women, that they saw as the cornerstone for a "honorable" nation within the community of nations, was substantially aided by Fatima Jinnah, her sister, and other educated women. She may perhaps be remembered as the first female in modern Muslim

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<sup>2</sup>Ahmad Raza and Hasan Sohaib Murad, "Gender Gap in Pakistan: A Sociodemographic Analysis," *International Journal of Social Economics* 37, no. 7 (2010): p. 541–557.

<sup>3</sup>Anita M. Weiss, *Interpreting Islam, modernity, and women's rights in Pakistan*, Springer. (2014). Thea Marlen Rotter, "Gender Inequality in Pakistan", p.34

history to have fearlessly contested a presidential election in Pakistan in support of democracy and human rights. Conventional Muslim factions managed their entitlement to safeguard Sharia Law and obstructed efforts to formulate a progressive construal of Islam concerning the rights of women. Since these "revolutionary and narrow-minded social trends have a desire to place limits on the active social role of women," women's social standing remained vulnerable to their influence. The complex issue was exacerbated by the historic and tribal traditions of multiple Pakistani cultures. Prior to the country's founding, the region's long-standing customs and beliefs limited women's status and prospects.<sup>4</sup>

In the late 1950s, the Pakistani government, under the leadership of Field Marshal Ayyub Khan, saw an opportunity to modernize Pakistan and alter its legal framework when it chose to ratify the United Nations Agreement on the Agreement for Marriage, Minimum Age of Marriage, as well as Registration of Marriage. Pakistan had the ability to respond to the difficulty of safeguarding the rights of women within the family by crafting laws that were distinctive. Its result, the Muslim Family Law Ordinance of 1961, was established. The MFLO limits marriage, divorce, and forbids multiple marriages without upholding women's rights, protecting women financially and legally. It suggests registering all marriages, doing away with the option of divorcing by simply repudiation (*talaq*), requiring a man to show his wife's written approval to a settlement committee before he can be remarried, and providing more security for women in the event of divorce. With the MFLO, the Pakistani government initially systematically protected women's rights in the country.

The next major piece of legislation affecting women's rights was Pakistan's 1973 constitution, which improved women's legal standing in the country in various contexts. It restates the state's resolve to put an end to violations of fundamental rights and values. Article 25 (1) states that every citizen is entitled to equal protection under the law and equality before the law; Article 25 (2) further states that discrimination based on caste, sex, color, or religion is prohibited with government positions (Article 27). Article 38(a) concludes by stating that the state must raise the level of life of all citizens in order to safeguard and preserve their well-being, regardless of

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<sup>4</sup> Thea Marlen Rootter, "Gender Inequality in Pakistan" (2019). p 33-34

gender, caste, creed, or race. The concepts of policy section's Article 34 states that actions must be done to guarantee women's full participation in all aspects of national life.<sup>5</sup>

Women who have learning and empowerment began during the Musharraf regime and lasted during that period. The human rights movement emerged soon after Pakistan's founding and gained momentum when discriminatory laws were adopted during the Zia era. This movement has damaged the progressive and enlightened Pakistan for women, where the process of peace has begun. The Women Protection Law's implementation in 2006 signaled the turning point in the reforms to the law defending women's rights, even if there is still more work to be done in Pakistan to create a fair and safe state for women and to enforce human rights in all of its true sense. Pakistan has signed a variety of international accords committing it to uphold and defend women's and human rights.

In Pakistani society, the rights of women advocacy and empowerment play a significant role. The most crucial component of women's empowerment is legal empowerment, which ensures the protection of women's social, cultural, and economic rights. Pakistan is creating a variety of plans to realize the objective of empowering women. Numerous governmental and non-governmental groups have enabled women to campaign for their legal rights and defend their fundamental liberties. There are adequate laws in the country to protect women's rights. The women still have to deal with issues like attempted rape, domestic abuse, and family rights in society. Many people are reluctant to file complaints because of pressure from their relatives and a fear of embarrassment in public. It is crucial to take law enforcement groups into account. The legal system does not trust the female populace. Improved implementation processes are needed if women are successful in having their rights upheld and be granted legal empowerment.<sup>6</sup>

### Patriarchy and Gender based violence

A patriarchal culture is one in which men continue to dominate women throughout society at large and demonstrate their dominance over their spouse and children within the household.

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<sup>5</sup> The Constitution of the Islamic Republic of Pakistan, 1973, (edition published by the National Assembly of Pakistan, 1993), Art. [Article Number]. Cited from Anita M. Weiss, *Interpreting Islam, modernity, and women's rights in Pakistan*, Springer. (2014). p.3-4

<sup>6</sup>Naveeda Noreen, Razia Musarrat, "Protection of women rights through legal reforms in Pakistan", *Journal of Public Administration and Governance* 3, no. 4 (2013): 119-142. p. 120, 137

Lerner emphasizes how systemic and ingrained men's domination is in important society structures.<sup>7</sup>

Pakistani society is deeply ingrained with patriarchy in both its cultural and social frameworks. Men and women exist in two separate realms in theory. Men dominate the outside world, and women belong in their house, which is their proper physical and mental domain. The outer world is dominated by men, and a woman's home is her rightful physical and intellectual realm. Because of the purdah habit and the concept of honor, Pakistan wrongly distinguishes between both the private and the public, internal and external worlds. In marriages, women are bought, sold, and exchanged. Patriarchal systems are somewhat stronger within rural and tribal societies where local laws promote male dominance over women's lives. Women are purchased, sold, and traded in marriages.<sup>8</sup>

It has been established that one social tool men use to control women is violence. According to feminist theory, gender-based violence is directly caused by patriarchal cultures. The key to comprehending violent masculine conduct towards women in Pakistan is to see it as a component of a system of patriarchy that limits women by determining and dictating their positions and actions through cultural norms and values. In Pakistani society, women's subjugation stems from deeply ingrained patriarchal norms. The strange, evil, and destructive customs that support feminine subordination, are accepted as religious rituals, and are perpetuated as cultural practices are among the most widespread factors diminishing women's worth and fostering gender-based violence in Pakistan. It is a woman's body that should be fined and punished for her offenses when her acts endanger the patriarchal society. Among the penalties are assaults, burnings, sexual misconduct, as well as execution for pride. The increase in aggression against women may be ascribed to a patriarchal mentality that is strengthened by an ineffective legal system that aims to regulate women's conduct and behavior. It is clear that there are unreported crimes against women. Systemic problems like a weak justice system, women's powerlessness, as well as a lack of social support often prevent even those who seek justice from succeeding. Due to these

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<sup>7</sup> Gerda Lerner, *The creation of patriarchy*, Nueva York." *Oxford University Press* 239 (1986): 39

<sup>8</sup>Country Briefing Paper Women in Pakistan Asian development bank Programs Department (West) and Office of Environment and Social Development July 2000. p 2

circumstances, a lot of Pakistani women rarely speak out in protest and instead remain quiet spectators to these injustices and deaths.

One reason for the rise in incidents of gender-based violence is the male-dominated state structure. Where may women search for justice? Women are readily victims of domestic abuse without ever being punished when law enforcement officials mistreat them, the court system fails to provide women with fairness, while there is an equal informal legal system run by patriarchal tribal elders.<sup>9</sup>

Pakistan is a patriarchal society. Its society is a living example of "classic patriarchy." Like in other patriarchal societies, men have traditionally occupied all important positions of authority and power in Pakistani culture, which has given men a favorable status. In Pakistani society, discrimination against women occurs in the cultural, social, political, and economic spheres. Men control and occupy every position of power and authority in all institutions, including the state to the family, in patriarchal society.

Patriarchy is the primary feature of Pakistani society.<sup>10</sup> Women have less access to and control over the public sphere, which is dominated by men. It is expected of women to live most of their lives in the house or in the private sphere. They are governed with the family patriarchs inside the house. The entire social order that saw them kept out of the public eye and depending on the male leader of the household in the home's private domain led to a lower socioeconomic level and heightened sensitivity to aggression and crimes against them. As a result, women have lower educational attainment, less availability of healthcare, are less likely to be employed, and have less influence over political and legislative decision-making. Pakistani women have fewer access points to educational resources. Women's literacy rates were only 32% in 1998, while men's rates were 54%.<sup>11</sup>

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<sup>9</sup>Abdul Hadi, "Patriarchy and Gender-Based Violence in Pakistan", May 2017 European Journal of Social Sciences Education and Research 10(2):297.p .302-303

<sup>10</sup>Shaheed, F. (1991). The Cultural Articulation of Patriarchy. In F. Zafar (Ed.), *Finding Our Way: Readings on Women in Pakistan* (pp. 135-158). Lahore: ASR Publications. Cited from Naima Tabassum, Huma Tabassum, Tabasum Afzal, "Relationship Between Patriarchy and Customary Social Practices Affecting Women's Life in Pakistan." *Pakistan Journal of Gender Studies* 14, no. 1 (2017): 111-128. p.113

<sup>11</sup> Population Census Organization. (1998a). Demographic indicators- 1998 Census, retrieved August 29, 2013, from: <http://www.census.gov.pk/DemographicIndicator.htm>. Cited from Naima Tabassum, Huma Tabassum, Tabasum Afzal,

In rural areas, only 20% of women had a high school education. Little has altered in this situation up to this time. According to the 2013–14 Pakistan Social and Living Standard Measurement Survey, women's literacy rates are 47% nationwide, including 66% among urban women as well as 36% of rural women.<sup>12</sup> Similarly disappointing are the accomplishments of Pakistani women within the sphere of formal education. The quantity of official educational opportunities for women is comparatively lower than that of men; just 33% of primary schools are attended by girls.<sup>13</sup> There are numerous socio-cultural obstacles that prevent women from pursuing higher education, including the belief that females are self-sufficient and do not need to leave the house, the belief that investing in the education of boys will yield dividends but that investing in the education of girls is a waste, the purdah (veil), early marriage, and many more.

The lack of Pakistani women from positions of leadership and influence is a result of this larger patriarchal social and cultural system. According to Tabassum, men and women in Pakistani society are brought up to assume different social as well as economic responsibilities in the framework of patriarchy from the moment of their birth. Men become dominant and women submissive as a result of this socialization. Because of this, women still submit to their fathers, brothers, and spouses when making decisions as daughters, sisters, and wives. In their societies, women are not permitted to be in the public eye; the only way they can be represented is through their male companions. In this manner, the details about them are taken into account when figuring out who their men are outside of their home. They discovered that there was no representation in the community as a result.

Violence and abuse against women also involve a number of harmful sociocultural practices.<sup>14</sup> The position of women became a commodity that men might use for their own social and political gain because of these discriminatory cultural practices. In Pakistani society, a lot of cultural customs are common, such as marriages by force and adoption trades. It is traditional in Watta Satta

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<sup>12</sup> Government of Pakistan. (2015). Pakistan Social and Living Standards Measurement Survey (2013-14): National/Provincial Report. Islamabad: Statistics Division, Pakistan Bureau of Statistics. Cited from Naima Tabassum, Huma Tabassum, Tabasum Afzal, "Relationship Between Patriarchy and Customary Social Practices Affecting Women's Life in Pakistan." *Pakistan Journal of Gender Studies* 14, no. 1 (2017): 111-128. p.113

<sup>13</sup> "Relationship Between Patriarchy and Customary Social Practices Affecting Women's Life in Pakistan." *Pakistan Journal of Gender Studies* 14, no. 1 (2017): 111-128. p.115

<sup>14</sup> Hina Jilani, Ahmed.M, "Violence Against Women: The Legal System and Institutional Responses in Pakistan". In S. Goonesekere (Ed.), *Violence Law & Women's Rights in South Asia* (pp. 148-206). New Delhi: Sage Publication. (2004)

(exchange marriage) to offer a married woman of a single family in exchange for a promise, or to trade another lady from the groom's family for a man from the bride's family.<sup>15</sup> This practice restricts and limits the choices women have for partners based on the compatibility and preference of their family men, hence decreasing their freedom to choose a partner.

The act of killing someone in the sake of family honor who wrongfully wronged women in addition to men is known as honor killing. Data that is currently available indicates that a respectable number of honor killings take place in Pakistan each year. The total number of honor killings documented was 475 in 2008, 605 in 2009, 557 in 2010, 705 in 2011, and 432 in 2012.<sup>16</sup>

The "dowry" ritual refers to giving gifts to the bride at the beginning of her marriage in the shape of kitchenware and furniture ornaments to assist her in setting up her new house.<sup>17</sup> The qualities of the gifts and resources have evolved over time. Once restricted to presents, dowries today cover a wide range of items, including cash, gold, automobiles, motorcycles, appliances, furniture, clothes, silverware and even real estate such as houses. It thus becomes an expense for the parents of the bride and often results in violence against women in her new home following marriage. Despite this, the country continues to accept the behavior as usual. Consequently, the dowry has been linked to domestic abuse and the abuse of women in their own homes.<sup>18</sup>

Pakistani society has a long history of committing crimes against women because of a variety of causes that both embrace and reject these social norms. Research has connected a number of cultural, legal, social, and political issues to the persistent crime against women that occurs in Pakistani culture.<sup>19</sup> Despite other factors, a nation with an extensive record of violence against women is believed to have originated primarily from its broader male-dominated society

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<sup>15</sup> H. Jilani, &M. Ahmed, (2004). Violence Against Women: The Legal System and Institutional Responses in Pakistan. In S. Goonesekere (Ed.), *Violence Law & Women's Rights in South Asia* (pp. 148-206). New Delhi: Sage Publication. (2004)

<sup>16</sup>Nasreen Azhar. *Violence against Women in Pakistan: A Qualitative Review of Statistics for 2011*. Islamabad: Aurat Publication and Information Service Foundation. (2012)

<sup>17</sup> Gulzar, S., Nauman, M., Yahiya, F., Ali, S. & Yaqoob, M. (2012). Dowry System in Pakistan. *Asian Economic and Financial Review*, vol.2:7, pp.784-794. Cited from Naima Tabassum, Huma Tabassum, Tabasum Afzal, "Relationship Between Patriarchy and Customary Social Practices Affecting Women's Life in Pakistan." *Pakistan Journal of Gender Studies* 14, no. 1 (2017): 111-128. p.116

<sup>18</sup>Saeed Tazeen Ali, Arnadottir Gunnhildur, and Asli Kulane, "Dowry Practices and their Negative Consequences from a Female Perspective in Karachi, Pakistan: A Qualitative Study. *Health*," (2013) vol.5:7, pp.84-91

<sup>19</sup> Naima Tabassum, Huma Tabassum, &Tabassum Afzal, "Social Practices Fostering Crime against Women and the Law in Pakistan. *International Research Journal of Arts & Humanities (IRJAH)*," (2013) vol.4:41, pp.305-327.



and cultural values. Due to anti-women sociocultural practices and patriarchal cultural assignment of women to a lesser economic and political status, violence against women seems to be on the rise.<sup>20</sup> All the gendered based violence occurred due to patriarchal society and some cultural practices.

### Gender Roles in Pakistani Society

The roles and responsibilities that society assigns both men and women is known as gender responsibility. One might speak of gender roles in terms of either gender role belief or gender role attitude. Social norms shape gender roles. Gender roles can vary depending on the culture because they are social norms. The inability of men and women to follow social norms can occasionally lead to issues because of these differences. Different communities assign different roles to men and women, which leads to distinct responsibilities among men as well as women, respectively. Women are not appreciated for their primary domestic duties, which include caring for their homes and raising children.<sup>21</sup> The world's male-dominated societies strongly identify as male and are preoccupied with certain notions of masculine and feminist roles.<sup>22</sup> Women in Southeastern and South Asian cultures, in particular, are continuously fighting for their right to independence and fundamental human rights.<sup>23</sup> Beliefs that uphold gender inequality and discrimination are ingrained in Pakistan's male-dominated society. It is believed that women are traditionally feminine while men are stereotypically masculine. In Pakistan, gender-based discrimination permeates every age group, every area, and almost every facet of daily life.<sup>24</sup> Severe gender inequality and unequal gender roles in Pakistan are major predictors of violence against women.

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<sup>20</sup> Naima Tabassum, Huma Tabassum, and Tabassum Afzal. "Relationship Between Patriarchy and Customary Social Practices Affecting Women's Life in Pakistan." *Pakistan Journal of Gender Studies* 14, no. 1 (2017): 111-128. p 114-118

<sup>21</sup> Zoya Pervaiz, Subha Malik, "Gender Roles and Psychological Wellbeing: Difference in Contemporary Groups" 2  
<sup>22</sup>Melinda York R. "Gender Attitudes and Violence against Women". LFB Scholarly Publishing LLC. (2011) <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=260376>

<sup>23</sup> Kung Jae Lee and Hye-Gyong Park, "Measures of Women's Status and Gender Inequality in Asia: Issues and Challenges". *Asian Journal of Women's Studies*, (2011)17, 7-31.

<sup>24</sup> Naeem Akram, "Women Empowerment in Pakistan: Its Dimensions and Determinants. *Social Indicators Research*, 140, 755-775. (2018) cited from Mona Ayesha Khalid, "Assessment of Gender Roles among people of Pakistan" 21 December, (2011) p. 338

<sup>25</sup>Tazeen Saeed Ali, Gunilla Krantz, Raisa Gul, Nargis Asad, Eva Johansson, and Ingrid Mogren. "Gender Roles and Their Influence on Life Prospects for Women in Urban Karachi, Pakistan: A Qualitative Study," *Global Health Action* 4 (2011): Article No. 7448, p.7

Different cultural and religious conventions are applied in society, which leads to the development of patriarchal ideas. Specifically, religion has been reshaped to uphold women's subjugation, confinement to the home, and intense reliance upon male family members. They bear witness to this by covering themselves physically and by allocating particular areas for women only in their homes, workplaces, training facilities, schools, and shopping centers.<sup>26</sup> Pakistani society places a strong emphasis on the family and revolves around the idea of "honor," which means that women must uphold the honesty, stability, harmony, and reputation of the entire family—even if this means enduring discrimination, injustice, and various forms of abuse. Though the demands of these conceptual themes differ throughout women and families, generally speaking, average as well as high-status women are more in charge than average, uninformed, and rural women.<sup>27</sup>

The social structure of Pakistani society is primarily shaped by male-dominated values. In other words, a man is supposed to earn a living outside the home, while a woman is expected to be responsible for care of the house like a wife and mother. The separate realms for men and women are separated mentally. When it comes to household resources, guys are given preference due to their status in society outside the home. As a result, boys' education is prioritized above girls' because it is thought that men need a high level of education to stand out for wealth in society, while women should concentrate on acquiring the abilities to make good wives and mothers. Girls consequently do not believe that schooling is necessary.<sup>28</sup>

Prescriptive and descriptive gender roles are two further kinds. In the descriptive aspect, it is crucial to know whatever is anticipated of a male or woman in a particular circumstance,

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<sup>26</sup>ShekharSingh, Ardhendu, Dilip Ambarkhane, and Bhama Venkataramani, "Women-Only Markets in Pakistan. SAGE Business Cases" (2016) <https://doi.org/10.4135/9781473973947>. Cited from Mona Ayesha Khalid, "Assessment of Gender Roles among people of Pakistan" 21 December, (2011) p. 339

<sup>27</sup> Filomina Critelli M. "Beyond the Veil in Pakistan. *Affilia: Journal of Women and Social Work*", (2010) 25, 236-249. <https://doi.org/10.1177/0886109910375204>. Cited from Mona Ayesha Khalid, "Assessment of Gender Roles among people of Pakistan" 21 December, (2011) p. 339

<sup>28</sup>Gender Roles in Pakistan, Retrieved from <https://www.k12academics.com/Education%20Worldwide/Education%20in%20Pakistan/Women%27s%20Education%20in%20Pakistan/gender-roles-pakistan#:~:text=in%20Pakistan%20%7C-,Gender%20Roles%20in%20Pakistan,-Patriarchal%20values%20heavily>

whereas in a prescriptive element, it is crucial to understand the desirable or expected behavior.<sup>29</sup> Prescriptive and descriptive aspects of gender stereotypes impede women from achieving professional success and acceptance. The idea of agency is commonly linked in literary works to stereotyped characteristics of men, including being independent, confident, energetic, and resolute. Nonetheless, communality is always linked to stereotypically nice, thoughtful, submissive, giving, and frail characteristics in women. It has also been established as these gender stereotypes are accurate across all societies. Having a prejudice to assess someone favorably or unfavorably is what is meant by attitude.<sup>30</sup> Furthermore, it can be distinguished by a number of kinds, including knowledge (connected to ideas and beliefs), affect (connected to emotions), and behavior (actions). Consequently, thoughts and beliefs that view men and women as objects of attitude constitute gender stereotyping, which is always positively correlated with attitudes held by both sexes. Therefore, it's important to remember that not every gender stereotypes are examined closely. The only gender stereotype that can be condemned and potentially replaced by new ideas of gender identity is the one that prevents women from developing their own skills, choosing careers that suit them, and making decisions about their personal lives.<sup>31</sup>

The greatest amount of gender discrimination is found in Pakistan. Most women are not allowed to pursue independent careers and lives, exercise their right to privacy and freedom of movement, speak out against mistreatment by men, assert their rights to property, and numerous additional privileges. According to Statistics, Pakistan had been the lowest-ranked country (148 out of 150) also the last worldwide in the gender disparity index. Although the 1973 Constitution grants women certain legal rights, such as the right to property, the freedom to move around, the right to an education, the right to marry with consent, and the prohibition against discrimination based on gender, women are rarely observed exercising these rights in real life because of cultural pressures and customs.<sup>32</sup> Even when the mother is expecting a kid, the preference already exists.

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<sup>29</sup>Laurie Rudman, A, and Peter Glick. "Prescriptive Gender Stereotypes and Backlash toward Agentic Women," *Journal of social Issues* 57 (2001): 743-762.

<sup>30</sup> Alice H. Eagly and Ana Mladinic, "Gender Stereotypes and Attitudes toward Women and Men," *Personality and Social Psychology Bulletin* 15 (1989): 543-558

<sup>31</sup> A, Timmer, R. J. Cook, and S. Cusack, "Gender Stereotyping: Transnational Legal Perspectives," *Human Rights Law Review* 10 (2010): 583-58. Cited from Mona Ayesha Khalid, "Assessment of Gender Roles among people of Pakistan" 21 December, (2011) p. 339

<sup>32</sup>OECD (Organization for Economic Co-Operation and Development) (2010). "Pakistan", in *Atlas of Gender and Development: How Social Norms Affect Gender Equality in Non-OECD Countries*. OECD Publishing.

People exhibit a significant amount of gender prejudice; even before a child is born, men are expected to perform far more than daughters.<sup>33</sup> After having a girl, the joy of having a new baby almost fades and becomes depressing.<sup>34</sup> Some even decide to have a lengthy line of infants (7–10) in the hopes of getting a boy child, while others choose to abort or commit infanticide (despite the fact that it is against the Pakistani constitution). A long list of discriminatory practices begins when parents accept that they will always have a female child: discrimination in parenting techniques; discrimination in providing food as well as facilities; discrimination in providing health care and education; discrimination via leisure activities and employment available outside the house; discrimination in marriage and divorce laws; and discrimination within social care settings.<sup>35</sup>

In Pakistani society, men and women are viewed as two distinct opposite extremities of the spectrum, with different expectations, responsibilities, and traditions placed on each. Often, women are born in gender roles which are shaped by divisive customs and societal conventions. primarily concerned with the concepts of tolerating, producing, and giving birth. These views, which have a solid cultural base in the country, deprive women of other liberties and privileges. For instance, 50% of women in Pakistan do not have access to basic education, according to data. In Pakistan, women have worse levels of nutrition and health, as well as minimal social mobility. Most women have only the right to stay in their homes, and they are also expected to assume subordinate roles in their families. As a result, women are incapable to make decisions or judgments that have an immediate impact on their living situations or the lives of other family members.

Rather, women should take on smaller tasks that don't require an excessive amount of social power. This denial of fundamental rights places women in an illusion of inferiority to men, which drives women out of their feelings of empowerment and causes them to experience a crippling fear of helplessness. This is comparable to how males are assigned to the opposite gender role in

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<sup>33</sup> Sadia Saeed, "Toward an Explanation of Son Preference in Pakistan. *Social Development Issues*, 37, 17-36. (2015) <https://search.proquest.com/docview/1698855492?accountid=14116>

<sup>34</sup> Kazmi, S. H. (2014). *Omni Present Gender Discrimination*. *Pakistan & Gulf Economist*, 33, 19-20. Cited from Mona Ayesha Khalid, "Assessment of Gender Roles among people of Pakistan" 21 December, (2011) p. 339

<sup>35</sup> Sadia Saeed, "Toward an Explanation of Son Preference in Pakistan. *Social Development Issues*", 37, 17-36. (2015) <https://search.proquest.com/docview/1698855492?accountid=14116>

Pakistani society. Men behave discriminatorily because they are assigned social roles unevenly and are therefore perceived to hold a controlling position in both the house and the outside world. Pakistani society keeps on encouraging prejudice against women via complex gender roles and strong opposition to change as a result of its predominately patriarchal society.

### Constitutional Rights of Women in Pakistan

To defend women's rights, several laws and bills were passed, such as the 1973 Constitution in the Islamic Republic of Pakistan. The Article 25 sections of the 1973 Constitution safeguard women's equal access to education. Article 25 states that everyone shall be respected similarly under the law and that gender discrimination must end. The country's essential law is the Constitution. It is the fundamental social contract between citizens of a nation. It is the fundamental social compact that governs a nation's citizens' rights, political system, and administrative framework. It can only protect people's rights by first establishing those rights as unalienable rights through an appropriate legal system.<sup>36</sup>

The general framework of the already in effect constitution gives women more guarantees without discriminating against them. It is putting in place a system built on nondiscrimination and equality. The State's commitment to women is reflected in the 34th article of the Constitution, which states:

"Steps will be taken to ensure women's full engagement in every one of the sectors of national life." Therefore, when there is a constitution, it will be preferable to acknowledge women's rights since democracy allows women to enjoy equality of position and opportunity and prosper according with their aspirations. The institutions run the men remain unable to turn the promise of women's empowerment and power that the Constitution offers them into a reality.<sup>37</sup>

Moreover, Article 38(a) gave the government the authority to guarantee the welfare of the populace by elevating their social standards of living, irrespective of their gender, social class,

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<sup>36</sup> Ameena Ulfat, "Women and Protection of women rights", Federal Law House, (2007). p 99

<sup>37</sup> Ameena Ulfat, "Women and Protection of women rights", Federal Law House, (2007). p 99

faith, or race. The aforementioned sections provide adequate constitutional safeguards for the rights of Pakistani women.<sup>38</sup>

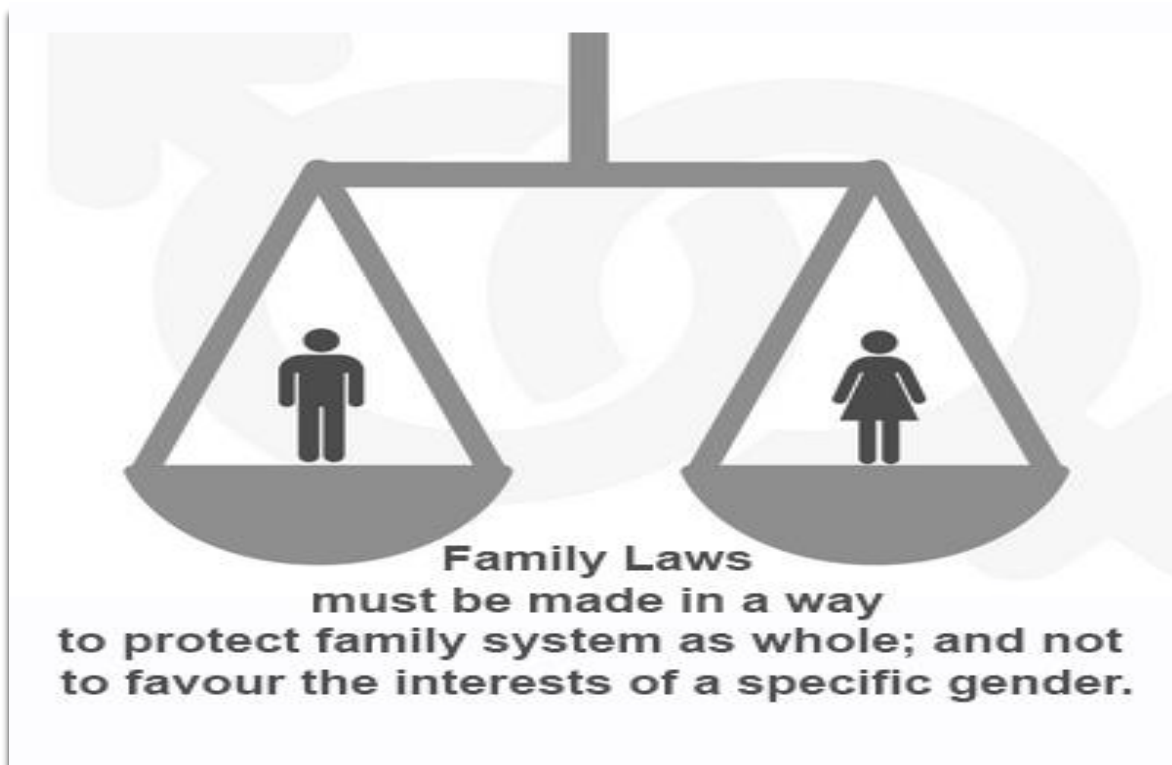
### **Family laws of Pakistan Relating to Marriage, Divorce, Inheritance and Maintenance**

Every person has the claim to human rights, and civilized societies cannot exist without rights and obligations being inherited. Everybody has the right to their human rights, which are fulfilled if states uphold their obligation to defend the rights of their citizens. A living income, the freedom from violence and discrimination, the pursuit of the best possible mental and physical health, the opportunity to a good education, your right to own property, the ability to make decisions for political well-being, and the rights to an education are some of these important rights. Nonetheless, a lot many women and girls experience prejudice based on their gender worldwide. Many issues that disproportionately affect women and girls—such as low wages, restricted access to healthcare, domestic and sexual violence, and low earnings—become more serious as a result of gender inequality. The Constitution forbids discrimination based only on a person's gender. Furthermore, the Constitution safeguards relationships, households, mothers, and children, as well as the full participation of women in all spheres of national life.

### **Figure 1 Family Laws and Gender Equality**

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<sup>38</sup> Zia Ullah, Shabazz Ahmed, “Protection of Legal Status of Women in Pakistan: An Analysis of the role of Supreme Court”, p, 616



### Rights of Marriage in Pakistani Constitutions

The 1973 Pakistani Constitution guarantees the right to free speech and complete safety for its inhabitants. The 35th article of the country's 1973 Constitution not only elaborates on individual rights but also asserts the state's obligation to safeguard marriage, families, women, and children. However, as Pakistan remains an Islamic country, it prohibits relationships outside of marriage, that are defined as two unrelated persons living together but not getting married.

According to article 227 (1) in the Pakistani Constitution of 1973, the Quran as well as the Sunnah are the primary source of guidance for Muslim laws concerning families in Pakistan. These are the fundamental rules in Muslim family law within Pakistan, which also include laws derived from other sources like taqlid, ijma, and ijihad. These sources are known as the Shariat. The Muslim Family Law Act of 1961 is governed by Islamic law. The Constitution of Pakistan additionally guarantees the maintenance of basic rights, including matrimony. A civil

compact between a husband and wife, marriage requires the permission and willingness of both parties. Islamic customary norms contain an order of conduct that highlights the responsibilities and rights of both the bride and the husband. The foundation of this agreement is the spouses' shared consent. Aijabo qabool (asking as well as accepting) is the term for this. If one of the spouses is younger than 18 (the groom) or 16 (the bride), a wali (guardian) is needed. A judge may occasionally allow a kid below the legal age of 18 to get married. Islamic tradition dictates that a couple's consent is needed before marriage can be consummated; but, under some family circumstances, the guardians' intentions must be respected.<sup>39</sup>

Under General Ayyub Khan's military administrations, regulations in Pakistan pertaining to marriage and families were changed. However, under Zulfiqar Ali Bhutto's leadership, women's standing significantly improved. During this period, respect for women was formally codified into law for the initial time in Pakistani history. There has been a notable increase in the proportion of female employees. In July 1976, a commission was established to discuss the state of women in Pakistan. Eight months later, the commission's report was presented, including recommendations for changes to the law. Nevertheless, the report's conclusions were never accepted by the National Assembly or the general public.

The rights that women had enjoyed under Bhutto's leadership were eroded when Zia ul Haq came to power in 1977. Zia ul Haq exploited Islam for his own political ends. Zia ul Haq suspended fundamental constitutional rights, including the right to guarantee women's equality before the law. He spoke for restoring "the ethical purity of early Islam" and "the sanctity of the chardivari," which calls for keeping women inside the four walls of their homes. He enacted a Hadood Ordinances, the Bill Concerning Qisas-e-Diyat (Retribution), and the Qanun-e- Shahadat (the law of Evidence), all of which contributed to the decline in women's standing in Pakistan.<sup>40</sup> Later, under the regimes of Benazir Bhutto and Nawaz Sharif, women's rights continued to be viewed with skepticism, with the exception of the 90-day Temporary government funding of Moin

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<sup>39</sup> "Exchange Marriage System in Pakistan", [Exchange Marriage System in Pakistan \(lawteacher.net\)](http://www.lawteacher.net)

<sup>40</sup> Jahangir, A. & Jilani, H. (2003). *The Hadood Ordinance: A Divine Sanction*; Lahore: Sang-e-Meel Publications, pp.188-89.



Qureshi in 1993, when both the public and private media denounced prejudice against women in Pakistan, especially that which was connected to the Hudood Ordinance.<sup>41</sup>

The United Nations passed international agreements on the eradication of enslavement, female rights in politics, and women's status within the initial three decades of its existence. These treaties established criteria and principles that are pertinent to women's rights. Despite the advice of numerous national and international rights organizations, Pakistan is yet to ratify the 1951 Convention on the Elimination of All Forms of Inequality Towards Women, as reported by the United Nations Centre for Human Rights (1993). Pakistan's 1973 constitution saw substantial changes during Zia ul Haq's presidency as the nation's society grew more Islamic. Pakistan constitutes an Islamic state that upholds Islamic principles. Islam profoundly changed customary law, particularly on women's rights to marriage, separation, and inheritance. In addition to requiring that wives get dowries from their husbands that they manage as their own property and not the family's, the Quran makes women equal partners in marriage contracts. Islam has given women the right to pick their own mate. The Quran protects women from the persistent incorrect preconceptions about them and grants them a rightful place in society. Islam acknowledges the equality of men and women.<sup>42</sup>

### Rights of Inheritance in Pakistani Constitution

Pakistan, an Islamic country, manages inheritance matters in line to Sharia law, which permits women to own property. Islam gave women the right to inherit at a time when it was not conventional for them to do so and they were often passed down or inherited as property.<sup>43</sup> Pakistan's inheritance laws are closely linked to religion due to the country's Islamic rule. The following is how a Muslim's estate is divided: first, funeral expenses and fees paid on the deceased's deathbed; second, costs incurred for getting an inheritance certification, letters for administration, or administration; third, wages due to any laborers or domestic servants that labored for the person who passed away within three months of his death; and last, paying off the deceased's outstanding debts in order of priority. Any estate that remains after all of the aforementioned payments have been completed is to be utilized for legacies, but not more than one-third of it. The heir possesses a right of contribute against his co-heirs if the lawsuit by the

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<sup>41</sup> Matsui, Yayory (1990). *Women's Asia*, London: Zed Books, p.67.

<sup>42</sup> Abida Perveen, "The Constitution of Pakistan (1973) And Women Rights: An Interpretation", p 43-45

<sup>43</sup> Asghar Ali, *Islam, Women and Gender Justice* (New Delhi: Gyan Publication House, 2001), 60.

judgment-creditor in an order in Article 52 of the civil process Law against all the heirs left him with less than his fair part of the deceased person's net wealth. The rest is to be divided among the heirs of the dead according to the many sects' laws to whom he belongs on the point of his passing. <sup>44</sup>Pakistan follows the Hanafi law.

- 1) Categories and shares as specified in the Quran;
- 2) According to Islamic law, if a deceased left behind his own son and the children of a predeceased son, such grand children were excluded from inheritance;
- 3) The Muslim familial law Act of 1961 brought forth certain changes, as it stated:

In the event that one of the absorbencies' sons or daughters dies before the succession officially opens, the remaining kids of the deceased son or daughter will, in accordance with the succession's rules, have access to a share that would have been awarded to the deceased son or daughter, when necessary, when they were still alive. At the time, several scholars reportedly discussed this regulation as unjust, arguing that granting a predeceased son's daughter his part would exceed the amount prescribed by the Quran. Supposing that the deceased left his own daughter, who is normally entitled to a share of 1/3, this means that the grandfather, will get her father's share, which is 2/3<sup>rd</sup>. this is seen unfair according to Islamic law;

- 4) A parent cannot disinherit a child in his lifetime;<sup>45</sup>

The body of legislation that controls how a person's property is distributed when they pass away is known as succession law. It establishes the heirs' entitlements and the manner in which the assets of the deceased will be divided. The SuccessiOn Act 1925 governs succession law in Pakistan and specifies regulations regarding inheritance for both Muslims and non-Muslims. The Act offers guidelines for the rights and obligations of heirs, the inheritance order, and the division of property among heirs. Muslims base their allocation of property on the precepts of Islamic law. The Act establishes the hierarchy for heirs, giving priority to immediate family members over more distant relatives. The Act further says that the heirs' property shall be distributed according to their rightful shares as per Islamic law. Non-Muslims are permitted by the Succession Act to distribute their property in line with their own legal systems, which may be based on cultural or religious convictions. The Act also mandates that a receiver or court be appointed to manage the

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<sup>44</sup> Muhammad Kazim Ali Khan v Sadia Ali Khan; (1938) 65 IA 218; 13 Luck

<sup>45</sup> International Conference on Islamic laws and women in the modern world, (Giant Forum Global Issues Awareness for National Thrust Forum). p .152

estate and that the deceased's assets be split among the heirs. But conditions in Pakistan are far from perfect.<sup>46</sup> Due to customs, conventions, and prevailing cultural habits, women have numerous challenges.<sup>47</sup> The bride's lawful share of an inheritable family property is frequently offset by the dowry, which subtly denies her the ability to inherit. Despite the fact that dowries were banned almost forty years ago, their use did not drastically decline. It is customary to support cousin weddings in order to ensure that property stays in the family. In the worst cases, feudal families would try to protect their holdings by marrying according to the Holy Qur'an. Women frequently give away their rights because they fear rejection from their families.<sup>48</sup>

The Republican Party changed the criminal law in 2011 to make it unlawful of forcefully deprive women their inheritance in response to the popular rejection of this privilege. Nevertheless, the combination of patriarchal goals and cultural norms presents a great deal of challenges for women. The current study attempts to explore the challenges faced by Punjabi women when deciding whether or not to claim their ancestral property; a primary focus is the part that free will and informed consent play in influencing these decisions, in addition to the societal manipulation of these decisions. The following are the study's objectives:

- a) Analyze the choices women make regarding their inheritance rights in relation to
- (b) Determining the sociocultural factors that influence women's decisions to assert or renounce their right to inherit
- (c) Examine the obstacles that women encounter when attempting to inherit.<sup>49</sup>

One important part of a state legislature's work is the inclusion of inheritance laws. Comprehending the extant legislation that governs a particular matter is vital for their efficient implementation and for the empowerment of that specific group. One of the main problems in Pakistani society was a lack of understanding and knowledge about the laws of Shariah as well as state legislation, which is having an important effect on the implementation of policies that are favorable of women. This is because of the country's high rate of illiteracy, the predominance of

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<sup>46</sup> Nausheen Ahmed, *Land Rights for Muslim Women: Review of Law and Policy* (Islamabad: SDPI Policy Brief Series, 2010),

<sup>47</sup> Aftab Hussain, *Status of Women in Islam* (Lahore: Pakistan Educational Press, 1987),

<sup>48</sup> Rubya Mehdi, *Gender and Property Law in Pakistan: Resources and Discourses* (Lahore: Vanguard Publication House, 2002), 136.

<sup>49</sup> Iram Rubab, Ahmed Usman, "Women's Right of Inheritance: Choices and Challenges in Punjab", December 2018 DOI: 10.32350/jitc.82.06. p.96-97

traditions and society, along with the non-acknowledgment or inheritance of women. Religious leaders feel that their use in raising public knowledge of women's inheritance rights is crucial and should be supported, but they have not been successful in persuading families—particularly those headed by men—to adopt favorable views. Generally speaking, women's low educational attainment and habitual misreading of religious teachings—a common practice in patriarchal environments—are the reasons for their ignorance of their legal rights. Furthermore, women have been brainwashed into believing that the Islamic concept of *purdah* also limits their freedom of movement and, as a result, that women shouldn't be able to access or control any property they may own, making property ownership and control a matter for men. The ladies see dowries as a substitute for inheritance. Similarly, nothing is understood about state regulations based on Islamic precepts that protect female inheritance.<sup>50</sup> However, inheritance rules are disregarded because of the patriarchal nature of society as well as social conventions and values. It is considered a terrible thing in Pakistani society for women to demand their entitlements or heirs.

### Rights of Divorce in Pakistani Constitution

Khula or Talaq are two methods for ending a marriage. Broad Details Muslim marriages are contracts that can be broken like any other. In the event that one of the spouses passes away, it automatically dissolves. Apart from this, the right to dissolve a marriage is granted by law to both the husband and the wife.<sup>51</sup> Due to Islam's recognition of spouses' legal right to end a marriage, both partners have the religious right to do so. However, under Islam, a spouse receives an inalienable constitutional right to one through the proclamation of Talaq, which is properly translated as divorce. But according to Islamic law, the wife is allowed to exercise the power of divorce if it is stated clearly in the marriage contract, known as the *Nikah Nama*, that is signed around the time of the wedding. However, if the wife's request over a divorce is denied, she still has the chance to ask the Family Courts for a legal divorce by requesting "Khula," which comes from Arabic for "releasing the knot" and refers to the right of a woman to a separation via her husband via the involvement of the court. Whether the marriage ended via "Talaq" or "Khula," it

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<sup>50</sup> Zafar Iqbal Kalanauri, "Women Inheritance in Islam and Obligations of men", p.17

<sup>51</sup> Mumtaz Ahmed, "Divorce laws in Pakistan",

is still necessary to record the divorce since it must be formally recognized. If this isn't done, there may be valid reasons to question the divorce.

Therefore, in order to have official evidence of the dissolution of the marriage, one have to get the dissolution of marriage document from the appropriate government office, as per Pakistani legislation. It is important to note, however, that Islamic scholars hold that a "Khula" issued by a court of law and a divorce declared by the husband are both valid and legally enforceable. According to Pakistan's Muslim Family Laws, a divorce among both parties of a marriage contract may have many effects. The oldest and most common method of divorce involves the husband to unilaterally announce, in his own risk and without the assistance of a judge, "Talaq," or "I divorce you." In the second method, the couple decides to end their marriage and part ways with one another without the involvement of the court. The third, and currently most popular, method entails requesting a court order from both parties to the marriage contract. by an administrative order that comes from a demand made by a spouse. The only option for a wife to divorce her spouse without his approval is through a contract, whether signed prior to or following marriage [S.305].

The terms of the parties' agreement state that a divorce decided by the husband is called talaq (Ss. 299–366); if it is determined by mutual agreement, it is called khula (S. 310); and when there is aversion between the husband and wife, it is known as mu–baraat (S. 311).<sup>52</sup> In accordance with the seventh section of both the Muslim Family Law Ordinance 1961 as well as Muslim Personal Law, the husband may also declare "Talaq" orally. In order to obtain a divorce certificate, the husband needs to notify the relevant Unions Council or government office in writing via registered mail. It is anticipated that the spouse will put her ex-wife's location in the notice mentioned above. This gives the union council and government agency permission to send her notices through official mail in an effort to facilitate an agreement and, if possible, to promote harmony among the husband and wife. The notice must be fulfilled or referred by the Council over the arbitration process within 30 days of the recipient's receipt. In the event if a woman remarries, this measure would protect her from an unrecorded, immediate divorce, so avoiding needless

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<sup>52</sup> Din Shah Fardunji, "Principles of Muhammadan Law", (Mansoor Book House Law Books Publishers and Books Sellers). p.459

criminal accusations and sentencing. A woman must thus be aware of her relationship status and possess formal records attesting to her legal divorce. Mutual Divorce When choosing this type of divorce, both the man as well as the wife can end their marriage quickly, simply, and with little legal issues. It eliminates the need to file a divorce petition in family court. Per subsection 8 within the Muslim Family Law Ordinance in 1961, the husband and wife may complete a Mutual Divorce Deed and serve written notice to the relevant government authority. It is imperative that the government office adheres to the notice-issuance procedure prior to providing the parties with a declaration of ending the marriage.

#### Mst. Balqis Fatima vs Najm-ul-Ikram Qureshi

The High Court of Lahore interpreted Quranic verse 2:229 the matter of Ms. Balqis Fatima v. Najm-ul-Ikram Qureshi to hold that a wife might be granted khula without her husband's consent so the state (represented by the judges) was granted the power to control the annulment of the marriage. It upholds the concept of khula while advancing gender equality by giving women the same benefits as men. Along with to having a legal right, khula is an Islamic privilege that women may employ as a means of departure if and when necessary.<sup>53</sup>

Khula (Application for Divorce): In Islamic law, a wife may only initiate divorce proceedings on her own behalf if her husband has indicated in the Nikah Nama, the marriage contract, that she is entitled to do so. Even so, if the woman is incapable of obtaining a judicial divorce, she can still approach the Family Court to obtain a "Khula," or judicial divorce, to end the marriage. When the wife requests "Khula," or the dissolution from marriage, the court grants her request. The wife would need to file a case in the Family Court on the dissolve of Muslim Marriage Act 1939 in order to request "Khula". Women may request "Khula" based on specified reasons for legal divorce, but they must be established before a suit is ruled in her favor and she is issued a certification of separation of marriages based on "Khul."<sup>54</sup> The married Muslim woman passed the Divorce for

<sup>53</sup> Mustafa Khan, "The Divorced Rights for Women in Pakistan and the UK and the India: A Comparative Study", Published by Admin, April 20, 2023

<sup>54</sup>Divorce Procedure and Laws in Pakistan," August 25, 2023 Retrieved from [https://www.google.com/search?q=divorce+procedure+and+laws+in+pakistan&og=&gs\\_lcrp=EgZjaHJvbWUqCQgAECMYJxjqAjIJCQAQIXgnGOoCMgkIARAJGCcY6gIyCQgCECMYJxjqAjIJCAMQIXgnGOoCMgkIBBAJGCcY6gIyCQgFECMYJxjqAjIJCAYQIXgnGOoCMgkIBXAJGCcY6gLSAQkxMzg4ajBqMTWoAgiwAgE&sourceid=chrome&ie=UTF](https://www.google.com/search?q=divorce+procedure+and+laws+in+pakistan&og=&gs_lcrp=EgZjaHJvbWUqCQgAECMYJxjqAjIJCQAQIXgnGOoCMgkIARAJGCcY6gIyCQgCECMYJxjqAjIJCAMQIXgnGOoCMgkIBBAJGCcY6gIyCQgFECMYJxjqAjIJCAYQIXgnGOoCMgkIBXAJGCcY6gLSAQkxMzg4ajBqMTWoAgiwAgE&sourceid=chrome&ie=UTF)

Muslim Marriages Act in order to streamline and clarify Islamic law's provisions regarding women married according to Islamic law's ability to file for divorce and to eliminate doubt about how her abandonment of Islam would affect her marriage. The Act became operative on March 17, 1939, and it specified the subsequent grounds for divorce:

- 1) The husband's circumstances have been unknown for four years;
- 2) the husband's two-year neglect of providing maintenance to the wife;
- 3) A seven-year jail sentence for the husband;
- 4) The inability to fulfill responsibilities under the marriage without a valid reason;
- 5) The husband's impotence;
- 6) His insanity;
- 7) The wife's rejection of the marriage;
- 8) The husband's cruelty;
- 9) any further defense allowed by Islamic law. The fourth provision of the statute deals with what happens if a married Muslim woman chooses to convert to another religion. It is suggested that the grounds be separate from one another and that any of the aforementioned conditions could result in the issuance of an order from the court for a dissolution of the marriage.<sup>55</sup>

The legislation (1939) was designed to remove any doubt as to how a married Muslim woman's denial of Islam would affect her marriage and to clarify and streamline the parts of Muslim law that concern married Muslim women who want to abandon their relationships. Even though the Act purported to consolidate and clarify Muslim Law, in fact it brought in sweeping changes, as misinterpretation of Muslim Law by courts had made it practically impossible for women married under Muslim law to seek divorce. There was a misperception that Hanafi Law prohibited Muslim women from obtaining a divorce through the legal system. Courts in British India ruled that a spouse's desertion from Islam acted as the marriage's final and effective divorce. Consequently, a married Muslim woman's apostasy ended her marriage. The Muslim Marriage Act of 1939 brought about a number of important legal changes. A Muslim wife who marries under

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<sup>55</sup> Din shah Fardunji, "principles of Muhammadan Law". (Mansoor Book House Law Books Publishers and Books Sellers). p.482

Muslim law may still file for divorce on a variety of grounds specified in her Islamic apostasy, but it will no longer end the marriage.

It should go without saying that contented marriages among the two spouses are highly valued in Islam. Both have been granted permission to strictly follow Islamic instructions in order to achieve this goal. However, if a divorce is required and neither partner believes that they can coexist amicably under Islamic guidelines, then they may formally break their union. In accordance with Islamic law, a spouse can divorce his spouse or another person, yet he can also cede some of this authority to her, either permanently or for a set amount of time. Section 8 in the Muslim Family Law Ordinance of 1961 specifically allows for this kind of Talaq, known as Talaq-i-Tafweez.<sup>56</sup>

The Nikah Nama, or marriage contract, may contain a provision over the ceding of the future spouse's divorcing rights to his prospective wife at the moment of marriage. This type of delegation is commonly referred to in Muslim law as "tafwiz." After getting married, the pair may even decide that the wife will ask her husband for permission to submit a request a separation on his behalf. If granted this privilege, the wife may apply for divorced on the husband's behalf in the same manner as the husband can pronounce "Talaq, Talaq, and Talaq". This crucial component of Muslim marriage regulations facilitates the protection of a wife's prospective married life. If a wife is awarded the authority of Tafwiz, she can exercise "Talaq-e-Tafwiz," which is the power to dissolve the marriage, without having to appear in court to apply for divorce. Section 7 of this Ordinance requires the husband to deliver a notice of divorce, in a manner similar to how subsection 8 of th Ordinance requires the woman to in turn abide by the conditions on the seventh section of the Ordinance. Stated differently, she is required to provide notice to both the chairman of the Union Council and her spouse. Reconciliation cannot begin until the Chairman creates a Settlement Council. Ninety days must elapse after the Chairman gets the notification of talaq before the divorce can be revoked.<sup>57</sup>

Pakistan has an Islamic-based legal system; divorce rules are mainly governed by the Muslim Family rules Ordinance of 1961. Pakistani family courts handle divorce proceedings

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<sup>56</sup> Muhammad Abdul Basit, "*Muslim Family Laws*" Federal Law House, second edition (2015). p.88

<sup>57</sup> "International conference on Islamic Laws and women", p 405-406



according to the ordinance. Pakistani women who want to get married confront a lot of societal and cultural obstacles. Women who file for divorce face shame and may face pressure from their family to stay in the marriage. Women who file for divorce can experience abuse or violence. It may be difficult for women to take use of their rights under the law and get a divorce due to certain social and cultural considerations. Pakistan's divorce rules continue to disproportionately benefit men, and women who want a divorce frequently encounter stigma and social pressure.<sup>58</sup> Due to male dominant society and social norms, women are deprived of their rights. However, there are many laws regarding rights of divorce of women but they are not being followed seriously.

### **Rights of Maintenance in Pakistani Constitutions**

Islamic law states that fathers and mothers bear the primary responsibility for supporting their boys into adulthood and their girls until marriage. Even in the event of a divorce, a husband must provide for his wife until 'iddah after marriage. There is disagreement over the matter of support after 'iddah, but the Pakistani judiciary says nothing about it. However, at now, there are talks about a potential legislation that would require payments for maintenance to be provided for divorced women throughout the rest of their lives unless they get married again after 'iddah. Maintenance is the term for a husband's obligation to supply his wife with basic needs, such as food, clothing, housing, and other costs, based on his financial situation. A woman also has this privilege under the Dissolution of Muslim Marriage Act 1939, Section 2, Subsection (ii). The role of the higher judiciary extends to past maintenance as well as maintenance during a marriage and the "iddah" term for a divorcee. husband does not retain a divorced wife because she is no longer considered to be the wife following the divorce. The husband will typically divorce the wife and put an end to the maintenance issue when she requests the court for it. The family court decides how much maintenance to award based on the husband's financial situation and the case's circumstances. Both state law and Islam mandate that husbands provide for their wives. The husband is obligated to support his wife under both state and Islamic law. For first and second wives, there is

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<sup>58</sup> Mustafa Khan, *"The Divorced Rights for Women in Pakistan and the UK and the India: A Comparative Study"*, Published by Admin, April 20, 2023

no distinction in maintenance. In Pakistan, a husband's maintenance for his second wife is equal to his maintenance for his first. It is appropriate to treat the second wife similarly to the first.<sup>59</sup>

The maintenance allowance covers lodging, food, clothes, and other needs for daily survival. A woman's basic right is to get maintenance, which is a husband's major responsibility. Pakistan's legal system recognizes it and it is founded on fundamental principles of Islamic law as well. The husband's financial situation will decide the amount of maintenance, which is not prescribed or regulated neither by Islamic law nor by Pakistani legal rules. Additionally, the Superior Court considers the husband's financial situation while making decisions. When the requirements outlined by Muslim jurists are met, a Muslim woman is entitled to maintenance. In Pakistan, maintenance is clearly provided for the duration of a marriage or until 'iddah following a divorce. However, the Law and Justice Commission of Pakistan has undertaken certain initiatives and issued recommendations following the 'iddah period.<sup>60</sup>

Every husband has a legal duty to provide for his wife and kids. However, he is not supposed to maintain a disobedient wife that is when she is not accompanying him without a legal and justifiable excuse. He must maintain whether the wife is sick and is even unable to perform her matrimonial duties whether the marriage is consummated or not. As per the apex Court in Pakistan maintenance is not confined merely to food, clothing and lodging but it cannot be extended to incorporate within its education at higher levels ad infinitum. A woman may ask the head of the Arbitration Council to set her own maintenance allowance per subsection (1) of section 9 of the MFL0, 1961. The Collector may receive amendment requests within thirty days, and his choice is final. In a similar vein, the FCA, 1964's Section 17-A and 17-B permit the Family Court to determine maintenance amount. Before determining the allowance under Section 17-A (4), the Family Court must gather information about the husband's sources and means.

Family Courts have been receiving instructions and recommendations from Apex Courts to exercise extra caution when assessing maintenance amounts. In addition, higher courts have frequently declared that if decisions for interim maintenance are contested, they will not meddle

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<sup>59</sup>Khadija Law associates, "Wife Maintenance law in Pakistan", accessed from <https://khadijalawassociates.com/wife-maintenance-law/>

<sup>60</sup> Hafiz Muhammad Siddique, "Women's Right to Maintenance in Legal System of Pakistan with Special Reference to Judgments of Superior Courts" p 32

in matters falling beyond their constitutional purview. Family courts now have the ability to examine their own rulings in family disputes thanks to rulings from higher courts. Maintenance might be paid for a woman's past, present, or Iddah era. The father's duty to support his son ends when he reaches the legal age of the majority, that is, 18 years old, according to the ruling of the Supreme Court. According to rulings made by Pakistan's higher courts, the father has a duty to provide for his single daughter. Furthermore, courts have decided that when a grandpa's father is unable or unwilling to support his grandchildren, the grandfather has a duty to do so.<sup>61</sup> The Pakistani legislation pertaining to wife maintenance governs every step of the lawsuit. In accordance with Pakistani legislation, family courts render decisions about spouses' maintenance payments. Islamic law determines a spouse's maintenance in Pakistan. It is the husband's responsibility to pay his partner's living expenses. The financial status of a husband determines a wife's maintenance payments in Pakistan. The Nikah comes before the husband's obligation to support his wife. The husband must provide the wife with her monthly payment for the term of their marriage. The entire litigation process is governed by Pakistani rules on wife maintenance. Pakistani law states that judgments about maintenance payments between spouses are made by family courts. But still Throughout the length of the Iddat, the husband remains responsible for the wife's costs regardless of whether the divorce procedure in Pakistan is completed. He has to continue to give his wife an allowance each month because the law does not require him to pay her alimony when the idea ends. Pakistan's law on wife maintenance stipulates a husband's weekly allowance to his wife. Even if she is suing for divorce, the khula may still ask the court for monthly support until the duration for the iddah is determined.<sup>62</sup>

The women's (safeguarding of rights upon divorce) Act, 1986 was enacted to safeguard the legal rights for Muslim women that had either ended their own marriages or been divorced from their partners. Provisions for subjects relevant to or additional to it are included in the Act. It is evident from the Act's language that no entitlement provided for Muslim women around the time of its passage has been removed, curtailed, or overturned. Several provisions of the Act expressly detail the requirements for women seeking maintenance. In addition, it states that if a

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<sup>61</sup> Muhammad Munir, "Maintenance of the Wife and Children in Islamic Law and Pakistani Legal System: An Appraisal". p 25

<sup>62</sup> "Maintenance of Wife". <https://www.lawyerinlahore.com/maintenance-of-wife/>.

woman lacks maintenance to her spouse, she may apply for a grant from the Wakf Board in line in section (b), which states that she may get maintenance from the Waqf Board or, if that is not an option, from family members. However, her maintenance obligations end with the second marriage she had, and she is not entitled to have any more maintenance claims taken into account. As a result, the law provides a Muslim woman that has been divorced with sufficient funds to live properly and avoid being abandoned on the streets. protecting ladies who have split up If a Muslim woman selects to maintain any kids that she enjoyed prior to or after the divorce, she will be entitled to the following under subsection (1) of section 3: a fair and reasonable the supply as well as maintenance, that the man she divorced must offer as well as pay for her children within the iddah period.<sup>63</sup>

Pakistan, an officially recognized Islamic republic, has put in place a number of laws and constitutions to uphold women's rights and eliminate gender-based discrimination. Nevertheless, there is frequently a lack of dedication to women's rights and the execution of these laws. Because to social conventions and ideals, as well as a patriarchal culture, women struggle greatly to attain their basic rights. Some advocate for Pakistan to implement Sharī'ah principles in order to combat gender inequality and align it with the teachings of the Prophet Muhammad. Whenever it comes to respecting women, Prophet Muhammad (صلى الله عليه و سلم) established a precedent that we should adhere to. He had never touched his spouses or daughters in his life. "I am the most excellent among you, to my wives," he remarked. "The best of you are those whom offer the greatest to their wives." After hearing a man's complaint about his wife being violent towards them, Prophet Muhammad (صلى الله عليه و سلم) counseled the man to tolerate his wife's behavior with determination. Even when it came to accepting her marriage proposal, he asked his daughter Bibi Fatima's permission. This is in sharp contrast to the ongoing oppression of women in Pakistani society, which includes rapes, kidnappings, and physical and psychological torture. In Islam, marriage is understood like an agreement among a male and a woman, in which the bride's approval is essential. In Islam, forced marriages are forbidden, however divorce is acceptable if a woman decides she does not want to remain with her husband. Gender equality is advocated for in the Qur'an. highlighting the fact that a single soul gave rise to all humans. Additionally, it offers

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<sup>63</sup> Romit Aghrawal, "Maintenance: under Hindu, Muslims, Christians and Parsi laws"

detailed advice on subjects like divorce and inheritance. But the problem isn't that there aren't rules; rather, it's that people aren't aware of them or willing to follow them. Pakistan must demonstrate more dedication to gender equality in order to overcome these issues. The equal status of men and women is emphasized in the Qur'an, along with the significance of accepting one another as members of the diverse human family. Educating society on the legal privileges and protections available to women is essential. The implementation of women's rights in Pakistan is hindered by the inadequacy of the legal, legislative, and administrative systems, even with the presence of legal remedies. The issue is made worse by the fact that these arrangements frequently benefit society's elite groups. Therefore, in order to guarantee that women's rights are efficiently carried out and upheld, broader administrative and social reforms are required in Pakistan in order to advance women's status and achieve their rights.

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