

LAND REFORMS IN PAKISTAN: AN ANALYSIS THROUGH THE LENS OF DISTRIBUTIVE JUSTICE



SUBMITTED BY:

SAJIDA FARAZ

128-FSL/PHDLAW/S20

Supervisor:

Dr. Samia Maqbool Niazi

Assistant Professor of Law

Department of Law

Faculty of Shariah & Law

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Submitted in partial fulfillment of the requirements for the Ph.D degree in Law with
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Supervisor: Dr. Samia Maqbool Niazi

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Dedicated to my Dear Parents for their consistent and unwavering support and
love.**

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List of Abbreviations

CAIC	Congress Agriculture Improvement Committee
CDA	Capital Development Authority
CAP	Common Agricultural Policy
CEE	Central and Eastern Europe
CEECs	Central and Eastern European Countries
CIS	Western Commonwealth of Independent States
EBASTA	The East Bengal State Acquisition and Tenancy Act
EU	European Union
F.L.C	Federal Land Commission
FGEHF	Federal Government Employees Housing Foundation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ILO	International Labor Organization
IPs'	Indigenous People
JI	Jama'at-i-Islami
JUH	Jamiat Ulema-i-Hind
KU	Karachi University
LRAP	Land Reform Action Programme
MLR	Martial Law Regulation
MoRD	Ministry of Rural Development
NWFP	North West Frontier Province

ODA	Overseas Development Organization
PIU	Produce Index Units
PML	Pakistan Muslim League
UDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous People'
WSWB	Willing Seller-Willing Buyer
WWI	World War I
WWII	World War II

Abstract

This study concentrates on the role of distributive justice in land reforms in Pakistan, with a call for legislative changes for proper land distribution. To date, there are no appropriate legal solutions for the distribution of lands in Pakistan, even though land reforms attract wide attention. Several land reforms regulations in Pakistan were declared un-Islamic by the apex courts of the country. This work aims to fill this gap by establishing a hybrid land reforms model for implementing land reform in a country based on Islamic Sharia, constitutional law, and internationally acceptable benchmarks. This study dives deep into subcontinental, Islamic history of land reforms and some selected jurisdictions' land practices. It also scrutinizes the legislative history and case laws regarding land reforms in Pakistan to examine the constitutionality and judicial reaction toward land reform legislation. This work uses distributive justice as its overarching concept, grounding it in the work of Rawls to be adopted in concordance with Pakistani and Islamic frameworks. For methodology, this study relies on doctrinal analysis.

Ultimately, the study contributes to both theoretical and policy-oriented discourse by offering a practical, context-sensitive model for land reforms that upholds justice, dignity, and socioeconomic equality in Pakistan. The findings of the study highlight that the impediments to land reform in Pakistan are less about legal incompatibility and more about political resistance and judicial misinterpretation. The dissertation proposes a midway reform model emphasizing rectification of unjust holdings, equitable redistribution, and administrative mechanisms that comply with both Islamic injunctions and constitutional mandates.

Chapter 01. Introduction

1.1 Thesis Statement

Land reform regulations are declared un-Islamic in various case laws of apex courts in Pakistan; as of now, there is no adequate/ appropriate legislation for land distribution; hence, there is a need for legislative reforms to attain the goals of distributive justice.

1.2 Significance of the Study

Land reforms have been a very challenging topic in the history of Pakistan, as land is one of the central assets of an agrarian society. The existing land distribution in Pakistan is feudalist and capitalist, which is a hurdle in eradicating many social evils such as poverty, inequality, discrimination, etc. Therefore, land reforms are highly needed for society's individual and collective rise. This research is focused on proposing reasonable midway land reforms that could be implemented easily in the light of the constitution. Hopefully, this study will be helpful to establish a social justice and prosperous society.

1.3 Introduction

Land is a great treasure and a rich resource of a nation. It depicts wealth in its ultimate form and is the central economic and political power source. Land is tied to human progress and food production in many ways, however its historical distribution is uneven leading to social imbalance. In traditional and common usage, 'land reform' means reallocating or redistributing land in favor of landless peasants, smallholders, and tenants. Land reform has come into being alongside the rise of neoclassical theory. At present, with the evolution of technology in the fields of agriculture and industry, human contentment is considered to be correlated with economic growth. The growth means the annual average rise in per capita real production per year.¹

1.4 Theoretical Framework

This dissertation adopts an integrated theoretical framework grounded in the principles of distributive justice derived from both Islamic jurisprudence and Western political philosophy. The objective is to formulate a coherent and contextually appropriate foundation for assessing and

¹ Akmal Hussain, "Land reforms in Pakistan: A reconsideration," *Bulletin of Concerned Asian Scholars* 16, no. 1 (1984): 49, doi:10.1080/14672715.1984.10409782.

reimagining land reform policies in Pakistan. Given Pakistan's unique constitutional identity as an Islamic republic, alongside its colonial legal heritage and entrenched feudal structures, this dual-sourced framework is designed to be normatively robust and operationally practical.

A) Western Theoretical Foundations

I. John Rawls's Theory of Justice

Keeping the ultimate purpose of land reforms, which is “1) guaranteeing the fulfillment of basic needs, 2) equitable personal incomes, and 3) elimination of extreme inequalities and achievement of equal opportunity, this research is adopting the principles of distributive justice established by John Rawls as an underlying philosophy for proposing land reforms in Pakistan.”²

John Rawls puts forward the below two principles of justice: “All have an alike claim to a fully adequate scheme of equal fundamental rights and liberties. Social and economic inequalities are to satisfy two conditions: they are attached to positions and offices to be held under conditions of fair equality of opportunity and are of the most significant benefit to the least advantaged members of society”.

In (1), Rawls emphasizes on “equality of opportunity”. In 2 (a), Rawls preserves its significance to the second 2 (b), “whereby no sacrifice to fundamental liberties should be made to generate greater equality of opportunity or a higher level of material goods, even for the worst off. For 2 (b), Rawls uses a —index of primary goods to measure the benefits of people.”³

Redistributing income and wealth, within the contract and where it is clearly to the benefit of the ‘least advantaged’, is to benefit society as a whole.

To drag these principles into the context of land reform, I will restate them as under:

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, including the right to shelter and housing.⁴ Social and economic inequalities are to satisfy two conditions: they are attached to positions. Offices open to all under condition of fair equality of opportunity. Everyone should have equal opportunity to acquire land for generating personal

² Brian Lund, "Distributive Justice and Social Policy," *Social Policy: Theories, Concepts and Issues*, 2006, 115, doi:10.4135/9781446280386.n7.

³ Samuel Fleischacker, "A Short History of Distributive Justice," 2005, 110, doi:10.2307/j.ctv2fcct3g.

⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 2009), 304.

income. They are to be the greatest benefit of the least advantaged members of society. The people with little or no land should be kept in mind while undergoing land reforms.⁵

1. Providing shelter to landless people will meet their fundamental rights, and equal opportunities to access the land which will benefit both the deprived and middle-class people.

Rawls's theory has been critiqued for its lack of concrete procedural steps to implement distributive justice. Scholars such as Iris Marion Young have attempted to address this by integrating procedural mechanisms, particularly from deliberative democratic theory, into frameworks of justice. While this dissertation remains grounded in Rawls's distributive vision, it acknowledges the importance of procedural justice as a necessary complement. The concept of procedural justice is instrumental in achieving distributive justice. In the context of land reforms, this means ensuring transparency, accountability, and participatory mechanisms in the rectification and redistribution process.

II. Iris Marion Young's Perspective

Young's critique of the distributive paradigm highlights the significance of inclusive deliberation and political participation in achieving justice. In her work "Justice and the Politics of Difference" (1990), she argues that fair distribution alone is insufficient if structural marginalization and exclusion from decision-making persist. Her emphasis on deliberative democracy, where affected communities actively shape policy through inclusive dialogue which offers a valuable procedural lens for implementing land reforms. In Pakistani context, where landless communities, tenants farmers, and marginalized rural groups are often excluded from formal governance structures and policymaking processes, incorporating Young's framework can enhance both the democratic legitimacy and social effectiveness of redistributive efforts. A truly just land reform model in Pakistan must not only address ownership disparities but may also empower these historically silenced voices to participate in designing and implementing reforms. Justice, therefore, is not merely about equitable outcomes but also about equitable participation in shaping those outcomes.

III. Robert Nozick's Entitlement Theory

⁵ "Utopias of the British Enlightenment," 1994, 227, doi: 10.1017/cbo9780511840869.

In 1974, Nozick provided three-step procedural guidelines for practicing land reforms. Although Nozick formulated this procedure for individual entitlements, his suggested procedure is well-suited for our purpose; therefore, the researcher only adopting procedural steps to operationalize the distributive justice principles of Rawls.

Nozick considers the justice of the state of affairs to consist of whether individuals are entitled to their holdings. The three principles of justice, justice in acquisition, justice in transfer, and justice in rectification, are the sources of individuals' entitlements. Legitimate acquisition is defined as the idea that, by nature, one already owns oneself, and one legitimately acquires (previously unowned) natural features of the world with which one mixes one's labor. When one has something, one can give it to anyone. A transfer is just if and only if it is voluntary.⁶ A distribution of resources that results after a legitimate acquisition or trade of resources is just. However, the existing distribution may be the effect of previously illegal acquisitions and transfers. In those cases, it needs some rectification.⁷

B. Islamic Theoretical Foundations

In Islamic jurisprudence, land is ultimately owned by Allah, and humans are considered trustees. Ownership is thus not absolute but conditional upon social responsibility and compliance with moral and legal principles. The Prophet (Peace Be upon Him) distributed uncultivated lands to those who would put them to productive use. This historical precedent demonstrates the legitimacy of state-led allocation of land to promote justice and discourage hoarding or inefficient use. The principle of *Maslahah* provides the state with the authority to implement policies that promote collective welfare. When land concentration exacerbates poverty or marginalization, state-led redistribution is not only permissible but obligatory.

C. Application to the Pakistani Context

Pakistan's feudal structure is antithetical to the Islamic ideal of egalitarianism and the Rawlsian requirement of fair equality of opportunity. Both traditions call for structural reforms to dismantle entrenched privileges. Iris Marion Young's procedural justice approach offers practical insight for institutional reform in Pakistan. It recommends participatory forums and community-based mechanisms to involve rural stakeholders—particularly women, tenants, and small-scale

⁶ Robert Nozick, "Distributive Justice," *Distributive Justice*, 2017, 2, doi: 10.4324/9781315257563-1.

⁷ Peter Vallentyne, "Robert Nozick: *Anarchy, State, and Utopia*," *Central Works of Philosophy*, 2006, 92, doi:10.1017/upo9781844653621.006.

cultivators—in shaping the priorities, design, and implementation of land reforms. Such a participatory model strengthens both accountability and public trust in the reform process. The convergence of Rawlsian distributive justice and Islamic trusteeship underscores the necessity of addressing extreme disparities in land ownership. Land access is a prerequisite for both economic dignity and social inclusion

Nozick's rectificatory principle provides a defensible legal and ethical route for revisiting unjust land acquisitions. Simultaneously, Islamic doctrines of *Maslaha* empower the state to rectify systemic imbalances in land ownership.

Reordering Nozick's principles gives us a procedure to work the land reform; first, the land record ownership record should be rectified the illegitimate land should be acquired by the state, and the land retained by the state shall be given through transfer to homeless people to meet the right to shelter, all those who are the least advantaged and have the potential to cultivate but do not have their land so that they can generate their income.⁸

This integrated framework offers a principled yet pragmatic approach to land reform policy in Pakistan, ensuring alignment with both its constitutional obligations and its Islamic ethos, while also meeting the standards of international justice discourse. Subsequent chapters will employ this framework to evaluate existing legal structures and guide the proposed reform model.

1.5 Research Methodology and Proposed Solution

The study adopts a doctrinal legal approach as its foundation to analyze various legal elements of land reforms in Pakistan together with constitutional laws and religious principles and international perspectives. A midstream land reform model that follows constitutional guidelines while complying with *Shariah* standards warrants analysis using doctrinal methodology because it represents an essential and realistic solution for Pakistan.

The study embeds methodology within its core argument and presents it from the beginning of the study through an integration of problem statement and research objectives and theoretical framework. The central problem arises from judicial case interpretations regarding Qazalbash *Waqf* in addition to legislative inactivity which has resulted in Pakistan's failure to establish an equitable land reform structure.

The doctrinal method, with its focus on primary sources such as constitutional provisions, statutory texts, court decisions, and Islamic jurisprudence (*fiqh*), serves as the backbone of Chapter 2 (Concept of Justice in Islamic Jurisprudence), Chapter 3 (Concept of Justice in Western Jurisprudence), and Chapter 5 (Land Reform Regulations and Judicial Practices in Pakistan). The chapters analyze through legal assessment both judicial and religious manners in which current legal norms impact land redistribution processes and trends.

The research analyzes legal systems through comparison by examining land reform programs in Germany and Central/Eastern Europe for implementation strategies suitable for Pakistan's social environment. The comparative method demonstrates functional approaches to transformation and institutional methods that align with the research objectives.

The research study adopts qualitative-descriptive and analytical methods to advance beyond basic presentation of laws and rulings. Chapter 5 assessment applies critical appraisal to scrutinize the Qazalbash Waqf case for its proper fit within Islamic legal values alongside Pakistani constitutional principles. The analysis in Chapters 2 and 3 studies Islamic and Western distributive justice concepts with the purpose of developing an appropriate framework for Pakistan's plural legal system.

The study develops an operational reform model using normative legal proof sources which include:

- The Constitution of Pakistan (especially Fundamental Rights and Islamic provisions),
- Islamic legal doctrines (e.g., *maslahah*, *zakat*, and the public interest),
- Theories of distributive justice (e.g., Rawls, Nozick, and Iris Marion Young's),
- And international legal norms.

The research advances its integrated theoretical framework to Chapter 7 for establishing its proposed reform model. The model integrates Pakistani constitutional values through Islamic principles and combines effective legal instruments with adopted best practices from international judicial systems.

Library-based extensive research supported this project through the utilization of physical and electronic materials. Key legal materials include:

- Pakistani statutes and judicial precedents
- Islamic classical texts and modern interpretations

Library-based research depended on two sources: international reports about land reform policy along with analysis of modern land reform strategies.

The research uses peer-reviewed legal commentaries paired with scholarly writings as supporting materials.

The study referenced libraries from the Supreme Court Library of Pakistan along with the Higher Education Commission databases as well as Al-Maktabah Al-Shamilah for classical Islamic texts, JSTOR, and archives from UN and FAO to gain global reform insight.

This method enables researcher to perform both essential legal evaluation and practical reform development while guaranteeing proposals that meet theoretical standards and can obtain legal and social execution. The findings demonstrate how Pakistan's land reform impasse lies not in religious or constitutional matters but in interpretive and political factors while redistributive justice remains compatible with Muslim law and constitutional requirements.

1.6 Importance of Land Reforms

Land reforms have been instrumental in the economic development across the human history. Land reforms involve evaluating, amending, or eliminating statutes, rules, or practices concerning land ownership and tenure. The incentive legislation has to be renewed, and preventive law must be abolished.⁹ Land is among the most valuable natural resources in the nation. It is the principal source of revenue and a significant source of financial and political power. Land could represent human progress and be viewed as a tool for living. Land ownership is very symbolic of social stratification and relationships in agrarian societies. In specific instances, tenure deficiencies stand as impediments to socio-economic development, and land reform may be commonly required to restructure the institutions related to tenure systems and dispose-off any barriers. The standard or widely accepted definition of land reforms is a reallocation of ownership rights over the land in favor of landless and agricultural laborers and tenants. More specifically, land reforms are related to those programs that grant land to farmers and agricultural laborers. In its most basic

⁹ Christoph Beringer, "Welfare and Production Efficiency: Two Objectives of Land Reform in Pakistan," *The Pakistan Development Review* 2, no. 2 (1962): 176, doi:10.30541/v2i2pp.

concept, land reforms propagate the idea regarding the demand for increased fairness and social equality.¹⁰

1.7 Land Distribution Pattern in Pakistan

The land distribution pattern in Pakistan is based on capitalism and feudalism. Upper-class families own a major portion of land. These families lease out this land in dehumanized conditions to the tenants that often dispossess their fundamental rights and liberty. As per the data estimation, 50 % of all farmed land in Pakistan is owned by 04% of Pakistan's wealthy families. Thus accentuating inappropriate wealth discrimination in society.¹¹

1.8 Islamic Perspective

Islamic law states that all lands belong to Allah. The state is, therefore, acting as a trustee of the 'ownership' of the land for Allah in the interest of the community. Caliph Umar (R.A) employed a friend of the Prophet (Peace Be upon Him) and took over the idea of ownership to the extent of conquered lands belonging to the Muslim community. The income yield of the land (which is the proceeds of the land) and its capital or income are first attributed to man.¹²

Islam also provides the very idea of dual ownership of land (belonging to Allah in a real sense, and humans can only use the land for production, etc.). This, therefore, means that the state must ensure that land is well and reasonably utilized following the principles of Allah and all universally acceptable standards of right and wrong. To say there is no Arab or Muslim way of governance is misleading and far from the truth. However, *Adl* and *Shura* are relevant within the Islamic context.¹³ The Islamic property rights are subject to a condition. The condition is the prohibition of irrational or unjust usage, which strips another of his dues.¹⁴ The people would rent it to cultivate one-fourth, one-third, or half the produce of their land. The Prophet (Peace Be upon Him) Hadith narrated By Jabir: "The people used to rent their land for cultivation for one-third, one-fourth or half its yield." The Prophet (Peace Be upon Him) said, "Whoever has land should

¹⁰ Nur Adhim, Sukirno Sukirno, and Muh. Mahfud, "The Social Function Of Land In Liberal And Islamic Law Perspective," *Proceedings of the The First International Conference On Islamic Development Studies 2019, ICIDS 2019, 10 September 2019, Bandar Lampung, Indonesia*, 2019, 3, doi:10.4108/eai.10-9-2019.2289346.

¹¹ Iqbal A. Khan and Muhammad S. Khan, "Planning for Sustainable Agriculture in Pakistan," *Developing Sustainable Agriculture in Pakistan*, 2018, 36, doi: 10.1201/9781351208239-1.

¹² Paul G. Forand, "The Status of the Land and Inhabitants of the Sawad during the First Two Centuries of Islam1)," *Journal of the Economic and Social History of the Orient* 14, no. 1 (1971): 30, doi: 10.1163/156852071x00023.

¹³ Nuzhat Iqbal, "The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan," *The Pakistan Development Review* 39, no. 4II (2000): 655, doi:10.30541/v39i4iipp.649-662.

¹⁴ Iqbal, "The Concept of Land Ownership in Islam," 652.

cultivate it himself or give it to his (Muslim) brother gratis; otherwise keep it uncultivated."¹⁵ Islamic law requires the poor to be burdened not only by the state but by the affluent as well. It is not a gift, it is not a grant, but it is a right and a right which is compulsory so far as the poor man is concerned if he cannot earn or if the opportunity for earning does not exist. Ownership is what a few must have, but Islam does not have it; instead, it has trusteeship as the precondition. The recipients of endowments or responsibilities are mostly held accountable for their welfare. The state is then fully authorized to reclaim the land for the greater economic interest if landholders do not perform these obligations based on public interest (*Maslaha*).¹⁶ The word ‘justice’ is used in the Holy Qur’an third most frequently, after the name of ‘Allah’ and ‘knowledge.’ However, social justice is one of the more emphasized aspects of Islam. Muslims are being asked to act with balance, fairness, goodwill, and truth, just as Allah has done in his attributes of *Adl* (justice) and *Qist* (equity). Nevertheless, the Islamic structure does not only create various ownerships of the land but also has redistributive elements.¹⁷

1.9 Global Initiatives Regarding Land Reforms

Global values and explanatory papers urge the provision of fundamental rights to individuals to expedite the delivery or recognition of human rights;¹⁸ nevertheless, no global claim on the lands can be found in plain terms in the worldwide system of laws. Adding to the fact, the state's responsibility regarding personal land access and coverage was not highlighted or given enough consideration in the legal frameworks. Through a deep analysis of the international laws and frameworks on international human rights, one can observe that though land rights are partially touched upon, a keener and broader consideration is needed on the global level.

The explained rights and well-defined in Human Rights on the International level in only two significant aspects of global legal provisions about universal human rights. These essential aspects were either the owning rights of natives of the lands or were connected to the land-owning rights of females. Land rights and their usage are often embedded in religion, culture, and society. That's why land-owning and its usage rights are fully matured and well defined in the context of universal and taken as of native nature in the context of human beings. “The International Labour

¹⁵ "Sahih Al-Bukhari Hadith: 2341, Volume 3," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sahih-bukhari/3/>.

¹⁶ Iqbal, "The Concept of Land Ownership in Islam", 657.

¹⁷ Ainul J. Maidin, "Role of Land Use Planning in Improving Public Health," *SSRN Electronic Journal*, 2012, 70, doi:10.2139/ssrn.2015083.

¹⁸ The Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, Adopted June 11, 1976.

Organization (ILO) Convention 107 of 1957” was the first international effort to recognize the rights of native populaces. The convention was practically employed for the original and different social groupings residing in the territories of internationally recognized countries; the convention aimed to integrate these marginal groups into the mainstream social fabric. The strategy of mainstreaming and assimilating became part of the discourse between the recognized countries and the natives of those lands. The discourse led to the governance of lands in Asia, like the amendment in “International Labor Organization treaty No. 107” and the launching of convention “No. 169 of the International Labor Organization in 1989”. Convention No. 169 of 1989 differed from previous conventions as it fully accepted the diverse perspectives of the natives and ethnic groups, and their social values were regarded as equal to those of other groups. These groups' representation and views were deemed vital while reaching some form of decision because they could best decide about their benefits.

This was mainly due to the recent debates in the late 80s and '90s regarding climate change and protecting the natural environment (habitat), which caused the global human rights apparatus for protecting original populations to evolve. The Earth Summit of 1992, also referred to as the “United Nations Conference on Environment and Development”, which was held in Rio de Janeiro, Brazil, proved to be a significant step towards securing the rights of indigenous communities. The summit agreed on many provisions for securing indigenous communities and their lands, such as the “Rio Declaration, Agenda 21, and the Convention on Biological Diversity.” The initiatives or statutes agreed upon set the global apparatus for legal provisions for preserving the native communities’ natural rights based on their native ways of awareness and their practical approach toward the safety of their habitat and the ecological systems around them. The proclamations of Rio’s Earth Summit provided a global legal apparatus that identifies itself with the intricate relationship of indigenous communities with their habitat or native lands.¹⁹ The three primary universal or natural rights concerning the association of developing sustainably are well defined by the global legal apparatus (International Law): the living right, encompassing life in a sustainable ecological system; the inherited and historical rights of natives and other ethnic,

¹⁹Jayantha Perera, *Land and Cultural Survival: The Communal Rights of Indigenous Peoples in Asia* (Asian Development Bank, 2009), 4.

communal groups; the rights of involvement in the processes or procedures, like the rights of information and the right of knowing those processes.²⁰

In 2007, the United Nations passed a resolution declaring the rights of natives or original people. The resolution is titled “UNDRIP,” short for “United Nations Declaration on the Rights of Indigenous People”. The United Nations also created a regular platform (Forum for Indigenous issues at United Nations) for matters related to native populations. The largest continent by population has already endorsed the United Nations Declaration on the Rights of Indigenous People, and the only remaining countries in the southeast still pending ratification are the States of Burma and the State of Malaysia. Apart from countries, most global institutions improvised their plan of action and policy guidelines for protecting indigenous people and their rights. The majority of states in the Asian continent are still following the same old traditional approach incorporation toward natives, in their policies concerning the issues of natives. The majority of the countries in Asia do not identify or bestow a special status towards native or indigenous communal groups; only some countries, like the Philippines, India, and the State of Cambodia, have some regulations or constitutional articles regarding the protection of native peoples and their lands. The natives were comparatively not handled and incorporated as unique but were instituted under the same rules and regulations as the common masses. Some provisions of the United Nations a global body with a mandate of maintaining peace and human rights of the whole of humanity concern itself in plain terms regarding individual rights, especially the rights of the land. Such provisions are stated plainly in the following documents: the essential document of universal human rights ‘UDHR’ short for “Universal Declaration of Human Rights,” and two other vital obligatory treaties or pledges regarding socio-political and eco-cultural rights titled, ‘ICCPR’ and ‘ICESCR’ short for “International Covenant on Civil and Political Rights”, “International Covenant on Economic, Social and Cultural Rights”, respectively. The two vital covenants ICCPR and ICESCR call for the right to a safe and secure lifestyle. Access to sustainable accommodation facilities are crucial in safe and secure living; landownership, or the right to own land, is central to fulfilling this right. Land is often a central and essential factor in achieving the right to accommodation and lodging; even for the whole communal group, it is a focal point for acquiring their fundamental rights of shelter or lodging.²¹

²⁰ Perera, *Land and Cultural Survival*, 5.

²¹ Quizon, "Land Governance in Asia," 56.

One of the many fundamental rights of human beings mentioned in diverse global papers, declarations, and covenants are lodging and accommodation.²² The working group (CESR) detailed everyday Economic, Social, and Cultural Rights observations. The registrar also pointed out lodging as central regarding access to the right to sustainable living. The common observation or remark number four regarding the right to enough lodging accessibility stresses the broader definition of lodging or accommodation, and it further defines lodging or housing as the right of accessibility for people to safety, serenity, and self-respect.²³ The essential factors highlighted in the general comment or observation number four are enough lodging (sustainable accommodation) that comprises access to facilities, suitability for living, area, and financial sustainability—the safety against the lease or unlawful expulsion from the lands that one is based upon. The marginalized groups often face the fear of expulsion; therefore, for the right of access to sustained lodging, the safety against these illegal and inhumane eviction practices are necessary. These regulatory statutes and provisions supplement and catalyze the process for land reforms, as these rights could only be guaranteed by the reforms made regarding tenancy, etc.

1.10 Need for Land Reforms

Poverty, which is the main contributor to illiteracy, unemployment, and social and moral degeneracy, is caused by landlessness. The feudal land system usually produces unwarranted class divisions between citizens and among citizens, which causes human exploitation. Consequently, this also escalates political and social control of the nation within a minority over the collective progress and supply of the country.

It must also be noted that land distribution in an inequitable manner also affects the social unrest, moral decay of society, and economic injustice.²⁴ Therefore, the introduction of novel land-related reforms is the need of the hour to keep the nation on track of development and progress. The collective advancement is not possible without uplifting the individuals.²⁵

²² Universal Declaration of Human Rights.

²³ Committee on Economic Social and Cultural Rights (CESCR), General Comment 4, The right to adequate housing (Art. 11(1)), 7 (Dec. 13, 1991) [Hereinafter CESCR, General Comment 4].

²⁴ Qazalbash Waqf and Others vs. Chief Land Commissioner, PLD, 99 (Supreme Court, 1990).

²⁵ Abbas Moosvi, "No Progress without Land Reform," The Express Tribune, last modified October 22, 2023, <https://tribune.com.pk/story/2442267/no-progress-without-land-reform>.

This research aims to review the new legislative policies and redefine current laws to pave the way for a sustainable economy through successful land reforms per the Constitution of Pakistan.

1.11 Statement of the Problem

Though there have been numerous attempts made towards the reform of land system in Pakistan, lack of proper legal structure fails to support the cause of land distribution. The Qazalbash Waqf case which ruled previous land reforms as un-Islamic remains a legal and ideological dilemma up to the present time. There is no proper legislation in Pakistan to deal with land inequality issues; therefore, it creates many questions regarding the land reform compatibility with the constitution, *Shariah*, and international laws.

This dissertation argues that the main issue in this case is the lack of a clear and coherent approach as well as the inconsistent response of the judiciary, the legislature, and religious institutions to the concept of distributive justice in the framework of land reforms. Although domestic, Islamic and international laws are viable sources of reform, their adoption into Pakistan legal system is both a legal and a political issue.

To address the problem, this research aims to answer the following questions.

1. What is the relation between Distributive Justice and Land Reforms?
2. Whether International Law responded to the issues of Land Reforms or not?
3. What is the *Shariah* perspective regarding Land Reforms?
4. What is the legislative history and case laws of Land Reforms in Pakistan?
5. What was the judicial response/ constitutionality of the Land Reform legislation in Pakistan?
6. What is the current status of the Land Reforms Regulation in Pakistan?
7. What are the Suggested Land Reforms in the light of the Constitution of Pakistan, in the perspective of principles of *Shariah*, International law, and best practices of the developed countries of Distributive Justice?

1.12 Objectives of the Study

This research aims to;

1. To explore the relationship between Distributive Justice and Land Reforms.
2. To inspect the response of International Law to the issues of Land Reforms.
3. To revisit the *Shariah* perspective regarding Land Reforms.
4. To analyze the legislative history and case laws of Land Reforms in Pakistan.
5. To examine the judicial response/ constitutionality of the Land Reform legislation in Pakistan.
6. To investigate the current status of the Land Reforms Regulation in Pakistan.
7. To suggest Land Reforms in the light of the constitution of Pakistan, from the perspective of principles of *Shariah*, international law, and best practices of the developed countries of distributive justice.

1.13 Literature Review

Land reforms in Pakistan have been widely explored from historical, judicial, economic, and sociopolitical perspectives.

Regarding the history land reforms in Pakistan, the government has issued its rules and regulations various times. Numerous studies have examined the country's historical context of land reforms, including “*The Fourth Round, and Why They Fight On: An Essay on the History of Land and Reform in Pakistan*”²⁶ by Haris Gazdar. Ideally, these works provide complete and comprehensive knowledge of the history of land reforms in all regimes. Khizar Abbas's study, “*Landed Elites and Politics of Agrarian Reforms in Pakistan: ‘A Case Study of Zulfikar Ali Bhutto’s Era,*”²⁷ extensively studies the origins and historical development of the feudal land distribution system. Gazdar and Khizar Abbas have thoroughly documented both the feudal system development and land reform timeline in Pakistan. Gazdar’s historical research provides relevant background yet fails to establish relationships between past trends and present-day legal oppositions. Abbas examines the Bhutto era political dynamics of land reforms in his research, but his findings do not explain the connection between historical developments and modern judicial interpretation of land reform laws. These studies establish essential concepts about fundamental land ownership problems yet fail to solve uncertainties regarding legal limits

²⁶ Gazdar, Haris. "The fourth round, and why they fight on: An essay on the history of land and reform in Pakistan." *PANOS South Asia, Collective for Social Science Research, Karachi* (2009).

²⁷ Khizar Abbass, Anwal Kharl, and Xie Xiaoqing, "Landed Elites and Politics of Agrarian Reforms in Pakistan: A Case study of Zulfikar Ali Bhutto’s Era," *International Journal of Contemporary Research and Review*, 2018, 120, doi:10.15520/ijcrr/2018/9/01/402.

to reform in present-day Pakistani law. Mushtaq Ahmad²⁸ argued that the land tenure system Pakistan inherited was severely out of sync with what was required for a functioning contemporary democratic welfare state. When the land, the primary source of income and employment, was concentrated in the hands of a few elites, monopoly over production resulted in far-reaching economic, political, and social consequences. The power of feudal and land elites is evident from the fact that more than 80 % of cultivated land in Sind, over 60 % in Punjab, and nearly 50 % in the Khyber Pakhtunkhwa was owned by large landholders.

Muhammad Abrar Zahoor, in the paper *"History and Politics of Land Reforms in Pakistan: The Zulfikar Ali Bhutto era (1967-1977)"*,²⁹ insists that in the 1970 elections, Zulfikar Ali Bhutto came to power as a populist leader and founded his Pakistan People's Party in 1967. Bhutto was in the cabinet of Ayub Khan for a long time and knew the weak points in the government. After he founded his party, he challenged the policies of the Ayub government and spearheaded the struggle to remove this regime. As a result of the elections in 1970, they won a divided electoral mandate; the Awami League got the majority in East Pakistan, and the Pakistan People's Party got more votes in West Pakistan. Prone to socialism, Zulfikar Ali Bhutto wanted to subscribe to Fabian Socialism in Pakistan. Land reforms were introduced, and nations were nationalized. Pakistan's history has historically required land reforms, with the Ayub dynasty making the initial big push toward achieving this. In his electoral campaign, Bhutto denounced Ayub's illusory land reforms. Giving an electoral promise and then implementing land reforms in 1972. Reactions to land reforms varied, and land reforms had varying results. This article studies the history and politics of land reforms in Pakistan with special emphasis on the land reforms of Zulfikar Ali Bhutto.

Warriner D systematically analyzes land and agrarian reform as approximate terms in the book *"Land Reforms in Principles and Practice."*³⁰ The 'agrarian structure,' or land system, refers to the 'institutional system' that regulates agriculture, including land ownership and distribution, land tenure categories, and the composition of agricultural labor. Organizations such as cooperatives and trade unions are included in this structure when compulsory membership is enforced. They will exhibit substantial variations depending on the location. Jahangir's World Times provides a concise overview of Pakistan's land reforms. It demonstrates

²⁸ Ahmad, Mushtaq, "Land Reforms in Pakistan," *Pakistan Horizon* 12, no. 1 (1959).

²⁹ Zahoor, Muhammad Abrar, "History and Politics of Land Reforms in Pakistan: A Case Study of Zulfikar Ali Bhutto Era," *Journal of the Punjab University Historical Society* 31, no. 2 (2018).

³⁰ Warriner, Doreen. "Land reform in principle and practice." (1969): xx+-457.

that land reforms are incompatible with prosperity, a fundamental source of human exploitation, in terms of individual property rights. A very feudalistic landscape is defined by an estimate, which indicates that 50% of the country is cultivated property owned by only 4% of elite families. Feudalism is designated as the primary villain that impedes Pakistan's economic prosperity, as it leads to impoverished tenants being at the mercy of the unbridled landlord. East Pakistan has implemented land reforms and tenancy regulations after its separation, which have benefited its economy.

Most historical records shed helpful context by studying reforms independently rather than understanding how policies accumulated throughout the years. An integrative method should replace the current approach because it delivers both event documentation along with critical evaluation of previous reform impacts on current legal and policy obstacles.

Various nations at different times have implemented legal and theoretical frameworks to address their needs and constitutional mandates, which have also attracted scholarly attention, exemplified by '*Land Governance In Asia: Understanding The Debates On Land Tenure Rights And Land Reforms In Asian Context*'.³¹ Among the limited few articles in the *Framing, the Debate Series* by Antonio B. Quizon has examined the land rights system and reform more specifically by focusing on the specific condition of compulsory acquisition of private land rights under government control and the Land Use Act in the case of Nigeria is his "*Compulsory Acquisition without Compensation and the Land Use Act*"³² by Akintunde Kabir Otubu.

To obtain a wide, if not world, view of land reforms and their impact on many countries' economies, social welfare, and farming. Sam Moyo and Walter Chambati, "*Land and Agrarian Reform in Zimbabwe* (amended edition)."³³ Michael Lipton has presented an extensive analysis of land reforms in developing nations in "*Land Reform in Developing Countries: Property Rights and Property Wrongs*".³⁴ The article examines how tenants' constitutional rights were met without broad land reforms; the article was entitled "*A Fundamental Rights Perspective of Land Reform in Pakistan*"³⁵ by Guffran Ahmad.

³¹ Quizon, Antonio B, "Land Governance in Asia: Understanding the debates on land tenure rights and land reforms in the Asian context," *Framing the Debate Series* 3 (2013).

³² Akintunde K. Otubu, "Compulsory Acquisition without Compensation and the Land Use Act," *SSRN Electronic Journal*, 2014, doi:10.2139/ssrn.2420039.

³³ Sam Moyo and Walter Chambati, "Introduction:" *Land and Agrarian Reform in Zimbabwe*, 2013, doi:10.2307/j.ctvk3gnsn.7.

³⁴ Michael Lipton, *Land Reform in Developing Countries: Property Rights and Property Wrongs* (London: Routledge, 2009).

³⁵ Gufran Ahmad, "A Fundamental Rights Perspective of Land Reforms in Pakistan," *Pakistan Social Sciences Review* 4, no. III (2020);, doi:10.35484/pssr.2020(4-iii)32.

A comprehensive analysis of the impact of land reforms on agricultural production and its correlation with the land produced has been conducted by Aasim Sajjad Akhtar, Shahrukh Rafi Khan, Ali Qadir, Ahmad Saleem, and Foqia Sadiq Khan. The argument for land and agrarian reforms in Pakistan is unambiguous, as demonstrated by this article. As per the Federal Land Commission (FLC), the land ownership in Khyber Pakhtunkhwa (and even more so in Punjab) is highly concentrated, and it has grown among the landowning class despite the growing disparity between the rich and the poor that was evident in the 1980s and 1990s. Each decade, the Agricultural Census compiles operational holdings data. The data indicates that operational holdings have become considerably more fragmented, with the proportion of total farm sizes below 12.5 acres increasing from 80 % to 88 % between 1980 and 1990. However, as the land becomes increasingly fragmented, substantial landlords conduct business by ostensibly expanding their portfolios with the necessary liquidity. The state's objective in this context is to guarantee the equitable distribution of land and the complete and comprehensive implementation of agrarian reform to ensure that small-scale farming is sustained under self-cultivation and equitable under tenancy agreements. There is a compelling argument in favour of land reform, which is even more plausible when the issue is considered from a broader justice perspective, particularly from an Islamic point of view. On the one hand, Islam views natural resources such as land as a trust in which individuals have usufruct rights rather than ownership. These usufruct rights are limited to only those resources that can be effectively farmed by the individual, provided they are actively involved in its cultivation. For two reasons, authors are in favour of land reforms: the economic rationale of increased productivity from small farms, the significance of land reform in the implementation of devolution and related reforms that are impeded by landed power, and the enhancement of education, which is negatively correlated with the level of education in villages in our sample. Finally, we propose that a new phase of land and agrarian reforms may be more effective in avoiding the ill-fated errors of previous insincere attempts.

According to Philip Oldenburg, land consolidation is not generally regarded as a land reform if the land is divided into multiple plots and regrouped into a single large plot. The land consolidation program in Uttar Pradesh, India, is analyzed to increase the number of "independent" farmers in two ways: (a) by increasing the economic viability of farms per unit area and (b) by reducing the dominance of a few farmers over others, as evidenced by

observational evidence, testimony from farmers and officials, and before and after data on landholding. Land consolidation, at the very least, accomplishes the objectives of land reform if the fundamental rationale for India's land reform is to "liberate" farmers from economic and other ties.

In "*Welfare and Production Efficiency: Two Objectives of Land Reforms in Pakistan*," Christoph Beringer argues that land reform is a crucial policy instrument governments employ in underdeveloped countries to foster economic development. This research concentrates on the land and tenancy reform laws implemented in the former individual provinces of West Pakistan (Punjab, Khyber Pakhtunkhwa, Sindh and Baluchistan). It has been repeatedly adopted by the administrations of these provinces both before and after partition. Upon the commencement of the current administration in January 1959, a comprehensive land reform statute was implemented for the entire province of West Pakistan. Numerous reform initiatives were implemented to distribute land ownership rights more equitably and establish a foundation for the agrarian sector's ongoing, productive potential development through reasonable tenancy reform. This study's background information may be beneficial for comprehending the current state of land tenure. This section (section II) provides information on the dimensions of tenure, subdivision, and fragmentation recently collected in the former Khyber Pakhyunkhwa of West Pakistan. Section III will assess the material concerning the condition of the stipulations of the land reforms law and derive specific conclusions regarding the likely future trajectory of the land reforms policy.

In the article "*Rural Wages, Labour Supply, and Land Reform: A Theoretical and Empirical Analysis*"³⁶ by Mark R. Rosenzweig. Land reform is a widely discussed topic. However, there is a dearth of literature regarding the potential effects of such land reforms on wage rates. However, over half of rural families in developing countries rely mainly on agricultural wage earnings for their income. In general, the findings are consistent with a competitive market model and suggest a negative correlation between rural nominal wage rates and a measure of landholding inequality.

Simon Hull, Kehinde Babalola, and Jennifer Whittalin, in their article, "*Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa*,"³⁷ identifies three

³⁶ Rosenzweig, Mark R. "Rural wages, labor supply, and land reform: A theoretical and empirical analysis." *The American Economic Review* 68, no. 5 (1978).

³⁷ Simon Hull, Kehinde Babalola, and Jennifer Whittal, "Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa," *Land* 8, no. 11 (2019): xx, doi:10.3390/land8110172.

categories of land reform theories: conservative theory, which advocates for the preservation of the status quo by opposing the forceful alteration of customary law and secular property tenure; replacement theory, which advocates for the actual replacement of customary land practices with formal, registered property rights; and adaptation theories, which contend that land reform must be tailored to the specific needs of the context.

The study entitled '*Measuring the Impact of Land Reforms on the Farming Community in District Mardan, N.W.F.P*'³⁸ conducted by Naushad Khan, Sehnaz A. Arifullah, Naeem Shah, Dildar Hussain, Ikram Ul Haq, Muhammad Idrees and Niaz Muhammad in three (Nama Gwalain, Boyalai and Kha'rinal) selected villages of Mardan (Khyber Pakhyunkhwa) during the years 2008 - 09. The study involved 160 participants, which included 144 tenants and 16 landlords, to understand the impacts of literacy, productivity, the trends in contemporary technology adoption, and litigation status after introducing three land reforms in the study area. To ensure impartial results, 144 of the tenants and 16 of the landlords were randomly selected as respondents. For data collection, respondents were asked questions through custom-designed questionnaires that included quantitative and qualitative data. Percentages and paired t-test statistics were used to analyze the data obtained from farmers using traditional or modern production practices. These results reveal that enrolment, literacy, labor productivity, and rate of new technology adoption have increased, as well as a greater interest in employment due to land reforms. Almost all the renters said they feel empowered and capable of deciding on land reforms. Secondly, increased interest in agriculture has augmented tenancy rights and decreased production costs. However, the favorable outcomes of the land reforms have been severely jeopardized by the escalation of litigation disputes between tenants and landlords. This paper focuses on assessing the frequency of litigation between tenants and landlords and its impact on the agricultural community in Pakistan after agrarian reforms of the land reforms in the late 1960s and the early 1970s.

The study offers strong statistical findings about land reform results but avoids deliberating on core issues of moral fairness and sustainable institutional adjustment. Future research needs to combine outcome assessments with critical evaluation of legal frameworks and ethical norms to enable development of a unified model for reform.

³⁸ Naushad Khan, Shahnaz A. Arifullah, Naeem Shah, Dildar Hussain, Ikram Ul Haq, Muhammad Idrees And Niaz Muhammad, "Measuring The Impact Of Land Reforms On The Farming Community In District Mardan, NWFP", Sarhad J. Agric 25, no.4,(2009).

In, *"The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan,"*³⁹ by Nuzhat Iqbal and Zulfiqar Ahmad Gill, land ownership was perceived as a politico-economic institution in its ethical, legal, and historical dimensions. It encompasses a wide range of heterogeneous aspects derived from various ownership systems. The *Umamh's* expansion illustrates the integration of ownership laws into the rights and responsibilities framework of the overarching legal framework of obligations at the state and individual levels. The authors refer to the economic and legal theory of land ownership and its implications for developing Islamic social welfare institutions.

Timothy Besley and Robin Burgess have demonstrated in their article *"Land Reform, Poverty Reduction, and Growth: Evidence from India"*⁴⁰ that land reforms that aim to alleviate poverty frequently encounter political obstacles that impede their effectiveness. This study employs panel data from the sixteen principal Indian States from 1958 to 1992 to determine the primary impacts of extensive mandated land reforms on poverty and growth. The study contends that these land changes are, at least in part, the result of decreased destitution.

Klaus Dining Era, Songqing Jin, and Vandana Yadav detail the advantages and disadvantages of land reforms and spell out explicit policy implications for state governments in a paper titled *"Impact of Land Reform on Productivity, Land Value, and Human Capital Investment: Household Level Evidence From West Bengal"*⁴¹ on the advantages and disadvantages of land reforms and obvious policy consequences for the state regimes. Three primary components of the Reforms are identified in this paper: The abolition of intermediaries (*zamindars*) shortly after independence was facilitated by (i) tenancy laws that provided existing tenants with greater tenure security by registering their holdings and restricting rent and new rental agreements (ii) and ceiling laws that established a foundation for the expropriation of land above state-defined limits and the redistribution of this land to landless agricultural laborers or impoverished farmers (iii). The ceiling laws were a legal foundation for expropriating land held by a specific owner above a state-specific ceiling and the subsequent land transfer to impoverished farmers or landless agricultural laborers.

The final chapter of Akmal Hussain's research, *"Land Reforms in Pakistan: A*

³⁹ Nuzhat Iqbal, "The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan," *The Pakistan Development Review* 39, no. 4II (2000): doi: 10.30541/v39i4iipp.

⁴⁰ T. Besley and R. Burgess, "Land Reform, Poverty Reduction, and Growth: Evidence from India," *The Quarterly Journal of Economics* 115, no. 2 (2000): doi: 10.1162/003355300554809.

⁴¹ Deininger, Klaus W., Songqing Jin, and Vandana Yadav. "Impact of Land Reform on Productivity, Land Value and Human Capital Investment: Household Level Evidence from West Bengal." (2008).

Reconsideration,⁴² examines the distribution of land in Pakistan and the influence of technological advancement. The author is in favor of reform and the reevaluation of land distribution. The emergence of agrarian technology has accentuated societal divisions and disparities, as it would have done otherwise (unity and prosperity) in other contexts. The study suggests that landlords can reclaim land from tenants for self-cultivation due to the ease and speed of modern cultivation methods compared to pre-technological days. These are the first essential factors. Most indigent tenants lack access to technology, resulting in their dependence on landlords to supervise the marketing and exchange of their produce. Consequently, comprehensive land reforms are necessary for this technological era.

Several essential gaps exist within modern research because there is no effective framework which connects constitutional law with Islamic law and distributes equitably. Several times, these land reforms have been researched, including their impact on citizen views and their economic, social, cultural, and political aspects.

Multiple research methodologies used in the literature review achieve validation of a mixed doctrinal and empirical research design. Researchers must unite different methodologies because this combination enables them to trace both the theoretical recommendations and actual policy results of land reform initiatives. This study merges multiple analytical methods from various fields to establish a complete analytical framework which will guide methodological disciplines before developing the suitable distributive justice-based 'midway' reform model.

Research in this domain primarily examines components separately since it avoids integrating legal, economic and political elements within one analysis. Research shows no substantial effort has been made to combine these various perspectives into an integrated model for reform structure. A policy framework is essential because it should both assess divergent models and unite constitutional analysis with Islamic jurisprudence and distributive justice theories for creating practical reform solutions.

The Pakistani land reforms have been the subject of literature that has examined the Constitution of Pakistan, Sharia, and International Law. Additionally, it has demonstrated the impact of land reform regulations on the agrarian population's standard of living and land production. Furthermore, few works have addressed the advantages and disadvantages of

⁴² Akmal Hussain, "Land reforms in Pakistan: A reconsideration," *Bulletin of Concerned Asian Scholars* 16, no. 1 (1984): doi:10.1080/14672715.1984.10409782.

implementing land reforms and the impact on the attitudes of the governing and working classes. While some have discussed these land reforms from an Islamic perspective, examining their economic effect on poverty reduction and their political implications, others have exhaustively and critically examined the history of these land reforms. The land reforms and the Qazalbash Waqf case⁴³ have also been the subject of numerous studies and analyses. However, none of the existing research works has developed any implementable alternative land regulations, nor have any of these works articulated a midway land reform that could be implemented without conflicting with the *Shariah* or the constitution of Pakistan. To address the research gap, this study will investigate midway distributive justice concerning Pakistan's constitution and Islamic law.

Most studies about land reforms in Pakistan have investigated different aspects in their own standalone sections since they mostly focus on separate subject matters. The lack of a unified approach exists which unifies constitutional decrees and Islamic legal frameworks and international best practice standards under distributive justice principles. The continuous integration of these different elements must happen because it solves fundamental practical problems that exist when modifying such an established feudal organization.

The literature about land reform in Pakistan demonstrates an extensive discussion about its historical development together with legal understandings and economic social effects. The major drawback of current land reform research exists due to its inadequate synthesis of constitutional analysis with Islamic principles and international standards. Using doctrinal analysis combined with comparative and empirical data this research aims to create an implementable “midway” land reform model which fills in a significant gap noticed in the reviewed scholarship.

1.14 Complexity of Issues

The issue's complexity lies in the intersection of fundamental rights, the legal framework of Pakistan, and Islamic injunctions. The previous attempts at land reforms in Pakistan were declared null and void by the Shariat Appellant bench of the Supreme Court in the Qazalbash Waqf case due to its repugnancy to Islam. This judgment blocked how future endeavors on land reforms in Pakistan could be made, making land reforms a complex phenomenon.

⁴³ Qazalbash Waqf v. Chief Land Commissioner, PLD, 99 (Supreme Court 1990).

Chapter 02. Concept of Justice in Islamic Jurisprudence

2.1 Introduction

This chapter examines how the Sharia laws treat the mutual subjects of land reforms and distributions. We recall some of the earlier practices of Muslim caliphs and monarchs. *Shariah's* aims included social activities such as land reforms and public welfare, but these practices do not provide clear information about the property right to the land. Therefore, while there isn't an explicit outright ban on privatization, subtle guidelines make it seem permissible, and explicit restrictions on hoarding and feudalism exist. The issue pertains to preventing private property, which holds no significance in the fight against feudalism. This is mainly because, in contemporary society, the misuse of the right to possess an abundance of property leads to feudalism. This chapter bases its argument on the concept of ownership in Islam, Islamic theories of distributive justice, feudalism, and land tenancy. Nunito and Suharti (2000) assert that property issues hold significant importance, especially in Islamic countries. They define property as having rights over certain material goods, such as land and kin.

In this dissertation, the terms "Islamic law" and "Shariah law" are used with conceptual precision relevant to the Pakistani legal context. Although these terms are often used interchangeably in public discourse, they possess important theoretical distinctions that require clarification. Islamic law (*fiqh al-Islami*) refers broadly to the comprehensive body of jurisprudential interpretations developed by Muslim jurists. It encompasses diverse schools of thought (*madhāhib*), classical doctrines, and scholarly opinions derived from the Qur'an, *Sunnah*, *Ijmā'* (consensus), and *qiyās* (analogical reasoning).

2.2 Conception of Land Ownership in Islam

The Arabic word for ownership is '*al-milkily*' or '*al-milk*,' which means the right to possess and/or control a thing and the power of disposition thereto. Ibn Manzur also takes the meaning of "to contain" from the root "*milk*," which is more pronounced in "*milk*" and "*milk*," so you may dominate and eliminate whatever you desire.⁴⁴

⁴⁴ Nik A. Nik Abdul Ghani, Muhammad Y. Saleem, and AHCENE LAHSASNA, "Beneficial Ownership: To What Extent It Complies with Shari'ah?," *Asian Social Science* 11, no. 27 (2015):155-167, doi:10.5539/ass.v11n27.155.

Land ownership refers to the effective right to acquire, possess, and manage a specific parcel of land. In the case of the Islamic land tenure system, the sovereignty of Dar ul-Islam, therefore, solely belongs to Almighty Allah; hence, it is an artifact different from the Western concept as stated by the Holy Qur'an: "Do you not know that the kingdom of the heavens and the earth belongs 'only' to Allah, and you have no guardian or helper besides Allah?"⁴⁵ The companion of the Holy Prophet (Peace be upon Him) narrated Urwah: "I testify that the Messenger of Allah Prophet (Peace Be upon Him) decided that the land is the land of Allah, and the servants are the servants of Allah. If anyone brings barren land into cultivation, he has more right to it. This tradition has been transmitted to us from the Prophet (Peace Be upon Him) by those who transmitted the traditions about prayer from him."⁴⁶

The Holy Prophet (Peace Be upon Him) said in another tradition. Narrated Sa'id ibn Zayd: The Prophet (Peace Be upon Him) said: "If anyone brings barren land into cultivation, it belongs to him, and the unjust vein has no right."⁴⁷ The traditions of Islam assert that Almighty Allah is the rightful owner of all land. Suppose it is impermissible that any one of the inhabitants of the Dar ul-Islam remains alive without enjoying the right to interpret the Qur'an and Sunnah. In that case, it is equally impermissible to let any of them stay powerless to bring back the barren land to life, and no one has the right to prevent them from doing so. In Islam, there are two types of ownership: absolute and human. This chapter helps us realize that Allah owns the land.⁴⁸

1. **Absolute Ownership:** This suggests that Allah Almighty is the rightful owner.
2. **Ownership by People:** The second concept pertains to individual ownership, strictly following its literal definition. Any ownership should only occur with Allah's approval and under specific conditions.⁴⁹

⁴⁵ The Holy Qur'an, 2: 107. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

⁴⁶ "Sunan of Abu Dawood Book 20 - Tribute, Spoils, and Rulership (Kitab Al-Kharaj, Wal-Fai' Wal-Imarah), Hadith 3076 | Hadith Translations of Prophet (Peace be upon Him)," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sunan-of-abu-dawood/20/3076/>.

⁴⁷ "Sunan of Abu Dawood Book 20 - Tribute, Spoils, and Rulership (Kitab Al-Kharaj, Wal-Fai' Wal-Imarah), Hadith 3073 | Hadith Translations of Prophet (Peace be upon Him)," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sunan-of-abu-dawood/20/3073/>.

⁴⁸ Mandaville, Peter. International relations, in *The Princeton Encyclopedia of Islamic Political Thought*, Gerhard Bowering editor, (New Jersey, Princeton University Press, 2013), 259.

⁴⁹ Afzal-ur-Rahman, *Economic Doctrines of Islam* (1974), 20.

2.3 Ownership Models

Under Sharia law, one can adopt ownership in the following ways:

- i. **Mawat:** It is important to note that the initial step in obtaining land ownership is to preserve and rehabilitate the land by acknowledging the head of state's authority. If the parcel of land lacks an owner or is not part of the village's grazing or forest land, it becomes a waste.⁵⁰
- ii. **Trading:** The second type of ownership is known as trading. This profit generated from it could be considered ownership if derived per the *Shari'ah* rules without earning an interest.
- iii. **Through hunting:** The literal word "*mal*" for the Malays is "free birds, animals, and fishes," thus, hunting is how one might own a "*mal*" (thing or item). You can hunt with animals or weapons; sometimes, you can use a trap to hunt for what you need.⁵¹
- iv. **Gift:** A gift is an agreement where one person transfers their property to another without receiving an equivalent. By so doing, one is also able to achieve ownership. Thus, if one offers an object to another, they accept it as a master of this object. It was customary that gifts' givers and receivers and the persons with whom such terms are associated would be called so.⁵²
- v. **By Succession:** Thereby, through this method, it is possible to transfer the ownership of the person, their immovable and movable properties, to the legal next-of-kin as prescribed in shares according to their proportion of shares in Shariah after the death of some of them.
- vi. **By Will:** A will is also one way of obtaining ownership, and a person comes into possession of any item if he has inherited it through it even though the will ought to contain only one-third of the total estimated sum of tangible and intangible, includible assets.
- vii. **Through equality:** Thus, as has been said above, the Islamic State has the right to provide the un-ploughed furrow to anyone. This piece of land is referred to as *lqtaa*,

⁵⁰ Malik I. Anas, *Al-Muwatta of Imam Malik* (2014), 205.

⁵¹ S. M. Yusuf, *Economic Justice in Islam* (1987), 19.

⁵² Maya Shatzmiller, "Women and Property Rights in Al-Andalus and the Maghrib: Social Patterns and Legal Discourse," *Islamic Law and Society* 2, no. 3 (1995): 230, doi: 10.1163/1568519952599204.

while an individual who owns this piece of land is referred to as *iqtaa*. Therefore, it can be concluded that *Iqtaa* is also a way of acquiring ownership.

viii. **Prescription:** Prescription primarily falls under property law in the act's name. It means that a person has been the controller or manager of something for a long time. Any ownership vested in them must be gained by Islamic law, and purchase is prohibited by prescription in this connection. Thus, the legal mechanisms for targeting acquisitions in English have gone to such an extent that even unlawful acquisitions can be made.⁵³

2.4 Principles of Land Ownership

Islamic law permits the acquisition, purchase, or transfer of land. A few well-known guidelines serve as the foundation for each case's ownership.

2.4.1 Allah Possesses the Whole of Humanity as a Trustee

Other Islamic distributive principles are derived from the first fundamental principle of the sources of authority and, more specifically, the first question of ownership, which is exclusively with the Almighty Allah. Allah embraces this concept in the Noble Qur'an several times:

“Do you not know that the kingdom of the heavens and the earth belongs 'only' to Allah, and you have no guardian or helper besides Allah?”⁵⁴

“To Allah 'alone' belongs whatever is in the heavens and on the earth? Whether you reveal or conceal what is in your heart, Allah will call you to account for it. He forgives whoever He wills and punishes whoever He wills. And Allah is Most Capable of everything.”⁵⁵

According to Allama Yusuf Al-Qaraḍawi, author of the widely read book *Economic Security in Islam*, the Islamic perspective is also evident. Man is a caretaker of these riches; Allah is the true owner. As Allah states, “And let those who do not have the means to marry keep themselves chaste until Allah enriches them out of His bounty. And if any of those ' bonds people'

⁵³Abu Isa, "7.3.4 Types of Property," *System of Islam*, accessed July 9, 2024, <https://systemofislam.com/index.php/intro/7-the-economic-system/7-3-islam-and-the-economic-question/7-3-4-types-of-property.html>.

⁵⁴ The Holy Qur'ān, 2: 107. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

⁵⁵ The Holy Qur'ān, 2:284. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

in your possession desires a deed of emancipation, make it possible for them if you find goodness in them. And give them some of Allah's wealth, which He has granted you. Do not force your 'slave' girls into prostitution for your worldly gains while they wish to remain chaste. And if someone coerces them, then after such a coercion Allah is certainly All-Forgiving, Most Merciful 'to them.'"⁵⁶ He has learned that he must spend the money as provided by the true owner of the money.

2.4.2 Concept of Private Landownership in Islam

Does Islam recognize private property ownership if all land belongs to Allah and man is only a trustee? Islam is not incompatible with the idea of private property. The Qur'an acknowledges the right to own property in the following verses: "O believers! Do not devour one another's wealth illegally, but trade by mutual consent. And do not kill 'each other or' yourselves. Surely Allah is ever Merciful to you."⁵⁷ In another verse, "It is to' have faith in Allah and His Messenger, and strive in the cause of Allah with your wealth and your lives. That is best for you if only you knew."⁵⁸ Property protection is the fourth of the five objectives or the 'purposes of the shari'ah' (*Maqasid as-Shariah*). In this regard, *Shari'ah* recognizes property rights as an essential right to be given, protected, and respected;⁵⁹ however, it must be noted here that the Islamic theory of ownership is not the same as that of capitalist ownership.⁶⁰

2.4.3 Land Ownership is subjected to Certain Conditions.

Land may be owned by a man based on the premise that land is a divine gift from which a man can use and derive benefit. "He is the One Who smoothed out the earth for you, so move about in its regions and eat from His provisions. And to Him is the resurrection 'of all.'"⁶¹ *Maqasidas-Shari'ah* consists of five essential considerations: religion, life, mind, lineage, and property. This verse has been applied to the right of private ownership to use land. Once the land

⁵⁶ The Holy Qur'ān, 24:33. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/24/>.

⁵⁷ The Holy Qur'ān, 4: 29. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/4/>.

⁵⁸ The Holy Qur'ān, 61:11. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/61/>.

⁵⁹ Maqasidas-Shari'ah consists of five essential considerations; protection of religion, protection of life, protection of mind, protection of lineage and protection of property.

⁶⁰ JOHN C. WILKINSON, "MUSLIM LAND AND WATER LAW," *Journal of Islamic Studies* 1, no. 1 (1990): 60, doi:10.1093/jis/1.1.54.

⁶¹ The Holy Qur'ān, 67:15. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/67/>.

becomes his property, the land owner may make transactions for the land, for example, transfer, gift, charge, or lien, according to Salleh Buang.

Additionally, the owner can pass such land on his death through inheritance or a will or make such land as *Waqf*.⁶² Narrated by Rafi bin Khadij: My uncle Zuhair said, "Allah's Apostle forbade us to do a thing which was a source of help to us." I said, "Whatever Allah's Apostle said was right." He said, "Allah's Apostle sent for me and asked, 'What are you doing with your farms?' I replied, 'We give our farms on rent on the basis that we get the yield produced at the banks of the water streams (rivers) for the rent, or rent it for some *Wasqs* of barley and dates.' Allah's Apostle said, 'Do not do so, but cultivate (the land) yourselves or let it be cultivated by others gratis, or keep it uncultivated.' I said, 'We hear and obey.'"⁶³ In Islam, private land ownership is preconditioned by the proper use of the land in question. If a landowner fails to use his land or any part of it, he should allow others to use it or donate, transfer, or sell it to someone who will correctly use it. All cases of neglect and abandonment grant the Islamic State the right to intervene and reclaim the land under two scenarios: All instances of neglect and abandonment grant the Islamic State the right to intervene and reclaim the land under two scenarios:

- a. When the particular landowner does not make optimum use of his property.
- b. The necessity of the property for the state is required for public purposes.

2.4.4 The land is not in use by the landowner.

As for the Islamic land allocation and ownership law, how many years would the owner consider the land vacant? As stated by the sources, it can be understood that Prophet (Peace Be upon Him) granted three years to cultivate the piece of land that a person occupied.⁶⁴ Although the Prophet (Peace Be upon Him) had given Bilal a piece of land in the valley of Aqiq, and he could not till the whole land for the next fifteen years, a large portion remained fallow. In this report, Umar took action. He advised Bilal, informing him that he could develop the land, yet he ought to grant it. Well, to this suggestion, Bilal agreed.⁶⁵ Caliph Umar said to Bilal: The above depiction is suggesting that the Prophet (Peace Be upon Him) did not grant you the land so that you deny it

⁶² Salleh Buang, "Land Law in Malaysia: A Critical Examination of Its Compatibility with Islamic Law," unpublished PhD thesis, international Islamic University Malaysia, Petaling Jaya, (1985). 131-132.

⁶³ Sahih Al-Bukhari Hadith | 2340, Volume 3," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sahih-bukhari/3/>.

⁶⁴ Three (3) years is attributed to the Shafie School. See also Muhammad A. Mannan, *Islamic Economics: Theory and Practice: A Comparative Study* (1970), 79.

⁶⁵ Ben Shemesh, "Abu Yusuf's Kitab al-Kharaj," 1969, 76, doi: 10.1163/9789004659223.

from the people; he granted the land so that you make use of it; therefore, you should take only that portion of the land that you need and can use and leave the rest. Ziyad- the governor of Iraq who served under Caliph Ali bin Abu Talib and Mu'awiya, reduced this. In Hasanuzzaman's view, the policy was changed to enhance the government's role, especially in offering development conveniences.⁶⁶ It also provides that where the Islamic state reclaims any land that has been disposed of but is left uncultivated or deserted, the owner of such land does not receive any consideration.⁶⁷ This is due to the breach of the requirement that all landowners develop it within thirty-six months or three years of acquiring the land. Al-Shafi'i opined that although the restriction is three years, it is open to adjustment depending on its circumstances. He stated that the state would need to prod the landowner to use the property or abandon it for an acceptable period without cultivation.⁶⁸

2.4.5 Those who till the land are the Rightful Owners

Everything that the All-Powerful Allah has created has a purpose. Humans' cultivation of a piece of land is one of its intended uses. In his book "The Book of Revenue" (Kitab al-Amwal), Abu 'Ubayd states that he was informed by someone that Khalid ibn 'Abd Allah al-Wasiti had heard from al-Kalbi from Şalih from Ibn 'Abbas that upon the arrival of the Messenger of Allah (Peace Be upon Him), Medina was granted all the unirrigated land to be used as the individual's discretion. To fulfill their fundamental requirements, people must develop the land to the degree necessary.⁶⁹ For as long as land is being farmed, the right to cultivate it will exist. According to Islamic law, this privilege will be forfeited after an extended time without cultivation.⁷⁰ Based on a statement made by the Holy Prophet (Peace Be upon Him), the aphorism "the land belongs to those who cultivate it" was created. Jabir bin 'Abdullah narrated that the Prophet (Peace Be upon Him) said: "Whoever revives a barren land, then it is for him."⁷¹ According to the Hanafis, the Imam must provide his prior consent to revitalize barren land. In *Al-Ahkam As-Sultaniyyah*, Al-Mawardi states that whoever revives a dead land becomes its owner, whether or not the Imam grants

⁶⁶ S. M. Zaman, *Economic Functions of an Islamic State: (the Early Experience)* (1991), 125.

⁶⁷ Ahmad Ibrahim, "Islamic Concepts and the Land Law in Malaysia" in *The Centenary of the Torrens System in Malaysia*, Ahmad Ibrahim, Judith Sihombing (eds) Malayan Law Journal (1989).

⁶⁸ Abu U. Sallam, *Kitāb Al-amwāl* (Garnet & Ithaca Press, 2003), 290.

⁶⁹ Abul Hasan Ali Ibn Muhammad Mawardi, *Al Ahkam As Sultaniyyah: The Laws of Islamic Governance* (Scotts Valley: Createspace Independent Publishing Platform, 2018), 276.

⁷⁰ Muḥammad Shafi', *Distribution of Wealth in Islam* (1983), 14.

⁷¹ "Tirmidhi Book 15 - The Chapters on Judgements from the Messenger of Allah, Hadith 1379 | Jami` At-Tirmidhi Hadith Collection and Translations," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 29, 2024, <https://www.alim.org/hadith/tirmidi/15/1379/>.

permission.⁷² Abu Ḥanīfa, on the other hand, asserts that the Imam's permission is required, citing the Prophet's (Peace Be upon Him) dictum that “no one may have anything unless his Imam is happy about it.”⁷³ Moreover, as narrated by Sa'id ibn Zayd, The Prophet (Peace Be upon Him) said: “If anyone brings barren land into cultivation, it belongs to him, and the unjust vein has no right.” there is evidence that ownership of dead lands is validated through its revival without the Imam's approval. If someone does not cultivate their land for an extended time, the Imam is empowered by Islamic law to seize it from them. Yaşya ibn Adam relates it from 'Abd Allah ibn Abī Bakr, who states: “The Messenger of Allah Prophet (Peace Be upon Him) awarded Bilal ibn al-Ḥarith al-Muzanī a huge stretch of land when he came to him and asked a gift of land.”⁷⁴

2.4.6 Land Needed for Public Interest (‘*Maslahah Ammah*’) by the Islamic State

From the social perspective of Islamic ownership of land, the Islamic State has, on multiple instances, compulsorily purchased property that belongs to individuals or groups of persons when the land is necessary for public use. According to Afzalur Rahman, there is little land⁷⁵ available, and it cannot be expanded to satisfy the demands of a population that is always growing. Apart from personal usage, the state needs property for public use that would benefit society at large.⁷⁶ One instance presented as authority is the story about the people of Bajeela. The inhabitants of Bajeela had received land from Caliph Umar, where they had worked for approximately two to three years. Still, the property was bought because the community might find greater use for it.⁷⁷

2.4.7 Required Intent and Re-compensation

Getting land from a person calls for their permission and fair compensation. Compensation should be paid considering the market price and the owner's consent. Permission was granted, and the Holy Prophet (Peace Be upon Him) acquired some land belonging to Madinah inhabitants to build the mosque. Though the owners made no demands, he paid them at the

⁷² Abul Hasan Ali Ibn Muhammad Mawardi,” *Al Ahkam as Sultaniyyah*. ” 252.

⁷³ Muaz bn Jabal, Al Wahbah Al-Zuhaili, Al-Figh Al- Islami Wa Adillahtuh, Vol V, (Damascus Darnl FikT), (1989), p. 561. as cited in Mohammad Muhibbin, "The Concept Of Land Ownership In The Perspective Of Islamic Law," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 17, no. 01 (2018): 50

⁷⁴ Ibn Sallām” The Book of Revenue”, 285.

⁷⁵ Abu Yusuf, Yaqub Ibn Ibrahim Kitab Al Kharaj Vol 4 (a/-Matba'ah a/-Salafiah wa Maktabatuha, Qaherah, 1392) 76-77. S M Hasanuzzaman, Economic Functions of an Islamic State, The Islamic Foundation, International Islamic Publishers Karachi 1" Edition 1981, 125. 15 Ahmad Ibrahim, ibid. 16 Abu'Ubayd, ibid 290.

⁷⁶ Afzal-ur-Rahman, *Economic Doctrines of Islam* (1974), 213.

⁷⁷ Husnul Mirzal, Muhammad W. Hasdyani Putra, and Shally N. Rasyida, "Land Acquisition in the Job Creation Law in the Perspective of Islamic Ownership Theory (an Analysis with the Concept of Istimlak and Milk al-daulah)," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 15, no. 1 (2021): 23-24, doi:10.21111/ijtihad.v15i1.5609.

market rate.⁷⁸ Another instance occurred when, under Caliph Umar, the army trod on the crops of a Syrian farmer. Caliph Umar gave his orders for him to have ten thousand dirhams in pay. Muslim lawyers said it was against the law for the government to seize the property of its citizens. Apart from reimbursing for the loss of property ownership, Islam's idea of compensation includes indemnifying the landowner for expenses paid on the property and for income lost due to a lack of use. The beneficial owner must remember that his ownership of the usufruct—the benefit—derived from the property goes beyond mere rights to use. Usually, his pay is based on the items he omitted.⁷⁹ As said before, nobody—not even the government—can grab another person's belongings. Therefore, it must be acquired legitimately and provided with proper compensation. This is based on the present worth of the pilfered property.⁸⁰ Still, there are two special situations wherein the state may buy real estate without paying for it. First is the acquisition of Sawafi land, which is given to anybody by the government via data for use in development or agriculture. Should the possessor fail to cultivate the land within the designated 03 years or the site remains empty after that period, the state is entitled to retrieve it. In this instance, the landowner is not obliged to accept government money. In this instance, however, a researcher found that property acquisition is more closely linked to land seizure than to being obtained for public purposes. 2) Buying land with certain designations for the public good—that is, the intrinsic features of the land for public benefit. The way the Harim appropriated their grazing ground is one instance. In this case, the landowner and users are not obliged to obtain governmental compensation.⁸¹ Regarding the second exception, Caliph, “Umar reportedly reclaimed Rabzah, a private pasture in a Madinah neighborhood.” The public used the huge swath of land for horse grazing, and it is believed that roughly 4000 state horses were grazing alone on the specified stretch of ground.

2.4.8 Requirements for Sales and Purchases under Duress

The Islamic legal and regulatory framework for community and government-to-community buying and selling is based on the basic principles of *taraadhin*,⁸² which means “mutual consent, agreement, and willingness” between the two sides. Buying and selling is based

⁷⁸ Sheikh Showkat Hussain, "Human Rights in Islam: Principles and Precedents," Islamic Comparative Law Quarterly, Vol. III, No.2 (1983), 105.

⁷⁹ Salleh Buang, "Law of Real Property in Malaysia," IID-Law Journal, Vol. I No.1 (1989), 92.

⁸⁰ Mohamoud A. Gulaid, “*Land Ownership in Islam: A Survey*,” (2001), 55.

⁸¹ Abdullah Muhammad Abdullah, "Intiza' at-Milkiyah Lil-Maslahah 'Arnmah," 935-963, cited in Ridzuan Awang, 289.

⁸² M.H. Drs. Harun, *Fiqh Muamalah* (Muhammadiyah University Press, n.d), 200.

on consensual/mutual permission, as Surah An-Nisa: 29 in the word of Allah and the hadiths of the Prophet (Peace Be upon Him) reported by Ibn Hibban clearly show.⁸³ Whether or not the landowner gets paid if he agrees to have the government take his property. The problem occurs, however, when the landowner disagrees and orders forced sales and purchases. Regarding government-ordered acquisitions and sales, most experts think these activities are legal even if the owner is reluctant and comes with certain criteria like compensation and overall advantages over personal interests.⁸⁴ This is reasonable given the site's economic cost, the allocation for something *dharui*, and the *ummah* will benefit more than the individual. To be forbidden for the benefit, a scenario must fulfill the three criteria of *dharuriyat*, *qath'iyat*, and *kulliyat*, according to Imam al-Ghazali. He also pointed out that the law was amended even during the *tahsiniyat*, which was previously forbidden to be limited to the *dharuriyat* rather than the *hajiyat*.⁸⁵

2.4.9 Ownership-Related Restrictions

Allah limitation corresponds with the protection ownership offers. Men will so be guided suitably. Man spends earthly riches as an earthly agent of Allah. His rights are well-defined and constrained by Allah's bounds; he must do his tasks with the greatest honesty and attention.⁸⁶ The comprehensive instructions associated with the sacredness of property, which can be found in the Qur'an and the Sunnah, are an in-depth explanation of the broad principles about the sanctity of property.⁸⁷ Should somebody or the government abuse the owner's rights outside of these limitations, the owner might launch a lawsuit and pursue justice before the courts. The object in question has to be returned; the transgressor has to make whole any harm caused to the rightful owner. Once again, acquiring legal ownership of private property is very illegal.⁸⁸

2.4.10 Ownership Requirements and State Intervention

Islam forbids grabbing anything using theft, pilfering, or nonpayment for cost. Moreover, ownership is outlawed, affecting society and the individual. Allah states, in the Qur'an, "Surely Allah does not shy away from using the parable of a mosquito or what is even smaller. As for the believers, they know that it is the truth from their Lord. And as for the disbelievers, they argue,

⁸³Muhammad Nur Afif Afandy et al., "Concept of 'An-Taradhin Minkum in the Perspective of Qur'an and Hadith," *KnE Social Sciences*, 2022, 290, doi:10.18502/kss.v7i10.11366.

⁸⁴Az-Zuhaily, W., "Fiqhul Islam Wa Adillatuhu," Damsyiq: (2012), Darul Fikri.

⁸⁵al-Ghazali, "al-Mustasyfa fi 'Ilmil Ushul," Beirut: (2000), Daar al-kutub al-Ilmiyyah

⁸⁶The limitation is found in the manner the property must be expended and usually to serve social ends.

⁸⁷Kamali, Muhammad Hashim, "The limits of power in an Islamic state," *Islamic Studies* 28, no. 4 (1989): 344.

⁸⁸Kamali, Muhammad Hashim, "The limits of power in an Islamic state," 345.

'What does Allah mean by such a parable?' Through this 'test,' He leaves many to stray and guides many. And He leaves none to stray except the rebellious.'⁸⁹

Islam tells us only to gain or acquire things legally and bans possessing anything that entails using immoral or harmful methods. It also challenges how money and property are distributed, depriving certain groups of people of their means of survival. Money so helps to both sustain and advance life as it unfolds. Usually, one needs a nice existence as Allah has ordered that everyone share it equitably.⁹⁰ A guy has to remember that the things he is attracting to him are just tests or trials. He thus has to do what Allah orders and abide by the laws. This addresses the rules and constraints set for property ownership. His legal rights are not unqualified. They have specific uses and have certain obligations and restrictions. His rights are limited, and he is qualified and compelled to help people in need; he has certain unalienable commitments towards his family, relatives, and others.⁹¹ Apart from the person, the state and society may also exercise their right to own property. The state is allowed the ability to intervene and, in certain cases, cancel a person's right to property; it is, therefore, in charge of preserving very important human and social interests. The public interest or benefit determines finally the extent and degree of governmental intervention. In the case that Muslims refuse to comply with the limitations put on private property, the state, in its function as the people's representative, has the power to enforce them, even if it involves using force. At last, Islam has moved to ensure that its people share money fairly and justly. Regarding public needs or interests, private ownership might be relinquished of property.⁹²

2.5 Concept of Possession

In Islamic law, the factors that define the notion of possession (*yad*) include imprisonment (*qabd, yad*), capacity to get rid of it (*taṣarruf*), and purpose to take having it (*niyah, animus possidendi*). It does not indicate why the owner qualifies to own the property.⁹³ In ownership, possession is the real ownership and usage of property independent of formal owner designation. Many times, possession and ownership are used as synonyms. Except for the

⁸⁹ The Holy Qur'ān, 2: 26. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online |Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

⁹⁰ Siddiqi, Muhammad Nejatullah, "Islam's Approach to Right of Property," Some Aspects of the Islamic Economy, Islamic Publications Ltd., Lahore, (1978), p. 49.

⁹¹ Mohammed Nejatullah Siddiqi, "Islam's Approach to Right of Property," 122.

⁹² Salasal, S. M. M. S., and Siti Mariam Malinumbay, "The concept of land ownership: Islamic perspective," *Buletin Geoinformasi* 2, no. 2 (1998): 9.

⁹³ Md. H. Rahman, "Application of Constructive Possession (Qabd Hukmi) In Islamic Banking Products: Shariah Analysis," *Turkish Journal of Islamic Economics* 7, no. 1 (2020): 90, doi: 0.26414/a075.

owner himself, the person now in custody of the thing has a greater claim to ownership than all others. The phrase's connotations indicate regularly claiming ownership and unrestricted use of the object or thing in dispute. This does not, however, suggest the individual has legal ownership of the property.

In some respects, the process of passing ownership is simpler and less involved than other ones. First, however, a right is just a sign of ownership. One does not find a proper notion. Apart from the idea of “exclusion of others, this is a concept that is now being implemented. Someone having such power and control is said to be “*malik*,” also frequently used to allude to “owner.”⁹⁴

2.6 Historical Overview of Pre-Islamic and Islamic Practices Regarding Land Reforms

Islam was founded in reaction to the unfair and discriminating land ownership system that preceded the Islamic advent on the Arabian Peninsula. The Qur'an then confirmed the system of land and plantation ownership used by the sedentary Arabs in cities and villages by its acknowledged ownership. Chapters of al-Imran verse 195 and al-Hashr verse two detail this. Another method the Prophet's (Peace Be upon Him) custom justifies property ownership is the concept of wartime loot, in which fighters involved in the conflict were given shares of the seized areas. This idea was implemented in Khaybar's land, one of the countries taken under conquest during the war. The Ansar friends who worked the ground as gardeners and farmers received a similar legitimizing of private property ownership. The practice of establishing protected land by a specific tribal figure for the benefit of himself, his family, or other tribe members to exercise control over water and grass resources to maintain their lives and their livestock was known as *Hima*. It was commonly used to carry out the custom of land possession during the pre-Islamic era. Stronger tribes might either conquer the smaller tribes or use force to gain possession of the land.⁹⁵ Exact boundaries didn't accompany it on the territory they had achieved via the *Hima* approach. Since the Islamic faith depended more on force as well as acts of violence and deemed the practice of property purchase by *Hima* harsh, it opposed it.⁹⁶

⁹⁴ Rahman, “Application of Constructive Possession,” 83.

⁹⁵ Ridwan, “Land Ownership Reform in Islam,” *Asian Social Science* 15, no. 2 (2019): 166, doi:10.5539/ass.v15n2p164.

⁹⁶ *BINA' AL-IQTISAD FI AL-ISLAM* (2018), 50.

2.6.1 The Era of the Holy Prophet (Peace Be upon Him)

With the help of his Islamic teachings, the Prophet (Peace Be upon Him) created laws governing property ownership, including those about its acquisition process and philosophy. Islam has accepted *Hima* as a land division system after making many changes. First, the caliph alone should execute the notion of *Hima*; people should not do it. Second, he is oriented toward the public good rather than self-enrichment. The Prophet (Peace Be upon Him) established that “*Hima* belongs solely to Allah and the Prophet (Peace Be upon Him)”⁹⁷ as the foundation for the conversion of land ownership via *Hima* from a pre-Islamic practice to an Islamic one. *Hima* is intended for the good of the community, which is why the land of *Hima* is sometimes referred to as common. In the meantime, *Hima* alludes to the Prophet (Peace Be upon Him), and this function can only be carried out by a caliph with the political power to govern.⁹⁸ Thus, as a kind of government involvement in the framework of legal land ownership regulation based on the public benefit value of an equitable and fair land ownership system, the *Hima* right has the exclusive right of the head in the Islamic system.⁹⁹ As an imam, the Prophet (Peace Be upon Him) had the power to establish laws within the framework of a country. The Prophet (Peace Be upon Him) also mentioned his authority to restrict exercising property rights in other passages. An imam's right to control land usage is based on logical, reasonable, and objective reasons based on the idea that realizing the public good is a basic obligation of the head of state.¹⁰⁰ An Islamic legal maxim states that the goal of a head of state's policies should be to make the people's interest. Muhammad Baqir Sadr claims that Islamic theology views property ownership rights as more community-oriented, which is to the advantage of people. The government has the power to convert private assets into public spaces.¹⁰¹ This demonstrates how much more potent social ownership is than individual ownership. *Tamim*, or transforming individual land ownership rights into communal ones by tying up personal assets to become public assets based on public benefit, is the principle of nationalizing personal assets to be public assets.

The Holy Prophet (Peace Be upon Him) changed the paradigm of his pre-Islamic understanding of land ownership from one that was more personal and intended to benefit the individual or group to one that was for the general good. For the sake of Muslims, the Prophet

⁹⁷ M. Al-Shafi'i, *Kitab Al-Umm* (n.d), 70.

⁹⁸ Abdul Allah ibn Ahmad Ibn Qudamah, *Al Mughni* (2007), 73.

⁹⁹ Iqbal, "Land Ownership in Islam," 649.

¹⁰⁰ Abdurrahman, "al-S, Aṣbah wa al-Naḍāir," Beirut: Dar al-Fikr (1996)250.

¹⁰¹ Ridwan, "Land Ownership Reform," 166.

(Peace Be upon Him) personally adopted a Hima land purchase strategy in the al-Naqi region. In the same vein, it was carried out by Hazrat Umar ibn Khattab, who granted him access to the lands in the Sharaf regions. It is evident from the Prophet's (Peace Be upon Him) via *Hima* practice that these lands were communal property and served the public good, such as grazing horses used for warfare. In Islam, *Hima* refers to the state's possession of land for public interests. The feudal Arab social structure of that era, marked by monopoly, preserved the pre-Islamic practice of *Hima* in land ownership. At that time, the state-owned property, the custom, was Islam's reformation. The Holy Prophet (Peace Be upon Him) personally illustrated how the practice of redistribution of land serves the objectives of the country of Khaybar was divided into twenty-six pieces by the Prophet (Peace Be upon Him), and each portion was thereafter divided into one hundred patches. The Holy Prophet (Peace Be upon Him) then seized 50% of the land for himself, while the remaining thirteen hundred subsections were handed over to the remaining Muslims. The Holy Prophet (Peace Be upon Him)) dismantled the pre-Islamic feudalistic land distribution system, which only granted land to troop commanders, other high-ranking state officials, and the church (place of worship).¹⁰² The 'original owners' land ownership rights were taken away, and they became peasants or land-managed enslaved people. As a result, a new land ownership relationship (an oppressive one between employers and land) was formed.¹⁰³ Masters enslaved people; even if the real owners had the luxury of cultivating the land, they remained laden due to the high taxation system. Iran and the Roman Empire before the co-conquest of the region. Since the Prophet (Peace Be upon Him) time, the state has practiced land control over the areas that Muslims have conquered. The Clan of Nadhir and their land was the first of the conquered territories that Muslims possessed during the time of the Prophet (Peace Be upon Him). This was after the Prophet (Peace Be upon Him) moved to Medina, where the Clan of Nadhir broke their agreement with Muslims, which resulted in the expulsion of the Jews, and they fled Medina.¹⁰⁴ The Prophet (Peace Be upon Him) gave away all the war booty, particularly the moveable ones, to those in need, including the *Muhajirin* companions, the impoverished, and the needy.

Unmovable war booty, such as lands, was not given away but rather possessed by the state, which was authorized to grant the lands to certain individuals known as "*iqta*"¹⁰⁵ either as an

¹⁰² Ridwan, "Land Ownership Reform," 166.

¹⁰³ Irfan M. Ra'ana, *Economic System Under 'Umar the Great: A Treatise on Muslim Economy in Early Seventh Century* (1977), 179.

¹⁰⁴ Ibn Qudamah, "Al Mughni," 50.

¹⁰⁵ Iqbal, "The Concept of Land Ownership in Islam," 655.

ownership right or the state benefited from the land's results and used those just rights to support its activities. The ownership rights over lands taken as war booty from the Clan of Nadhir belonged to the state or social welfare. This *Iqta* is the formalization of the land redistribution scheme within the framework of the land reform initiative of the Prophet (Peace Be upon Him). The state's acquisition of the Clan of Nadhir's property demonstrated that the fundamental tenet of Islamic land ownership is that it belongs to the state.¹⁰⁶ Afterward, in the fourth year of his *hijra*, the Jewish community of Khaybar's land was taken possession of, as they had broken the Hdaybiyah treaty they had agreed with Muslims. The state held the agricultural fields, and the local people were allowed to cultivate them again for profit. The Prophet (Peace Be upon Him) gave the troops who fought for the moveable trophies of battle and adopted a profit-sharing system.¹⁰⁷ Similarly, the situation was identical in the land of Fadak. Local indigenous people farmed the agricultural areas using a profit-sharing arrangement after the Prophet (Peace Be upon Him) acquired land ownership; jurists eventually recognized this practice as land leasing. During the subsequent era, the policies of *Ijara*, the Prophet (Peace Be upon Him), about the administration of the conquered countries were acknowledged. The system of land ownership during the Prophet's (Peace Be upon Him) and Caliph Abu Bakr's periods was not well-organized and durable since there was no need for this kind of setup.

2.6.2 The Era of Hazrat Umar (R.A.)

There was a shift from feudalism in land ownership when 'Umar ibn Khattab came to power in the Caliphate and instituted Islamic territorial expansion outside the Arabian Peninsula. In his view, the state now owns and governs the captured territory. Each year, the indigenous were obligated to pay a land tax, also known as *kharraj*, in exchange for the ability to farm their lands. According to an old event, the Islamic army begged their leader, Saad ibn Abi Waqqas, to give them the land they had seized from the Sawad in Iraq. Afterward, Saad sent a letter to 'Umar ibn al-Khattab to communicate the information. According to Umar ibn Khattab's reply to the letter, the land was to be allocated to the Muslims or the local populace, who were required to pay taxes. Because when everyone has their share of the land, the question of what happens to subsequent generations becomes paramount.¹⁰⁸ When the Romans conquered Egypt, it was the same story. Senior companions like Bilal and Abdurrahman ibn Awf and others put pressure on Amr ibn Ash

¹⁰⁶ Iqbal, "The Concept of Land Ownership in Islam," 660.

¹⁰⁷ Abdul Allah ibn Ahmad Ibn Qudamah, *Al Mughni*, 57.

¹⁰⁸ Abū ' . Sallām, *Kitāb Al-amwāl* (ISBS, 2002), 167.

to appoint him as territory leader. Umar ibn Khattab convened a meeting of the companions to resolve this matter; he informed them that the seized territory was not to be given to the troops but to the locals, who were to cultivate it and pay taxes to the state. The need for operational finances to pay the salaries of the troops protecting the frontiers of Islamic countries for the sake of Islam's territorial integrity and to lay the groundwork for future generations was the driving force behind Caliph Umar's actions.¹⁰⁹ As part of his strategy to eradicate feudalism in the area, Umar ibn Khattab had far-reaching policies, such as refusing to give the captured land to the troops.¹¹⁰ Even though the Prophet (Peace Be upon Him) did indeed divide some of Khaybar's land among Muslims and troops, the amount of land was small enough that it did not encourage landlordism. The magnitude of the territory captured in Iraq and Egypt was enormous. Therefore, further devastation would inevitably follow the division of the land as it created landlords. The foundation of Umar's *ijtihad*, or way of thinking, is the principle of society's public welfare, which is philosophical. Umar ibn al-Khattab's text analysis method is sometimes called a contextual approach.

Along with his efforts to prevent the accumulation of riches by a select few, Umar ibn Khattab's land law policies demonstrate the fundamental idea that all people should have the right to possess assets, including land, and that the state should have control over this right. The future of the next generation should be considered in policies about land.¹¹¹ It is also implied by Umar ibn Khattab's policies that the State of Saudi Arabia had a strategy in place to nationalize agricultural land assets. However, it contradicts the actual Qur'anic wording of *ghanimah*-related verses. Most *fiqh* experts believe that Umar ibn Khattab's actions are founded on the principle of public good as the essence of *Shari'a*. In connection with verse seven of Surat al-Hashr, which addresses the distribution of war spoils (*fa'i*), which prohibits the consolidation of riches in the hands of a few, it becomes significant. S.A. Siddiqi refers to Caliph Umar's initiatives on land ownership reform as the restoration policy, which aims to establish a more equitable system of land ownership.¹¹² Muslims enjoyed ample land ownership and possessions due to Umar ibn al-Khattab. Because it was anticipated that a person might acquire land holdings, eventually leading to monopolistic activities among landowners, even Umar ibn Khattab established a decree

¹⁰⁹ Abū Yūsuf Ya'qūb b. Ibrāhīm al-Ansārī and Aharon B. Shemesh, *Abu Yusuf's Kitab al-Kharaj [k.al-Harağ, engl.] Transl. and provided with an itnrod. and notes by A[haron] Ben Shemesh* (1969), 150.

¹¹⁰ Ra'ana, "Economic System Under 'Umar the Great," 140.

¹¹¹ Ridwan, "Land Ownership Reform," 167.

¹¹² Selim A. Siddiqi and Shujā'at ' . Siddiqi, *Public Finance in Islam* (1948), 67.

prohibiting property ownership by banning land purchases. Umar inquired, “From whom did you buy this land?” after hearing Abu Ubayd relate the event of ibn Utbah ibn Farqad, who had purchased certain plots of land along the Euphrates River, Utbah responded from the owner. Umar then instructed Utbah to return the item to the landowner and request a refund of his money.¹¹³ Umar also forbade Muslims in conquered areas from engaging in agricultural labor. Umar sent letters to the provincial governors in every territory he had conquered, explaining that the Arab population should not work in agriculture since they get regular pay from the state.

Alternatively, Caliph Umar decreed that the former owner, capable of farming, should keep the property. This policy was formulated in response to Musa Ash’ari’s findings that some landowners in the region they had conquered had engaged in the slave trade. Agriculture is not a suitable field for the Arab people. Umar said in a letter to Musa Ash’ari regarding abolishing slavery and using the money you get from it. As a land reform strategy centered on public benefit, Umar forbade Arabs from actively participating in agricultural management. Due to Umar’s refusal to participate in the land distribution, monopolistic tactics emerged, which might have contributed to the rise of feudalism in society. Moreover, the concept of professionalism should underpin land managers. In his opinion, providing vast tracts of land to certain people is unfair, while others go without necessities like food and water. It is why the Muslim countries of Medina, Taif, Najed, and Yemen were spared from Umar’s plan of nationalizing their lands. Umar also instituted a strategy to redistribute land rights, which included the state acquiring private property rights to transfer them to other Muslims.¹¹⁴ Due to population growth and the scarcity of arable land, the state of Muslims has instituted a land redistribution strategy.

The instance of Jabir ibn Abdullah al-Baja is relevant to this policy. Jabir and his clan were dispatched to Iraq by Umar, who promised them a part of the seized land if they could have conquered Iraq. The conflict ended, fulfilling the promise. However, due to the growing number of Muslims, Omar requested that Jabir return the property three years later. Umar compensated Jabir with 80 dinars, which were removed from Umar’s account when Jabir returned.¹¹⁵ The salary of the soldiers and government workers was a land distribution strategy for certain lands seized

¹¹³ Ra'ana, Umar the Great, 155.

¹¹⁴ Ira M. Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 2014), 500.

¹¹⁵ Lapidus, “*A History of Islamic Societies*,” 555.

during Umar's reign. They were granted various territories, including Sawafi land, which refers to the arable land left behind by vanquished monarchs like the Sasanian dynasty.¹¹⁶

2.6.3 The Era of Hazrat Usman (R.A.) and Mu'awiya Ibn Abi Sufyan

After the Islamic government conquered the eastern region of Persia and the western region of Rome, the land ownership custom in Islam underwent an intriguing evolution during the time of Caliph Uthman ibn Affan, who ruled from 644 to 656 AD. A discussion between the Roman and Islamic systems of property ownership took place in such a situation, particularly in the Sham province governed by Governor Mu'awiya ibn Abi Sufyan. As per Roman customs, the enslaved people who labored on the farms belonged to the landowners who owned the lands and lived in luxury. A major priority throughout the Caliph Umayyad and Abbasid reigns was the creation of land administration as one of the state's assets.

2.6.4 The Era of Caliph al-Ma'mun (813–833 AD)

During the rule of Caliph al-Ma'mun from 813 to 833 AD, authorities were set up in lands taken over, from the provincial to the lowest level. This was done to control land ownership and use, especially to collect state income tax. There are two types of *iqta*, *iqta tamlik* and *iqta istighlal*. As a way for the government to administer land, *iqta* can be given to people or groups seen as helpful to the government, like magistrates and military troops, as a form of political retaliation.¹¹⁷ In the *Mamluk* and Fatimid kingdoms, *Iqta*'s rule was also used to give the Amir, Wazir, and Heads of *Diwan* money or gifts from the government.¹¹⁸ *Iqta* policies that were not regulated led to the rise of new owners, mostly among the military class. This turned society into a feudal one, where landlords took advantage of workers who did not own land.¹¹⁹ In Ira M. Lapidus's view, the unchecked *iqta*'s policies made it possible for local leaders to rise in opposition to the government at the central level.¹²⁰ The governors seemed like small kings, and their lack of loyalty was shown by their failure to pay the revenue taxes owed to the central government, which eventually led to the revolt. Land law policies in Islamic history make the link between the political goal and the land reform strategy, called *iqta*, very clear.

¹¹⁶ Ridwan, "Land Ownership Reform," 168.

¹¹⁷ A.K.S. Lambton, *Continuity and Change in Medieval Persia* (State University of New York Press, 1988), 85.

¹¹⁸ Iqbal, "The Concept of Land Ownership in Islam," 655.

¹¹⁹ Al-Qutb, Sayyid, "Al-'Adalah Al-Ijtima'iyah fi al-Islam," Cairo: Dar al-Shuruq.

¹²⁰ "Agricultural and Urban Land Rent, Sharecropping, and Land Reforms: A Suggested Islamic Economic Agenda," *Journal of Islamic Business and Management (JIBM)* 7, no. 1 (2017): 54, doi:10.26501/jibm/2017.0701-005.

Furthermore, the land problem in Islam seems to be a public matter. The government owns the land, so it is up to the government to decide how to use it. When you compare the following grid to the framework of land ownership before Islam, you can see how Islamic land law modified its function.¹²¹

2.7 Public Rights and Individual Rights to Land Ownership in Islam

Shari'ah law says that every person, man or woman, Muslim or not, has the right to own, hold, enjoy, and move property. This is a right that everyone, including the government, must accept and protect. That is, owning land is a right recognized in Islam that everyone should be able to enjoy, regardless of race, religion, or color. The government sets rules for how to protect it and use it correctly. Along with ensuring people can live safely, Islam also ensures that everyone can own property safely. This kind of right only covers property that was properly bought. During His goodbye haj, the Prophet (Peace Be upon Him) spoke to the Muslims and said, "Your lives and properties are forbidden to each other until you meet Your Lord on the Day of Resurrection." This statement was emphasized. This consists of the right to enjoy and be compensated, to invest in business, to move property, and to live on property. The right to own land is not just limited to individuals; it can also be used by society and the state.¹²² Since the state is in charge of guarding people's rights, it can step in and sometimes take away people's rights to property to protect important social and personal interests.¹²³ How much and deeply the government gets involved is mostly decided by what is best for the public. The government, speaking for the people, has the power to enforce the rules on private property ownership, even if it means using force against Muslims who do not agree with them. Lastly, Islam has rules to ensure people get their fair share of the wealth.

2.8 Land Accumulation: Feudalism and Islam

The feudal system is an organization in which the owner or someone acting on his behalf gets a share of the production and certain economic rights. These rights include the right to demand that renters work for or pay them. Muslims, on the other hand, do not know anything about feudalism because they think that humans, as Allah's creations, are supposed to run the world and

¹²¹ Ridwan, "Land Ownership Reform," 169.

¹²² Robin D. Kelley and Christopher Jencks, "Rethinking Social Policy: Race, Poverty, and the Underclass," *Labour / Le Travail* 32 (1993): 344, doi: 10.2307/25143765.

¹²³ Nuzhat Iqbal, "The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan," *The Pakistan Development Review* 39, no. 4II (2000): 652, doi: 10.30541/v39i4iipp.

are *Khalifa* in it. As people play such important parts in the human kingdom, they need to be able to run the world properly.¹²⁴ The faith reminds Muslims that every human originates from the soil and returns to its origins. “In the Qur’an, Allah says, “Remember' when your Lord said to the angels, 'I am going to place a successive 'human' authority on earth.' They asked 'Allah,' 'Will You place in it someone who will spread corruption there and shed blood while we glorify Your praises and proclaim Your holiness?' Allah responded, 'I know what you do not know’”.¹²⁵ People see man as the guardian of Allah on earth because he is Allah’s representation. Man is given the trust (*Amana*) to protect the trust of beneficiaries and their natural resources, not just for himself but all of humanity’s beneficiaries.¹²⁶

Regarding Islam, the only legal link between a farmer and an owner is based on a contract or lease. In the first case, the farmer has to pay the owner a set amount as rent for the land based on how much it produces. After that, he is free to grow crops, spend money, and take all the produce from the land for his use. If he is a renter, he will give the owner a share of the land’s crops at the end of each year. In this situation, the owner pays for everything; the peasant only does the work. In either of these situations, the farmer has no right to be made to work, be given special rights, or be required to serve his owner without receiving anything in return. Both sides would rather have full equality in their freedom, rights, and tasks, with a partnership of giving and taking. The peasant can pick which land to rent or which owner to begin working with as a renter.¹²⁷ Second, he works with the property owner and has the same freedom to choose or agree on the amount he must pay the landlord for the rent. He can back out and not sign the contract if he does not think the deal is worth it. The owner has no authority or right to punish him for that. The peasant has the same legal rights as his owner, even though he is a renter. In equal amounts, they split the profit between themselves. This makes it clear that the tasks that peasants had to do under feudalism, which turned into forced labor, have no significance for the Islamic way of life. It set up an impartial relationship between the landlord and the peasant, where both treated each other with respect and were treated the same.¹²⁸ The third thing that makes feudalism unique is that the

¹²⁴ Zuhayli, *Al-Fiqh al-Islami wa-Adillatuh*, 52.

¹²⁵ Qur’an, 2: 30. "Online Qur’an Translation - Mustafa Khattab | Alim.org," Read Holy Qur’an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

¹²⁶ M. Iqbal, *Islamic Perspectives on Sustainable Development* (London: Palgrave Macmillan, 2005), 12.

¹²⁷ Irfan M. Ra’ana, *Economic System Under ‘Umar the Great: A Treatise on Muslim Economy in Early Seventh Century* (1970), 90.

¹²⁸ Mahathir Mohamad, *Islam: The Misunderstood Religion* (1997), 650.

feudal master had the power to decide how much land to give the tenant and what tasks the tenant was expected to carry out. This was only possible under the European idea of lordship and serfdom.

It has never been thought of in Islam that the overlord is superior to the farmer or that the peasant is inferior to the overlord. In Islam, the only things limiting a peasant's choice about renting land are his free will and willingness to pay. The smaller party has no rights against this except to demand the farmer's agreed-upon rental price of the agricultural property. When someone rents land, the land they can grow depends on their physical abilities or the number of helpers they can find, usually their boys. The tasks of being a tenant are limited to what is needed to fix up the land he bought.¹²⁹ On this occasion, the land is shared between the worker and the landlord until it produces food. When it comes to the landlord's land that the tenant does not own, the tenant shouldn't have anything to do with it and does not have to work there in any way. What makes feudalism so different from Islam is that the owner of feudalism has the power to judge and run the government. In feudalism, he is the only one who controls and rules all political and social life within his fiefs. Islam does not agree with this kind of privilege because it wants to get rid of it, not keep it in human relationships. So, we can say that feudalism never really occurred within Islam as long as Islam was the main religion in Muslim lands. This is because Islam's basic beliefs, rules, and laws are all against feudalism. It not only does this but also gets rid of all the things that help it grow. Throughout the Ommayyad and Abbasid times, there was a small amount of feudalism, which never really took off to become a normal part of Muslim life.¹³⁰

2.8.1 Feudal Estates and Islamic Shari'ah

The Islamic *Shari'ah* bars rulers from bequeathing state lands to favorites. Despots and dictators cannot award state land as a reward to their friends, bootlickers, or enslaved people or to promote their agenda and persona. Awarding state lands is legal but should not be done without rules. It is important to note that not all the land awarders are equal, and neither are the land awardees. The fair, righteous, Allah-fearing ruler should present this state award to true Servants of the religion and state who should deserve such award. The Muslim ruler should also have given them money or lands that fell under the Muslim ruler's domain. While tyrants and autocrats give awards to those equally as ill as they are for no good reason with lavish generosity awarding them from countries where the rules have no legal right to do so. Thus, there are two different types of

¹²⁹ Ziaul Haque, *Islam & Feudalism: The Economics of Riba, Interest and Profit* (1991), 160.

¹³⁰ Mohamad, *Islam: The Misunderstood Religion*, 665.

awards, and the management of these two types is different. The first category is lawful, and justice demands that they be complied with. The second category is illegitimate and, by the dictates of justice, must be annulled (mawdudi); the lands the British Empire had gifted to the locals in exchange for support can be considered illegitimate.

2.9 Distributive Justice in the Perspective of Islam

Islam, another word for peace and justice, has influenced how people share their money. Some Muslim writers say that fair sharing is the Islamic goal of distribution. Different people have different ideas about what “distributional equity” means.¹³¹ Some people think it means that everyone should get the same benefits, no matter how good they are or how much they contribute. Others say that the different pay levels in a company are fair and just because people are naturally different in their skills, knowledge, and approaches to work, and other things.

To put it another way, giving everyone the same prize would be unfair. Islam has always cared a lot about fairness in how resources are shared. It was the first problem that the Messenger of Allah, Prophet (Peace Be upon Him) fixed. He said being there was the key to making society fair and just. That being said, it is important to know how the Arabs lived in Medina, where the first Islamic state was founded, and how the Messenger of Allah, Prophet (Peace Be upon Him) and his first two leaders (Khulata, Abu Bakr, and Umar) made choices about who would get what. When it came to giving out money and things from the Baitul Mal (treasury), the rules were different during the times of the Prophet (Peace Be upon Him), Abu Bakr, and Umar.

Regarding Prophet (Peace Be upon Him), the person's needs were the most important thing to consider. When it came to Abu Bakr, it was equality. Umar gave extra gifts to the people who fought in the first Islamic fight at Badr during the time of the Prophet (Peace Be upon Him). He did this because he thought the recipients were worthy. He also paid extra attention to people related to the Prophet (Peace Be upon Him).¹³²

Several things affected the distribution rules, including how many resources were available or scarce, how strong the recipients' wants were, how valuable or useful the recipients were, and the reason for the sharing choice. The most important thing in all the choices about sharing was

¹³¹M. KHAN, "Distributive Justice and Need Fulfilment in an Islamic Economy," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 111, doi:10.4197/islec.3-1.6.

¹³² Yusuf Kandhalawi, "Distribution of Wealth and Norms of Distribution by Prophet (Peace Be upon Him)," in *IJayatus Sababa* vol. 2 (Urdu Text) (New Delhi: Idara-e-Isha.276.

how fair the receivers thought it was. People had different ideas about who should be the next *Khalifah* after the Messenger of Allah, Prophet (Peace Be upon Him). Differences of the same kind showed up when the next three leaders were chosen. However, the people picked for these positions were chosen based on how much they sacrificed for Islam and how close they were to the Prophet (Peace Be upon Him). It is important to remember that during the fight of Tabuk, Abu Bakr gave up everything he owned, 'Umar brought in half of his stuff, and Othman gave away a third of his money to help the Muslim army with their goal.¹³³ There is a similar pattern to how the top jobs were filled in Medinah, which was the administrative center of the Muslim State at the time. In the Islamic view, "distributive justice" is made up of three parts:

1. Ensuring that everyone's basic wants are met;
2. Fair but not equal incomes for each person;
3. The biggest differences in income and wealth should be fixed.

Islamic economists have discussed the problem of meeting basic needs from an Islamic point of view.¹³⁴ Islam says that people should be able to meet their basic wants while also understanding that people are naturally unequal and putting moral values into society to stop extreme inequality. How the West thinks about the ethical foundation of social responsibility may have learned a lot from how Muslims feel about social justice. Once people's basic wants are met, honor becomes the Islamic standard for distributing resources. So, differences in pay between people are okay and fair as long as they are based on their different skills or contributions. In Islam, pay choices should be based on what the person has done or how much they have contributed. In the Islamic view, it would not be fair to compare everyone's salary if there are differences in how much they contribute and what they can do. When workers are paid in a way that does not consider their contributions, it will lower their drive, leading to bad organizational performance. Because of this, Islam encourages people to give their extra money to charity so that they can get a better prize in the next life. Many verses in the Qur'an go into great depth about this topic. For example, one verse says, "Righteousness is not in turning your faces towards the east or the west. Rather, the righteous are those who believe in Allah, the Last Day, the angels, the Books, and the prophets; who give charity out of their cherished wealth to relatives, orphans, the poor, 'needy' travelers,

¹³³ Muhammad Zakariya, "Sacrifices of Sahaba during Tabuk Expedition," in *Stories of Prophet's (Peace Be upon Him) Companions* vol. 1 (Urdu Text) (New Delhi, Idara-Dinyat.100.

¹³⁴ M.N. Siddiqi, "The Guarantee of a Minimum Level of Living in an Islamic State," in Munawar Iqbal, (ed.) *Distributive Justice and Need Fulfillment in an Islamic Economy* (Leicester: The Islamic Foundation, 1988), 251.

beggars, and for freeing captives; who establish prayer, pay alms-tax, and keep the pledges they make; and who are patient in times of suffering, adversity, and in 'the heat of' battle. It is they who are true 'in faith,' and it is they who are mindful 'of Allah.'¹³⁵ Spend in the cause of Allah, and do not let your own hands throw you into destruction 'by withholding.' And do good, for Allah certainly loves the good-doers.¹³⁶ O believers! Donate from what We have provided for you before the arrival of a Day when there will be no bargaining, friendship, or intercession. Those who disbelieve are 'truly' the wrongdoers.¹³⁷ 'They are' those who donate in prosperity and adversity, control their anger, and pardon others. And Allah loves the good-doers.¹³⁸ Whatever you spend in the cause of Allah will be paid to you in full, and you will not be wronged.¹³⁹ And in their wealth, a rightful share was fulfilled' for the beggar and the poor.¹⁴⁰

2.9.1 Zakat as an Element of Distributive Mechanism

The Islamic system known as *zakah*, which requires rich people to give some of their wealth to the poor, motivates people to use their money to buy things, which is good for business. So, its impacts on production through trade and other inter-sectoral sharing of resources are normal. Still, they are not fully understood today because there is no Islamic management and problems with running the economy. The *zakah* reduction naturally stops people from hoarding wealth and other resources that they do not need. It also acts as a strong spiritual and economic incentive to spend. As long as more investments are made, the rich will make more money, which is legal in Islam, and poor people in the community will have jobs.¹⁴¹ Since production and spending are closely linked, *zakah* tends to open up new trade routes by encouraging output so the poor can use it. Under the *Tamlik* system, *zakah* money can also give the poor a chance or make

¹³⁵ The Holy Qur'ān, 2: 177. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

¹³⁶ The Holy Qur'ān, 2:195. "Online Qur'an Translation - Mustafa Khattab."

¹³⁷ The Holy Qur'ān, 2:254. "Online Qur'an Translation - Mustafa Khattab."

¹³⁸ The Holy Qur'ān, 3: 134. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/3/>.

¹³⁹ The Holy Qur'ān, 8:60. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/8/>.

¹⁴⁰ The Holy Qur'ān, 51:19. "Online Qur'an Translation - Mustafa Khattab | Alim.org," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/51/>.

¹⁴¹ Raquibuz Zaman, "Foreword," In, H. Rashid, (ed.), A Note on Some Aspects of the Economics of Zakah," (Bloomington, Indiana: American Trust Publications, 1980), 8.

them more productive. In the long term, these poor people could support themselves, meaning the government would not have to spend as much on social protection strategies.¹⁴²

2.10 Conclusion

This chapter demonstrated how Islamic history shows ownership of land and reforms were left fluid in some instances and available for construal. The socio-economic situations during the time of the Prophet (Peace Be upon Him) and the first four Caliphates differed, while the four Caliphates experienced new challenges due to territorial expansion. Besides this, the Islamic states transformed themselves into dynasties after the caliphate. Consequently, decisions made at different times had to be looked at through the lens of the Qur'an, hadiths, and the circumstances of every epoch. The attitudes of the *Caliphs* can still be learned from the policies regarding the land, but they must be set to meet modern issues. The Prophet (Peace Be upon Him) realized that social welfare, especially to those in the lower strata of society, is the concern of any emerging economy, hence calls for social welfare of the current land reform.

¹⁴²Izhak Englard, "Corrective and Distributive Justice," 2009, 81, doi:10.1093/oso/9780195380071.001.0001.

Chapter 03. Concept of Justice in Western Jurisprudence

3.1 Introduction

The chapter focuses on the uneven apportionment of lands inside Pakistan in the context of distributive or economic justice. The act of fairness in distribution (Distributive Justice) demands the justifiable sharing (division) of lands and other properties in a style so that the requirements of every member of the social structure are satisfied. This type of justice believes in equal and proportionate delivery of advantages, responsibilities, and duties of social life. Distributive Justice is often termed as an extensive terminology that engulfs a variety of material and non-material features of personal and social life. Justice is usually compared with corrective justice regarding the distribution of wealth and resources. This type of justice is about being just with the aspect of correction. It relates itself to the repayment and recovery of the damages. It emphasizes the payment of compensation to mend the harm done by the perpetrators. Distributive justice is defined in various ways by various academics and scholars. Some definitions are almost the same, and some are sharply varied. This section of the study explores justice in terms of distribution (Distributive Justice). The section explores categories of distributive justice, historical or chronological aspects, a variety of elements, and various scholars and their scholarly work on the concept of Distributive Justice. The section sums up by outlining the theoretical structure of the study.

3.2 Concept of Justice

The roots of the English word 'Justice' can be traced back to the Latin word 'Jus,' which can be translated into meanings such as a tie or bond in English. The word 'Justice' can also be found in the legal texts of the Old French language, exhibiting the meanings of lawful rights and legal power or authority. The word 'Justice' in French can also be traced back to the Latin word 'Justitia,' which is translated into English as 'righteousness.' Generally, the most often used interpretation of 'Justice' relates to a perfect idea or ideal representing something fair and correct. It exhibits the meanings regarding one being unbiased, neutral, and factual. Being 'Just' may

depend on the circumstances, but the ideals of fairness and correctness are perquisites for delivering justice or the concept of justice itself.¹⁴³

Laws are termed a set of moralities by Salmond.¹⁴⁴ These moralities or principles are identified and implied for delivering just and fair decisions. The definition of Roscoe Pound also puts 'Laws' as rules that civil courts identify with and impose.¹⁴⁵ The definition of justice proposed by John Rawls varied from the two previously mentioned definitions. In Rawls's definition of justice, justice itself is considered a primary requirement or feature of any organization, and the truth or actuality is primarily important for the thought process (theory) in mind. As the theory or philosophical thought's validity is based upon truth, in the same manner, the rules or regulations and the organizations that are based upon those rules should be reorganized or put to an end if they are based on injustice. Every individual has a fundamental right based on justice that cannot be violated, even for the benefit or advantage of the whole society.¹⁴⁶ Another theorist, Ernest Barker, presented Justice in political terms. For Barker, Justice functions to balance and harmonize various political ideals. It ensures that differing values are aligned and integrated to create a fair and cohesive social structure. Justice catalyzes the process of unifying and harmonizing different political ideals, resulting in a harmonized and cohesive system. It merges different political values into a unified and well-tuned system (whole), ensuring fairness and coherence in the social structures. Barker also claimed that the conception of justice is universal and can be understood by everyone. Justice became a universal or shared thought through a constant evolution over time, thus becoming a collective social thought and inheritance. It is not just an idea or conception but an actuality related to the social structures but a tangible object within real minds.¹⁴⁷ If viewed in the contemporary setting, Justice can be defined as recognizing and implementing laws passed by the country's legislative bodies.¹⁴⁸

¹⁴³ Justice | Search Online Etymology Dictionary," Etymonline - Online Etymology Dictionary, accessed March 5, 2022, <https://www.etymonline.com/search?q=justice>.

¹⁴⁴ Manuel A. Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions," *IIH/FONS* 1 (2016): 65, doi:10.20318/fons.2016.2529.

¹⁴⁵ "Attention Required!," Attention Required! | Cloudflare, accessed March 4, 2022, <https://www.toppr.com/guides/legal-aptitude/jurisprudence/purpose-of-law-concept-of-justice/>.

¹⁴⁶ "Ramakrishna Mission Vidyamandira."

¹⁴⁷ "Ramakrishna Mission Vidyamandira."

¹⁴⁸ "Concept of Justice."

3.3 Types of Justice

Justice can be divided into different categories and kinds. Among these categories, the most significant types of justice are corrective and distributive.

3.3.1 Distributive Justice and Corrective Justice

This kind of justice relates to the distribution of material and non-material things such as official position, status, integrity, or financial resources to be distributed with equity among the members of the society. Here, the distribution with equity means the distribution based on meritocracy as per the need or virtue of the individual. Most people approve of this notion that meritocracy-based distribution would be just. The corrective justice stance about justice varies a bit; it demands that perpetrators pay compensations for the losses inflicted upon the sufferers, and the compensations paid would be based on the losses or wounds incurred in any circumstance.¹⁴⁹ The kind of justice about the distribution of resources (distributive justice) has a striking feature: it delivers compensation and retribution to each individual as per their virtue.¹⁵⁰ Keeping an eye on an equity-based (proportionate) and balanced distribution via a comparative analysis of an individual or factual data with other individuals or factual figures ensures that no equivalent individuals have non-equivalent material or non-material resources.¹⁵¹ The kind of justice about correctness or fairness (Corrective Justice), its striking feature is to deliver to every individual the rights and materials that they rightfully possess or provide those things that manage social interactions.

Such as while delivering independent justice, the magistrate should first create a ground of parity between the two contesting individuals or groups, ensuring that no individual or group benefits from the other contestant's damage.¹⁵² A variety of notions exist regarding the association of justice based on correctness (Corrective Justice) and justice based upon distribution (Distributive Justice). For some groups of thinkers, distributive justice is prime, and corrective justice is held in subordination to the former.¹⁵³ As per the mentioned perspective, correctness-related justice can't be invoked until justice related to distribution recognizes the real owner. Some authors, like Perry, consider the functions of both corrective and distributive justices as diverse

¹⁴⁹ "Global distributive justice: what and why?" *Global Distributive Justice*, 2012, 20, doi:10.1017/cbo9781139026444.003.

¹⁵⁰ "Global distributive justice," 27.

¹⁵¹ Izhak Englund, *Corrective and Distributive Justice: From Aristotle to Modern Times* (New York: Oxford University Press, 2009), 2.

¹⁵² "Justice," TheFreeDictionary.com, accessed March 5, 2022, <https://legal-dictionary.thefreedictionary.com/justice>.

¹⁵³ Englund and Englund, 3.

and different. Corrective justice is independent for him because of the specific factors he normatively finds important.¹⁵⁴ Perry claimed that corrective justice is not dependent upon distributive justice because corrective justice deals with rights and privileges not correctly addressed by the principles of distributive justice. A Corrective type of justice only concerns itself with injuries and not with any takes of distribution.¹⁵⁵ The study is based on the distributive kind of justice; therefore, the study is concentrated on distributive justice. The idea of distributive justice is not just a unit thread but a complex web of interwoven conceptions. The conceptions are woven in a variety of dimensions by various theorists. A detailed study of distributive justice is addressed in the following section.

3.4 Concept of Distributive Justice

The idea of distributive justice may have emerged in the Eighteenth century. The concept was grounded in the notion that social fabric is not sustainable and the structure is falling apart; it cannot cater to the distribution of material and non-material things in terms of satisfying the requirements of every individual. Furthermore, in ancient rules of Monarchs, the ruling elite possessed everything, and their citizens were allowed to use their possessions in their lordship names.¹⁵⁶ The conception of distributive portrays how a social group distributes its limited things or produces among every person, each with its respective and relative requirements and demands. Distributive justice ensures the correct distribution of social resources and responsibilities between the social or communal structure participants.¹⁵⁷ It concerns itself with the calculations that must be employed to distribute the material possessions of society. It also decides the correct division of social responsibilities and rewards among individuals with different demands and requirements. Armstrong Distributive Justice envisages justice as a technique through which duties and rewards are distributed among members of the social or communal structure. The fundamentals of distributive justice shed light on the needed distribution mechanism regarding rewards and responsibilities.¹⁵⁸ This kind of justice not only pertains to guidelines and provisions of a moral nature regarding the distribution of things and just allocation of materials and chances; on the other

¹⁵⁴ W. D. Lamont, "Justice: Distributive and Corrective," *Philosophy* 16, no. 61 (1941): 13, doi: 10.1017/s003181910000187x.

¹⁵⁵ Andrew I. Cohen, "Corrective vs. Distributive Justice: the Case of Apologies," *Ethical Theory and Moral Practice* 19, no. 3 (2015): 665, doi: 10.1007/s10677-015-9674-5.

¹⁵⁶ "Distributive Justice."

¹⁵⁷ Izhak Englar, *Corrective and Distributive Justice: From Aristotle to Modern Times* (New York: Oxford University Press, 2009).

¹⁵⁸ "Attention Required," Attention Required! | Cloudflare, accessed March 4, 2022, <https://www.toppr.com/guides/legal-apititude/jurisprudence/purpose-of-law-concept-of-justice/>.

hand, it also ensures that these divisions or processes are justly carried out appropriately. The proper way is ensured by manipulating guidelines, regulating principles, and regulating the strategies of the rulers. The kind of justice about the distribution of resources is gaining more vitality in the social structures that feature imbalanced wealth distributions. The various fundamental rules and the need for distributive justice are also the themes of discussions and disagreements.¹⁵⁹

3.4.1 The Elements of Distributive Justice

To be impactful, the conception embraced regarding distributive justice must adhere to the ‘Value’, ‘Procedure’, and ‘Organizational elements in the social fabric.

I. Value Elements

Any legal framework is based and founded on the ‘Value principles,’ and various socio-political and law-based organizations back the mentioned framework or system. The conception of distributive justice may be considered foundational for the correct and equitable allocation of authority, economic incentives, and privileges. This conception demands standards (values), benchmarks, appropriate implementation mechanisms, and pragmatic components. Keeping in view the mentioned context, value elements or components act as foundational components for other components in the following scenarios:¹⁶⁰

a. Human Generosity

The generosity of human beings is a vital part of the conception of distributive justice. Generosity is considered so vital and significant because people are commonly generous. Maintaining dignity among humans requires that the masses are satisfied with their requirements and demands. Thus, the conception of distributive justice theory can be seen as a process that safeguards the generosity of humans, enabling them to live a life full of modesty and satisfaction via allocating material resources and amenities in a just and fair way. The stress upon the generous aspect of human nature makes sure that social structures function on the fundamentals of empathy and kindheartedness, nurturing a communal structure where each individual backs one another and contributes to the shared interests.¹⁶¹

¹⁵⁹“Global distributive justice: what and why?” *Global Distributive Justice*, 2012, 20, doi:10.1017/cbo9781139026444.003.

¹⁶⁰ Hassan Khosravi and Mojtaba Babaee, "Distributive Justice and the Fundamental Human Rights (Focusing on Rights to Healthy Environment)," *Journal of Politics and Law* 9, no. 7 (2016): 45, doi:10.5539/jpl.v9n7p43.

¹⁶¹ Hassan Khosravi and Mojtaba Babaee, "Distributive Justice and the Fundamental Human Rights (Focusing on Rights to Healthy Environment)," *Journal of Politics and Law* 9, no. 7 (2016): 45, doi:10.5539/jpl.v9n7p43.

b. Value and Intrinsic Equality

The conception proposes that all living beings hold an intrinsic or natural value. It means that no creature on earth is of higher value than another. Further, the common interests of the masses must be taken into account in the same manner as that of personal or individual interests in communal decisions.¹⁶² Equality is a multilayered (complex) concept that can be assessed in various aspects, such as moral or ethical, political, social, gender-based, and racial-based aspects of equality.¹⁶³ The distributive justice system concentrates on the notion of equality, which highlights the significance of the component of equality in itself. Human societies can make such settings or surroundings where each individual is treated dignified and respectfully. These societies can be built through recognition and respect for the intrinsic equality of individuals, irrespective of social background or financial status. This attitude helps eliminate systemic prejudices and encourages impartiality in most aspects of life, from legal systems to societal interactions.

c. Opportunity Equality

The concept of opportunity equality or equal opportunity suggests that all humans are worthy of equal chances or opportunities to nurture their skills and creativity, thus making each individual in a society able to contribute positively. The government must act unbiasedly, ensuring that the opportunities and material resources are distributed based on worth, inventiveness, and personal and societal efforts.¹⁶⁴

d. Lack of Prejudice

The fundamental causes of tyranny and disrespect are prejudice and unequal treatment. Keeping in view the inherent principle of equality and value, the ultimate or true humane equality would be attained if persons are not exploited as tools for the advantage of others. This fundamental principle ensures that no individual is supposedly treated supremely by others in the context of value. Therefore, equality emerges from the prevention of biases, making sure that each individual is treated in an equal and dignified manner.¹⁶⁵

e. Rule of Law

The concept of rule of law is also an important component of distributive justice. The aspect of the rule of law limits and controls individual powers, while the element of the rule of man

¹⁶² "Democracy, Teaching About," *Springer Reference* (n.d.), 250, doi:10.1007/springerreference_69879.

¹⁶³ Robert M. Stewart and Robert Stewart, *Readings in Social and Political Philosophy* (Oxford University Press, USA, 1996), 460.

¹⁶⁴ Khosravi and Babaee, "Distributive Justice and the Fundamental Human Rights," 45.

¹⁶⁵ Rasekh, Mohammad. "Right theory and International human rights" *Journal of Legal Researches* 41, no. 8 (2005): 70.

always looks for expansion. ¹⁶⁶The rule of law primarily speaks of two main things in societal structure. Firstly, it ensures that state authorities or institutions have the power or control needed for effective governance. Secondly, it also balances government authority and protecting basic citizen rights and freedoms. The primary functions of the rule of law, as mentioned earlier, are control over political powers, keeping public order, and securing the rights of citizens. The crux of the rule of law is its constant tenets regarding order and constraint. This aspect of the system diminishes the chances of self-interested control and encourages an impartial and just society. The rule of law delivers an expected and clearly stated lawful system that promotes economic progress and societal order. It certifies that laws are applied evenly and justly, safeguarding the rights of individuals (citizens) from personal engagements and misuse of authority.¹⁶⁷

f. Public Transportation and Supervision

Public participation highlights every person's right to participate in policy-making processes and struggles to advance societal circumstances. Public participation is the basic requirement for democracy to make a value system, establish social customs, develop general policies, and play an explicit part in the country's management. Oversight by the public in national matters strengthens democratic norms, guaranteeing that individuals have an opinion regarding the style of governance. Thus, equality in political issues and supervising those matters is crucial for establishing distributive justice. The risk of power abuse by rulers and others trying to deprive the masses of their basic rights is amplified if there is no public engagement in decision-making processes. Public participation in the processes supports the prevention of such abuses of power and guarantees that the interests of the masses are presented and safeguarded. The engagement of citizens in the democratic processes promotes transparency and answerability, resulting in trust between the state and its citizens. It also endorses the social responsibility of citizens, enabling citizens to contribute to the benefit of social order.¹⁶⁸

II. Procedural Elements

To establish a legitimate and fair framework, two elements of behavior and procedures and fundamental values must be integrated. The elements related to procedure in a democracy relate to the processes by which assessments, strategies, laws, and state initiatives are established via

¹⁶⁶ "Distributive Justice (Stanford Encyclopedia of Philosophy)," Stanford Encyclopedia of Philosophy, accessed January 27, 2023, <https://plato.stanford.edu/entries/justice-distributive/>.

¹⁶⁷ "Distributive Justice (Stanford Encyclopedia of Philosophy)," Stanford Encyclopedia of Philosophy, accessed January 27, 2023, <https://plato.stanford.edu/entries/justice-distributive/>.

¹⁶⁸ "Distributive Justice (Stanford Encyclopedia of Philosophy)," Stanford Encyclopedia of Philosophy, accessed January 27, 2023, <https://plato.stanford.edu/entries/justice-distributive/>.

sharing and all-encompassing procedures. The conception of distribution should suppose this behavior and function-related component, ensuring that those with authority divide the materials and privileges in orientation with the fundamentals of impartiality and specified value laws. This method ensures that the legal system is not only ideally fair but also pragmatic and impactful in attaining unbiased results.¹⁶⁹

a. Fairness

Fairness means the impartial and just behavior or the impact of these on both command (power) and statute (free from biased execution of laws), as well as practicality, which demands the equal distribution of materials among the involved participants. Fairness ensures that all persons or members of society get on their merit and are free from any partiality and discriminant behavior. It is one of the fundamental rules that complement the legitimate role of any law-based and distribution-related system.¹⁷⁰

b. Responsiveness

In politics and law, responsiveness is interpreted as an individual's pledge to their responsibilities.¹⁷¹ For Randerson, vital responsiveness features comprise reasoning, reportage, and description. It includes understanding laws related to civilians to decide suitable actions. A responsive system is fundamentally linked to the democratic system.¹⁷² It safeguards principles of democracy by preserving people's rights to contribute and mediate in state-related decisions. State management officers' inside and outside answerability is important for protecting democratic principles. Responsiveness provides mechanisms and procedures regarding activities and decisions made by individuals or organizations to other institutions, carrying substantial implications of legitimacy and political aspects. It also encourages confidence building between the administrators and those administered, strengthening the social contract.¹⁷³

c. Information Access

¹⁶⁹ Sheldon Alexander and Marian Ruderman, "The role of procedural and distributive justice in organizational behavior," *Social Justice Research* 1, no. 2 (1987): 185, doi: 10.1007/bf01048015.

¹⁷⁰ Jorgen Elklit and Palle Svensson, "What Makes Elections Free and Fair?" *Journal of Democracy* 8, no. 3 (1997): 40, doi:10.1353/jod.1997.0041.

¹⁷¹ Jeffrey E. Cohen, *Presidential Responsiveness and Public Policy-Making: The Publics and the Policies that Presidents Choose* (Ann Arbor: University of Michigan Press, 1999), 74.

¹⁷² Hassan Khosravi and Mojtaba Babaei, "Distributive Justice and the Fundamental Human Rights (Focusing on Rights to Healthy Environment)," *Journal of Politics and Law* 9, no. 7 (2016): 46, doi:10.5539/jpl.v9n7p43.

¹⁷³ "Democratic Process and Accountability in Public Administration," Semantic Scholar | AI-Powered Research Tool, accessed April 30, 2024, <https://www.semanticscholar.org/paper/Democratic-Process-and-Accountability-in-Public-Zarei/e347b64b252144f2797b0b3c9d7041741c698547#citing-papers>.

In a distributive justice system, the government must be held responsible to the masses by providing information, determining whether the materials and amenities are distributed as per the basic rights and meritocracy. The right to access and spread information enables citizens, and their educated participation is needed to protect their privileges and liberties. This transparent mechanism ensures that the government is administered within legal and ethical limitations, using its authority fairly and appropriately and preserving the trust of the masses. Access and the right to information are crucial instruments for applying control and assuring the correct working of the government.¹⁷⁴

d. Clarity

The conception of clarity relates to decision-making processes and implementing those decisions within institutions and related organizations. Particular laws, guidelines, capabilities, and authorities must direct the mentioned activities. Clarity also ensures that the masses as a whole or individuals on a personal level affected by these decisions and executions are given the unhindered right to use and access the available information. Furthermore, clarity is about whether the information broadcasted on print or electronic media is readable and comprehensible to all. Ambiguity and uncertain conditions are reduced by maintaining transparency, thus playing an important part in preventing and reducing corrupt practices within a political and legal system.¹⁷⁵

III. Structural Elements

The prior settings and preconditions should be met for value- and procedures-related components to be in working mode. The societal structure's principle values and set standards are recognized or surface inside institutional or organizational structures at the time of implementation. Similarly, legal and fair pledges should be identified and structured so that state institutions and societal structures can appropriately and fairly allocate privileges and materials. Thus, imagining an ideally just social structure requires structural and institutional sureties. Civil society or state-run, the structures in place must vigorously secure the democratic aspects. The aspects are mostly related to procedure, conceptions, and values.¹⁷⁶

a. Controlling of Public Power

The use of executive powers by the executives of the state and applying legitimate authority is fundamental for the rightful allocation of privileges and material resources. The preservation of

¹⁷⁴Faizan Mustafa, *Constitutional Issues in Freedom of Information: International and National Perspectives* (Kanishka Publishers, 2003), 200.

¹⁷⁵ Khosravi and Babaee, "Distributive Justice and the Fundamental Human Rights" 50.

¹⁷⁶ "Democratic Process and Accountability in Public Administration."

individual rights and privileges is achieved via instruments of control and imposing restrictions on resource allocation methods. There are two foremost mechanisms of power. i.e., political and judicial. The judiciary is empowered with tools to control judicially; it is more effective and powerful due to its authority over all state institutions, while public (civilians) and state institutions exercise political control.

b. Civil Institutions

Public or civilian-based institutions (not run or owned by the state) play a key role in the fair allocation of authority, financial resources, materials, and privileges. Inside civilian or public institutions, individuals can contribute to the common administration or governing of the country. These non-state institutions or civilians can impact the decisions or the execution of executing bodies. Thus, those executions conformed to the set standards of distribution. It also ensures the appropriate implementation of set standards and requirements. Volunteering (the voluntary actions by civilians) and intermediate institutions or structures are critical for the masses' opposition to state decisions and the manifestation of their decisions.¹⁷⁷

c. Free and Independent Media

The freedom or independence principle provides the foundation for the existence of media and press-like bodies. Independence of Media incorporates the elements needed for wider and freer dissemination of information. These elements include the independent search, gathering, and broadcasting of information. The mentioned elements result in wider coverage of news briefings, dissemination of public thoughts, free publishing of print media like newspapers, etc.¹⁷⁸

3.5 History of Distributive Justice

3.5.1 Plato (428-348BCE) and Aristotle

The historical aspect of distributive justice can be traced back around two thousand years ago. Its origins can be found in the Aristotelian and Socratic philosophies. The Greek philosopher Aristotle introduced the term 'distributive justice'. The philosophy of Aristotle defined distributive justice as the type of justice that encompasses such values that ensure eligible persons are awarded based upon the principles of meritocracy salmond. However, Aristotle didn't touch upon the issue of the distribution of resources in low quantities.¹⁷⁹ Another Greek philosopher, Plato, dedicated

¹⁷⁷ "Civil Society and Political Theory," *Civil Society on the Move* (n.d.), 74, doi:10.3726/978-3-653-04795-0/11.

¹⁷⁸ "Freedom in the press," *Human Rights Documents online* (n.d.), 70, doi: 10.1163/2210-7975_hrd-1234-2014002.

¹⁷⁹ David Dyzenhaus and Arthur Ripstein, *Law and Morality: Readings in Legal Philosophy* (Toronto: University of Toronto Press, 2001), 33-34.

some writings to allocating properties in an ideal social structure. However, he did not advocate for collective possessions or properties nor took it as a substance of justice. The centuries-old ‘Talmud’ also spoke of challenging privileges to possessions.¹⁸⁰ The earliest interpretation of distributive justice was starkly varied from the contemporary conception. In the older era, the conception of distributive justice revolved around the principle of meritocracy rather than the requirement of an individual. The meritocracy concept was seen as heavenly destined.¹⁸¹ The conception of universal rights of any individual was formed in later times. This concept was inspired by religious and spiritual teachings regarding the equality of humans. Though these novel concepts were challenged and resisted by the elite and landlords and were not practically asserted,¹⁸² the arrival of a worldview based on purely scientific perspectives overcame these hindrances, resulting in the contemporary standpoint that the government must make sure basic means and resources for all its citizens.¹⁸³

In the Aristotelian conception, meritocracy is stressed in the context of distributive justice, comparing it with the corrective type of justice. Corrective justice pays off any damage without considering the meritocracy aspect. Aristotle did not endorse the state-based relocation of material resources. While Platonic philosophy posited collective possessions, in his view, such a strategy would help prevent corrupt practices in the distribution of resources.¹⁸⁴ Plato and Aristotle concurred that not all individuals deserve equal shares in material possessions.

Thomas Aquinas is considered a prominent philosopher in natural law-related tradition after Aristotle. Before discussing a detailed account of Thomas Aquinas, the study will briefly discuss the Roman philosopher Cicero. Though Cicero did not consider Aristotle’s conception of justice, he presented a novel conception. Philosophers later viewed the conception as the parallel conception between commutative and distributive types of justice. In his renowned work ‘De officiis,’ Cicero compared justice to benevolence or, in other terms, ‘beneficence,’ claiming that ‘justice’ could be or should be a legitimate requirement for us, but benevolence shouldn’t be a requirement. Further explaining that infringement of justice can impose ‘positive harm’ but

¹⁸⁰ "An Inquiry into the Principles of the Distribution of Wealth Most Conducive to Human Happiness; Applied to the Newly Proposed System of Voluntary Equality of Wealth, William Thompson, 1824," *Socialism, Radicalism, and Nostalgia*, 1987, 81-82, doi:10.1017/cbo9781139167963.011.

¹⁸¹ Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge: Harvard University Press, 2005), 2.

¹⁸² Fleischacker, "An Inquiry into the Principles of the Distribution of Wealth", 2.

¹⁸³ "Liberalism and the political character of political philosophy," *Rawls, Political Liberalism and Reasonable Faith*, 2016, 200, doi:10.1017/cbo9781316551646.005.

¹⁸⁴ Jean-Jacques Rousseau, *Discourse on the Origins of Inequality (second Discourse); Polemics; And, Political Economy* (Dartmouth College Press, 1992), 270.

shortcomings of benevolence will dispossess masses of an advantage. The obligations of justice are binding upon all, while obligations of benevolence or beneficence are binding more to close circles of acquaintances, family members, and nationals of the same country.¹⁸⁵In her detailed analysis of Cicero's two earlier mentioned features, a well-reputed scholar Martha Nussbaum. These conceptions have greatly impacted religious as well as secular philosophers. Augustine and Aquinas were from religious backgrounds, while Grotius, Adam Smith, and Kant were from secular backgrounds, all owing their inspiration to Cicero's conceptions. The study of Nussbaum presents an authoritative analysis for differentiating between constant failure and inability to deliver some advantages or welfare. The study also provides that this differentiation is one of Cicero's significant theories.¹⁸⁶

3.5.2 Thomas Aquinas (1225-1274)

Thomas Aquinas reigned in Western political philosophy until the beginning of the century. The conception of Aquinas is a consequence of Aristotelian philosophy of justice. Aquinas embraced it and made advancements in it. Aquinas considered 'justice' supreme in all moralities. For him, justice is related to the outer world and can be determined in every aspect of our dealings with other individuals. Aquinas comprehends that justice features are based on the conception of being right or what is right or 'just. Justice features provide guidelines for an individual regarding his association with others in granting a particular type of equivalence and appropriateness. The mentioned association of 'rightness' is considered by Aquinas as 'just. It is an obligation owed to other individuals and is considered to be the feature identified by the object.¹⁸⁷ Regarding distributive justice, Aquinas believed that each individual receives resources on their part and vitality for the societal or communal structures. Thus, the more significant the status or position of an individual in a communal setting, the more will be bestowed upon that individual.¹⁸⁸

3.5.3 Francesco de Vitoria (1483-1546)

Francesco de Vitoria makes a clear distinction between failings of justice and failings of other virtues. Francesco informs the Spanish conquerors that they can hold accountable the

¹⁸⁵ Immanuel Kant and Mary J. Gregor, *Kant: The Metaphysics of Morals* (Cambridge: Cambridge University Press, n.d), 300.

¹⁸⁶ James Adair, "*The History of the American Indians*", 38.

¹⁸⁷ Thomas Aquinas, *The Political Ideas of St. Thomas Aquinas* (New York: Simon & Schuster, 1997), 45.

¹⁸⁸ Aquinas, "*The Political Ideas of St*", 50.

Amerindians (American indigenous Indians) regarding any breach of justice, but they cannot make them responsible for not being of their religion, such as Christianity. The same conception of the distinction between justice and other actions or intentions can be found in the ideas of Immanuel Kant, who believed that justice cannot include the intent of people. John Rawls also distinguished between justice political interactions and other aspects of human life such as religious affiliations, cultural attachments, and worldviews.¹⁸⁹

3.5.4 Thomas Hobbes (1588-1679)

In distributive justice, a judge's part is to decide what is just. If the judge is reliable and competent, they ensure every individual is given their due right. This appropriate distributing mechanism is often referred to as distributive justice. In accurate terms, it can be called 'equity,' which also comes under the natural law.¹⁹⁰

3.5.5 John Locke (1632-1704)

John Locke presented his conceptions and philosophies about justice. Locke's conception of human nature was different from that of Hobbes. Locke believed that the nature of humans is marked by two chief characteristics: reason and tolerance. However, Hobbes and Locke had the same conception of one aspect of human nature. Both considered the nature of humans, or the human nature enabled individuals to be selfish, as manifested with the arrival of currency. In the state of nature, all individuals were considered the same and freed, with a universal and basic (natural) right to safeguard their lives, health, freedom, or possessing something.¹⁹¹ Locke argued that unequal behaviors and interactions within social structures originate from an implicit and unspoken arrangement regarding currency usage. This arrangement is implicit and doesn't conform to the main social contract that establishes civil society structures and laws. It contradicts the social contract. Though Locke knew about unregulated and infinite wealth or financial resources accumulation in a few hands he did not take it as his task to solve it. He also presented it as the task of the government to regulate such acts but did not provide any principles regarding it.¹⁹²

¹⁸⁹ Kant and Gregor, "*The Metaphysics of Morals*," 297.

¹⁹⁰ Thomas Hobbes, *Leviathan* (North Chelmsford: Courier Corporation, 2012), 75.

¹⁹¹ Locke, John, "Draft of a Representation Containing a Scheme of Methods for the Employment of the Poor," *John Locke: Political Writings* (1993): 91.

¹⁹² John Locke, "*Two Treatises on Government*," 80.

3.5.6 Jean Jacques Rousseau (1712-1778)

Rousseau touched upon two kinds of inequality. The first one is natural, and the second is ethical. The natural is based on physical variations occurring naturally among humans, while ethical is the mental image or conception based on human-made communal and societal structures. Rousseau concentrated his study on the moral aspect of inequality. He believed this type of inequality results in and spreads injustices in authorities and financial resources within societal structures. Rousseau starts by observing an ideal individual without any communicative or lingual tools or conception. He furthermore explores the roots of societal structures, theorizing that the conception of individual possession, when first possessed, resulted in successive injustices and unequal practices.¹⁹³

In the context of distributivism, the common notion regarding Rousseau's ideas was that he criticized private possessions and capital-based societal structures for the wrong and unethical treatment of people of low socioeconomic standing. However, these explanations of Rousseau's ideology are not wholly correct. Rousseau's main contribution to 'Distributivism' can be his criticism of or critical analysis of market-based societal structures. The focus of Rousseau's ideas was the adverse effects of the capitalistic system on the poor, and he endorsed the view that reforms in politics can only heal the failing system; other than political reforms, no philosophy or religion can provide comfort to the ailing societal structures. His renowned work, *Discourse on Political Economy* was published in the year seventeen hundred and seventy-five. In the mentioned work, Rousseau emphasized the vitality of rights related to possessions, most of the time placing it ahead of individual freedoms.¹⁹⁴

3.5.7 Immanuel Kant (1724-1804)

Kant is one of the famous personalities in the realm of justice about distribution. He presented the conservative approach towards 'property rights in the history of philosophy. Kant also propagated the notion of not only communal-based caring for less fortunate individuals but also holding the governmental institutions responsible for the task of helping the poor masses of society. However, Kant could not interpret the mechanism or working of these two notions and how they will complement each other. As Kant employed the contemporary notions of distributive

¹⁹³Jean-Jacques Rousseau, "A Discourse on Political Economy," *The Two Narratives of Political Economy*, 2010, 200, doi:10.1002/9781118011690.ch6.

¹⁹⁴ Rousseau, "A Discourse on Political Economy," 210.

justice, he did not openly advocate that the government should solely help individuals with low socio-economic status as part of distributive justice. In its place, he took such help and care as a fragment of the social contract between the state and individuals. Kant explained distributive justice as the judiciary's implementation of rules and regulations regarding the resolution of particular cases. As per Kant, this work distinguishes the government from the state of nature.¹⁹⁵

3.5.8 John Rawls (1921-2002)

Rawls, in his renowned and popular work, 'A Theory of Justice,' published in the year nineteen hundred and seventy-one, states that aspects like the place where you are born, your socioeconomic position, and the status of the family in which you were born are just things of chance and no one has held over it. So, these aspects must not be the deciding factors of prospects and advantages individuals might get. Rawls proposed that the role of chance must be reduced through distributive justice for the just and right distribution of privileges and resources. Rawls's philosophical standing is known for being one of the propagators of the social contract theory. Rawls's notion is based on the conception that everyone agrees upon a social contract with social structures, identifying their privileges and responsibilities per the requirement.¹⁹⁶ This idea of justice is based on two fundamental philosophies. The first fundamental principle recognizes equal rights and liberties in congruence with the same freedoms for all individuals. The second basic principle, the difference principle, relates to fair and equal prospects. It addresses the socio-economic asymmetry with the notion that individuals with low socio-economic standing must benefit more than the rich, setting the conditions of fair equivalency.

Rawls presented the idea of 'original position'; in this scenario, those deciding the fate of others are unaware of their features and have positioned themselves behind a 'veil of ignorance.' This positioning helps make appropriate and just judgments, as they are carried without prior understanding of their honored rights and difficulties, just striving for equivalence in societal structures.¹⁹⁷ Though Rawls advocated for all universal equality, there is an exception in his theory that if inequality brings benefit to people experiencing poverty, it is admissible. He emphasized that everyone must have fundamental human rights, personal and communal freedoms, equal prospects, and adequate financial resources to achieve their goals. If redistributing economic

¹⁹⁵ Kant and Gregor, "The Metaphysics of Morals," 300.

¹⁹⁶ John Rawls, "A Theory of Justice," (Cambridge: Harvard University Press, 2005), 225.

¹⁹⁷ John Rawls, "Distributive Shares," *Intergenerational Justice*, 2017, 21, doi: 10.4324/9781315252100-3.

resources helps change the conditions of people experiencing poverty, it is considered a virtuous act for society.¹⁹⁸

3.5.9 Robert Nozick (1938-2002)

In his renowned work titled ‘Anarchy State and Utopia’ published in 1974, Robert Nozick put forward his conception of ‘entitlement.’ The Entitlement Theory is based on three fundamentals:

I. Justice in Acquisition

This first principle pertains to the historical aspect of possessing or owning something, shedding comprehensive light on acquiring private or personal properties initially.

II. Justice in Transfer

The second principle pertains to the transferring process, explaining the mechanism of transferring possessions from one individual to another, containing intentional mutual transfers and favors.

III. Rectification of Injustice

The third principle pertains to handling possessions (properties) that were acquired or transferred not in a just and right manner. It elaborates on the mechanisms and ways for reimbursing the sufferers. It also devises ways to tackle the previous inequalities inflicted by government institutions.¹⁹⁹

As per Nozick, if the societal structures were fair and right, there would be no need for a third principle:

II. Any individual who possesses as per the requirements of justice is permitted to hold it.

III. Any individual who possesses anything via the transfer process can hold it.

¹⁹⁸Richard Arneson, "Rawls, Responsibility, and Distributive Justice," *Justice, Political Liberalism, and Utilitarianism*, 2008, 95, doi:10.1017/cbo9780511619595.004.

¹⁹⁹ Peter Vallentyne, "Robert Nozick: *Anarchy, State, and Utopia*," *Central Works of Philosophy*, 2006, 150, doi:10.1017/upo9781844653621.006.

IV. Apart from these two conditions, no individual is permitted to hold any possessions.²⁰⁰

Therefore, the theory of entitlement presents that an allocation would be just if anyone were permitted to possess, as long as the two conditions are met. As not every individual follows these two principles, the third principle is invoked when the two principles are breached. The theory of entitlement is said to be grounded in the notions of John Locke. It perceives individuals as all equal, even if they have varied possessions. Nozick's concept endorses well-established private possessions and economy framework based on free market principles.²⁰¹

3.6 Theories of Distributive Justice

Theories relating to distributive justice strive to identify or define the meaning of just or appropriate distribution of resources among individuals in societal structures. It also provides ethical guidelines about just distribution. The grounds for just distribution in the communal or societal structures are introduced. There are six notable or popular conceptions regarding distributive justice. These conceptions pertain to the discussion of problems involved in distributive justice. These conceptions are 'Egalitarianism,' 'Justice as fairness (Rawlsian Egalitarianism),' 'Principles based on Resources (Dworkinonian Egalitarianism),' 'Principles based on Welfare,' 'Principles based on Desert,' and 'Libertarian Principles.' In this context, two aspects worry the thinkers; the first aspect questions the substance of distribution about distributive justice. i.e., the objects like salary, financial resources, fundamental requirements, well-being, etc. The second aspect inquiries about the foundational concepts or the basis that determines the distribution mechanism. e.g., equivalence, fairness, extension, as per the role one plays, personal features, etc.²⁰²

3.6.1 Strict Egalitarianism

The theory of 'strict egalitarianism' about distributive type justice demands 'all-equal' treatment. The theory requires the same allocation of material resources among the members of a societal structure. The fundamentals are mostly proven with logic. The basic notion is that all individuals are ideally equivalent in moral aspects, and this aspect can be manifested by maintaining equality while allocating material resources.²⁰³ However, although the concept is good

²⁰⁰ Vallentyne, "Anarchy, State, and Utopia," 170.

²⁰¹ Jan Narveson, *The Libertarian Idea* (Ontario: Broadview Press, 2001), 9-12.

²⁰² Ronald Dworkin, "What is Equality? Part 1: Equality of Welfare," *The Notion of Equality*, 2018, 100, doi:10.4324/9781315199795-6

²⁰³ Julian Lamont, "The Concept of Desert in Distributive Justice," *The Philosophical Quarterly* 44, no. 174 (1994): 50, doi: 10.2307/2220146.

at first glance, this conception was disapproved by many due to the main issues in its two aspects. The issues identified were the issues of index and specification. The problems were making fair and proper lists or tables for quantification and identifying or recognizing the focused time. The difficulties of indices emerge in the distributing process at the same phase, thus making it even harder to identify and quantify. The supporters of this notion advocate that if there are issues at different levels, we can employ the bundle method while distributing material resources. The problem that originates in the context of identifying or targeting time frames still exists. The fundamental notion of ‘strict equality’ propagates that all members of the social structure must possess the same basic level material resources at some point of starting, also termed as ‘starting gate principles.’ It may result in broader and larger disparities; these are also deemed suitable by the propagators of this idea, which concentrates on the fact that equivalence must be exhibited at all times. This ideal notion also disregards the preliminary variations of social structures and equivalence in opportunities, as it merely focuses on equivalence in outcome.²⁰⁴ Moreover, a scenario will emerge where individuals get the equivalent material resources, and a quandary will arise with the question of how to pay off the struggles and successes.²⁰⁵

3.6.2 The Difference Principles

The exponents of various theoretical fundamentals in distributive justice also identify that in actuality or reality, the affairs of the world are not sharply equivalent, and the financial resources can experience ups and downs over time. Diversity is present among members, societal structures, and even whole nations. John Rawls, in his renowned philosophical works, “A Theory of Justice,” was published in nineteen seventy-one and ‘Political Liberalism’ in nineteen ninety-three. Rawls's conception regarding distributive justice is founded on these basic dissimilarities. This conception is ‘justice as fairness,’ also called the ‘difference principle.’ Rawls claims that distribution is fair and proper if less privileged individuals receive more advantages. This principle permits disparities if they are serving the cause of progress in the conditions of poor members of society if viewed in contrast with strict equality.²⁰⁶

John Rawls presented two fundamentals of being just:

²⁰⁴ Lamont, “The Concept of Desert in Distributive Justice,” 55.

²⁰⁵ Zakiyuddin Baedhaw, "Distributive principles of economic justice: an Islamic perspective," *Indonesian Journal of Islam and Muslim Societies* 2, no. 2 (2012): 247, doi:10.18326/ijims.v2i2.241-266.

²⁰⁶ Rawls, “A Theory of Justice,” 230.

1. Every individual has an equivalent right regarding a sufficient frame of equivalent fundamental rights and freedoms.

2. Socio-economic dissimilarities must adhere to the following two terms:

a. They are linked to particular statuses and administrative centers available to all under settings just for the equality of prospects.

b. They must work to their fullest for the less-privileged individuals of the social structure.

In the first principle, Rawls stressed the ‘equality of opportunity.’ In the second principle, Rawls prefers ‘fair equality of opportunity’ above growing material resources and extensive equality in the context of opportunity, even for the poor. Rawls utilizes indices to calculate welfare for basic material resources.²⁰⁷ Essential material resources (goods) are distinguished into two classes. The first category is related to basic materials of social use such as freedoms, privileges, and equal prospects for the future, salary, and financial resources. The second category pertains to natural aspects such as personal virtues.²⁰⁸

Rawl's principle of difference is often criticized for its ignorance regarding privileges. The privileges that some individuals are eligible for certain financial assistance depend on their services. Some thinkers claim that some members of the social structure may require larger financial aid, according to their labor put into the communal services, even if this assistance does not provide any advantage to the less privileged. Proponents of the Libertarian concept criticized that the appropriate interpretation regarding how these less-privileged people are in those positions is absent in Rawl's concept of difference principle.²⁰⁹

3.6.3 Resources-based Principles

The principles based on welfare are concerned with delivering the most benefits, which consist of aspects like life expectancy (age), health facilities, educational facilities, and earnings. They are not focused on equivalently delivering these amenities of life but on holistic wellness achievements. Proponents of the conception endorse that these material resources are only beneficial if these resources are growing prosperity. The other corresponding conceptions, such as

²⁰⁷ John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), 200.

²⁰⁸ Michael Allingham, "Distributive Justice," 2014, 120, doi: 10.4324/9781315817446.

²⁰⁹ Lamont, "The Concept of Desert in Distributive Justice," 57.

‘strict equality,’ resource-based,’ and ‘libertarian,’ are also vital and significant if they contribute to overall well-being.

The principles grounded in welfare are about usefulness. It aims to extend or grow desire, joy, etc. Jeremy Bentham perceived ‘pleasure’ as an aspect of ‘intrinsic value,’ while another thinker, J.S. Mill, took ‘happiness’ for the same value. This principle, grounded in personal elements, is often criticized for its ‘subjectivity,’ as this feature makes it difficult for thinkers to compare members. It viewed members of society as just sustainers of comfort and luxury and not as active participants playing some constructive role. Moreover, it is often blamed for not explicitly approaching inequality among members, merely concentrating its views on privileges and claims rather than responsibly contributing to societal structures.²¹⁰

3.6.4 Welfare Based Principles

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²¹⁰ Allingham, “Distributive Justice,” 122.

²¹¹ Danaher, John, “Principles of Distributive Justice. An Entry in Philosophical Disquisitions,” 2010, <http://philosophicaldisquisitions.blogspot.com/2010/09/principles-of-distributive-justice.html>. 23.

²¹² Lamont, “The Concept of Desert in Distributive Justice,” 60.

²¹³ Cohen, G.A, “Equality of What? On Welfare, Goods, and Capabilities”, *Recherches Economiques de Louvain* 56 (1990): 357-382. Reprinted in *The Quality of Life* edited by Martha Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993), 20.

3.6.5 Desert Based Principles

The Desert-based principles or conceptions about distribution take into account the social aspect. It elaborates on the principles that members use their capabilities and faculties while performing or contributing to society positively and productively. It results in a societal bonus. That's why members are eligible for varied financial welfare or awards. A fairer and just allocation would consider the personal labor, assistance, or benefit members of the social structure deliver to the bonus or social surplus. Allocations must be proportional to the benefits an individual contributes to the social structure.²¹⁴ The endorsers of this concept propose three fundamental bases for compensation:

2. Contribution: The award or compensation of an individual must be based upon the worth of the service.
3. Effort: The compensation or award of an individual must be given based on the amount of effort they invest in their service.
4. Costs: The compensation or award of an individual must be given based on the financial resources one invests in the service.

The desert-based principle is often criticized. There exists no distinct calculation for assistance or services. The calculation may differ in financial burden, time, and effort. The concept may continue with unequal attitudes, as an individual's capacity often depends on pre-determined dissimilarities. Individuals with high socio-economic backgrounds can provide or offer more, as they hold more material resources or have enhanced educational backgrounds. The economic gains via factors or methods that individuals or groups cannot control and those that affect the less privileged are perceived as unfair. Moreover, the deserted principle ignores the requirement of assistance for poor and less-fortunate members of the social order who cannot take part or are left behind in aspects related to contribution, effort, or spending.²¹⁵

3.6.6 Libertarian Principles

The followers of the libertarian conception disapprove of any financial objectives like equivalence premium well-being or material resources. They view freedom or self-owning as the most vital aspect. As per the perspective of libertarianism, any material allocation is acceptable if it pursues principles of entitlements or ownership. For Nozick (1974), justice depends on

²¹⁴ Danaher, "Principles of Distributive Justice," 24.

²¹⁵ Peter Vallentyne, *Equality and Justice: The demands of equality* (Oxfordshire: Taylor & Francis, 2003), 11.

permitting ownership to individuals. The ownership or possession rights are grounded in three fundamentals: justice in acquiring, justice in transferring, and justice in rectifying. Acquiring lawfully can be described as possessing oneself and demanding possession of materials by involving your effort with them. Anyone who owns something can allocate it to other individuals with freedom if it's willingly. Any distribution is just if it results from lawful acquiring or transferring. Nonetheless, if present distributions originated from previous illegal activities, they necessitate a correction.²¹⁶

3.6.7 The Capabilities Approach

The approach of capability advocates that distributing materials must enable individuals to play an active and effective part in the social structure. The mentioned conception can be found in the works of Amartyan Sen, who emphasizes the provision of materials to the individuals they require, according to their natural abilities and talents. Amartya Sen's prominent work of Nineteen ninety-two questions about equality in what terms? The question posits an important understanding of equality: one can strive for equivalence in multiple aspects of life, such as earnings, financial resources, joy, freedoms, prospects, privileges, or any requirements to be fulfilled. To be equal can be examined by comparing these dimensions among random members. The approach underlines the vitality of the variable chosen for comparison, such as joy or earnings, for calculating inequality.

The approach based on capability is concentrated on wider terms of equivalence, contradicting other conceptions because it recognizes personal or individual differences. It is recognized as a multi-dimensional approach because it differs from other conceptions regarding its consideration range. Other approaches emphasize the moral value of functionality or liberty, but the capability approach embraces every dimension of life.²¹⁷

3.6.8 Communitarianism

Communitarianism is regarded as one of the modern conceptions of distributive justice. It advocates for allocating material resources to encourage communal or general benefit and welfare of communal structures. It emphasizes a group's interests over a member's interests, targeting everyone's benefits collectively. The ideas about distributive justice have pros and cons, and each

²¹⁶ Danaher," Principles of Distributive Justice,"26.

²¹⁷ S. A. Elizabeth, "What Is the Point of Equality? *," *Theories of Justice*, 2017, 150, doi: 10.4324/97813152363229.

theory offers a varied approach. The most relevant approach to this study is communitarianism.²¹⁸ The study focuses on communal or group interest over the interest of an individual. Thus, the study will concentrate and delve deeply into expanding cognition regarding the conception of communitarianism. Due to its appropriateness for the research, the study restricts its theoretical framework from the extensive aspect of distributive justice to ‘communitarian distributive justice.’²¹⁹

3.7 Synthesizing Rawls, Nozick, and Islamic Justice into a Unified Framework

In order to build a coherent foundation for the proposed model of land reforms in Pakistan, it is essential to synthesize insights from three major streams of normative thought: John Rawls’s theory of distributive justice, Robert Nozick’s entitlement theory with its procedural emphasis, and the Islamic conception of justice rooted in divine trusteeship. While each of these frameworks emerges from distinct philosophical and theological traditions, there exists a significant degree of conceptual overlap that may be harnessed for constructing a viable, context-sensitive framework of land redistribution that adheres to Pakistan’s constitutional and Islamic obligations, while also engaging with international justice discourse.

3.7.1 Rawls’s Vision of Distributive Justice

John Rawls’s seminal contribution to justice theory rests on two interrelated principles: first that every individual has an equal claim to a system of basic liberties; and second, that socio-economic inequalities are justifiable only if they result in the greatest benefit to the least advantaged and are attached to positions open to all under conditions of fair equality of opportunity. In the context of land reforms, this framework provides a normative justification for redistributive measures aimed at redressing historical disadvantage and empowering marginalized communities. Rawlsian justice thus serves as a guiding principle for identifying the morally permissible limits and targets of land redistribution.

3.7.2 Nozick’s Entitlement Theory and Rectificatory Justice

Although Nozick’s entitlement theory stands in sharp contrast to Rawls’s egalitarianism, it offers a valuable procedural complement through its emphasis on the justice of acquisition,

²¹⁸ “Communitarianism,” *Encyclopedia of Community: From the Village to the Virtual World*, Vol 1, A-D, Karen Christensen and David Levinson, eds. (Sage Publications, 2003), 224-228.

²¹⁹ Will Kymlicka, "6. Communitarianism," *Contemporary Political Philosophy*, 2001, 200, doi:10.1093/hepl/9780198782742.003.0006.

transfer, and rectification. Of particular relevance is Nozick's rectificatory principle, which asserts that holdings acquired unjustly must be corrected through deliberate institutional mechanisms. In post-colonial societies such as Pakistan—where historical patterns of land concentration have been shaped by coercion, patronage, and legal manipulation—this principle legitimizes the state's role in reversing illegitimate land transfers. Thus, while Nozick opposes redistributive justice as a policy goal, his theory provides essential normative tools for identifying and addressing historical injustices in land ownership.

3.7.3 The Islamic Conception of Justice and Trusteeship

Islamic jurisprudence regards land as a divine trust: all ownership ultimately belongs to Allah, and human beings are custodians tasked with utilizing resources responsibly and equitably. The legitimacy of ownership is conditioned upon compliance with obligations such as cultivation, fair dealing, and the fulfilment of social duties, including zakat. The principles of *Maslahah* (public welfare) and *Adl* (justice) authorize the state to reclaim and redistribute land when it is hoarded or left uncultivated in ways that harm the broader community. Importantly, Islamic justice is not limited to distributive outcomes but encompasses a moral framework wherein property rights are subordinate to ethical imperatives and collective wellbeing.

This tradition promotes three essential justice principles: (1) securing the basic needs of all individuals, (2) enabling fair—not necessarily equal—economic outcomes, and (3) correcting gross imbalances in wealth. These principles closely resonate with Rawls's commitment to benefiting the least advantaged and align with Nozick's recognition of the need to correct unjust holdings.

3.7.4 Convergence and Divergence

Despite their divergent ontological assumptions—liberal individualism for Rawls and Nozick, and theistic moral authority for Islam—these frameworks share a common concern with fairness, legitimacy, and the moral conditions under which resource distribution becomes just. Their points of convergence include Rawls's difference principle aligns with the Islamic mandate for redistributive justice. Nozick's rectificatory approach mirrors Islamic jurisprudence regarding returning unjustly held land. All three traditions place emphasis on processual legitimacy and moral accountability.

Nonetheless, important divergences remain. Islamic law fundamentally challenges the Western liberal conception of absolute private property, emphasizing stewardship, communal rights, and divine ownership. Rawls and Nozick do not account for theological constraints or religiously mandated redistribution. Yet, their overarching visions of human dignity and justice remain compatible with Islamic ethical norms when adapted within a contextual framework.

3.7.5 A Synthesized Framework for Midway Land Reform

Based on the foregoing analysis, a unified normative framework for land reform in Pakistan emerges through the integration of Rawlsian, Nozickian, and Islamic principles. From Rawls, the principle of distributive justice—particularly the difference principle and the imperative of equal liberty—justifies the need to redistribute land in ways that prioritize the socioeconomically disadvantaged. From Nozick, the concept of rectificatory justice offers a procedural mechanism for identifying and correcting historical injustices in land acquisition and ownership, thus legitimizing state intervention in unjust holdings. Islamic jurisprudence, meanwhile, provides both a moral and legal foundation for land reforms by grounding ownership in trusteeship, endorsing the use of *Maslahah* (public welfare) as a guiding principle for state action, and institutionalizing redistribution through zakat and the prohibition of hoarding.

Together, these three traditions offer a multi-layered justification for reform: Rawls contributes the normative rationale for redistribution, Nozick contributes the procedural mechanism for addressing illegitimacy in current holdings, and Islamic law furnishes the ethical and religious legitimacy for state-led intervention in land affairs. This synthesis ensures that the proposed land reform model is not only conceptually coherent but also contextually appropriate for Pakistan’s constitutional, religious, and social landscape.

3.8 Conclusion

This section explains distributive justice. Distributive justice pertains to sharing material resources to ensure that each individual gets a just and appropriate portion. Distributive justice is grounded in ‘need,’ equity,’ and ‘equality.’ Most philosophers touched upon the subject and presented diverse notions on it.

Aristotelian philosophy views distributive justice as a means of awarding based on the principle of meritocracy, mostly for political offices. Modern or contemporary thinkers posit the view of providing all with fundamental necessities of life without considering meritocracy. As per

this view, all members are eligible for fundamental rights based only on being human.²²⁰ Distributive justice can be categorized into theoretical conceptions such as libertarianism, the difference principle, welfare-based approach, resource-based approach, desert-based approach, and capability approach. Every conception interprets distributive justice in its terms. This study employs the conceptions of Rawls and Nozick, as they suitably conform to the study's background and objectives.

²²⁰ Fleischacker, "*A Short History of Distributive Justice*," 4-5.

Chapter 04. Land Administration in Subcontinent

4.1 Introduction

The land started to be a means of influence around 1800 BC, and then people began egging on it gradually, and with the pace of time, land became the symbol of power. The history of land ownership in the subcontinent can be traced back to the time of the Aryans and the era of Maurya. Initially, the king was considered to be the owner of the land, though not the absolute one, and steadily the ownership was passed on to the locals. Finally, during the colonial regime in the subcontinent, the concept of private property penetrated the social structure. During the Sultanate dynasty, the revenue used to be collected from peasants through revenue collection officers.

In contrast, during the Mughal dynasty, the *Mansabdari* system prevailed, where the people were divided into groups and used to get salaries from land revenue. Until then, no concept of private property or absolute land ownership existed, although *mansabdars*, *zamindar*, or headmen controlled the land. The colonial government completely bestowed the land as private property, and feudalism deepened its roots in society. Britain consolidated the locals, leading to feudalism and social stratification.

After the partition, Pakistan could not get over it to date as the powerful and influential feudal lords tried hard to preserve their social status and influence. However, the government tried three times to redistribute and reallocate the land. The attempts failed for social, cultural, political, and religious reasons, and as of now, no organized distribution of land can help the nation prosper.

This chapter gives a comprehensive overview of land ownership and distribution patterns and how the community-shared land was transferred to private property in the subcontinent before and after partition.

4.2 Land Administration in Ancient Subcontinent (1500BC-500BC)

The history of ancient India traces back to the Indo-Aryan Maurya era. After many fading spotlights on landownership, Manu recognized that the first and foremost right of ownership over land rests with the king, but the same is not absolute. He also believed that being a lord and protector of the earth, half of the minerals excavated from mines belonged to the king. The same ideas of Manu can be found in the post-Gupta era, where Katyayan said that being an owner of all the lands, $\frac{1}{4}^{\text{th}}$ of the production of lands belongs rightfully to the king. Even though explicitly the ownership of the land will vest in the man who has immediate possession, Katyayan's point of view conforms to Narad Smriti. In Narsingh Puran, a contrary view is taken that land solely

belongs to the king, and the person cultivating and possessing it has no right of ownership in it. It is considered the first text that recognized the king's absolute ownership and divested the ordinary subjects of the right of ownership.²²¹

As per Narad, a family's ownership right is created in a piece of land if they continuously and uninterruptedly cultivated the same for three generations. However, if so, the king can allot the same parcel of the land to another person of his choice. From here, too, it can be inferred that a king's right over property/land is superior to that of an ordinary person. Moreover, it was an accepted practice in vogue then to divide the land used for grazing. However, so far as the concept of private property and that of division of land is concerned, its roots can be traced back to the period of Guptas.

In contrast, the idea of selling the land was introduced in Brihaspati. Later, Katyayan, following the Brihaspati, introduced rules regarding the sale of the land. Katyayan was of the view that land which is taxed could be sold to pay the tax. In the case of the sale of land, Brihaspati held that it is important for the seller to explicitly declare the quantum of trees, wells, water source, if any, crops and their condition, fruits, tax abodes, etc. From the previous proposition, it can be inferred that Brihaspati was trying to outline terms for trading the whole village.²²²

Gautam and Manu upheld the view that a person will create the right of ownership over a property if the same remains in his continuous possession for at least 10 years. Later, Yagyavallabh stretched it by 20 years; however, they talked about the property generally and not specifically in the context of agricultural land. Afterward, the period required to create the right of ownership over property and agricultural land was extended to 60 years minimum by scholars like Vishnu, Narad, Brihaspati, and Katyayan. Later, the Mitakshara law in the 11th century set the minimum limit at 100 years, while Smriti Chandrika of the 13th century put it at 105 years. This development in the private person's right of ownership with time almost makes it impossible to deny it further. So, it can be manifestly seen that at the very inception, there was a concept of community ownership; at the close of the ancient period, societies shifted towards king and private person ownership, albeit the two clashed with each other. A king's ownership right enables him to grant any land to any person he wants, e.g., temples, nobles, employees, etc. According to the notion of

²²¹ Accessed November 17, 2024, <https://www.allsubjectjournal.com/assets/archives/2018/vol5issue12/5-12-79-257.pdf>.

²²² Bandyopadhyay, Rekha. "Land system in India: A historical review." *Economic and Political Weekly* (1993): A149.

private person ownership, after receiving land from the king, the person can further make its allotment to any person he wants, like farmers. The supra discussion made it clear that there used to be several land claimants in the early Middle Ages, each with a legal backup for his claim. An analogous position was dominant in feudal Europe then, yet certain vital variances existed.²²³

The social edifice of medieval India displays the autonomy and comprehensive control of the peasants over the land they cultivated, and the overproduction generated from the same. At the same time, the peasants fell in the category of inferior owners or “*Adna Malik*” while the landowners were above them as superior owners or “*Ala Malik*.” Being superior owners, the landowners were at liberty to levy and demand any kind of tax from the peasants as they were the inferior owners and were subject to the authority of the superior owners. Nevertheless, above all, the king was the ultimate authority to whom all the lands belonged, i.e., he was at the top of the hierarchy above the inferior and superior owners, and due to the same reason, the king was often called the “*Bhumidah*, (the giver of land).”²²⁴ In the Gupta and Post Gupta eras, a new peasantry system emerged, replacing the old one. This new system vested the owner with vast powers and allowed him to handle his land as he wished. The institution of the caste system further enriched this feudalistic style of control. The state of peasants was enhanced by subsequently providing their dividends: (a) lease holding, (b) sharecropping, and (c) a system of serfdom. From the times of Buddha to Gupta, the notion of “Peasant” went through an evolutionary stage of development. Throughout the medieval period, a variety of meanings were attached to it.

The alternative word for peasant is “*Ksetrika* or *Ksetrin*,” which denotes “controller of land” and occasionally cultivator or agriculturist.²²⁵ Numerous levels of control over land helped the landowners establish dominance over the peasant class. The concept of land ownership, in the strict Indian context, is relatively feudalistic, representing a class of landlords and peasants living in an agrarian society.

4.3 Land Administration in the Delhi Sultanate (1206–1526)

From the 7th to 12th century, India underwent abrupt changes in its feudal and agrarian structure. An intermediate class in the form of “landed aristocracy” came into being in this period,

²²³Rajesh Kumar, "Historical Analysis of Land Ownership Articles on Bhoodan Movement," Gandhi Sevagram Ashram Welcome, accessed August 7, 2022, <https://www.gandhiashramsevagram.org/gandhi-articles/historical-analysis-of-land-ownership.php>.

²²⁴ Dwijendra N. Jha, *Feudal Social Formation in Early India* (South Asia Books, 1987), 169-170.

²²⁵ Jha, *Feudal*, 169-173.

which used to have control over the revenue of one or more villages.²²⁶ The chief feature of the era's agrarian system was the distribution style of additional production.²²⁷ King used to hire special officers to collect revenue.²²⁸ The hired officers were in charge of administration and revenue collection. They also had the authority to modify the preceding practice of revenue collection, assessment of land, land measurement, and concession. The whole realm was divided into portions on its basis.²²⁹ Furthermore, the officers were subservient to the king.

Muslim rulers of the medieval era distributed lands as *jagirs*, *waqfs* (endowment lands), and *imams* (land grants) for cultivation. In return, this bore negative results, and the revenue income of the state decreased because most of the revenue collected ended up in the pockets of *jagirdars* and *ashrafia* (noblemen). The chief cluster of these *jagirdars* consisted of *Choudhry*, *khuts*, and *muqaddams*. Sultan Ghiyas al-Din Balban (1266–1286) attempted to eradicate these land endowments, but failure was his fortune. The first successful attempt to abolish the same was made by Aladdin Khilji (1296–1316). He impounded these lands and transformed them into king's lands and called them "*khalsa*." As time flies, Ala-uddin also changed his approach towards taxation and land. Thus, he started to grant lands to the nobles and changed his taxation policy.²³⁰ At the inception of his rule, Ala al-Din had to bargain with the influential people of different communities for the strength and firmness of his position. He bought the loyalty of the influential class by paying the price in the form of facilitating them and granting their wishes and demands.²³¹ But he turned the tables on them once he found himself resilient enough to handle the state alone and charged them all for disloyalty to their prior ruler. The agrarian system formed the base of the concept of land ownership throughout the era of the Sultanate. The key exploitation class in society then was the king and his bureaucracy. It was the exact copy of the ancient tradition of elite class dominance over the crofters.

The ruling elite class had the authority to impose and collect revenue from specified territories. Territories that were under the control of the ruling class were divided into units called *Iqtas*,²³² while those under the direct control of the sultan himself were divided into units called *Khalsa* (crown lands). *Iqta* was considered the elementary unit of such land. During the reign of

²²⁶ Lallanji Gopal, *The Economic Life of Northern India, C. A.D. 700-1200* (Motilal Banarsidass Publishers, 1989), 16.

²²⁷ Ishtiaq H. Qureshi, *The Administration of the Sultanate of Dehli* (1942), 121-122.

²²⁸ Irfan Habib, *Essays in Indian History: Towards a Marxist Perception* (Tulika Books, 1995), 75-77.

²²⁹ Qureshi, *Sultanat of Dehli*, 86.

²³⁰ Ghulam S. Niazi, *The Life and Works of Sultan Ala-uddin Khalji* (New Delhi: Atlantic Publishers & Dist, 1992), 55.

²³¹ *History of the Khaljis* (1955), 178-180.

²³² Qureshi, *Sultanat of Dehli*, 122.

the Sultan growth of the *iqtas* was divided into three phases:²³³ (a) In the first phase of growth, *iqtas* were allotted to the military commanders, who used to collect revenue from the same to sustain his troops; (b) At the time of Khaljis and Tughluqs, *iqta* were given to the *muqtis* (holders of *iqta*, governors) but did not have the absolute control over the same lands. They just used to collect and send the revenue to the king's treasury. In return, they were given salaries for their jobs. (c) In his kingship, Sultan Firuz Tughluq (1351–1388) granted a concession to the serving officers because of the insurgences and political flux. The expected revenue income was fixed enduringly, but he banned the transfer of *iqtas*. He introduced a unique payment method for his troops, allocating them revenue collection for themselves.

Iqtas had two chief facets: first, it divided the entire kingdom into those governors who were tribute-receiving, and second, it boosted the demand for revenue. The land grants were also known as *milk*, *idarat madad-i-maash*, or *inam* besides *iqta*.²³⁴ Any surplus in the collected revenue belonged to the king because he was the ultimate owner and sovereign. Due to the same reason, the entire land belonged to the king; the crofters or the chieftains were mere tools of the ruler.

4.4 Mansabdari System in Mughal Sultanate (1526–1857)

In 1526, Zaheer al-Din Muhammad Babur (1526–1530) laid the foundation stone of the Mughal Empire in India. The third of the Mughal empires, namely Jalal al-Din Muhammad Akbar (1556–1605), who was Babur's grandson, introduced the “*Mansabdari* System” in the 19th year of his rule.²³⁵ A new classification of the official functionaries was introduced through this system, including *ashab al-Sayf* (masters of the sword), *ashab al-Amamah* (religious scholars), and *ashab al-Qalam* (masters of the pen).²³⁶ A person designated as “*Mansabdar*” used to be given charge of a specific area, and it was his duty to maintain the allotted troops from the revenue collected. If no particular area was allotted to them, then they used to be paid in money.²³⁷ It was the Mughal era in which the word “*Zamindar*” was introduced and earned popularity. This word was used to signify several people, i.e., owners of hereditary interest, ranging from influential, self-regulating, and self-directed lords to trivial intermediaries at the town level. Based on the same, *zamindars* of this era can be categorized into three extensive sets: (a) the independent lords, (b) the intermediate

²³³ Indian History, 82-84.

²³⁴ Indian History, 85-88.

²³⁵ Abdul Aziz, *The Mughul Court and Its Institutions: Arms and jewellery of the Indian Mughuls ; Thrones, tents and their furniture (used by the Indian Mughuls) ; The imperial library of the Mughuls* (2002), 2.

²³⁶ Aziz, *Mughul Court*, 52-53.

²³⁷ Qureshi, *Sultanat of Dehli*, 106-107.

zamindars, and (c) the principal *zamindars*.²³⁸ The lords were the hereditary independent rulers of their terrains and relished virtually sovereign control. The intermediate *zamindars* encompassed several sorts of *zamindars* who collected the revenue from the principal *zamindars* and paid it to the royal treasury. This class of *zamindars* consists of *choudhris*, *desais*, *muqaddams*, *qanungos*, *ijaradars*, etc.²³⁹ It was them who used to hold proprietary rights over land.

Just like in the previous era of Sultans, in the Mughal era too, the position persisted to be blurred. There is a likelihood of a situation where the state and other individuals have rights over the same patch of land, which was the position in that era. At the same time, there was no notion of absolute land ownership. During the Mughal rule, *zamindars* grew strong and formidable, thus resulting in vast social power. During the rule of Akbar, lands were divided into *jagirs* and *khalsas*. The *Mansabdars* were commonly identified as the *Jagirdars*. Besides that, an enormous class of *Zamindars* was separated into three classes. The crofters were of two sorts - the 'Khudkashta' and 'Pahikashta'. The prior were crofters who ploughed their lands, and the latter were landless crofters who cultivated other's land. It can be said that the settlement design adopted by the Mughals, in turn, gave way to numerous claims being made to the same patch of land.²⁴⁰

4.5 Land Administration in British Raj (1857-1947)

With each passing current, the reign of rule in the subcontinent shifted from sultans to Mughals and then to British. British rulers just implemented the system of land taxation for the Mughals and expanded it further through its colonial administration.²⁴¹ Under the ruling hand of the British, India was shaped anew in terms of its economy and social structure, which helped the British rule collect revenue effectively. At the inception and early times of British rule, they adopted the policy of overcoming and oppressing the inhabitants. But with time, British rulers realized that warfare was not the answer and would never serve us positively. They tried to seek some new ways of making the Indians subservient. They started to experiment to find more appropriate ways to subdue the Indian folks. They pursued the governmental benefaction of the native landlords for the strengthening of their regime.²⁴² British rule and governing style shaped India's native revenue system in subsequent respects. Firstly, the “private property” model was

²³⁸Satish Chandra, *Medieval India: Society, the Jagirdari Crisis, and the Village* (Macmillan Children's Books, 1982), 136.

²³⁹ Saiyid N. Hasan, *Religion, State, and Society in Medieval India: Collected Works of S. Nurul Hasan* (New York: Oxford University Press, USA, 2005), 143.

²⁴⁰ “Historical Analysis of Land Ownership.”

²⁴¹ Herbert C. Merillat, *Land and the Constitution in India* (1970), 10.

²⁴² "Amazon.com," Amazon.com, accessed May 27, 2022, <https://www.amazon.com/Pakistan-Jagirdari-Zamindari-Nizam-Shikanjah/dp/9698455221.109-110>.

familiarized and was a copycat of the model used in Britain. Next, a proficient scheme of governance was given. Moreover, the British legislative system was familiarized in India.²⁴³ As per the system of revenue introduced by British rulers, the revenue taxation varied from locality to locality and was applied to a certain portion of crops. The agricultural lands were given under the supervision of native Rajas or officials specifically appointed in this regard. Paying the ruler a definite share of the harvest was the peasant's duty.

As the Mughals used to collect revenue in kind, British rulers shifted towards revenue collection in cash. But at the same time, British rulers adopted the system of irrigation and employment of administrators from the Mughals.²⁴⁴ The agricultural land of Madras and Bombay was allotted to the local and native crofters, but it was not hereditary. The administration collected revenue and taxes from the landlords and farmers, who aided and served the British Government in the subcontinent.²⁴⁵ This was a kind of temporary settlement, and the ulterior thinking behind it was to make locals docile. In 1793, the first perpetual settlement was implemented in Bengal. It was this perpetual settlement per which the British rulers granted locals the right to private ownership in the fertile land.²⁴⁶ The managerial system of British rulers was callous and exacting to the crofters and plebeians. The perpetual settlement vested the right of private ownership in landlords, while the crofters were deprived of their due rights. At the same time, due to their weak and unstable financial status, the crofters used to be in debt to their landlords. The British managerial system depreciated the crofters by using diverse strategies to use them as apparatuses. As a result, *jagirdars* and landlords benefited from this scheme and scenarios.

In the next phase, a system called "*Ryotwari*" was introduced to curb the power of tax on *lambardars*, money lenders, native chieftains, and other pertinent officers.²⁴⁷ Which proved to be detrimental to the deprived crofters. *Ryotwari* and *Zamindari* Systems both existed on equivalent grounds. In Punjab, a novel administrative system was developed at the dawn of the 19th century. The village men supervised this newly introduced system, in which joint holding of a family and joint village lands (*Shamilat*) were evaluated and assessed. The aim behind implementing this new

²⁴³Mazhar Abbas et al., "A study on historical development of landownership and landed aristocracy in Pakistan," *Pacific Rim Property Research Journal* 22, no. 3 (2016): 6, doi:10.1080/14445921.2016.1235756.

²⁴⁴ Merillat, *Constitution in India*, 10.

²⁴⁵ Inderjit Sharma, *Land Revenue Administration in the Punjab, 1849-1901* (1985), 70-73.

²⁴⁶ Merillat, *Constitution in India*, 12.

²⁴⁷ David Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan* (1988), 20.

system was the accomplishment of supremacy over the locals. The officials or the proprietors were the go-betweens of royal administration for amassing revenue.

The chief responsibility allocated to the officials was defraying revenue to the treasury. The structure of this scheme was grounded on go-betweens like landlords and *zamindars*.²⁴⁸ Here, the officials were the only expeditors amid crofters and the administration; however, with time, the officials commenced to claim hereditary entitlements over the lands and the officer-ship. The British rulers were mostly oblivious to matters regarding crofters, as far as they received their revenue and taxes because they were only concerned with their revenue collection and not with the crofters and their conditions.²⁴⁹ The British rulers remunerated the landlords and *zamindars*. The tenure of their office was for a specific time during which they were allotted a specified area for tax and revenue collection. One of the factors for the efficient government of British Rule was the institution of the innovative notion of property holding in India. In the case of land settlement, the British followed the path walked by the Mughals²⁵⁰ nonetheless, the idea of land ownership was the novelty introduced by the royal administration in the 18th and 19th centuries.²⁵¹ These were the developments that changed the economic and societal aspects of India. The lot of the civilian administration was linked with land ownership, whereas the destiny of the proprietors was knotted to the state. The British Administration carved out the landowners into three categories: Firstly, *Umara*, Secondly, *Zamindars*, and lastly, minor *Zamindars*. Only those landlords and owners were brought under the ambit of this classification who the British administration believed to be loyal to them. At this juncture, the ultimate right to ownership still vests in the British Monarch. A patch of land was to be allotted to numerous crofters, which used to be under the supervision and control of local landlords. Still, at the end of the line, the final authority and ultimate ownership fell in the basket of the British Monarch. The landlords were also obliged to supply camels and horses for military purposes. All this was done through reforms and the administration restructuring to keep the natives constrained and subdued. With time, British rulers extended their settlement program to Punjab, Bengal, and Sindh. Later on, under the settlement, Sindh likewise became the prey to landlords who, in turn, were backed by British rule.²⁵² Even though 1935 Sindh was unglued from Bombay, the settlement program was still stretched to this part.

²⁴⁸ "Pakistan Jagirdari." 112-113.

²⁴⁹ Abbas, "Landownership in Pakistan," 7.

²⁵⁰ *Land Control and Social Structure in Indian History* (2020), 44.

²⁵¹ Mirza A. Beg, *Democracy Displaced in Pakistan: Case History of Disasters of Social Pollution* (1998), 19-20.

²⁵² "Pakistan Jagirdari." 115-121.

The core objective of the British Rulers was to take out revenue from the landlords and iota from crofters. Slowly, the modern generation of landlords began to live in metropolises, and their purpose was to generate an all-out sum of revenue from the crofters.²⁵³

4.6 Subcontinental Land Administration after Partition

In 1947, the subcontinent was split into two independent countries, namely Pakistan and India; both countries took their land administration paths differently, resulting in different outcomes.

4.6.1 Land Administration in Pakistan

The related reforms have been the center of focus processes across Pakistan's socio-political history. Reforms or regulations concerning land distribution are vital in fighting societal inequalities and the oppressive nature of the agrarian sector, which are necessary for long-term socio-economic gradation. At its inception, Pakistan desperately needed a long-term sustainable socio-political and socio-economic environment. The policymakers knew that land occupies a focal point in the lives of Pakistani people and can contribute to a more sustainable societal order based on social justice. Therefore, for sustainable socio-economic and socio-political order in the long term, the state initiated three major reforms or regulations concerning the country's lands. For the first time, land-related reforms were instituted in the late sixties, then in the early seventies, and the last reforms took place in the late 70 under the regime of Zulfikar Ali Bhutto. Apart from these regulatory reforms of lands, there were also major and vital Acts passed under the regimes of martial law administrators. The three major regulations set an upper limit on landholders. The limit fixed or the upper limit of land holdings varied across these three reforms. Like in the reforms of the late 1950s, the upper land holding limit was fixed at 500 acres for those lands that were using the established irrigation system and one thousand acres for those lands that were deprived of this system and solely depended on the rainwater. The excess land was taken under the government's control and divided among the poor farmers. Reimbursements were paid for the lands taken by the government. In the early seventies, Zulfikar Ali Bhutto presented a new stage of reforms. This stage lowered the upper limit for land holdings. i.e., reducing the limit of lands under irrigation to 150 acres, while for the lands not under irrigation, it was set at 300 acres only. The lands exceeding the upper limit were taken away, and reimbursements were paid, but it was

²⁵³ "Historical Analysis of Land Ownership."

much less than the 1959 reforms. The reforms of the late seventies were also presented under the regime of Zulfikar Ali Bhutto; here, the reimbursements paid were comparatively high compared to those of 1959. The process of acquiring lands was not strict as compared to previous exercises. The ban on the buying, selling, and transfer of agrarian lands. Apart from these key regulatory reforms, this chapter also discussed other vital regulatory Acts envisioned for revamping the whole land system. The mentioned land-related reforms bring social justice and pave the way for creating the distribution of lands with equity among the poor leaseholders, poor farmers, and cultivators. These reforms, if implemented in spirit and letter, can transform the lives of all fellow citizens.²⁵⁴

Land reforms in Pakistan will be dealt with in-depth in the upcoming chapter.

4.6.2 Land-Related Reforms in Bangladesh

In 1971, when Pakistan was divided into East and West Pakistan, East Pakistan became a new state named Bangladesh. Bangladesh started sorting its land-related problems, such as those of India and Pakistan, by initiating land reforms.

Land-related reforms in Bangladesh comprised dual aspects: tenure and land reform. The chronological historical aspects of land-related reforms date back to the Act of EBSATA, also known as The East Bengal State Acquisition and Tenancy Act.²⁵⁵ EBASTA (East Bengal State Acquisition and Tenancy Act), the Act in 1950, eradicated the century-old *zamindar* system formed under the Britons and returned the control of lands to the basic owners, the land cultivators. Although, as the reforms of land were made in the aftermath of independence from the British, the leaving of *zamindars*, who were *Hindus*, gave space to the rich peasants who were Muslims a new dominating role and gave them authority to capture vacant lands illegally.²⁵⁶ The Act of the 1950s envisaged the establishment of the limit of lands to thirteen hectares for one family, but its size was increased in the sixties by the former pre-1971 government of Pakistan. After gaining independence from Pakistan in the 1970s war, the government of Bangladesh formed a policy in the next year of 1972 known as the Land Reform Policy of 1972.²⁵⁷ This policy reversed the landholding limit to 13 hectares of land per family. It also stated that all new land types, such as diluvia and accreted types, would be treated as *Khas* or public land. However, a takeover by the

²⁵⁴ Ahmad, Mushtaq, "Land Reforms in Pakistan," *Pakistan Horizon* 12, no. 1 (1959):30-31.

²⁵⁵ K.R. Gupta and [Introduction B. Maiti], *Urban development debates in the new millennium: studies in revisited theories and redefined praxes* (New Delhi: Atlantic Publishers & Dist, 2004), 17.

²⁵⁶ The Bangladeshi Trotskyist organization, Democratic Workers Party, (Gonotantrik Mazdur Party), "Land Reform in Bangladesh | Bangladesh | Asia," In Defence of Marxism, last modified May 30, 2005, <https://www.marxist.com/bangladesh-land-reform151001.htm>.

²⁵⁷ *OECD Observer* 1972, no. 3 (1972): 43, doi: 10.1787/observer-v1972-3-en.

military in the mid-70s put a period in place for the policies concerning the redistribution of lands. The 1980s Land Reform policy additionally reduced the land holding limit to around eight hectares. Still, it remained unsuccessful in recollecting the targeted supplementary surplus land of around one million hectares.²⁵⁸ The legislature banned the practice of *Benami*, the process of transferring land ownership to another name to bypass the land limits on holdings. It made the security related to tenures for the sharecroppers, or *bargadar*, and introduced a basic minimum per day wage or payment for the laborers working in the agriculture sector. It also defined crop-sharing arrangements between the landholder and their tenants. In 1987, the passage of the LRAP program, Land Reform Action Programme, furthered the definition of eligible families for the *khas* land type. Reforms related to lands in the state of Bangladesh could not be finished. The *khas* lands type comprised some 10% of the country's total land; it was far less than the policymakers targeted. The state government of Bangladesh was blamed for the lack of willingness to politically impose the policies related to recapturing all extra lands over the limit set, and many landholders bypassed the legislation through unregistered and unlawful means of transfers and fraud.²⁵⁹

In 1989, the passage of other two legislative Acts in Bangladesh happened: the Land Appeal Board Act and the Land Reforms Board Act. All the resources were used to streamline all administrative affairs related to lands across the country—the streamlining efforts aligned with the formerly working institution named the Board of Revenue. Though leasing is banned, the issues pertaining to *bargadars*, those illegal entities with no legal position over the lands they controlled, yet they tilled those lands without any interference, and the complex relation between the owner and *bargadar* was to be determined logically and vocally.

The EBSTA Act, short for East Bengal State Acquisition and Tenancy Act, could not resolve the main issues of trending and everyday practices of crop sharing, prevalent land-owning by sub-marginal groups, the severe sub-divisions and break up of lands, the suspicious record of lands made through outdated systems, and the unusual issues related with the managing of government-owned *khas* or char also known as accretion lands. The struggles made in lands-related reforms addressed the regulation of tenancy rights, encompassing crop-sharing persons, tackling unwanted divisions into sub-parts, and breaking up owned lands. Then again, the efforts

²⁵⁸Ministry of Information and Broadcasting, Department of Publications, *Bangladesh progress, 1972* (1973), 25.
2. Ministry of Information and Broadcasting, Department of Publications.

²⁵⁹ Quizon, A. B, "Land Governance in Asia: Understanding the debates on land tenure rights and land reforms in the Asian context. Framing the Debate Series No. 3," *International Land Coalition (ILC), Rome* (2013). 35- 37.

proved unsuccessful because they did not contain steps to improve land-related management, and there were no efforts to improve crop production by making the required materials available, organizing the financial resources, and facilitating the production of farms through markets.²⁶⁰

4.6.2.1 Implementing Land Reforms in Bangladesh

With the end of the system of *Zamindari*, also referred to as a system of feudal or landlords in the *Nineteen Fifties*, the Act for Tenancy and Acquisition (EBSATA). The Act transformed the general and ordinary public lands and some *Zamindari* land categories into *Khas* land type. The following land laws after these Acts were cognizant of the need of deprived and without land farmers and guaranteed them accessibility to the agricultural ‘*khas*’ land type under government control but unused.²⁶¹

4.6.2.2 Land Reforms in Bangladesh: A view of its Effectiveness and Results

The basic effects that these land related reforms had in Bangladesh can be summed up into following: (a) the real farmer/cultivating entity at the low level of hierarchy awarded with the real holding of land, issued by government orders; (b) improving the position of farmer through the sense of security enjoyed by farmers, after the ban on *zamindari* system generated more motivating initiatives for generating more produces; (c) all extra *khas* land type under former tenants system came under government control, so the equal redistribution of those *khas* land types into the farmers without lands and the poor cultivators were the themes of policy; (d) the land ceiling procedures abolished the land holdings in some wealthy families; as the former system of tenancy subdued to the authority of government, they were liberated from unlawful extortion and tyranny from ex *zamindars* and their associates; and (e) the procedures put a break on the renting in the forthcoming times and the abolishing of sub divisions of feudal estates.²⁶²

4.6.3 Land Reforms in India

In the Indian part of the subcontinent, the journey leading to the lands-related reforms was probably set off by the two most important movements in history, the Movements of Bhoodan and Gramdan. These two important movements of Bhoodan and Gramdan were mostly related to social equity and land-owning rights for the poor and lower classes. The Bhoodan movement aimed at pursuing the land owners, elites, or feudal class to give or withdraw their land-owning rights in

²⁶⁰ Land Reforms," Banglapedia, accessed November 12, 2022.

²⁶¹ Uddin, Muhammed Kamal, "Needs for land and agrarian reform in Bangladesh," In *Regional Workshop on Land Issues for Asia*, 4. 2002.

²⁶² "Land Reforms."

favor of those without lands.²⁶³ The movement came to be known by the name of Gramdan, aimed at the repetitive pursuit of the landed class and those with a lease of lands to withdraw their land-owning rights in each rural locality to the local dwellers or villagers, thus making that locality or village -the rightful and legal owner of the property. The Gramdan movement was the beginner in the post-colonial movement that aimed at transforming society through the activity of the masses (movement) and not through government-sponsored legal support in the legislature. The serenity provided, kept, and put moral pressure on the magnanimous landowners.

These two movements of land reforms saw their climax in the late 60s. Several states in post-colonial India pushed forward legislation aiming for the same, as did these two popular and vital movements. Later on, after the late 60s, the two basic movements of land-related reforms lost their spark among the masses, and the reason was crystal clear. The reason is the natural transformation from the popular venture into state- and government-backed programs.²⁶⁴

During the partition era, the Indian part of the subcontinent had an irrigation and agricultural system that was characterized by the extreme inequality of land-owning classes, the inappropriate and anxious system of tenure among farm workers, and petty agrarian yield. A very small portion of rich individuals in the political class exercised most of the country, owning rights over most of the country's lands, thus making most of around 70% of the rural localities without lands or with minimal lands.²⁶⁵ After the partition, the Indian part of the subcontinent happened to put the processes in place for the reforms related to lands that were previously and at foremost discussed in the 1949 constitution.

Under the mentioned Constitution of India, which prevailed in 1949, states (units) were given legislative powers to pass and execute particular land reforms.²⁶⁶ For the mentioned job, a committee under the leadership of J.C Kumarappan was established. The Congress Agriculture Improvement Committee or short (CAIC) committee, would put forward land recommendations. Under the chairmanship of Kumarappan, the committee drafted a report that recommended wider

²⁶³ "Land Reforms in India."

²⁶⁴ N. C. Behuria, *Land Reforms Legislation in India: A Comparative Study* (1997), 242.

²⁶⁵ M. L. Dantwala, "India's Progress in Agrarian Reforms," *Far Eastern Survey* 19, no. 22 (1950): 240, doi: 10.2307/3024276.

²⁶⁶ Hemant Singh, "Land Reforms in India after Independence: Purposes and Features," Jagranjosh.com, last modified May 26, 2016, <https://www.jagranjosh.com/general-knowledge/land-reforms-in-india-after-independence-purposes-and-features-1448021572-1>.

land agrarian reform measures in India.²⁶⁷ This independence keeps in check that there exists a diverse variety of versions of the land reforms enacted in different states at different times.²⁶⁸

Those reforms related to lands can be subdivided and categorized into five based on their central purpose, i.e.

- i. Reforms related to Tenancy
- ii. Reforms related to The Abolition of the Intermediaries
- iii. Reforms associated with Fixing Ceilings on Land holdings
- iv. Reforms associated with the Consolidation of Land holdings
- v. Reforms related to the Compilation and updating of land records.

4.6.3.1 Reforms related to Tenancy

The reforms related to the tenancy are categorized into a first group and its relative Acts. Among these are the inclusions of attempting to regulate tenant contracts in two ways: by registering and stipulating contracts and their terms agreed upon.

4.6.3.2 Reforms related to the Abolition of the Intermediaries

The reforms related to the Abolition of the Intermediaries are categorized into the second group and its relative Acts. The intermediaries are those who worked for the lords, known as Feudal lords or *Zamindars* in the local language. They performed jobs like a collection of rents for the colonialists, mostly British at that time. They were famous for allowing a larger share of the extra production from the cultivated lands to be received from the tenants.²⁶⁹

In most states, the legislature passed legislation to culminate the roles of intermediaries in the pre-1958 era.²⁷⁰ The abolition-related reforms were far more effective and held relevance as far as other reforms were concerned. The success rate in most areas dealt with the withdrawal of supreme rights of the intermediaries over the lands and weakening their hold on economies and politics. The reform was to strengthen the actual land owners and those who cultivated.²⁷¹

²⁶⁷ "Land Reforms in India."

²⁶⁸ Akina Venkateswarlu, "Land Reforms in India: Implementation in the Post-Independence Period," *Political Economy of Agricultural Development in India*, 2021, 75, doi: 10.4324/9781003242529-4.

²⁶⁹ Grigoriĭ G. Kotovskii, *Agrarian Reforms in India* (1964), 243.

²⁷⁰ Peter Reeves, "The congress and the abolition of zamindari in Uttar Pradesh," *South Asia: Journal of South Asian Studies* 8, no. 1-2 (1985): 200, doi:10.1080/00856408508723072

²⁷¹ P. S. Appu, *Land Reforms in India: A Survey of Policy, Legislation and Implementation* (1996), 64.

4.6.3.3 Reforms related to Fixing Ceilings on Landholdings

The reforms related to fixing ceilings are categorized into the third group and its relative Acts. The category concerned itself with efforts relating to implementing the ceilings on lands held, and the third category termed itself Land Ceiling Acts. In plain terms, the ceilings or caps on land-owning/holdings referred to as putting caps on legal stipulation, the maximum size limit beyond which no sole farming entity could hold any land. The purpose of such a ceiling was to resist and control the concentrated land ownership in the few hands. All states of India made sure to adopt legislation related to the land ceiling that limits the extent to which the land for agricultural produce, family, or person can have ownership. The legislation created equality of landholdings by giving authority to the states and taking ownership of land that surpassed the limit set in the ceiling. Redistribution of the surplus lands to less privileged, low-income, landless, and farmers exposed to exploitation. The laws related to ceiling laws differ, as per state, depending on the land quality held.²⁷² In 1949, the Agricultural Improvement Committee of Congress recommended the maximum amount and size of land a landowner could hold. It was the three x (three times) economic ownership. i.e., enough and sufficient economic resources. By the year 1961 and 1962, all the state governing bodies had done the passage of legislation related to land ceiling acts. Despite those acts, the extent of the ceiling differs from state government to state government. Binging, the uniformity across state governments was a new policy devised in 1971 concerning the ceiling and its limits. In 1972, guidelines related to ceilings were issued on the national level, differing from area to area depending on the kind of land involved, its production, and other factors of high importance. It was ten to eighteen acres for the best type of land, the range for second class type land was 18 to 27 acres, and for the remaining type, 27 to 54 acres of land with smoother limits in the hilly and deserted regions.²⁷³

4.6.3.4 Reforms related to the Consolidation of Landholdings

In the fourth category of reforms, the consolidation of landowners of disparate natures was dealt with. Land consolidating means supplementing multi-consolidated lands or farms and distributing it among each farmer. The adoption of the provision was merely to solve the issue of land fragmentation. The consolidating program related to land requires the granting of one piece

¹² Behuria, *Land Reforms Legislation in India*, 246.

¹³ BRLF – Bharat Rural Livelihoods Foundation, accessed November 10, 2022, <https://www.brllf.in/wp-content/uploads/2018/05/Agricultural-Census-2005-06.pdf>.

of land consolidated to the farmer, which equates to the full land holdings in various spreads under the farmer's ownership.

The policy means that the farmers will be awarded a unit of land instead of owning a few in various locations.²⁷⁴ The massive increase in populace and decreasing employment opportunities in the non-agrarian sectors induced more pressure on the lands, thus resulting in an ascending trend of the divisive nature of land-owning. Land distribution's divisive and fragmentary nature made managing irrigation-related tasks and the role of people as land supervisors very harsh. The overall disturbance of mechanisms led to the consolidation proposal related to landholdings. Under this Act, if a person had numerous plots of land in a rural location, those plots of land in that rural locality were consolidated into single units, a bigger and larger piece of land, which was processed through the purchase or exchange of the land.

4.6.3.5 Reforms related to the Compilation and Updating of Records of Land

The fifth group or category dealt with reforms related to the compilation and updating of the land records in India. The committee formed on Revitalization of Land Revenue Administration produced a report that was published by the related Ministry of Rural Development, shortly known as MoRD, in the year Nineteen Ninety-Five; that report could be called the first of its nature in bringing about the parity into the disturbed affairs of records related to lands present in various states. The recommendations of the committee presented were revolutionary. Such as:

- Administrative affairs related to lands were transferred to Institutions of Panchayati Raj.
- The Land Administration Department was renamed as the Revenue Department
- Offices of the Sub-Registrar and Tahsildar were merged to maintain records better.²⁷⁵

The Ministry related to Rural Development, also known as MoRD, published her vision in a Document for land records to be computerized in 1999, bringing singularity in land administration. This published document, for the first in the country's history, proposed

¹⁴ Singh, ""Land Reforms in India after Independence."

¹⁵ Mazhar Abbas et al., "A study on historical development of landownership and landed aristocracy in Pakistan," *Pacific Rim Property Research Journal* 22, no. 3 (2016): 6, doi:10.1080/14445921.2016.1235756.

standardizing the information system of the land to identify the core data-related fields around the country. The system will be beneficial for various purposes, such as devising plans, implementing the same up-to-date procedures, surveying and generating land records, converting the Administration of Land Records into a self-sustained financial activity, and so on. Formulation and implementation of a policy on a national level related to records of land in the new century is the need of the hour.²⁷⁶

4.6.3.6 Implementing Reforms Related to Lands in India

Beginning in the 1950s, the governments of the respective states with a purpose of ending the roles of intermediaries and the interests they posited on the lands they had those roles, tenancy-related regulations, setting up lands-related ceilings, and distribution of extra lands above those settings, and redistribution of lands that were in public ownership for purposes of agriculture and homesteads. The most famous reforms and programs related to lands were in the few states by its respective governments like Kerala State, West Bengal State, notably while the socialist or left political forces were in the government, and the state of Uttar Pradesh abruptly post-independence in the independence year of 1947.

The first of an its-kind group of state legislation contains the end of the *Zamindaar* (intermediary whose job was to collect the rents on lands), as well as an end to the parallel system of *ryotwari* (that was the direct collecting), those systems were remains of the colonial system of Britons and during colonial rule, around 95% of the country was running through those systems. State legislation gave these intermediate interest parties only some patch of land under their use and took from them the remaining lands, though most of the time compensating them with the more valued awards.²⁷⁷

Under these legislative acts, around twenty million tenants were awarded ownership rights over the lands they were cultivating and are now owners of the lands. The next group of legislation was about the protection of farmers, and the farmers were more than one-third of all rural populous and the ones who worked under the landlords (*Jagirdars*) without any contract or tenure security. Most of the state's governments passed laws related to a tenancy that awarded permanency to

¹⁶ Gazdar, Haris. "The fourth round, and why they fight on: An essay on the history of land and reform in Pakistan." *PANOS South Asia, Collective for Social Science Research, Karachi* (2009).

²⁷⁷ Armistha Pal, Prabal Roy Chowdhury, and Zoya Saher, "Land Ceiling Legislations, Land Acquisition and De-industrialization - Theory and Evidence from the Indian States," *SSRN Electronic Journal*, 2021, 2, doi:10.2139/ssrn.3890909.

tenants' rights and put a ban on or put in regulation the novel arrangements of tenants. As a result, around 12.4 million tenants, or some 8% of the Indian rural population, got land-owning rights.²⁷⁸ Moreover, reforms related to tenants also huge scale expulsions of tenants by their land-owning lords. All state governments of India passed laws on land ceilings that limit the size of land-owning rights for individuals and families that can be used for agricultural purposes. The legislation gave authoritarian powers to the state government to take ownership of the surplus lands to the ceiling limit and to redistribute those surplus lands to those without land and poor farmers. The legislation on the limits of lands or land ceilings varied among state governments, in the context of where the limits were agreed upon, usually from ten to fifteen acres, the volume of land grants to the recipients, and limitations on recipients on transfer or sell of the lands granted.

As 2005 concluded, around 6.5 million acres of excess land were reallocated to 5.6 million families. The numbers in percentages depicted around 01 % of Indian lands for agrarian purposes and around 04 % of rural families. Finally, some state governments granted some state-owned land to families without lands. The land was diverse and comprised patches of land for agrarian uses or ranches and land for housing.²⁷⁹ One of the estimates provided that about 40 lac people got housing plots. Other land-concerned reforms followed suit in the eighties, like rights of women on lands, education in the field of law and free legal consultancies, land-buying-related initiatives for housing units and orchards, and reforms of tenures-related society and communal forestry practices.²⁸⁰

4.7 Conclusion

This chapter looks at the historical development of land and how its management transitioned from communal ownership to a highly centralized system that reflected the individual desire of the leaders to monopolize power in the pre- and post-partition subcontinent. The Aryans originally recognized and said 'the land belongs to the king.' Then, with time, new systems were enforced, such as the *Mansabdari* of the Mughals and the *Mahalwari* and *Ryotwari* systems of the British. During colonialism, the land was given to some locals since this brought them support, making it a sign of power and political authority. After the partition, the landlord class was

¹⁸ E. J. Rssell, "Post-war Agricultural Problems and Policies in India, The Indian Land Problem and Legislation and Land Reforms in India," *International Affairs* 31, no. 1 (1955): 118, doi: 10.2307/2604659.

¹⁹ "Land Redistribution Reforms," *Land Tenure Reform in Asia and Africa* (n.d.), 156, doi:10.1057/9781137343819.0008.

²⁰ Kṛṣṇācandra Miśra, *Land System and Land Reforms* (1990), 15.

dominant in Pakistan. In Bangladesh, EBASTA (East Bengal State Acquisition and Tenancy Act), the Act in the 1950s, eradicated the century-old *zamindar* system formed under the Britons and returned the control of lands to the basic owners, the land cultivators. The Act transformed the general and ordinary public lands and some *Zamindari* land categories into *Khas* land type. India's land reform policies have been instrumental in addressing historical land ownership inequities rooted in feudal and colonial systems. Post-independence, the government implemented measures such as abolishing zamindari (landlord) systems, tenancy reforms, and land ceiling acts to redistribute land to marginalized farmers. Despite significant achievements, challenges persist, including bureaucratic inefficiencies, resistance from large landowners, and the exclusion of certain disadvantaged groups. Islamic principles, emphasizing justice and equitable distribution, could provide complementary insights into India's ongoing struggles for land equity.

Chapter 05. Land Reforms Regulations and Judicial Practices in Pakistan

5.1 Introduction

The resisting forces of the capitalist elite and the landholders barred the land reforms, and the introduction and implementation of these processes were perplexing due to the constant historical opposition the mentioned interested parties faced. These interested parties (presumably feudal lords and capitalist elite) never supported reforms related to land, as those land holdings were not only sources of passive earnings but also provided them with much-needed political power. They (feudal and capitalistic elite) can make or break the political arena, as they hold the key to establishing or destroying any political government. The large land-holding elite (feudal lords) act as de facto power holders or the ruling entities over the people in their lands. Historically, it has been proven that the minority of the elite with large land holdings has ruled over the large populous. In Pakistan's historical journey, the diverse masses mostly belonged to low or middle socio-economic strata of Indian Muslims but contrary to the struggles and blood of the common masses. Pakistan, from its beginning, has been ruled by a handful of families who are either feudal lords or the capitalistic elite; this exclusive group holds the reins of power and decides upon the fate of millions of people. The exclusive group gains political power by becoming part of the democratic governments or the accessories of the military dictators (Junta). ²⁸¹The exclusive elite group carved its way into Pakistani politics, and since its independence, it has played an important and powerful role throughout the nation's political history.

Though a constant struggle continues regarding land reforms in aspects of its systematic functioning and distributing mechanism across the wider geographical landscape of Pakistan, the continuous efforts have led to numerous laws and reforms across the chronological history of Pakistan. The rules and regulations are on different levels of government, some on the levels of the province and some on the national or federal level. The laws are also classified by their nature of importance, i.e., they are important at a high level and not at a low level.

This section deals with regulating laws and acts related to reforms in the context of Pakistani lands. However, it primarily focuses on three important land-regulating reforms. i.e., Land Reform of 1959, Land Regulating Reforms of 1972, also known as MLR 115, and Land

²⁸¹ A group of persons controlling a government especially after a revolutionary seizure of power (Marriam Webster).

Reforms Act of 1977, also known as Act II of 1977. Furthermore, it provides brief views on some pivotal land reforms and the subsequent Acts that have been passed. The section also sheds light on tenant-related laws and the commissions and dives deeply into Pakistan's judicial practices related to land reforms. To get a wider look at the happenings, the section explores global discussions on land reforms to confirm whether the global-level legal organizations have worked for it.

5.2 Land Reforms under Ayub's Regime In 1959 (MLR-64)

Ayub Khan's military-backed regime took the much-needed first step in the right direction concerning the country's land regulations and rules reforms. The laws or the reforms were titled the West Pakistan Land Reforms Regulation in the late 1950s, and it was also known as Martial Law Regulation (MLR) 64; the legislation got its name because it extended to the whole of West Pakistan. The main points or the characteristics of the regulations included a limit or cap on personal or family landowning. Per the regulation, no person can hold more than a certain limit. The limit was detailed as irrigated lands (using the state's irrigation system) and not-irrigated lands (rainy lands); irrigated land was fixed at 500 acres, and not-irrigated land was fixed at one thousand acres. Another metric for measuring agricultural produce was also used to fix the produce and its land. For the ceiling purpose, 36000 PIU (Produce Index Units) was fixed as the upper limit—moreover, the regulations allowed for the lands to be distributed between renters.

Furthermore, the regulating acts or the provisions consisted of securing the interests of leasing those lands and also mentioned the further subdividing the lands owned.²⁸² Under the said Act, the recovered and utilized lands were estimated to be about 2.5 million acres, and the distributed land divided into fractions and distributed between 183, 200, and 83 small farmers was estimated to be 2.3 million acres. As per other records, the government could get its hands on 35% of the lands that surpassed the limit.²⁸³

However, the reforms of Ayub's regime on paper were put in black and white strikingly, such as its coverage and the probable effects on the production of agriculture, redistributing

²⁸² Naushad Khan, Shahnaz A. Arifullah, Naeem Shah, Dildar Hussain, Ikram Ul Haq, Muhammad Idrees And Niaz Muhammad, "Measuring The Impact Of Land Reforms On The Farming Community In District Mardan, NWFP", *Sarhad J. Agric* 25, no.4,(2009): 668.

²⁸³ Akmal Hussain, "Land reforms in Pakistan: A reconsideration," *Bulletin of Concerned Asian Scholars* 16, no. 1 (1984): 47, doi:10.1080/14672715.1984.10409782.

income, and jobs. The success or the loss of these reforms is lucidly exhibited in the eventual passage of laws and the eventual outcomes.

5.3 Land Reforms Regulations 1972 (Martial Law Regulation 115)

The reforms taken in the late 1950s were active and imposed till the 1970 regime of Zulfikar Ali Bhutto. Though Bhutto belonged to the few big feudal families of Sindh province, he was adamant about reforming the already-in-place regulations. After serving under Ayub Khan's regime as a cabinet minister, Bhutto realized the deficiency and made the two major land reforms under his government possible. The first major reform was the Land Reform Regulation of 1972, also known as Military Lands Regulation 115; it evoked the 1959 West Pakistan Land Reforms Regulation or the MLR -64 through a paragraph.²⁸⁴

The paragraph or section (8) within subsection (1) of regulation 115 stated about individual property ownerships and the limits imposed, such as no single person can take ownership exceeding 150 acres of land under an irrigation system or 300 acres of land that is not irrigated or the sum average of both lands that are irrigated and not irrigated surpassing the threshold of 150 acres of land that is irrigated means that a unit acre of land that is irrigated equals to the double of land that is not irrigated. Paragraph Eighteen, sub-section (1) of the MLR 115, also emphasized surplus lands to be evacuated and used for the interests of the leased or renting entities (persons) involved in sowing and harvesting those lands.

The reforms in the early 1970s anticipated consisted of:

- (a) Introduction of new and lesser threshold limits for land-owning of persons or families
- (b) The state could acquire surplus lands and reutilize them.
- (c) Distributing those utilized lands to the tenants -without any lands or small cultivators
- (d) Small farmers and landless tenants were provided with immunity from paying for the lands bought under the MLR-64 (1959)
- (e) The introduction of constraints on removing leaseholders, water rate payments, and payment rules were amended, as well as the revenue on land and the expenditures on seeds.

²⁸⁴ Ahmad, Mushtaq, "Land Reforms in Pakistan", 34.

- (f) Rules for the rights of transferring the lands to the descendants were added.²⁸⁵

5.4 Land Reforms Act 1977 (ACT II OF 1977)

The second phase of reforms occurred in the late 1970s under the second term of the Bhutto government. The legislative part of the country was chosen by the people in 1977.²⁸⁶ The chosen legislature would provide the third and the last stage of reforms in Pakistan's sociopolitical history. It was the Land Reforms of 1977, also famously known as Act II of 1977. These reforms were incongruous with the past two reforms because these last reforms were initiated and passed by any civilian-led democracy rather than dictators or martial laws. The reforms were not meant to break up with the Martial Law Regulations 115, passed in the same 1970s, but to work alongside those reforms.²⁸⁷

Though most of the regulations remained or were amended in a conforming manner with other reforms, the striking feature of the reforms was regarding individual ownership of land. The 1977 regulation changes the limit on individual ownership of the lands, including *Shamilaat*. The limits provided for irrigating land is one hundred acres, and for not irrigating land is 200 acres, or the combination of both types of irrigated and unirrigated adds up and surpasses the limit of 100 acres of land that is irrigated, where 1 acre of land using irrigating systems is taken equal to 2 acres of land –not using any irrigating systems provided by the state.²⁸⁸ Moreover, if a land patch is apart (exception) from the above rules, then as per section three, no land-owning or landownership of a piece of land should surpass the Produce Index Units of 8000, the land quantity of PIU given is numbered on different types of soil records as kept in the files of revenue department for *Kharif* season.²⁸⁹ As per this regulating Act, the Federation (Federal Government), under section nine, must pay reimbursements for the land taken from the landholders under the mentioned reforms. The reimbursements set were Rs.30 /PIU.

²⁸⁵ A. K. Khalid, *The Agrarian History of Pakistan* (1998), 252.

²⁸⁶ M. Rashid, "Land Reforms in Pakistan," *Social Scientist* 13, no. 9 (1985): 1-10, doi: 10.2307/3517492.

²⁸⁷ Khizar Abbass, Anwal Kharl, and Xie Xiaoqing, "Landed Elites and Politics of Agrarian Reforms in Pakistan: A Case study of Zulfikar Ali Bhutto's Era," *International Journal of Contemporary Research and Review*, 2018, 120, doi:10.15520/ijcrr/2018/9/01/402.

²⁸⁸ Abbass, Kharl, and Xiaoqing, "Landed Elites and Politics of Agrarian Reforms in Pakistan," 123.

²⁸⁹ P. C. Joshi, "Land reform and Agrarian change in India and Pakistan since 1947: 1," *The Journal of Peasant Studies* 1, no. 2 (1974): 348-350, doi: 10.1080/03066157408437882.

5.5 Other Minor Land Reforms in Pakistan

Apart from these three highly impacting land-related Reforms and Regulating Acts, a few other land-related reforms were also initiated and are part of the land reforms' historical journey in the country. The other minor reforms are listed as follows:

1. **The West Pakistan Land Revenue Act of 1967:** The Act is renowned for introducing a well-defined system for collecting land taxes on the produce in the West Wing of 1960s Pakistan; later, the Western Wing became Pakistan. The Act also presented the solutions or regulating sections for the conflicts related to lands and created legal support for revenue systems through special courts that only operated and attended revenue cases.²⁹⁰
2. **The Baluchistan Land Revenue Act of 1967** is a carbon copy of the main or primary Act of West Pakistan Act on the federal level. This Act only varies in its domain, as it applies to the province of Baluchistan.²⁹¹
3. **The Land Ceiling Act of 1972:** The 1972 Act of Land Ceiling capped the individual's land-owning rights. The Act was passed in goodwill for the poor and general masses, thus averting concentrated land holdings and paving the way for similar ownership rights in quantity over the land.²⁹²
4. **The Land Acquisition (Amendment) Act of 2013:** The 2013 Amendment Act of Land Acquisition modified the 19th-century colonial Acquisition Act of 1894. The amendment was initiated to pay back the landowners well whose lands are taken by public officials (government) for public reasons or causes. The Act also provided steps for resettling and welfare of the evacuated families under the land-acquiring process.²⁹³
5. **The Punjab Land Records Authority Act of 2017:** The 2017 Act of Punjab Land Records Authority created the Punjab Land Records Authority. The authority is in charge of keeping the files and archives of lands and providing facilities for registering lands and transferring lands across the province of Punjab.²⁹⁴

²⁹⁰ The West Pakistan Land Revenue Act, 1967, No. XVII of 1967 (as amended).

²⁹¹ The Baluchistan Land Revenue Act, 1967, No. XVIII of 1967 (as amended).

²⁹² The Land Ceiling Act, 1972, P.O. No. 2 of 1972.

²⁹³ The Land Acquisition (Amendment) Act, 2013, No. 30 of 2013.

²⁹⁴ The Punjab Land Records Authority Act, 2017, Act XVIII of 2017.

5.6 Tenancy Laws in Pakistan

Pakistan, along with other colonial laws and regulations, also adopted the colonial laws related to tenancy. British colonialists imposed these laws to rule over the Indian Subcontinent. However, these colonial laws were modified after independence to suit the country. The modifications were channeled through Acts of Legislature, Presidential Orders, and Judicial Orders. The decisions of the *Wafaqi Sharai Adalat* (Federal Sharia Court), in the context of land-related reforms and tenancy-related laws, are significant as they play an important part in making jurisprudence over the issues.

After gaining independence in 1947, the State of Pakistan initiated the process of reforms and amendments to regulations, and the laws related to matters of tenancy were developed and modified across different governments. Currently, each provincial unit has its own rules on occupancy and tenancy matters.²⁹⁵ In the provincial unit of Sindh, in the 1950s, the Sindh provincial government passed the 1950 Act of Tenancy in Sindh, following the legal stretches of the 19th century 1887 Punjab Act of Tenancy.²⁹⁶ Those *Haaris* working in the same four acres of fields for three years were given secured ownership rights under the 1950 Sindh Tenancy Act.²⁹⁷

Furthermore, the commission or the resolution on the national level of peasants stated in their agreement that all the lands cultivated in the Sindh province would be divided among the small farmers with full ownership privileges. The peasants may have small farms or no cultivable lands in their possession.²⁹⁸ Similarly, the provincial unit of Punjab embraced an Act for restoring and protecting tenancy rights; the Act was titled ‘The Protection and Restoration of Tenancy Rights Act of 1950. In said Act, some definite circumstances were drawn for removing leaseholders; all the rules were adopted to protect leaseholders from everlasting expulsions.²⁹⁹ The other provinces also passed bills of the same nature, like the province of Baluchistan, which also enacted the regulations and rules through an Order of 1987, known as the ‘Baluchistan Tenancy Ordinance.’³⁰⁰ However, before this ordinance, another law or regulating Act was implemented or put into action, famously called ‘Baluchistan Pat Feeder Canal’ or ‘The Land Reforms Regulation

²⁹⁵ Geoffrey Payne, "Land tenure and property rights: an introduction," *Habitat International* 28, no. 2 (2004): 170, doi: 10.1016/s0197-3975(03)00066-3.

²⁹⁶ Geoffrey Payne, "Land tenure and property rights: an introduction," *Habitat International* 28, no. 2 (2004): 170, doi:10.1016/s0197-3975(03)00066-3

²⁹⁷ The Sindh Tenancy Act, 1950 Sec. Sec 4(i).

²⁹⁸ Hussain, " Land reforms in Pakistan: A reconsideration," 48.

²⁹⁹ Chattha, Ilyas. "The Impact of the Redistribution of Partition's Evacuee Property on Th." Taylor & Francis, Taylor & Francis, 8 Oct. 2015, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315696904-2/impact-redistribution-partition-evacuee-property-patterns-land-ownership-power-pakistani-punjab-1950s-ilyas-chattha>.

³⁰⁰ Baluchistan Ordinance No. XXIV of 1978.

of 1972. At that time, the government stated its authority and power over land holdings and started mechanisms for the distribution of those lands among small farmers or leaseholders. Though the mechanisms were resisted by the large holding entities (feudal lords), they tried tactics and crooked means to get their hands on the lands. Still, government institutions like the Federal Land Commission took steps to prevent the corrupt practices. The lands under government rule were awarded to eligible small landless farmers. Furthermore, the centuries-old traditions of lordship by feudal lords were smashed.³⁰¹

In the same manner, the two other contrasting legislations were put into action in North West Frontier Province (in the present Khyber Pakhtunkhwa) in the year 1950 as the Act related to Tenancy, while in the provincial unit of Punjab, in the year 1952 Act related to Tenancy. The mentioned Acts consisted of different points related to regulation and controlling the lands, like lowering the per capita share, providing a secured environment to tenants, and different land-owning or land-holding rights to the leaseholders of these provincial units.³⁰²

Apart from these legislative Acts or Reforms of a regulatory nature, the affiliation or bonding between the two vital functionaries of the agricultural sector, i.e., the landholder or owner and the leaser (tenant), was institutionalized under ‘The Act of Land Reforms Regulation 1972. The structure or plan of the 1972 regulatory reforms provided numerous privileges and obligations for the leaseholders and landowners, correspondingly.³⁰³ For the leaseholders’ facilitation, the then ruling political order initiated the passage of lending for agricultural usages; the credits were provided under the 1973 Act of ‘Loans for Agricultural Purposes.’ The regulations passed financial aid to small or needy farmers to increase their portion of the agrarian produce. The financial institutions or the credit providers were tasked with granting or lending money to the growers (cultivators) on the easiest terms possible for their return or repayment. The landowners were also immune to various taxation rules on the terms and conditions of lands owned.³⁰⁴

In addition to these regulating statutes, some federal-level commissions were also formed. For example, under the guidance of the Federal Land Commission (F.L.C), Inspecting bodies on the federal level took initiatives. It kicked off deliberate measures to acquire lands held without

³⁰¹ Ronald Herring and M. G. Chaudhry, "The 1972 Land Reforms in Pakistan and their Economic Implications: A Preliminary Analysis," *The Pakistan Development Review* 13, no. 3 (1974): 255, doi:10.30541/v13i3pp.245-279.

³⁰² The NWFP Tenancy Act of 1950 & The Punjab Tenancy (Amendment) Act of 1952.

³⁰³ Joshi, "Land Reforms and agrarian change in India and Pakistan," 170.

³⁰⁴ Clive Bell, "REFORMING PROPERTY RIGHTS IN LAND AND TENANCY," *The World Bank Research Observer* 5, no. 2 (1990): 150, doi:10.1093/wbro/5.2.143.

any legitimate grounds.³⁰⁵ The determined struggles across the length and breadth of the country led to the huge acres of land reacquired by the state from the illegal clutches of big landlords. Although the state could not reacquire those large lands, the state was only able to reacquire a small amount under the 1972 regulation of land reforms.³⁰⁶ The provincial unit of North Western Frontier Province formed a provincial-level commission under the title 'Land Disputes Enquiry' to investigate agricultural issues in the provincial domain of North West Frontier Province, specifically the conflicts among various strata of social fabric.³⁰⁷ The Federal Lands Commission's intervention led to overhauling the whole system. The Federal Lands Commission took up the matters of owning rights to resettlement of banned social classes or communal groups. It was a historical move or an important step in the right direction that was a defining historical factor in the land reforms.³⁰⁸

5.7 Adversities of the Current Land Distribution System in Pakistan

Many problems, obstacles, complexities, and troubles emanate from the country's present structure of land ownership and distribution. These adversities include. These adversities include:

1. Unequal Land Ownership: It is a fact that a few people have excess control over most of the land, although 90% of people, especially from the countryside, are either without land or, at best, have a small fraction of it. This leads to the distribution of economic inequalities that form in the given social inequalities known as feudalism. A detailed discussion of feudalism will be made in the following sections.

2. Land Disputes: In our society, land is considered a symbol of power, wealth, high social status, and greatness. This ideology makes people want more land than they need, so they work hard to acquire land without needing it. Most do not care about Islamic, ethical, and legal values to excel in this social competition; therefore, land disputes prevail. Serious crimes like murder, exploitation, and violence are a result of land disputes.³⁰⁹

3. Rural Poverty: Rural poverty is closely related to the lack of ownership of the land and its unequal distribution. 'Landlessness is a key factor in poverty, as it constrains access to resources and livelihood opportunities,' he explained.

³⁰⁵ Abbass, Kharl, and Xiaoqing, "Landed Elites and Politics of Agrarian Reforms in Pakistan," 124.

³⁰⁶ Abbass, Kharl, and Xiaoqing, "Landed Elites and Politics of Agrarian Reforms in Pakistan," 123.

³⁰⁷ Khan, "The Case for Land and Agrarian Reforms in Pakistan", 10.

³⁰⁸ Christoph Beringer, *Welfare and Production Efficiency: Two Objectives of Land Reform in Pakistan* (1962), 174.

³⁰⁹ Ali, Asmat, and Munir Ahmad, "Analysis of the Barriers to Land Administration in Pakistan," In *GSDI 15 World Conference*. 2016.

4. **Tenant-Farmer Issues:** Many tenant farmers work on other people's land and make their living often in exploitative conditions.

5. **Corruption and Collusion:** Corruption and Collusion: The corrupt practice within the land administration system allows powerful individuals and agents to dispossess people of land and land rights through coercive transactions outside of due process. That undermines the rule of law and worsens the land-grabbing problem.

6. **Environmental and Social Impact:** The problem of land grabbing is also very environmentally and socially destructive. Deforestation, illegal mining, and other anthropogenic activities that aggravate environmental degradation can result from it. It also displaces communities and erodes their livelihoods.

7. **Government Inaction:** There are no well-rounded policies and reforms addressing problems of land distribution and land grabbing. Failing to deal with these problems can result in social and economic instability.³¹⁰

5.8 Feudalism and Associated Problems

The invalidity of land reforms has reinforced the extreme inequalities in land possession and, hence, feudalism. Mustafa Lakhani, president of the Sindh High Court Bar Association, said feudalism was a big hindrance in land reforms in Pakistan.³¹¹ A system in which powerful landowners have their powers and subject their peasants. Nikhat Sattar, adviser of Indus Resource Centre, says that there is no one time period when feudalism occurred and that feudalism is a mindset that creates inferiority complexes in society.

Many social evils are the children of feudalism, which violates basic human rights in the first place. I.A. Rehman termed “feudalism the biggest hindrance in implementing fundamental rights.”³¹² Because once they get an education, once they earn money, once they improve their standard of life, once they improve their social condition, once they can move upwards, the feudal lords would not allow that; the only business of the feudal lord is to keep their subjects backward so that they can never move up in life and it becomes difficult for the feudal to keep them under control.

³¹⁰ Ali, Asmat, and Munir Ahmad, "Analysis of the Barriers to Land Administration in Pakistan," 8-10.

³¹¹ "5% People Hold 64% of Pakistan's Farmland," Pakistan Defence, last modified October 11, 2013, <https://defence.pk/threads/5-people-hold-64-of-pakistan-s-farmland.282582/>.

³¹² A. Reporter, "Feudalism Main Hurdle to Rights Implementation," DAWN.COM, last modified September 15, 2012, <https://www.dawn.com/news/749633/feudalism-main-hurdle-to-rights-implementation>.

The greatest need in Pakistan is education; even there, the feudal structure is repeated. There are first-rate schools in English for the elite, second-rate for the strivers, and execrable for the masses.³¹³ Who wants the children educated? The feudal, of course, not education brings awareness, which may harm their feudal rule, and thus the schools built in Sindh are without teachers and students and are more commonly used as '*autags*' of '*waderas*'.³¹⁴

Exploitation and slavery are drawn from feudalism as a source. They are dictators, these feudal lords, and they dictate to these poor peasants and rule them as if these poor peasants were their slaves. Even if they do not marry their daughters and sons according to their own will, they have to get permission from the lords to do anything, and they will be in poverty. Feudalism in a society limits human freedom and liberty, and the powerful feudalists are at an unjust and cruel liberty of the weak peasants. Thus, societies tended to become more slave-based. Rural Pakistan's main manifestation of poverty is feudalism and the highly unequal land distribution. Mr. Arif said that 50.8 % of the rural households were landless, and the level of poverty among the rural landless people was high. He said Pakistan needed land reforms to reduce poverty, hunger, and malnutrition. They were very poor in rural areas because the landlords gave them an unjust crop share. The peasants were malnourished and under extreme economic constraints because of that injustice.³¹⁵

Not only were these feudal lords in control of the rules of their area, but they even had their power exercised over political affairs and judiciary. Political activities of Pakistan Jafri (1995) demonstrated in his book '*Pakistan Kaiy Siyasi Vadery*' have been controlled by feudal lords.³¹⁶ A democracy has no home in any tribal or feudal society. Dr Riaz Ahmed Shaikh said the seed of democracy was a society with industrialization, human compassion, and human rights. Dr. Khalid Mahmood Iraqi the KU Vice Chancellor, in the meanwhile, added that the middle class is not seen in Pakistani politics, while in America, Britain, India, and Western countries, the middle class is a part of politics and is in power for landlords and elite courses do not allow them to so.³¹⁷

³¹³Nicholas Kristof, "Feudalism in Pakistan," On the Ground, last modified August 1, 2002, <https://archive.nytimes.com/kristof.blogs.nytimes.com/2009/08/01/feudalism-in-pakistan/>.

³¹⁴ "Feudalism Keeps Sindh Backward," DAWN.COM, last modified June 7, 2003, <https://www.dawn.com/news/361022/feudalism-keeps-sindh-backward>.

³¹⁵"5% People Hold 64% of Pakistanis Farmland," Pakistan Defence, last modified October 11, 2023, <https://defence.pk/threads/5-people-hold-64-of-pakistan-s-farmland.282582/>.

³¹⁶Basher Ahmad and Muhammad A. Nawaz, "Impact of Feudal on Pakistani Politics: A Case Study of District Vehari," *Global Pakistan Studies Research Review* V, no. I (2022): 39, doi: 10.31703/gpsrr.2022(v-i).04.

³¹⁷ Our Correspondent, "No Democracy Thrives in Feudal Society'," The Express Tribune, last modified January 3, 2024, <https://tribune.com.pk/story/2451994/no-democracy-thrives-in-feudal-society>.

These extraordinary inequities in Pakistan appear unjust and obstruct economic growth and national consensus.³¹⁸ Feudalism has produced an evil land tenure system consisting of a high degree of land concentration, absentee landlordism, and tenure insecurity for sharecroppers, resulting in low agricultural production.

According to a case reported by Aljazeera in 2014, a ten-year-old boy, Tabssum Iqbal, from Chak Bala Punjab, was tortured and shredded arms in the threshing machine by Gulam Mustafa, the son of the landlord. The police won't file a case. These refusals and similar others prove that feudalism and authoritarianism affected the place and the rest of the departments. These cases show that feudalism still exists in Pakistan.³¹⁹

5.9 Contradiction of Feudalism with the Constitution of Pakistan

Feudalism is found to contradict the following provisions of Pakistan's constitution.

Article 2 of Pakistan's Constitution states, "Islam shall be the state religion of Pakistan." Islam is based on the principle of social justice, but feudalism has no concept of social justice. Principles of social justice are also written explicitly in the Constitution of Pakistan.

Although Article 3 of the constitution prohibits all kinds of exploitation, the main type of exploitation of peasants is feudalism. These landlords victimize and exploit their peasants in violation of the constitution of Pakistan.

Article 11 prohibits slavery, forced labor, and child labor, but feudalism is a system of slavery in which the peasants live their lives by following the orders and commands of their lord, who is their master. They are bound to get permission for "everything" from their lords." they are forced to live in miserable" life." We are sure that the concept of feudalism goes against Article 11 of the Constitution of Pakistan. The feudal system still perpetuates conditions that look like slavery in rural areas such as the Kashmore District of Sindh in Pakistan. A local activist, Asma Jahangir, once stated, "The feudal lords maintain their power through a combination of economic control and social intimidation, leaving peasants with no choice but to obey their commands." This depicts the situation of many tied to the land and their landlords. They often need permission to get necessities and are in dire living conditions. This has, therefore, led to the fact that Article 11

³¹⁸ Kristof, "Feudalism in Pakistan."

³¹⁹ Ali Mustafa, "Culture of Feudal Impunity," Al Jazeera, last modified August 21, 2024, <https://www.aljazeera.com/news/2014/8/21/pakistans-fight-against-feudalism>.

of the Constitution declaring slavery and the forced labor of man prohibited and illegal notwithstanding, many peasants are caught in the roundabout of dependents and oppressions — a very parrot's example of the contradiction between the right written on paper and reality.³²⁰

What it means here is that the feudal lords of the time did not allow their subjects to get an education, improve their status with employment, or get into any other profession, trade, or business, which was against the Constitution. The freedom of trade, business, or any other occupation is fully safeguarded under Article 18 of the constitution of Pakistan.

Though the constitution grants the right to acquire, hold, and dispose of property as granted by Article 23, it does not promote feudalism. Feudalism is the system in which feudal lords have extraordinary authority over the land of the lower classes. Additionally, these feudal lords obtained large expanses of the land from the British and the Mughals. These lands they are not owners of. However, the constitution provides some restrictions and limitations on the right of private land ownership.

As mentioned above, Article 24 protects private property rights, but at the same time, the government may regulate the use of property for public interest. In brief, under Article 24, the state may take private property to establish an educational facility or for any public utility provided. It is clear then that Articles 23 and 24 do not promote feudalism.

According to Article 25 of the constitution of Pakistan, all citizens are equal before the law, but there is no discrimination. Unfortunately, feudalism is a highly unequal system. Feudalism has a concept of equality. These feudal lords do not allow their subject to assert their most basic rights. It also states in Article 25 (a) the right to education, and Article 37a states the state shall promote the educational and economic interests of backward classes, yet our society is the feudal class.

Article 37 of the constitution says advocacy for social justice and eradication of social evils is what the state shall do. The inexpensive and expeditious justice is Article 37 Clause d. Article 38, on the other hand, assures people of social and economic well-being regardless of caste, religion, race, or creed. If it can lift its standard of living, break down the concentration of all its wealth into the hands of the few, and make all the necessary adjustments in rights between the

³²⁰From the Newspaper, "Feudal Democracy," DAWN.COM, last modified March 13, 2024, <https://www.dawn.com/news/1821149>.

employer and the employee, as well as the landlord and the tenant, The Constitution of Pakistan has given social justice as well as elimination of the social evils based on which the chief of the evils is feudalism. From the above discussions, it can be observed that besides all other principles mentioned in Pakistan's constitution, the constitution is bounded by equality, social justice, the social and economic well-being of the people, and the prohibition of slavery. All this is, however, contrary to feudalism. One way to overcome this evil problem is to put and obey the Constitution. The state should apply the above policies to expunge feudalism.³²¹

5.10 Abolishment of Land Reforms through Qazalbash Waqf vs. Chief Land Commissioner Case

The case entitled 'Qazalbash vs. Chief Land Commissioner' is considered by the legal fraternity as a representative case of Pakistan's complex and intricate legal system. This case offers the opportunity to analyze the diverse aspects of Pakistan's legal and judicial system. The complicated interplay of these aspects, such as land reforms, constitutional rights, and Islamic principles, will be examined. The case mentioned proceeded in the Shariat Appellate Bench of the country's superior court (Supreme Court), argued against the legality and constitutional bases of 'The Land Reforms Act of 1972', claiming that certain provisions of the Act were in contravention to the Islamic Sharia principles of land and property rights.³²²

The roots of this legal battle can be found in the traditional discourses and legislative strivings around the land-related reforms in Pakistan. Pakistan has observed multiple levels of land-related reforms to address the inappropriate distribution of land and promote greater societal justice. Though applying these land reforms proved to be enigmatic and complex, most of the time, the reforms were in collision with constitutional guarantees and Islamic principles regarding land and property ownership.³²³

In this particular legal battle, the prominent shareholders intensively debated or claimed that the Act of 1972, about land-related reforms, encroached upon their basic rights secured by the constitution. For instance, they argued for the basic right to own, utilize, and take benefits from their property.

³²¹ "Impact of Justiciability of the Right to Education on Its Enforcement in India and Pakistan," Welcome to SAHSOL | SAHSOL, accessed November 23, 2024, <https://sahsol.lums.edu.pk/node/12801>.

³²² Qazalbash Waqf v. Chief Land Commissioner, PLD, 99 (Supreme Court 1990).

³²³ Pakistan Institute of Development Economics, *Land Reforms in Pakistan: A Historical Perspective* (1987), 108.

After laborious efforts and critical analysis of legal aspects, the Shariat Appellate bench of the Supreme Court examined the issue, eventually passing a ground-breaking decision. The particular bench of the Supreme Court acknowledged multiple parts (paragraphs) of 1972 provisions, prominently paragraphs VII, VIII, IX, X, XIII, XIV, and XVIII³²⁴, as in contravention to the constitution, as they were against the basic Islamic teachings and principles enshrined in *Shariah*.

This hallmark decision in the legal battle against land reforms proved to be most effective, as it reversed the regulations of 1972³²⁵ MLR-115 (Martial Law Regulation no.115) and the succeeding 1977³²⁶ Land Reforms Act. Thus hampering any efforts in the context of land reforms in Pakistan.³²⁷

5.11 Critical Analysis of the Case

This section thoroughly examines the judgment through the lens of Islamic injunctions, public rights, distributive justice, and the constitution of Pakistan, highlighting the need for a comprehensive reassessment of the court's reasoning and its implications for the broader socio-economic development of Pakistan.

5.11.1 Deviation from Islamic Propositions

In the context of basic Islamic principles, the Qazalbash Waqf case is based rightfully, as it focuses on private (personal) property rights. In a broader social context, the basic Islamic principles regarding societal fairness and proportionate distribution of resources are also discussed. Islamic jurisprudence encompasses multiple provisions and examples that can construct a more fair and just perspective on land-related reforms, ensuring that the poverty-stricken masses' basic needs are resolved, keeping in view and treating with respect the individual legal rights of property-owning individuals.³²⁸

³²⁴ By order of the Shariat Appellate Bench of the Supreme Court of Pakistan in Qazalbash Waqf case reported in PLD 1990 SC 99, the whole of paragraphs 7, 8, 9, 10, 13 and 14 of the Regulation and consequentially paragraph 18 of the Regulation were held repugnant to the Injunctions of Islam and they ceased to have effect prospectively w.e.f. 23rd March, 1990.

³²⁵ This Regulation was promulgated by the Chief Martial Law Administrator Pakistan on 11th March, 1972, and was published in the Gazette of Pakistan (Extraordinary), Pages 291-300. By Article 280 of the Interim Constitution of the Islamic Republic of Pakistan, 1972, this Regulation was saved and continued as existing law and having been specified in the Seventh Schedule shall be deemed to have become an Act of the appropriate Legislature.

³²⁶ This Act of Parliament received the assent of the President on the 9th January, 1977 and was published in the Gazette of Pakistan, Extraordinary, Part I, dated January 9, 1977. The Land Reforms Ordinance, 1977 (II of 1977) made by the President on 5th January, 1977 was repealed and replaced by this Act.

³²⁷ Qazalbash Waqf v. Chief Land Commissioner, PLD, 99 (Supreme Court 1990).

³²⁸ Farooq Aziz and N. R. Khan, *Refutation of Private Ownership of Land: An Islamic Perspective* (2012), 84.

The Islamic *Shariah* focuses on societal justice and proportionate distribution of capital. Its emphasis on varied instances in Qur’anic *Surahs* and *Ahadith* proves the fact. The verse, “To give charity publicly is good, but to give to the poor privately is better for you, and will absolve you of your sins. And Allah is all-aware of what you do. You are not responsible for people's guidance, 'O Prophet'- it is Allah Who guides whoever He wills. Whatever you 'believers' spend in charity is for your good- as long as you do so, seeking the pleasure of Allah. Whatever you donate will be paid back in full, and you will not be wronged.”³²⁹ O believers! Indeed, many rabbis and monks consume people's wealth wrongfully and hinder 'others' from the Way of Allah. Give good news of a painful torment to those who hoard gold and silver and do not spend it in Allah's cause.”³³⁰ In the same manner, Abu Said Al-Khudri Quoted the Prophet of Allah, Prophet (Peace Be upon Him) narrating: “The poor have the right in their wealth, which will satisfy the needy and the traveler.”³³¹ The mentioned verses and hadiths exemplify the pledge of Islamic principles, easing the harsh conditions of the poor and supporting societal justness. They underscore the duty of the fortunate ones (rich) to contribute towards the less fortunate from their riches, thus helping in the holistic uplift of society. An important principle regarding public interest (*Masalah*) emphasizes and highlights the significance of considering the broader societal influence of financial initiatives, including land-related reforms.

Understanding that Islamic teachings must be applied and interpreted in the light of their historical and socioeconomic context is essential. Islamic values of justice, equity, and consultation should direct the execution of land reforms, guaranteeing the protection of all parties' rights.³³² The interpretation of Islamic principles and the Qazalbash Waqf judgment’s position on land reforms have drawn criticism for being inconsistent with accepted Islamic precedents and principles. The ruling accurately highlights the absolute essence of individual property rights in Islam but ignores the important aspects of Islamic doctrine that support fair distribution and social justice.

First, the ruling’s claim that Islam has no numerical restrictions on land ownership runs counter to academic interpretations and historical traditions. Islamic history was not devoid of

³²⁹ Qur’an, 2:271 & 272. "Online Qur’an Translation - Mustafa Khattab | Alim.org," Read Holy Qur’an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/2/>.

³³⁰ Qur’an, 9:34. "Online Qur’an Translation - Mustafa Khattab | Alim.org," Read Holy Qur’an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/translation/khattab/9/>.

³³¹ Sahih Al-Bukhari Hadith | 54, Volume 2," Read Holy Qur’an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sahih-bukhari/2/>.

³³² Nijatullah Sadiqi, Mohammad, “*Islam ka Nazariya-E-Milkiyat*,” Pub: Markazi Maktaba Islami, New Delh: 1978, Vol. 2, p. 240. *See also*, view in Islami Manshdar of All 'Pakistan Jamiat Ul-Ulama-i-Islam at p. 40.

restrictions on property ownership, as seen by the idea of “*iqta*” in the early Islamic period, which involved land distribution for conditional use and revenue purposes.

Second, the ruling goes against the Islamic “*Maslaha*” (Public Interest) concept by discounting the state’s responsibility to control property ownership and carry out reforms. Islamic jurists have always acknowledged the state’s right to get involved in economic issues, including property ownership, to safeguard social justice and the public interest.

This idea allows laws and policies to support fair land access, stop exploitation, and advance societal well-being.³³³ The Supreme Court of Pakistan also emphasized the state’s duty to protect equality and individual dignity, as Article 14 of the Constitution stipulated. Under Articles 09, 14, and 25, the court underlined that the state must guarantee every citizen's dignity, liberty, and honor by establishing an atmosphere based on integrity and equal legal protection.³³⁴ The court also emphasized the government’s basic responsibility to uphold law and order, guarantee good governance, and offer security to all citizens, irrespective of their status. This obligation is consistent with religious teachings that hold that saving one life is equivalent to keeping all of humankind while taking one life is comparable to destroying all of humanity. The court also cited a quote from Umar ibn Khattab (R.A), the second caliph, to demonstrate that even a dog dying from neglect would be viewed as a leadership failure.³³⁵

The Qur’anic teachings that stress the value of social justice and fair distribution of wealth are also disregarded in the Qazalbash Waqf Case. Surah Adh Dhariyat (51:19) and Surah AL-Hashr (59:7) are two verses that emphasize the Islamic duty to make sure that money is distributed equitably among all members of the society rather than being concentrated in the hands of a selected few.³³⁶ By tackling the problem of landlessness and encouraging a more fair allocation of resources, land reforms, when properly implemented, can help accomplish this Islamic responsibility. A framework for land reforms that is in line with Islamic teachings and the demands of modern society can be created by considering the “*Masalah*” principles and the Qur’an teachings on the distribution of wealth. A framework like this should encourage sustainable

³³³ Mohammad H. Seoharvi, *Islam ka iqtisadi nizam* (1989), 299-303.

³³⁴ Commissioner of Income Tax v. Eli Lilly Pakistan, SCMR, 1279 (Supreme Court 2009). Para.4.

³³⁵ Watan Party v. Federation of Pakistan, PLD, 997 (Supreme Court 2011).Para.58

³³⁶ The Holy Qur’an, Surah Al-Hashr (59:7) and Surah-Adh-Dhariyat (51:19)

farming methods, give everyone fair access to land, and support the nation's overall social and economic advancement.³³⁷

5.11.2 Disregard for Public Rights and Welfare/ *Salus Populi*

The Qazalbash case, particularly the opinion of Justice Taqi Usmani, has been widely criticized for its failure to consider the rights and welfare of the broader public adequately. The judgment's rejection of the principle of "*Salus Populi*" or the welfare of the people, a guiding principle in legal and constitutional frameworks, is highly problematic. The state's responsibility to ensure its citizens' economic and social well-being is a fundamental tenet of modern governance, rooted in the principles of social contract and the common good.³³⁸ By neglecting the application of this principle in the context of land reforms, the judgment overlooks public welfare, the state's duty to address issues of rural poverty, landlessness, and the perpetuation of feudal structures that hinder socioeconomic progress.

The Qur'anic verse cited in the excerpts (Surah At-Tawbah, verse 60) outlines eight categories of *Zakat* recipients, including the poor and the needy, underscoring the religion's commitment to addressing inequality and ensuring the welfare of the community as a whole. By dismissing the state's role in implementing land reforms to achieve this objective, the judgment disregards the public's right to equitable access to land and resources, a cornerstone of social justice and economic development.

Apart from constitutional and Islamic provisions, judicial precedents are also the testaments of the importance of public welfare. The Supreme Court emphasized integrating Islamic principles within the Constitution, ensuring democracy, social justice, and equality as enshrined in Articles 2A, 17, and 14. The decision linked law and order with economic development, asserting the state's responsibility to provide security and ensure the dignity of every individual, as per Articles 9 and 14.³³⁹ The Peshawar High Court stressed that public safety must always precede individual property rights in municipal regulations.³⁴⁰ "Public interest" refers to any action benefiting the general public and protecting collective community interests, as defined by the

³³⁷ Shahab, Rafi Ullah," Islami Riasat Ka Maliati Nizam," Pub: Tahqeqat Islami, Islamabad, Pakistan: 1973, 72 -75.

³³⁸ bū ' . Sallām, *Kitāb Al-amwāl* (ISBS, 2002), 112.

³³⁹ Watan Party v. Federation of Pakistan, PLD, 997 (Supreme Court 2011).Para.4.

³⁴⁰ Abdul Wajid v. Tehsil Municipal Administration, CLC, 1279 (Peshawar High Court 2020).Para.8.

Lahore High Court.³⁴¹ These practices are crucial for ensuring that government actions prioritize the welfare of society as a whole.

5.11.3 Contradictions with Constitutional Principles

The essential values embodied in the Pakistani constitution are incompatible with the Qazalbash Waqf judgment's understanding of Islamic principles and its position on land reforms. Despite its roots in Islamic teachings, the constitution opposes continuing socioeconomic injustice and feudalism. Conversely, the constitution's emphasis on promoting the general welfare of the populace and social and economic fairness is spelled out in its sections. According to the constitution, we must continue to be faithful to the declaration made by Quaid-e-Azam Muhammad Ali Jinnah, the founder of Pakistan, that Pakistan would be a democratic state based on "Islamic principles of social justice."³⁴² The Objectives Resolution ensures "social, economic, and political justice" and advocates for "social justice, as enunciated by Islam." Acquiring land and giving it to people needing housing after paying the owners does not take away from the goal of social justice as stated in Islam; rather, it is social justice as it is commonly understood.³⁴³

The claim made in the ruling that land reforms are either unconstitutional or un-Islamic ignores the constitution's larger framework, which seeks to guarantee the fair distribution of resources, the end of exploitation, and the creation of a just social order. The nation's goals are listed in Article 38(a) and (d) of the Principles of Policy. Some of the nation's stated goals are providing housing, improving people's quality of life, and ensuring their well-being.³⁴⁴ Additionally, the statement supports the goals of land reforms, which aim to promote socioeconomic growth, increase agricultural output, and rectify land ownership inequities.

Furthermore, the state may impose reasonable limitations on private property rights in the public interest under Article 253 (1) of the Pakistani Constitution.³⁴⁵ This clause emphasizes the fine line that must be drawn between the interests of the general public and individual property rights when it comes to land reforms. Article 253 (1) might be used in the Qazalbash Waqf case to support a more nuanced approach to land reforms, in which the state's authority to restrict

³⁴¹ Messrs Leo Communication (Pvt.) Ltd. v. Federation of Pakistan, PLD, 709 (Lahore High Court 2017). Para.14.

³⁴² The Preamble to the Constitution of the Islamic Republic of Pakistan, quite unlike the preambles to the constitutions of other countries, is not a mere introduction or adornment but a 'substantive part of the Constitution and shall have effect accordingly' (Article 2A of the Constitution).

³⁴³ Article 2A of the Constitution of the Islamic Republic of Pakistan, which instead of mentioning the 'Preamble' of the Constitution referred to 'the Objectives Resolution.'

³⁴⁴ Chapter 2, Constitution of the Islamic Republic of Pakistan.

³⁴⁵ Rana Amanullah, "Article 253 of The Constitution of Pakistan -Maximum Limits as to Property," Pkwisdom, last modified December 14, 2023, <https://pkwisdom.com/article-253-of-constitution-of-pakistan/>.

private property rights is balanced with Islamic teachings on social justice and equitable distribution. This would require a thorough analysis of the provisions of the land reform rules and their compatibility with Islamic teachings and constitutional ideals.³⁴⁶

5.11.4 Failure to Address Feudalism and Socioeconomic Inequalities

The rejection of land reforms in Qazalbash Waqf's rule ignores Pakistan's enduring problems with feudalism and socioeconomic inequality. The perpetuation of feudal structures and the concentration of land in the hands of a few landlords have been widely recognized as major impediments to the country's social and economic progress.³⁴⁷ Land reforms can redistribute land, empower marginalized communities, and foster a more equitable and productive agricultural sector when properly implemented. However, the Qazalbash Waqf judgment's rejection of such reforms, on the grounds of their perception of Islamic teachings, hinders the potential positive socio-economic impacts that some just land reforms could have.

The Apex Court of the country, in the increase in the price of flour case, explained the responsibility of the State under Article 38 of the Constitution of the Islamic Republic of Pakistan that the state must secure the well-being of its citizens by improving their standard of living and preventing wealth concentration among a few, ensuring access to necessities such as food, clothing, housing, education, and medical care for all individuals. However, the government appears to have not implemented effective mechanisms to fulfill these obligations. The Constitution serves as a social contract, assigning duties to various state organs to promote prosperity. It must be interpreted as a cohesive whole to balance job opportunities and wealth distribution.³⁴⁸

This decision highlighted the state's and judiciary's ability to advance and constrain the enforcement of poor rights, underscoring the need for a more comprehensive legal framework to protect these rights. The judiciary's role in enforcing poor rights is further exemplified in cases like Haji Nizam's Case, where the courts have intervened to enforce maintenance rights against affluent relations.³⁴⁹ Through such judicial activism, courts can proactively identify and address

³⁴⁶ The author Justice (Rt.) Dr. Tanzilur-Rahman has been the Chief Justice, Federal Shariat Court of Pakistan, Senior Puisne Judge, High Court of Sindh and Chairman, Council of Islamic Ideology, Government of Pakistan. The first part of this paper was initially published in the daily Dawn, August 15, 1998, 403 Forbidden, accessed October 12, 2024, p.4, available at, https://data.Qur'anacademy.com/QA_Publications/articles/English/Mis.

³⁴⁷ "Land Reform: a Tragedy," The Express Tribune, last modified April 13, 2025, <https://tribune.com.pk/story/869300/land-reform-a-tragedy>.

³⁴⁸ Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Amir Hani, In the matter of, SCMR, 329 (Supreme Court 2014). Para.4.

³⁴⁹ Haji Nizam Khan v. Additional District Judge, Lyallpur, PLD, 930 (Lahore High Court 1976).

violations of poor rights, setting precedents that protect the vulnerable and marginalized. Negating these precedents, the Qazalbash Waqaf case has hindered the progress of economic and social well-being, which may come from land resources.

In this case, the Supreme Court's Shariat Appellate Bench struck down key provisions of the 1972 land reform regulations and the 1977 Land Reforms Act, effectively undoing much of the progress in redistributing land and empowering the landless poor. However, the Qazalbash Waqf case also revealed the limitations of the judiciary, as its rulings can sometimes undermine efforts to redistribute land and resources more equitably. This highlights the need for a delicate balance between judicial interpretation and legislative action to enforce poor rights effectively. In *Muhammad Shahbaz v. District and Sessions Judge (East) Islamabad*, the Court focused on the Constitution's role in protecting citizens' rights. The court underscored that the Constitution must evolve to meet the changing needs of society, ensuring that laws do not compromise citizens' fundamental rights. The case emphasized that the Constitution serves as a living document that guarantees the protection of legal rights and the extension of legal benefits to all citizens.³⁵⁰In *Messrs Al-Raham Travels and Tours (Pvt.) Ltd. v. Ministry of Religious Affairs* case, the court recognized economic rights as inseparable from civil rights, including rights to necessities like food, housing, and healthcare. It underscored that the Constitution should be interpreted to ensure socio-economic justice in a changing environment.³⁵¹

5.12 Judicial Precedents Relevant to Land Reforms

This section contains judicial practices related to elements and factors that directly or indirectly influence the land reforms in Pakistan.

5.12.1 State's Role, Responsibility, and Authority in Land Management

This obligation of the state to guarantee the welfare of its people, especially their access to basic resources like land, is emphasized in these verses and Hadiths. Qur'an clearly states, "And He (Allah) has subjected to you all that is in the heavens, and all that is in the earth; it is all a favor and kindness from Him. Verily, these are signs for people who think deeply."³⁵² Hadith (Musnad Ahmad): "The Imam (ruler) is a guardian over his people and is responsible for them."³⁵³

³⁵⁰ Muhammad Shahbaz v. District and Sessions Judge, CLC, 274 (Islamabad High Court 2024).Para.24.

³⁵¹ Messrs Al-Raham Travels and Tours (Pvt.) Ltd. v. Ministry of Religious Affairs, SCMR, 1621 (Supreme Court 2011. Para. 31, 33 & 34.

³⁵² Qur'an, 2:165.

³⁵³ Sahih Al-Bukhari Hadith | 252, Volume 9," Read Holy Qur'an Verses Online | Islamic References & Recitation | Alim.org, accessed December 28, 2024, <https://www.alim.org/hadith/sahih-bukhari/9/>.

The state manages resources, including land, to benefit everyone, especially the least fortunate. The Supreme Court of Pakistan stressed in *Mehreen Zaibunnisa v. The land Commissioner* that the state's authority to purchase land for public use is acceptable and essential for the general advancement and well-being of the populace.³⁵⁴ The court acknowledged that, in certain situations, the state's obligation to advance the public interest may necessitate restricting private property rights, provided that just compensation is given. Therefore, the Qazallbash judgment's unwillingness to acknowledge the state's obligation to protect the public interest contradicts Pakistan's longstanding legal precedents and practices. According to Article 38 of the constitution, the state is required to advance the welfare of its people. The state is required under this article to provide social security, a suitable standard of living, and job facilities. Court decisions highlight the government's need to protect the public interest by ensuring that laws respect social justice and represent the people's demands.

The Supreme Court highlighted the incorporation of Islamic ideas into the Constitution in *Watan Party v. Federation of Pakistan*, tying law and order to economic growth and the state's obligation to maintain security.³⁵⁵ This ruling supports that the state must guarantee socioeconomic justice in its policies. A common element in numerous decisions is the state's obligation to behave justly and protect the welfare of its people. In *Government of Punjab v. Naseer Ahmad Khan*, the court emphasized that the state must defend all citizens' rights equally, without referring to the wealthy or powerful. Instead of protecting individuals who possess privileges and authority, the Executive and Legislative branches are supposed to act like mothers and defend underprivileged children and groups of people.

The ruling highlighted that the state should support the deprived classes of society, providing them with protection and privileges rather than enriching those already in power. Similarly, in *Ikram Bari v. National Bank of Pakistan*, the court asserted the state's responsibility to ensure social and economic justice is implemented per Islamic principles.³⁵⁶ In *Farooq Brothers v. United Bank Limited*, the Federal Shariat Court interpreted the Principles of Policy. It emphasized that although they are not enforceable by courts, they are binding on the government. The state must ensure that all actions, including lawmaking, align with constitutional directives to

³⁵⁴ *Mehreen Zaibunnisa v. The land Commissioner*, PLD, 397 (Supreme Court 1975).

³⁵⁵ *Watan Party v. Federation of Pakistan*, PLD, 997 (Supreme Court 2011). Para.2.

³⁵⁶ *Ikram Bari v. National Bank of Pakistan*, SCMR, 100 (Supreme Court 2005). Para.15.

promote socio-economic development. The case reaffirmed the state's responsibility to act by these guiding principles to ensure the welfare of its citizens.³⁵⁷

Similarly, in *Asad Ali Khan v. Province of Punjab*, the court ruled that the Principles of Policy should guide the state's actions. The court emphasized that the socio-economic objectives of the state should be respected in legislative processes. The ruling further stressed the state's obligation to ensure an egalitarian society.³⁵⁸

In *Arslan Ali v. University of Health Science*, the court highlighted the state's duty to promote social justice and eradicate social evils. The case ruled that every organ of the state must work to ensure equal access to education and opportunities, particularly for backward classes and areas. The state is responsible for advancing the interests of its most vulnerable citizens to ensure equity in educational opportunities.³⁵⁹

This responsibility aligns with the legal principle of "*Solus Populi*" (welfare of the people), which emphasizes prioritizing the public interest over individual interests. In the case, the court declared that the state land is public property, not the personal property of any individual, including the Chief Minister himself, and this established the state's responsibility to safeguard public assets. It also prioritized public interest in any land disposal, mandating that maximum revenue is generated for the benefit of the public. Open auctions were deemed crucial for commercial land disposal to ensure fair market value and prevent exploitation and housing schemes to be prioritized for the public interest, not individual benefits, when allocating land.³⁶⁰ All the above precedents emphasize the state's role in ensuring social prosperity and the public's welfare; the state is responsible and authorized to make legislative measures to safeguard the fundamental rights of all citizens equally.

5.12.2 Land for Public Purpose/ Public Welfare

One of the main topics of discussion in land reform is public welfare. According to the Indian Supreme Court, a "public purpose" is any objective that could benefit or pique the attention of even a small portion of the population.³⁶¹ The term "public purpose" is quite broad and cannot

³⁵⁷ *Farooq Brothers v. United Bank Limited*, PLD, 47 (Federal Shariat Court 2023).

³⁵⁸ *Asad Ali Khan v. Province of Punjab*, PLD, 770 (Supreme Court 2021).Para.15.

³⁵⁹ *Arslan Ali v. University of Health Sciences*, MLD, 818 (Lahore High Court 2015).Para.6.

³⁶⁰ *Province of Punjab through Sectary v. District Bar Association, Khaniwal*, SCMR, 1611(Supreme Court 2014). Para. 13.

³⁶¹ *In Sooram Pratap Reddy and others v. District Collector, Ranga Reddy District and others*, (2008)9 SCC 552.

be reduced to a single meaning; on the other hand, it might refer to an objective where the interests of the society as a whole, rather than those of an individual, are directly and significantly at stake.³⁶²

The court held in *Abu Dhabi Medical Devices Co.LLC v. Federation of Pakistan* that public interest Acts are legitimate, even if they violate individual rights.³⁶³ Enhancing public welfare and security should always be the goal of the public interest, especially regarding land acquisition. The court affirmed the right to property and shelter as essential to human dignity in *Suo Motu Case No.13 of 2009*, ruling that land should be used for public welfare.³⁶⁴

In the *Ch. In the Latif Akbar v. Azad Government of Jammu and Kashmir* case, the Court stressed the importance of continuity in government policies for public welfare, indicating that cancellations must be for genuine reasons, not political motives. This commitment to public welfare is essential for fostering trust between the government and its citizens.³⁶⁵ The court in *Messrs Rashid Arms Company v. Federation of Pakistan* held that legislative changes must align with the states and its citizens' welfare, emphasizing the need for laws to reflect public welfare.³⁶⁶

The Islamabad High Court ruled in the *Federal Government Employees Housing and Others v. Malik Ghulam Mustafa & Others* case that the Federal Government Employees Housing Foundation (FGEHF) had a legitimate use of its authority under the Land Acquisition Act, 1894 when it purchased land to house its employees. The claim that the purchase was illegal and a “plunder” of public funds was dismissed by the Supreme Court. Additionally, it emphasizes that housing government employees is a legitimate public objective and that the acquisition was completed following the relevant laws. The argument that the Land Acquisition Act of 1894 should have been replaced by the Capital Development (CDA) Ordinance (1960) was also dismissed by the court, which concluded that the Capital Development (CDA) Ordinance is a law specifically designed to promote the development of Islamabad and does not supersede the Land Acquisition Act’s general provisions. The ruling emphasized how crucial it is to balance private property rights and the general welfare of society. As long as the acquisition is carried out legally and the land

³⁶² *Kishwar Sultana v Province of Punjab*, MLD, 2004 (Lahore High Court 1604).Para.5.

³⁶³ *Abu Dhabi Medical Devices Co. LLC v. Federation of Pakistan*, CLC, 1253 (Karachi High Court Sindh 2010).

³⁶⁴ *Suo Motu Case No.13 of 2009*, PLD, 619 (Supreme Court 2011).Para.32.

³⁶⁵ *Ch. Latif Akbar v. Azad Government of Jammu and Kashmir*, PLD, 32 (Azad Kashmir High Court 2017).

³⁶⁶ *Messrs Rashid Arms Company v. Federation of Pakistan*, PTD, 1742 (Lahore High Court 2008).Para.6.

owners receive fair compensation, it strengthens the government's power to purchase land for public use.³⁶⁷

When a public interest is implicated, the Constitution restricts private property. Article 253(2) states that “any law permitting a person to own or possess beneficially an area of land greater than the area which he could have lawfully owned or possessed beneficially before the date of enforcement of the Constitution will be invalid.”³⁶⁸ Therefore, according to the Constitution, the Regulation will remain in effect regardless of any legislation issued by Parliament that raises or lowers the ceiling it has set. Furthermore, the court clarified in this decision the relationship between Article 24 and Article 253, stating that although Article 24 (2) mandates compensation for forced acquisition, Article 24(4)'s exemption forbids courts from contesting the sufficiency of that compensation. This ruling significantly enhanced the protection provided to laws passed under Article 253.

5.12.3 Public Rights over Individual Rights

A common problem in land reform cases is balancing individual and public rights. Although personal property rights are preserved, the judiciary has frequently held that when required, they may be surrendered to the needs of the public. Cases show how judges resolve this conflict by promoting justice and openness in property transactions to safeguard the community's interests.

The court in *Messrs Popular International (Pvt.) Ltd. v. Province of Sindh* emphasized that the government must act openly while handling public resources and defined “public interest” as measures guaranteeing social welfare and security.³⁶⁹ The government can only purchase land for public uses as specified by the Land Acquisition Act, according to the verdict in *Malik Bashir Ahmed v. Federal Government of Pakistan*. This ensures that people's rights are not infringed upon without a valid reason.³⁷⁰

This balance is further demonstrated in the *Messrs. TULIP Project Riverside v. National Highway Authority* case, when the court clarified that land purchase must adhere to constitutional protections for property rights, guaranteeing that any acquisition puts the general welfare ahead of

³⁶⁷ *Federal Government Employees Housing and others v. Malik Ghulam Mustafa & others*, PLD, 1 (Islamabad High Court, 2019).

³⁶⁸ Pak. Cons. Art.253 (2).

³⁶⁹ *Messrs Popular International (Pvt.) Ltd. v. Province of Sindh*, PLD, 19 (Karachi High Court Sindh 2016). Para.11.

³⁷⁰ *Malik Bashir Ahmad v. Federal Government of Pakistan*, Islamabad, PLD, 68 (Islamabad High Court 2018).Para.28.

private interests.³⁷¹ In *Messrs. Leo Communication (Pvt.) Ltd. v. Federation of Pakistan*, the court determined that public health, safety, and welfare must take precedence over individual property rights when making decisions affecting the larger community, emphasizing that public rights outweigh individual rights in land acquisition and public projects.³⁷²

The idea was further reinforced by the court in *Messrs Rabbiya Associates v. Zong*, which held that choices about public resources must put social welfare ahead of private interests to ensure that the general public benefits from such activities.³⁷³ In addition, the court stressed in *Allah Ditta v. Chief Settlement Commissioner Punjab* that private property cannot be sold for excessive enrichment and that any sale must adhere to the equity and justice values of the constitution.³⁷⁴

5.12.4 Social Justice

A fundamental component of Pakistan's constitutional framework is social justice. The state is required by Articles 37 and 38 to uphold social fairness and combat social evils. Judicial rulings demonstrate this commitment by focusing on equal access to resources and ensuring that land changes do not disproportionately harm marginalized people. In addition, the Objectives Resolution ensures "social, economic, and political justice" and advocates for "social justice, as enunciated by Islam." Acquiring land and giving it to people needing housing after paying the owners does not take away from the goal of social justice as stated in Islam; rather, it is social justice as it is commonly understood.³⁷⁵

The *Muhammad Nadeem Arif v. Inspector General of Police Punjab Lahore* case echoes this dedication to social justice, which calls for equitable distribution in public offices to advance social and economic fairness while preventing corruption.³⁷⁶

As seen in decisions such as *Raj Ram v. Shirmati Reeta*, where the court determined that the state must guarantee the protection and provision of essentials for the most vulnerable members of society, the concept of social justice is firmly ingrained in the duties of the state.³⁷⁷ The court reiterated the need for social justice to inform government policies and initiatives, especially when

³⁷¹ *Messrs TULIP Project Riverside v. National Highway Authority*, Islamabad, PLD, 314 (Islamabad High Court 2022).Para.20.

³⁷² *Messrs Leo Communication (Pvt.) Ltd. v. Federation of Pakistan*, Lahore, PLD, 709 (Lahore High Court 2017).Para.14.

³⁷³ *Messrs Rabbiya Associates v. Zong, Karachi*, PLD, 132 (Karachi High Court Sindh 2011).Para. 8.

³⁷⁴ *Allah Ditta v. Chief Settlement Commissioner Punjab*, YLR, 635 (Lahore High Court 2021).Para.8.

³⁷⁵ Article 2A of the Constitution of the Islamic Republic of Pakistan, which instead of mentioning the 'Preamble' of the Constitution referred to 'the Objectives Resolution.

³⁷⁶ *Muhammad Nadeem Arif vs. Inspector-General of Police Punjab*, Lahore, SCMR, 408 (Supreme Court 2011).Para.11.

³⁷⁷ *Raj Ram v. Shirmati Reeta*, Sindh, PLD, 214 (Sindh High Court 2023).Para.12 & 15.

defending the rights of underrepresented groups. According to the court's ruling in *Shaheen Airport Services v. Sindh Employees' Social Security Institution*, social security is a fundamental right, and the government must guarantee that workers and their families are safeguarded within social justice frameworks.³⁷⁸

Additionally, the decision in *Sohail Muhammad Shees Farooq v. Mst. Minza Romana* highlighted the state's duty to protect the most vulnerable members of society. It stressed that social justice should precede legal justice in family situations.³⁷⁹ This idea is essential to creating a just society where everyone can access opportunities and resources.

5.12.5 Fundamental Rights Security

The security of fundamental rights, particularly property rights, is enshrined in the Constitution of Pakistan. Article 23 protects citizens' rights to acquire and hold property, while Article 09 guarantees the right to life, which has been interpreted to include socio-economic rights. The Lahore High Court ruling in *Nestle Pakistan v. Director PESSI* illustrates the judiciary's role in safeguarding these rights, ensuring that state actions do not infringe upon individual liberties without due process. The court emphasized that the right to life encompasses socio-economic rights, including food, water, and medical care.³⁸⁰

Furthermore, the right to property and shelter is crucial to human dignity, supported by *Muhammad Yasin v. Federation of Pakistan*, where the court concluded that it is a fundamental right of the people to be governed by a state that provides effective safeguards for their economic well-being.³⁸¹ The judiciary holds a pivotal role in safeguarding the rights of the economically disadvantaged by interpreting laws and ensuring adherence to constitutional mandates that promote socio-economic justice.

5.12.6 Legitimacy of Land Acquisition

The Land Acquisition Act stipulates that land can only be purchased for public uses with sufficient compensation and governs the legitimacy of land acquisition in Pakistan. This notion is supported by judicial precedents, which state that any departure from accepted practices

³⁷⁸*Shaheen Airport Services v. Sindh Employees' Social Security Institution*, SCMR, 881 (Supreme Court 1994).Para.5.

³⁷⁹ *Sohail Muhammad Shees Farooq v. Mst. Minza Roomana*, MLD, 1972 (Sindh High Court Karachi 1998).Para.6.

³⁸⁰ *Nestle Pakistan v. Director PESSI*, PLD, 515 (Lahore High Court 2019).Para.2&3.

³⁸¹ *Muhammad Yasin v. Federation of Pakistan*, PLD, 132 (Supreme Court 2012).Para.13.

compromises the validity of the acquisition process. According to the courts ' constant emphasis, the government must justify the need for land and guarantee that landowners are treated fairly.

In *Land Acquisition Collector v. Abdul Wahid Chaudhry*, the court emphasized the necessity for just compensation. It ruled that residents' rights to property could not be violated unless permitted by law.³⁸² Similarly, the government's assessment of public benefit (which must align with community interests) must guide the purchase of land for public use in *Messrs. Eden Developers (Pvt.) Ltd. v. Government of Punjab* case.³⁸³ The court's decision in *Ms. Asiya Ashraf Chaudhary v. Government of Punjab* and *Malik Bashir Ahmad v. Federal Government of Pakistan* further reaffirmed the requirement that appropriate compensation be included in any acquisition made for purposes rather other than the public good, which is a violation of constitutional rights.³⁸⁴ *The Messrs. Tulip Project Riverside v. National Highway Authority* and *Sheikh Anwar Saeed v. L.D.A.* further emphasize the property right, which provides that any acquisition must follow due process and guarantee sufficient compensation.³⁸⁵ The topic of land acquisition and just compensation was examined in the case of *Commissioner Rawalpindi/ Province of Punjab v. Naseer Ahmed*. According to the Land Acquisition Act, the court decided that civil courts are the most appropriate forum for resolving compensation disputes.³⁸⁶ The High Court may intervene when the acquisition authority commits legal mistakes. This case demonstrates the validity of land acquisition when carried out in compliance with existing laws and rules, guaranteeing that landowners receive equitable treatment within the bounds of the law.

The Lahore High Court examined several court rulings and legal issues about the return of surplus land and its distribution among tenants in the case of the *Chairman of the Federal Land Commission v. Mst. Sanam Iqbal, etc.* ICA No.18 of 2002. Additionally, the court noted that excess land determined under section 07 belongs to the Government and forfeits the defaulter's rights. The court further explained that relinquished land under lease or mortgage returns to the lessor or mortgagor, whereas land under litigation in excess vests in the government until final determination.³⁸⁷

³⁸² *Land Acquisition Collector v. Abdul Wahid Chaudhry*, YLR, 608 (Lahore High Court 2004).Para.3.

³⁸³ *Messrs Eden Developers (Pvt.) Ltd. v. Government of Punjab*, Lahore, PLD, 442 (Lahore High Court 2017).Para.6.

³⁸⁴ *Malik Bashir Ahmad v. Federal Government of Pakistan*, Islamabad, PLD, 68 (Islamabad High Court 2018). Para.28. and *Mst. Asiya Ashraf Chaudhary v. Government of Punjab*, CLC, 503 (Lahore High Court 2020). Para.28.

³⁸⁵ *Messrs TULIP Project Riverside v. National Highway Authority*, PLD, 314 (Islamabad High 2022) Para.20 and *Sheikh Anwar Saeed v. L.D.A.*, CLC, 1723 (Lahore High Court 2015).Para.13.

³⁸⁶ *Commissioner Rawalpindi/Province of the Punjab v. Naseer Ahmed*, SCMR, 1037 (Supreme Court 2024).Para.19.

³⁸⁷ *Chairman of the Federal Land Commission. v. st. Sanam Iqbal etc.* ICA No. 18 (Lahore High Court 2002).

5.13 Analyzing the judicial practices

The Qazalbash Waqf Case is essential for comprehending Pakistan's judiciary's stance on land reforms. Many advancements made towards equitable land distribution were undone by the Supreme Court when it struck down important portions of the Land Reforms Act of 1972. This decision restricted the state's power to enact reforms without amending the constitution and to strengthen the concentration of wealth in the few selected hands. The ruling has had a lasting effect on land ownership in Pakistan, impeding attempts to promote social fairness and helping to restore feudal domination in the rural economy.

The Qazalbash ruling is criticized for failing to make the public's well-being the top priority. In favor of defending private property rights, the primary governing principle of *Salus Populi*, or "welfare of the people," was primarily disregarded. The ruling failed to address problems of utter importance, ranging from rural poverty, landlessness, and the continuation of unequal land ownership, by failing to apply this concept in the context of land reforms. This chapter also highlights inconsistencies between the judiciary interpretation of Islamic property ownership norms (traditions) and Pakistan's Constitution. The Constitution permits land reforms to encourage fair distribution and end feudalism. However, these initiatives were thwarted by the court's strict interpretation of Islamic decrees. Any land reform strategy to promote economic equality should consider the Islamic principles of social justice and equitable resource allocation, which were overlooked in favor of protecting private property rights.

A thorough review of the laws of land reforms is necessary. Pakistan's legislative and judicial systems must cooperate to manage the complexity of land ownership and ensure that future reforms align with Islamic principles and the constitutional goal of justice for the whole country if the country aims to achieve equitable land distribution and advance public welfare. The nation can only address the socioeconomic inequalities (that still afflict its agricultural landscape and impede the empowerment of its most disadvantaged dwellers) by employing an integrative strategy.

5.14 Conclusion

The related reforms have been the center of focus processes across Pakistan's socio-political history. Reforms or regulations concerning land distribution are vital in fighting societal inequalities and the oppressive nature of the agrarian sector, which are necessary for long-term socio-economic gradation. Pakistan desperately needed a long-term sustainable socio-political and socio-economic environment at its inception. The policymakers knew that land occupies a focal

point in the lives of Pakistani people and can contribute to a more sustainable societal order based on social justice. Therefore, the state initiated three major reforms or regulations concerning the country's lands for sustainable socio-economic and socio-political order in the long term. For the first time, land-related reforms were initiated in the late 60s, then in the early seventies, and the last reforms took place in the late seventies under the regime of Zulfikar Ali Bhutto. Apart from these regulatory reforms of lands, there were also major and vital Acts passed under the regimes of martial law administrators. The three major regulations set an upper limit on landholders. The limit fixed or the upper limit of land holdings varied across these three reforms. Like in the reforms of the late 1950s, the upper land holding limit was fixed at five hundred acres for those lands that were using the established irrigation system and one thousand acres for those lands that were deprived of this system and solely depended on the rainwater. The excess land was taken under the government's control and divided among the poor farmers. Reimbursements were paid for the lands taken by the government. In the early seventies, Zulfikar Ali Bhutto presented a new stage of reforms. This stage lowered the upper limit for land holdings. i.e., reducing the limit of lands under irrigation to 150 acres, while for the lands not under irrigation, it was set at 300 acres only. The lands exceeding the upper limit were taken away, and reimbursements were paid, but it was much less than the 1959 reforms. The reforms of the late seventies were also presented under the regime of Zulfikar Ali Bhutto; here, the reimbursements paid were comparatively high compared to those of 1959. The process of acquiring lands was not strict as compared to previous exercises. The ban on the buying, selling, and transfer of agrarian lands. Apart from these key regulatory reforms, this chapter also discussed other vital regulatory Acts envisioned for revamping the whole land system. The mentioned land-related reforms bring social justice and pave the way for creating the distribution of lands with equity among the poor leaseholders, poor farmers, and cultivators. These reforms, if implemented in spirit and letter, can transform the lives of all fellow citizens.

The Qazalbash Waqf case is pivotal in understanding how Pakistan's judiciary has approached land reforms. By striking down key provisions of the Land Reforms Act 1972, the Supreme Court reversed many advances toward equitable land distribution. This ruling reinforced the concentration of land in the hands of the few and limited the state's ability to impose reforms without constitutional amendments. The judgment's impact on land ownership in Pakistan has had long-lasting implications, contributing to the re-establishing of feudal dominance in the rural economy and hampering efforts to foster social equity.

A central critique of the Qazalbash judgment is its failure to prioritize public welfare. The principle of *Salus Populi*, or "welfare of the people," which is fundamental to governance, was largely neglected in favor of protecting individual property rights. By not applying this principle in the context of land reforms, the judgment missed an opportunity to address critical issues such as rural poverty, landlessness, and the perpetuation of unequal land ownership.

This chapter also exposes contradictions between Pakistan's constitution, which advocates for social and economic justice, and the judiciary's interpretation of Islamic principles regarding land ownership. The Constitution allows land reforms to promote equitable distribution and eradicate feudalism, yet the court's rigid interpretation of Islamic injunctions undermined these efforts. The emphasis on protecting private property rights failed to account for Islamic tenets of social justice and fair resource distribution, which should play a critical role in any land reform policy that fosters economic equality.

Beyond judicial rulings, the chapter underscores the structural barriers to land reform in Pakistan, such as procedural complexities, vested interests of the landed elite, and insufficient state resources for effective enforcement. These factors create a hostile environment for any substantive reform that could uplift marginalized communities. Although legally recognized, land reforms are often delayed or diluted in practice due to the influence of the feudal elite, who leverage their political power to maintain control over vast tracts of land, further impeding progress toward a more just and equitable society.

In conclusion, the chapter highlights Pakistan's formidable challenges in implementing land reforms, largely stemming from judicial rulings such as the Qazalbash Waqf case. The judiciary's preference for safeguarding individual property rights over collective welfare has perpetuated socio-economic inequalities and undermined efforts to address the imbalances in land ownership. However, the chapter also underscores the need for a balanced approach reconciling Islamic principles with the country's constitutional mandate for social justice.

Chapter 06. Land Reforms in Germany

6.1 Introduction

This chapter studies deeply the land reforms and administration in Germany. Germany stands as a succeeded epitome of land reforms. To study land administration in Germany, the scholar personally visited the Ludwig Maximilian University, Germany, and stayed there for six months to observe and study the land system of Germany. Thus, this chapter provides useful insights into German land practices that can be utilized in Pakistan.

6.2 Land Reforms in Germany

Since the pivotal year of 1989, Central and Eastern Europe has undergone profound transformations in its agricultural sector, marked by the transition from centrally-planned economies to market-driven systems. The collapse of the Berlin Wall and the dismantling of the Iron Curtain catalyzed these changes, triggering widespread land reforms aimed at privatizing state-owned agricultural lands previously managed by large collective and state farms. This transition period witnessed diverse trajectories among the region's countries: some swiftly completed reforms by the mid-1990s, while others encountered extended processes or minimal transformation. A central challenge arising from these reforms has been land fragmentation, where formerly large farms were divided into smaller plots. While measures to consolidate land holdings have been introduced in many countries, comprehensive studies linking reform strategies to the extent of fragmentation remain limited. Early academic literature from the late 1990s and early 2000s provided initial insights into these reforms, highlighting shared trends and distinct national approaches. This paper explores these complexities, analyzing how varied reform strategies have shaped agricultural landscapes and rural economies across Central and Eastern Europe.³⁸⁸

6.3 Historical Background of Land Reforms in Central and Eastern Europe

6.3.1 Overview of Prussian Serfdom and Land Reforms

In 1763, Frederick II of Prussia abolished serfdom on Crown lands and ended the suppression of peasants, aiming to improve their treatment. However, peasants had no land, so they returned to their lords to till their fields. In 1798, Frederick William III sought to abolish serfdom across the kingdom, allowing peasants to pay off labor obligations with cash. By 1806, following Napoleon's defeat of Prussia, reforms intended to modernize the state included the legal

³⁸⁸"Land Reform in Germany," Wikiwand, accessed July 9, 2024, https://www.wikiwand.com/en/Land_reform_in_Germany.

abolition of serfdom. However, peasants, unable to afford land, had to give up rights to assistance and common lands or part of their land, worsening their situation.³⁸⁹ Over the next decades, the government facilitated land purchases for peasants. After the 1848 revolutions, most peasant obligations were abolished, and peasants could buy land with bank mortgages. From 1850 to 1945, technological, medical, and agricultural advances spurred population growth in Germany, and social economists discussed land reforms. During WWI, soldier settlements were proposed, leading to the 1919 Reichssiedlungsgesetz (Imperial Settlement Act), transforming marshes into settlements. The 1923 Flüchtlingsiedlungsgesetz (Refugee Settlement Act) resettled Polish refugees. Post-WWII land reforms aimed to diminish land baron influence, reallocate land to refugees and displaced citizens, and improve agricultural efficiency. East Germany's communist Boden reform nationalized large estates, redistributing them to public ownership. After reunification in 1990, German courts upheld these land reforms, denying attempts to reclaim former estates.³⁹⁰

6.3.2 Evolution of Land Distribution in Germany

Land distribution in Germany has transformed significantly over centuries due to historical events, economic changes, and policy interventions. Under the feudal system, land was concentrated among the nobility and church, with peasants subjected to feudal obligations, leading to widespread inequality. The Prussian reforms (1807-1815), led by Karl August von Hardenberg and Baron vom Stein, aimed to shift land ownership to peasants by abolishing serfdom and feudal dues. Despite challenges during the Weimar Republic (1919-1933), efforts were made to distribute large estates to small farmers and veterans through settlement laws amidst political and economic instability. In post-World War II East Germany (1945-1949), land reforms expropriated large estates without compensation, redistributing land to peasants and refugees while establishing agricultural cooperatives (LPGs) to boost productivity. West Germany focused on consolidating fragmented land holdings, supporting small farmers with subsidies, technical assistance, and favorable credit terms, and enhancing rural development post-war. After reunification in 1990, East Germany underwent land privatization, breaking up collective farms and diversifying ownership structures. Today, Germany's agricultural sector features a mix of ownership models, including private individuals, family farms, cooperatives, and corporations, with regional

³⁸⁹ "Land Reform in Germany."

³⁹⁰ Morten Hartvigsen, "Land reform and land fragmentation in Central and Eastern Europe," *Land Use Policy* 36 (2014): 335, doi:10.1016/j.landusepol.2013.08.016.

variations between the former East and West. Regulatory frameworks govern land use, supported by subsidies under the EU's Common Agricultural Policy (CAP) to promote sustainability and rural development. Challenges remain, such as ensuring sustainable land practices, equitable access for new farmers amidst rising land prices, and adapting to technological advancements in agriculture.³⁹¹

6.3.3 Land Reform in Central and Eastern Europe

6.3.3.1 Land Reform and Compensation

Land reform processes in Central and Eastern Europe (CEE) since 1989 have been diverse, aiming to reshape agricultural structures while addressing historical injustices and economic efficiency. Across the region, countries like Lithuania, Latvia, and Estonia pursued restitution of pre-WWII land rights alongside privatization of state-owned land, albeit with variations in implementation. Conversely, in countries such as Hungary and Poland, unique approaches focused on compensation rather than restitution, using vouchers and privatization auctions to restructure agricultural holdings. Furthermore, countries like Albania, Romania, and Bulgaria undertook rapid redistributions of agrarian land to rural families, leading to significant fragmentation and small average farm sizes. The process has also seen attempts in former Yugoslav countries to balance restitution with large-scale privatization, impacting farm ownership and operational dynamics.³⁹²

6.3.3.2 Land Reforms Implementation

Implementing land reforms in Europe has encountered various challenges, particularly concerning privatization at both governmental and farm levels. Local opposition has often hindered privatization policies, complicating implementation. Governments grappling with principal-agent issues within implementing institutions have faced significant transaction costs in monitoring and controlling reforms. Moreover, deliberate governmental slowdowns have obstructed progress, reflecting a strategy to concede to reform pressures while maintaining political dominance, as de Janvry and Hayami argued. This "Conservative Model" suggests that reforms are often limited in scope to appease dissent and forestall more radical change, manifesting in complex and poorly executed reform laws across several Central and Eastern European Countries (CEECs). Examples include Hungary's ineffective legislation before democratic

³⁹¹ Erik Mathijs, "An historical overview of Central and Eastern European land reform," *Political Economy of Agrarian Reform in Central and Eastern Europe*, 2018, 40, doi: 10.4324/9780429446382-2.

³⁹² *Land reform in Central and Eastern Europe after 1989 and its outcome in the form of farm structures and land fragmentation*. Orbicon, 2013.

elections and Bulgaria's decree permitting limited private farming. In Romania, the National Salvation Front utilized reform to consolidate power post-revolution, granting local authority discretion in implementation but achieving mixed success in restoring property rights. These complexities underscore the intricate dynamics and challenges of land reform in the region.³⁹³

6.4 Impact of Land Reform in Central and Eastern Europe

6.4.1 Impacts of Post-1945 Land Reform in Eastern German

The land reform undertaken in Eastern Germany post-1945 aimed to reform patterns of land ownership, driven by Soviet intervention to dismantle traditional rural elites and integrate refugees from the East. This initiative also sought to create a more egalitarian distribution of land, targeting Junker landlords and large landowners with Nazi ties for expropriation. The confiscated land was redistributed primarily to land-poor peasants, farm laborers, and refugees, establishing smaller farms in place of large estates. While inspired by communist ideals, the reform faced significant challenges during implementation. The collapse of infrastructure and logistical issues in the postwar chaos hindered effective governance in rural areas. Socially, the rural populace's deeply rooted networks and religious ties complicated efforts to mobilize support and enforce reforms. Despite these obstacles, the land reform notably transformed land ownership across the Soviet Zone, particularly in regions like Brandenburg and Mecklenburg, amidst the political turmoil and economic instability of the post-World War II era.³⁹⁴

6.4.2 Impacts on Germany's Agriculture and Rural Society

Germany's land reforms in the 19th and 20th centuries transformed its agricultural sector and rural society. The Prussian reforms (1807-1815) led by Karl August von Hardenberg and Baron vom Stein modernized the feudal system by abolishing serfdom, granting peasants personal freedom and land ownership, and eliminating feudal dues. In the Weimar Republic (1919-1933), post-World War I agrarian reforms aimed to redistribute land through settlement laws and the Land Reform Act (1919), although political and economic challenges limited their success. After World War II, East Germany's reforms under Soviet occupation expropriated large estates without compensation, redistributed land to peasants and refugees, and promoted agricultural cooperatives for efficiency.³⁹⁵ In West Germany (1949-1990), reforms focused on modernizing agriculture

³⁹³ Peter Muller, "Recent Developments in Land Tenure and Land Policies in Germany," *Land Economics* 40, no. 3 (1964): 267, doi: 10.2307/3144735.

³⁹⁴ Muller, "Recent Developments in Land Tenure," 266.

³⁹⁵ Corey Ross, "The Land Reform and its Effects," *Constructing Socialism at the Grass-Roots*, 2000, 22, doi: 10.1057/9781403919724_2.

through land consolidation, support for small farmers, and rural development programs. These efforts increased agricultural productivity, ensured social and economic stability, and transitioned agriculture to a modern, market-oriented system, significantly shaping Germany's rural landscape and economy.³⁹⁶

6.4.3 Impact on Farm Structures and Land Fragmentation

Land reform in Central and Eastern Europe since 1989 has resulted in diverse agricultural landscapes shaped by historical, political, and economic factors. The Baltic countries—Lithuania, Latvia, and Estonia—focused on restoring agricultural and forest land to its pre-1940 state, alongside privatizing state land through sales or granting use rights. Estonia integrated state land sales into its reforms, while Latvia allowed users to buy state land they used. Central European nations like the Czech Republic, Slovakia, Hungary, Poland, and Eastern Germany, despite sharing similar pre-WWII farm structures, pursued distinct post-1989 paths. Hungary opted for compensation rather than restitution, distributing land through auctions with compensation vouchers. Poland aimed to improve structures by privatizing state land, involving former owners and leaseholders. The Czech Republic, Slovakia, and Eastern Germany saw partial land restitution, with large corporate farms remaining dominant. Different strategies were employed in the Balkans—Albania, Romania, and Bulgaria. Albania quickly distributed agricultural land, while Romania and Bulgaria gradually restored land based on pre-1946 ownership. This led to small farm sizes and extensive fragmentation, particularly due to co-ownership in Bulgaria and Albania. Former Yugoslavia countries maintained dualistic farm structures post-1989, with small family farms and large corporate entities inherited from socialism. Due to early EU accession, Slovenia retained larger holdings with high fragmentation. Croatia, Serbia, Montenegro, and Kosovo implemented restitution and privatization, significantly affecting land ownership and fragmentation. Western CIS nations—Moldova, Russia, Ukraine, and Belarus—began reform in the 1990s, privatizing collective and state farms with varying success. Belarus limited private land ownership, while Moldova and Ukraine shifted to physical land distribution. Russia mainly used land shares to maintain large-scale corporate farms. The restitution of pre-collectivization rights was less prioritized. Transcaucasus countries—Armenia, Georgia, Azerbaijan—distributed state land to rural families, leading to fragmented structures dominated by small holdings. Despite unified registration, substantial state-owned land persists, contributing to ongoing fragmentation

³⁹⁶Swinnen, Johan FM, "An explanation of land reform choices in Central and Eastern Europe," (1997).

challenges. In summary, post-1989 land reforms in Central and Eastern Europe have reshaped agricultural sectors with varying success, driven by strategies such as restitution, privatization, and compensation tailored to each country's historical and political context.³⁹⁷

6.5 The German Land Registry – the Grundbuch

The German Land Registry also gives the general name of the Grundbuch, which is considered central for seeking legal certainty in transferring real estate in Germany. Developed by the Prussian Land Register Code of 1872 and later strengthened by the German Land Register Code or GBO in 1897, this method represents efficiency, reliability, and legal security in property transactions. The Grundbuch, according to the historical legal norm of the early twentieth century, stipulates an accurate and easily accessible record of the property rights that are recorded in the documents that form the basis for all real estate transactions. Technological advances have led to shifts in its operations while other important principles have remained unaltered. Since 1993, it has embraced electronic means.³⁹⁸ Therefore, this chapter examines the German Land Registry from a historical perspective, revealing its current functioning organizational structure, related legal doctrines, recent developments in recent years, and its ever-growing role in the German legal system

6.5.1 The Evolution of the German Land Registry

For the first time, the Prussian Land Registry Act of the same year, 1872, provided for the registration of all property rights in the land and was the first in a series of changes towards the real land register. Therefore, in Form I, each property is allotted a separate page on the land registry. The document has only one main title with 3 sections on the whole page.³⁹⁹ This land registry law was somewhat followed by enacting the Grundbuchordnung (GBO) [German Land Register law] on March 24, 1897. It completed the Bürgerliches Gesetzbuch (BGB), also known as the German Civil Code. The German Civil Code, commonly referred to as the Bürgerliches Gesetzbuch (BGB) and the German Land Register Code, Grundbuchordnung (GBO), was enacted on the 1st of January 1900.⁴⁰⁰ The state implementation laws were codified simultaneously with

³⁹⁷ Imar A. Stuhler, *Land Policy in the Federal Republic of Germany* (1989), 55.

³⁹⁸ "The Introduction of REITs - What Happened in Germany," *Book of Abstracts: 2005 European Real Estate Society conference in association with the International Real Estate Society - Dublin, Ireland, 2005*, 220, doi:10.15396/eres2005_320.

³⁹⁹ Menzen, *Die preussische Grundbuch-Ordnung: nebst dem Gesetze über den Eigenthumserwerb und die dingliche Belastung der Grundstücke, Bergwerke und selbstständigen Gerechtigkeiten vom 5. Mai 1872 : unter Anführung von erläuternden Parallelstellen nebst Formularmustern zu Verhandlungen und Verfügungen* (1887), § 7, 24.

⁴⁰⁰ Ivanenko, Dmytro Dmytrovych, "History of development of the system of state registration of real estate in Germany (end of XVII-the beginning of XXI century)," (2015). 2.

the Land Register Code because the federal states in Germany wanted to maintain their jurisdiction. Thus, in February 1905, the prince of Bavaria (Luitpold) determined the control, issuing an order under the land registry authorities in the state regions of the Rhine. The implementation laws have been abolished at the state level by the GBO amendment of 1935, casting a common format valid across Germany based on the Prussian model still used today by the land register.⁴⁰¹ Since it contained no ideological implications, it was all right for the German Land Register Code to remain in force in the Federal Republic of Germany after 1949 under Article 123, paragraph 1 of the German Federal Law. These were pre-Constitution laws that together held no ideology at all. Subsequently, the German 'Land Register Code' was altered when Germany reopened the Act of 1993; the mentioned Act was enacted on 20.12.1993. It was known as 'Registerverfahrensbeschleunigungsgesetz,' which helped upgrade the process of conventional 'Land Register' from a paper base to computers. But, of course, the principles of registering the land law have not changed much, which is why it can be viewed here as the shift of the medium or format.⁴⁰²

The recent amendment to the German Land Register Code (GBO) took effect in 2022 with diversified provisions containing various extensive alterations intended to redesign the approaches towards registering land. Article 16 of this Amendment deals with transforming land registry to electronic media, thus leaving old methods of land registration. It not only makes the processes easy but makes them swift. It also has an efficient procedure for the task and submission of applications for the registration of property rights for the applicant. The change is expected to make registration more open and transparent. Since the proprietors and any other interested party can approach a register to find out the position of the property and any matter for which it is charged. Article 16 should help enhance the protection of the rights of the registrants and potential buyers for properties through such measures aiming to work on the efficiency of these procedures and incorporating more advanced technology to ease early registration accurately and efficiently. Such a change has incorporated an approach to meet the modern requirements to respond to the dynamics and flexibility in the delivery of the approach about the land registration system without

⁴⁰¹ Ivanenko, "History of development of the system of state registration," 2.

⁴⁰² Michael Schick, "Regulations and Laws on Real Estate Agents, Notaries and Cadastres," *Understanding German Real Estate Markets*, 2011, 80, doi: 10.1007/978-3-642-23611-2_6.

negating the first principles of the land registration system, which remains accurate in the determination of rights and the law on the protection of rights in property.⁴⁰³

6.5.1.1 Structure (Jurisdiction and Procedural Authority in German Land Registration)

In Germany, land registers are managed by District Courts rather than municipalities, as stated in the German Land Register Code (GBO).⁴⁰⁴ This system dates back to the Middle Ages and ensures higher legal certainty in real estate transactions because the courts can directly address objections. For instance, Munich's town charter 1347 mandated court involvement in property matters. The land register is administered by independent legal experts whose decisions can only be overruled by higher courts, such as the Higher Regional Court in Bavaria. Procedural competence is assigned to the Rechtspfleger (Legal officer) as per § 3 and 9 of the German Legal Officers Act (RpflG). The Rechtspfleger, independent and bound only by law, handles all tasks related to the land register, ensuring the process is free from external influence.⁴⁰⁵

Currently, as of 2014, the Munich land registry had 51 Rechtspfleger and 39 employees, dealing with 105,212 deeds, divided into 29,476 deeds related to ownership and 69,152 deeds related to encumbrances, restrictions, and real estate liens.⁴⁰⁶

6.5.2 Grundbuch and Its Three Divisions

The German land register rightly called the Grundbuch, is an inherent attribute of German property law and has existed to ensure organized documentation regarding ownership of properties and related rights thereon. Based on the registration procedures, the Grundbuchblatt – the land register sheet – consists of three parts.⁴⁰⁷

Ownership is the information content of the First Division of a Grundbuchblatt. It contains the property owner's name and, if necessary, stipulates who owns what proportion of the property: an owner or with a company, an owner and his partners, etc. This split must be made to distinguish the person with the legal title to the property to mark the primary ownership. By disseminating

⁴⁰³ Google Translation of the latest amendment of the GBO, Article 16, "Bundesgesetzblatt BGBl. Online-Archiv 1949 - 2022 | Bundesanzeiger Verlag, accessed September 21, 2024.

⁴⁰⁴ § 1 (I) Sentence 1 GBO.

⁴⁰⁵ "Pressemitteilung 19/2015 - Bayerisches Staatsministerium Der Justiz," Justiz in Bayern, accessed September 21, 2024, <https://www.justiz.bayern.de/gerichte-und-behoerden/amtsgerichte/muenchen/presse/2015/19.php>.

⁴⁰⁶ "Pressemitteilung 19/2015 - Bayerisches Staatsministerium Der Justiz,"

⁴⁰⁷ Menzen, *Die preussische Grundbuch-Ordnung*, § 7, 24.

such information, the First Division enables all people involved in exercising real estate transactions to look for the latter's owner, thus increasing legal confidence.⁴⁰⁸

Indeed, the Second Division contains all modalities of encumbrance and prohibition not to be discussed in the Third Division. They include easement interests, notices of conveyance and disposal, and restrictions affecting the land. It can record rights of residency, usufruct rights, and any complaints concerning ownership. This category is important for transparent processes so that the owner is aware of any claims restricting the owner's right to mobility or the property's value. By implementing such a plan, the buyers and other people interested in the property may come to certain conclusions regarding the property of interest.⁴⁰⁹

The Third Division specializes more in real estate liens. It encompasses any assertion of a right, like a lien, in the finances related to a particular property. This section presents various types of the aforesaid liens, such as land charges, secured land charges, mortgages, and securities mortgages. The Third Division includes records on outstanding financial liabilities. It proves to be a treasure trove for any financier and possible property buyer. Thus, updating on the current liabilities related to the particular property. This ensures that all the parties involved in the transaction can be informed of the property's financial standing.⁴¹⁰

Collectively, these three divisions provided an absolute and open account of all property rights and obligations under the German land register system. They legally catalyze and control real estate transactions, defend the owner's, creditors and future purchasers' rights, and defend the legal status of the property law framework in Germany.

6.5.3 Fundamental Principles of German Property Law

Therefore, this literature review shows that German real rights are absolute, perpetual, and universal, offering relatively more protection, particularly in realization and insolvency. The following are the established forms of the German property law:

The *numerus clausus* concept, incorporated in German property law, provides that the allowed rights must be chosen from a legal enumeration that corrects for legal uncertainties and lack of harmonization in property law transactions. This principle rules out the possibility of limiting the rights that could be afforded or enshrined in the law and draws the final parameters of

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

the ownership and use of property. Some rights are ownership (Eigentum), which gives the holder unlimited rights over the property. Usufruct (Nießbrauch) - where the member can benefit and use another member's property while preserving its substance and easements (Dienstbarkeiten). It provides the right to use a portion of another's property for a certain purpose. For instance, the passage of land levies (Grundschuld), which act as collateral for a debt without transferring ownership. The numerous clauses principle enhances the overall reliability of the German land registration system by restricting property rights to these defined categories, thereby promoting clarity and predictability in real estate transactions.⁴¹¹

Despite all the benefits of the above principles, the fourth principle of clarity and definiteness requires the object and content of real rights to be described to ensure that the land register is informative. It guarantees that the object and substance of real rights are described to the extent that the subsequent owners and, for example, the potential buyers may rely on the record in the land register. This code clearly shows that any form of disposal must benefit from the related entity.⁴¹²

It is viewed from the factual perspective that, unlike contractual rights, rights in rem make a clear differentiation between legal ground and enforcement, and therefore, by pointing out that the transfer of real rights is still good despite the unconstitutional character of the transaction that gave rise to it. The two operations are standalone from each other, but in a way that would be completely and utterly devoid of physical representation.⁴¹³

The principle of legality places a legal imperative on the Land Registry to vouch for the genuineness of every record in the Land Register. In legal writing, it has been described that the Land Registry must follow all legal substantive and procedural norms. Consequently, the Land Registry is responsible for overseeing and keeping official records of the land. This means that the Land Registry cannot deliberately generate the wrong information for the land record. It cannot afford to leave the room for the land record to be bad on purpose. This principle is based on the German Land Register provisions and clause 3 of Article 20 of the German constitution [Grundgesetz].⁴¹⁴

⁴¹¹Wilsch, Harald, "The German "Grundbuchordnung": History, Principles and Future about Land Registry in Germany," *ZfV-Zeitschrift für Geodäsie, Geoinformation und Landmanagement* zfv 4/2012 (2012).226.

⁴¹² Wilsch, "The German "Grundbuchordnung," 226.

⁴¹³ Ibid.

⁴¹⁴ Ibid.

The last of the German Real Law general principles concepts is the public disclosure principle. Since actual rights are generalized, they must be asserted to a third party to address this weakness. Later, as a consequence, § 873, clause 1 of the BGB, establishes the rule that any property transfer and the creation of any real right should be registered in the Land Register. The land register must demonstrate the legal status of the aforementioned immovable property. The entry concludes the acquisition of a real right. Therefore, the entry occurs through the constitutive act rather than the declarative. A more appropriate example is § 891 BGB, which is of the nature of a presumption of law. Since this is presented as a real right with the competent land registry, the landowner is endowed with this real right. At the same time, there is skepticism that the real right underlying the land registry has been amortized.⁴¹⁵

6.5.4 Land Registry Procedure

The German Land Register Law regulates activity that guarantees legal certainty in purchasing land and buildings. According to § 12c (1) GBO, requests to the relevant land record are only possible where a legitimate interest can be pursued; with the authentication of this process, the authentication clerk is tasked with upholding openness and data protection principles. As noted in the prior section concerning the Land Register, the register will be made accessible to only a selected few.⁴¹⁶

According to § 13 of GBO, the application for entries opens legal rights on the registration of property and refers to the Land Register as the register of property rights. The law under discussion and defining the rights of nonresident shareholders is § 13, which refers to a 1988 act, and its first part says: “(1) Subject to exception whereby the law may provide otherwise, registration should only be made upon application.” Application may be made by any person affected by the registration or by the person to whom the registration is directed. As seen in § 20, registration should only occur if a notary offers an application on behalf of the qualified candidate.⁴¹⁷

The corresponding parties individually make the entry under discussion at their own will. As mentioned in point 3.7, public disclosure can be a key reason to put in an application. The entry has a constitutive function, creating property and other real rights in the Land Register. This

⁴¹⁵ Ibid.226-227. *See also*, "Ownership Protection for Land in Germany," BDVI, accessed September 27, 2024, <https://www.bdvi.de/en/pas/ownership-protection-land-germany>.

⁴¹⁶ Wilsch, "The German "Grundbuchordnung," 227.

⁴¹⁷ Ibid.227-228.

necessitates an entry. Therefore, the German Land Register is commonly known as one of the most important registers. Being able to receive the title to their properties is made possible only with an entry in the Land Register; legal relations may rely solely on the data provided in the Land Register. The hidden costs of any form are excluded from Germany's Land Register. The Land Register is public domain, which means that any person can gain access to it. Sub-section 3 of § 18 of the Land Register Code further notes that when an application for an entry is stopped, the Land Registry must reject it under certain reasons or indicate a certain reasonable time within which a particular problem ought to be resolved.⁴¹⁸

The formal consensus is first discussed in the GBO § 19 by enhancing the notarized approvals' standardization and specifying the only process that must be observed during the registration. While §19 requires only formal consent for a transfer of land and for special rights, § 20 only does this for transferring land so that legal certainty of dealings in properties is achieved.⁴¹⁹

§ 53 deals with removing any entry that amounts to illegality or has been fraudulently entered and swallows the presumptions of title of the Land Register. § 53 says: '(1) if it becomes apparent that the Land Registry office has made an entry in violation of the statutes and therefore an incorrect Land Register is created, an objection shall be registered ex officio.' If any entry is considered inadmissible, much of its content shall be deleted per the proper procedure. This allows the Land Registry to expunge entry against the legal standard or when entered wrongly. All these aspects focus on this procedure and try to establish a standard procedure for the Land Registry to enhance the process's reliability, security, and order.⁴²⁰

6.5.5 Impact of Land Registry in German Law

As per § 873 of the BGB or the German Civil Code, the requirement of the real estate transfers and change of real rights, separation must be made under an agreement, and registration normally confers the constitutive effect. § 891 further presents' hypothetical assumptions: In particular, the positive assumption asserts ownership where a person is registered, and the negative assumption revokes a right where their name is de-listed in the register. All these assumptions also relate to the Land Registry; however, they can be discussed, as can be seen when a mortgage is discharged and an authenticated receipt is provided.⁴²¹

⁴¹⁸ Ibid.228.

⁴¹⁹ Ibid.228.

⁴²⁰ Ibid.229-230.

⁴²¹ Ibid.230.

As per § 892, bona fide acquisitions are made appropriately and rely upon the entry in the Land Register but are correct only for legal transactions, and the right of disposal is maintained. That, in turn, lays down where an objection has been noted in the registrar of title or where the purchaser has knowledge of an inaccuracy in the register, the defense of good faith ceases to apply. It ensures the use of the entries under the Land Registry, which affords legal convictions on the same lines as a check on every deed without recourse to such an entity. The interests of the recipients are being considered in the Land Registry to a lesser extent, and the German legislator has paid more attention to legal security than an actual recipient's interest.⁴²²

6.6 Responsibility and Legal Safeguards in German Property Law

For this purpose, § 53 (1) GBO in German law permits objections to the acquisitions made in good faith to question the correctness of the Land Register and to avoid the action on damages against the state. Real rights are also referred to in § 892 of the Civil Code as regards the consequences of acquiring real rights in good faith. It enshrined legal safeguards for purchasers who are reluctant to have earlier rights over the property they acquire, enhancing the credibility of the Land Registry. On the other hand, the legal construction of good faith acquisition is comparatively more protected.⁴²³

However, following Article 34 of the German Federal Constitution and § 839 of the Civil Code, the legal responsibility of governmental conduct for the actions of officials is recognized to make the government itself directly responsible for its actions rather than turning attention towards specific officers. Deductive responsibility comes into force only in cases of dishonest intention on the part of government officers, or they were careless; as for remedies, the act provides compensation in money only due to the impossibility of restitution under German law.⁴²⁴

6.7 Recent Developments in German Land Registry Procedures

Germany made a significant shift on September 1st, 2009, based on the new Family Procedure Act (FamFG), which switched from the Voluntary Jurisdiction Act (FGG). This reform impacts family lawsuits, probate matters, business filings, and the Land Registry Procedure.⁴²⁵ The FamFG is a general law, while GBO is a more focused regulation. For example, some appeal regulations of the FamFG differ from those in the GBO, which would allow for disparities in the

⁴²² Schick, "Regulations and Laws on Real Estate," 81.

⁴²³ Wilsch, "The German "Grundbuchordnung," 230.

⁴²⁴ Ibid. 231.

⁴²⁵ Ibid. 231.

Land Registry Procedures mentioned above.⁴²⁶ Current rules under FamFG also require new elements for all decisions, including partial and rejection decisions, the right of appeal, the court where the appeal should be filed, and the time to do it. Based on the German Land Register Code § 72, the Supreme Court hears appeals starting September 1, 2009, and the registrar gets more powerful. The aim of e-conveyancing under the Electronic Legal Transactions Act (ERVGBG) began on the 1st of October 2009 for improvement and submission of papers and control over electronically managing papers relating to the Land Registry. Consequently, the principles where electronic documents are brought to the Land Registry are helpful under § 136, Paragraph 1, GBO: an essential step of enhancing an electronic document is its recording by the appointed technical facility. Part and parcel of § 137 of the GBO mainly focuses on the conditions that refer to the structure of the electronic record and the legal status of these documents compared to the paper documents.⁴²⁷ § 138 The GBO regulates the conversion and transfer of documents electronically and on paper and provides linkage/conversion accuracy. The GBO has, under §139 of the GBO, authorized some types of records kept at various Land Registries to be inspected for increased public convenience. In the electronic file management system (Grundakte) to which decisions may be produced and issued electronically, § 140, GBO is conveniently regulated. The Land Register Database Act (DaBaGG) is an era of the planned reconstruction of the German Land Register for major innovation, such as curve acquisition for land registration and better introduction of new technologies for data usage and legal assurance.⁴²⁸

6.8 Conclusion

The study of land reforms in Central and Eastern Europe since 1989 reveals varied approaches and outcomes across 25 countries, highlighting the influence of historical, political, and economic factors—the reforms aimed to transition from centrally planned to market economies, privatizing state-owned agricultural lands. Despite common goals of equity and political justice, the strategies differed significantly, resulting in diverse farm structures. Some countries, like the Baltic States, completed reforms focused on restitution, while others, like Hungary and Poland, emphasized compensation and privatization. The Balkan countries experienced rapid land redistribution, leading to significant fragmentation. In contrast, Western

⁴²⁶ Ibid, 225.

⁴²⁷ C. R. Wolf, "Real-Estate Property Law Germany," *Key Aspects of German Business Law* (n.d.), 121, doi: 10.1007/978-3-540-68577-7_10.

⁴²⁸ Investabcom, "Introduction to the Land Register in Germany - Grundbuch," Invest-AB.com, last modified May 28, 2024, <https://www.invest-ab.com/land-register-germany-grundbuch/>.

Commonwealth of Independent States (CIS) countries largely retained large corporate farms, except Belarus. The Transcaucasia region saw small, fragmented holdings due to state land distribution. These reforms dismantled traditional farm structures, creating complex agricultural landscapes with ongoing land ownership and use challenges. Further research is needed to explore the link between reform approaches and land fragmentation, understand the long-term impacts, and develop strategies to enhance the region's agricultural productivity and rural development. This paper provides a foundation for more comprehensive studies, addressing key questions about the coherence between land reform and land fragmentation and offering insights for future policy improvements.⁴²⁹

The German Land Register as the Grundbuch enhances German real estate transfers' transparency, legal security, and effectiveness. It began with the Prussian Land Register Code of 1872 but was enhanced by the German Land Register Code (GBO) of 1897 and was useful for the registration as well as the enforcement of rights on property. This kind of registration was initially grounded on the legal institution formed in Germany in the early part of the 20th century but has sufficiently evolved to retain standard present measures, including the electronic methods since 1993 to form the Grundbuch. The three divisions of Grundbuch ensure that all domains of land and property are addressed. This ensures that property disputes reach high legal certainty standards through tenets such as 'numerus clausus' and the nature of rights in rem. The Land Registry authenticates property transactions, meaning buyers who act lawfully cannot lose their rights. The system also put in place a strong framework to support recent reforms. The New changes, such as the FamFG and ERVGBG, contain sections that seek to implement technology to be efficient and made available to the public to show that it adapts. Recently, the 2022 updates in the system synchronized it with the cutting-edge technological demands of the time. The system is implemented in District Courts and monitored by Rechtspfleger, independent legal officers. This proves that the Grundbuch is a rather significant organization within Germany's comprehensive legal system for verifying authenticity, openness, and dependability achieved within the property trading market while considering the capacity for fluctuation in the market.

⁴²⁹ Germany. Office of Military Government. Economics Division, *The Land Reform* (1946), 151.

Chapter 07. Findings, Conclusion, and Recommendations

This chapter discusses the study's major findings, such as land statistics of the country, establishing the need for land reform, main obstacles and overcoming them, revisiting the Qazalbash Waqaf case for public purpose, and proposed model for land reforms in Pakistan. Moreover, the chapter attempts to answer the research questions and enlists the key recommendations and implications of the study.

7.1 Land Use Statistics of Pakistan

Its total land area is about 803,940 square kilometers. 48 million hectares, or 60%, are considered unusable for forestry or agriculture and consist mainly of deserts, mountains, and demographic settlements. About 21.9 million hectares are being cultivated. The cropped area is nearly 65% in Punjab, perhaps 25% in Sindh, and 10% in the Khyber Pakhtunkhwa and Baluchistan.⁴³⁰

Three phases of land reforms have not been able to remove 3,529 *zamindars*, which hold 5 13,114 acres of land in irrigation areas and 3, 32,273 acres of land in irrigation areas. Of the 7 94,774 *Khatedars* there are 54 64,771 land holdings below 12 acres in irrigated areas; 1,44,098 are said to be holdings of less than 24 acres in unirrigated areas and 16,28,826 holdings of less than 24 acres. Pakistan's economy is largely driven by agriculture, which constitutes 25% of the gross domestic product, 60% of export income, and 48% of employment, said Tanveer Arif, CEO of Scope, at the workshop.⁴³¹

7.2 Establishing the Need for Land Reforms

This study broadly and specifically elaborated on different facets of the Subcontinent's land system, Particularly Pakistan. Since the Qazalbash Waqf case, which declared the previous land reforms un-Islamic, there have been no other legislative measures after that in Pakistan. Due to feudalism's negative impacts on the economy, social life, and civil liberties of the people, there should be reasonable legislation on the subject. From the previous discussion, the researcher concludes that there is an immense need for land reforms in the light of the Pakistani legal framework, which can be summarized as follows.

⁴³⁰ From the Newspaper, "5pc People Hold 64pc of Pakistan's Farmland, Moot Told," DAWN.COM, last modified October 10, 2023, <https://www.dawn.com/news/1048573>.

⁴³¹ Ibid.

Firstly, the manner of land allocation in Pakistan is feudal and capitalist, in which land stays in some selected families, which in turn provides them with social and economic power, and the remaining population is left to their mercy. Such capitalist land distribution greatly leads to the exploitation of the working class, which causes social and psychological imbalances in the human mind. However, according to Article 3 of the constitution of the Islamic Republic of Pakistan, the subjects are protected from any form of exploitation in these words: “*The State shall direct its policy towards the elimination of all forms of exploitation and the gradual realization of the principle that the earth belongs to everyone and that the blessings of the earth are a common heritage for all, from each according to his ability, to each according to his work.*” Based on this article, people should be paid based on their work and productivity. The feudal lords usually corrupt tenants' abilities, efforts, and mental skills more than compensate them for their efforts.⁴³²

Secondly, the feudal system leads to economic injustice and discrimination among the citizens of the country, whereas Article 25 of the Constitution of the Islamic Republic of Pakistan 1973 says that.; (1) Article 7, Section 1: “*all persons are equal before the law and the law protects all.*”⁴³³

This Regulation is immune from challenge based on the proviso to Article 8 (1 & 2) of the Constitution of Pakistan 1973, which states that “*Laws inconsistent with or in derogation of Fundamental Rights to be void.*” Article 8 (1) of the Constitution of Pakistan 1973 states that *Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.*”⁴³⁴

Firstly, Act II of 1977 is a law made and administered by Parliament to exercise the powers conferred on the Parliament under Art. 253, it is immune under Art. 24 (3) from any challenge. On the condition that the adequacy or otherwise of the compensation fixed by it cannot be questioned in any Court vide Article 24(4) provided that “The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.”⁴³⁵

⁴³²Gufran Ahmad, "A Fundamental Rights Perspective of Land Reforms in Pakistan," *Pakistan Social Sciences Review* 4, no. III (2020): 441, doi: 10.35484/pssr. 2020(4-iii) 32.

⁴³³ Pak. Cons. Art.25.

⁴³⁴Ibid, art, 8 (1 & 2).

⁴³⁵ Ibid, art, 24(4).

It was seen in Haji Nizam's case that the indigent and the destitute are the class of people who can claim maintenance against the rich kinsfolk. This right could be enforced even in court.⁴³⁶ Article 253 is self-executing because it is a complete code, achieves especially by its clause (2) what it proposes to do, and is mandatory in the process, making all laws inadmissible that are repugnant to it.⁴³⁷ As provided by Article 38 of the Constitution, it should be the duty of the State to raise the standard of living of the people; land reforms will help in improving the standard of living of the people.

The 1973 Constitution of Pakistan comprehensively deals with all kinds of land. Article 23 of the Constitution dealing privately owned land and property rights states: "Every citizen shall have the right to acquire, hold and dispose of the property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest."⁴³⁸ Article 24 also protects property rights and states: "No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and how compensation is to be determined and given."⁴³⁹

Further, Article 173(1) provides for the powers of government to acquire property and make contracts, etc:

"The executive authority of the Federation and a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase and acquisition of property on behalf of, the Federal Government or, as the case may be, the Provincial Government, and to the making of a contract."⁴⁴⁰

Thirdly and most importantly, such kind of land distribution engenders a slave-master relationship between the tenants and the landlords that removes the real meaning of freedom for which the constitution guarantees individual freedom, and slavery in any form is outlawed as is clear from Article 11 (1) of the Constitution, "Slavery is non-existent and forbidden, and no law shall permit or facilitate its introduction into Pakistan in any form."⁴⁴¹ Article 9 of the Constitution also establishes the Security of a person, which clearly states that "No person shall be deprived of

⁴³⁶ Haji Nizam Khan Vs Additional District Judge, Lyallpur and Others, PLD, 930 (Lahore High Court, 1976).

⁴³⁷ Qazalbash Waqf and Others vs. Chief Land Commissioner, PLD, 99 (Supreme Court, 1990).

⁴³⁸ Ibid, art, 23

⁴³⁹ Ibid, art, 24.

⁴⁴⁰ Ibid, art 173.

⁴⁴¹ Ibid, art, 11 (1).

life or liberty save per law.”⁴⁴² ‘Social justice as enunciated by Islam’ and ‘social, economic, and political justice’ are guaranteed through the Objectives Resolution of Pakistan. It is social justice in the common parlance to buy land to give to those who need housing by compensating their owners, and in proving social justice as enunciated in Islam, it is social justice.⁴⁴³

7.3 Obstacles in Enforcing Land Reforms in Pakistan

The enforcement of land reforms in Pakistan has been facing several challenges. The judicial procedure has been hard for poor people to access. The legal process can be daunting and inaccessible for low-income people, piled with procedural complexities that deter them from seeking justice. As rights enforcement often depends on judicial interventions, the complexity, and costs associated with legal procedures constitute a significant barrier, as illustrated by the challenges the poor face in accessing property and land rights, as highlighted in the Qazalbash Waqf case.

Navigating these procedures can be a formidable challenge for the economically disadvantaged, who often lack the resources and legal knowledge to pursue their claims. In R.F.A No.285-P/2015, Peshawar High Court, Raidullah v. Government of KP (Khyber Pakhtunkhwa), the court determined that the appellant lacked a legitimate under the Khyber Pakhtunkhwa Tenancy statute since the Supreme Court had declared the statute to violate Islamic Law, as the issue of tenancy and land ownership is central to the argument. One of the main features of feudal systems is the idea of land tenure, according to which people have the right to use and profit from land. The appellant’s “occupancy tenant” claim to the land is reminiscent of feudal countries’ idea of tenant farmers. The fact that the appellant’s suit was deemed time-barred was, therefore, the biggest obstacle. Within the thirty days allowed by the NWFP Waqf Properties Ordinance⁴⁴⁴, he did not contest the land’s designation as waqf property. Therefore, this case demonstrates how procedural obstacles can greatly influence a case’s outcome. Strict deadlines and intricate legal precedents are only two examples of these obstacles, which make it difficult for people to fight for their rights and navigate the legal system. The right to property and a sufficient standard of living are recognized as fundamental human rights by “the Universal Declaration of Human Rights (UDHR)” and its implementing covenants, including “the International Covenant on Civil and

⁴⁴² Ibid. art, 9.

⁴⁴³ Federal Government Employees Housing Foundation, Islamabad Vs. Malik Ghulam Mustafa, SCMR, 201 (Supreme Court, 2021).

⁴⁴⁴ R.F.A. No.285-P/2015. Peshawar High Court, Peshawar, Raidullah v. Government of KPK. Decided on 16.01.2017.

Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)”⁴⁴⁵ However, the procedural obstacles that impoverished litigants encounter throughout court processes frequently impede the realization of these rights. The Qazalbash Waqf case is an example of these difficulties since the landless poor found it difficult to contest the constitutionality of land reform laws due to the intricate legal criteria and procedures. Elements, including the high expense of legal representation, the requirement for specific legal expertise, and the drawn-out nature of court processes, can effectively deny access to the poor. The dearth of pro bono and legal aid agencies that assist those from low-income backgrounds in navigating the legal system makes this situation even worse. Thus, the legal framework’s procedural difficulties have the potential to seriously impede the enforcement of impoverished people’s rights, thereby compromising the fundamental ideas of justice and equality.

Due to a lack of government funding, court rulings that benefit the poor, like those in the Qazalbash Waqf Case, frequently encounter obstacles in their execution. Similar to the difficulties encountered in other jurisdictions, such as Pakistan’s battle with the implementation of land reform under several legislative phases, this barrier is apparent in the post-verdict phase, where the execution of rulings has been postponed or ignored.

A lack of administrative competence, conflicting government goals, and inadequate budgetary allocations can all cause judicial rulings that favor the poor to be implemented slowly or not. Strengthening the enforceability of the undetermined rights of the poor requires addressing these resource-related issues.⁴⁴⁶ The lack of resources and capacity within the legal system can result in incomplete or ineffective enforcement of court orders, undermining the impact of judicial decisions. In the Qazalbash Waqf case, the Supreme Court's ruling that struck down key provisions of the 1972 Land Reform Regulations and the 1977 Land Reform Act effectively reversed much of the progress in redistributing land and empowering the landless poor.⁴⁴⁷ This inability to fully implement court-ordered reforms highlights the need for a more robust and well-resourced institutional framework to enforce poor rights effectively.

⁴⁴⁵ "The Universal Declaration of Human Rights," *Human Rights: Thirty Years after the Universal Declaration*, 1979, Art.3. Right to life & Art. 17. Right to property, doi: 10.1163/9789004638075_017.

⁴⁴⁶ Rana U. Khan, Ali Shahid, and Rao Q. Idrees, "Combating Land Grabbing in Pakistan: Legal Challenges and Reforms," *Qlantic Journal of Social Sciences* 4, no. 3 (2023): 255, doi:10.55737/qjss.503641381.

The challenge of limited resources is not unique to Pakistan, as many developing countries face similar constraints in implementing court-mandated social welfare policies and programs. Inadequate budgetary allocations, lack of administrative capacity, and competing priorities within the government can all contribute to the delayed or incomplete implementation of judicial decisions favoring the poor. Addressing these resource-related challenges is crucial for strengthening the enforceability of undetermined poor rights.⁴⁴⁸

Strong organizations that stand to gain from preserving the current status quo usually hinder the implementation of laws meant to protect the poor. As evidenced by the difficulties encountered during the Tenancy Act's passage in Pakistan and the opposition to its application, which ultimately resulted in the Qazalbash Waqf ruling, this kind of resistance is a major obstacle.⁴⁴⁹ When the implementation of rights of poverty-stricken masses or individuals threatens their current privileges or financial interests, powerful people or groups (typically the landed elite) may oppose it. This opposition can manifest in several ways, including lobbying against reform laws, taking advantage of legal loopholes, or utilizing their power to postpone or impede the execution of court-ordered actions. The Supreme Court's ruling to invalidate important parts of the land reform rules was interpreted as a win for the landed aristocracy, who aimed to maintain their control over resources and land, as demonstrated in the Qazalbash Waqf Case. Vested interest opposition can appear in the legislative and executive departments of government and the judiciary. Lawmakers may be reluctant to enact laws challenging the status quo, while government officials tasked with implementing reforms may face pressure from influential landowners or political patrons.⁴⁵⁰ This power imbalance can undermine the effectiveness of even well-intentioned laws and policies aimed at protecting the rights of the poor.

Overcoming this resistance requires a multi-pronged approach that combines legislative reforms, judicial activism, and strong political will. Strengthening the capacity and independence of institutions responsible for enforcing poor rights and fostering greater public awareness and participation can help counter the influence of vested interests and ensure the equitable

⁴⁴⁸ Rana U. Khan, Ali Shahid, and Rao Q. Idrees, "Combating Land Grabbing in Pakistan: Legal Challenges and Reforms," *Qlantic Journal of Social Sciences* 4, no. 3 (2023): 255, doi:10.55737/qjss.503641381.

⁴⁴⁹ Ronald Herring and M. G. Chaudhry, "The 1972 Land Reforms in Pakistan and their Economic Implications: A Preliminary Analysis," *The Pakistan Development Review* 13, no. 3 (1974): 273, doi:10.30541/v13i3pp.245-279.

⁴⁵⁰ Khan, Shahid, and Idrees, "Combating Land Grabbing in Pakistan," 255.

implementation of laws. Effective enforcement of poor rights necessitates a sustained effort to address the entrenched power dynamics perpetuating socioeconomic inequalities.⁴⁵¹

When a major operation was launched to remove unlawful encroachments along the Malir River in Karachi, the Malir River encroachment issue gained prominence. It explained the problems authorities face in reclaiming public land and the pervasive problem of land grabbing in metropolitan areas. This case highlighted the difficulties and complications in combating land grabbing, particularly in urban areas with high population densities. The issue was complicated in several ways. For example, many affected people lived in unofficial or undeclared settlements near the river. The need to regain public property and the right to shelter must be balanced during the judicial process. Confirming ownership without official land titles was challenging, even though several residents claimed to have lived on the property for centuries. The eviction of informal settlements raised concerns about offering displaced families alternate housing options, highlighting the necessity of all-encompassing measures to address housing problems.⁴⁵²

All the major reforms (reforms of the late fifties, early seventies, and late seventies) in Pakistan's history could not deliver on its initial or intended promises. The core issues that engulfed all intended or goodwill initiatives in the 60s and 70s for the benefit of farmers or improving productivity were not even aimed at the said objectives. The initiatives were aimed at limiting the landholdings and were not aimed at securing the necessary benefits for the poor farmers or the leasers. The ceiling aspect also appeared as a hurdle in the whole exercise of reform implementation. The issue is setting the ceiling limits per person and not per family. The resettlement or sharing could not cover most of the deserving populous as the needy and deserving poor farmers were far more than the lands acquired during the exercise. In the year 1959, the then president and martial law dictator expressed in clear terms that though it was urgent and needed to turn our attention towards the uneven distribution of the lands across the country, it was also a matter of esteemed consideration to not make any hurdles in the way of those prosperous farmers who were too large landholders but were achieving produces through their struggle. For the abovementioned reason, the land-holding limits were set high. Thus not affecting mediocre landlords. The outcome of the reforms was clear, as the large landholders were not ready to give

⁴⁵¹Herring and Chaudhry, "The 1972 Land Reforms in Pakistan," 272.

⁴⁵² Our Correspondent, "Plea against Malir River Encroachment," *The Express Tribune*, September 8, 2022, <https://tribune.com.pk/story/2375494/plea-against-malir-river-encroachment>.

up on their fertile and cultivable lands. These lords, only forcible, gave up on their barren or deserted lands and took advantage of the government's incentives. Around 1.3% of the agrarian coverage was recovered, and most of the poor farmers paid for the land awarded to them.

The evasion and resistive tactics continued throughout the process, like that of appealing exceptions or some documented their lands as given present to others. The common tactic was a transfer of owning rights to the next kin, thus jeopardizing the whole process.⁴⁵³ The next stage of reforms took place in the early seventies, and in 1973, Bhutto had high hopes for these reforms. He envisioned it as far more successful than its predecessors, as it was designed to be more inclusive with wider coverage. For this reason, the land-holding limits were revised and made low compared to the Ayub regime's previous reform. The resistive landlords were also active during this phase of reforms and applied tactics to bypass the whole process or keep themselves at large from more loss incurred upon them. The usual tactics or resistive strategies were records tempering, hiding lands, or any other way of resistance that one could take through politics and misuse of authority. The same tradition of transferring lands to the next kin also continued but worsened this time. The transfer was limited to familial relations and expanded to acquaintances of any type. The worst form was the forcible transfer of land to the poor farmers. Most of the large land-holding entities even skipped the whole process by simply not accepting the land as their own or not putting it on record. The holistic analysis of the scenario points to the major lack of political forces to implement these reforms in their true spirit.⁴⁵⁴

The main hurdle in implementing land-related reforms is political resistance forces in Pakistan. The large landholders enjoy a powerful role in the Pakistani political sphere. These landlords cum political elite have always tried to make these land reforms ineffective, as these reforms would directly weaken their socio-economic dominance and would cost them financial and political loss. With such attitude and behavior, the ruling elite and government officeholders couldn't practice or implement these envisioned reforms. To conclude, the opposition from large landholders proved to be the central barrier to implementing the reform exercise. Being the power holders over economy and politics, the large landholders had the spine and muscle to oppose and make those land reforms ineffective, as the reforms were foreseen as the steps to undermine their core securities in the form of dominance and power. Such influence and powerful resistance just

⁴⁵³ Khan, " *The Case for Land and Agrarian Reforms in Pakistan* ", 8.

⁴⁵⁴ Khan, " *The Case for Land and Agrarian Reforms in Pakistan* ", 9.

broke the unified approach and the political will, and it also caused the helplessness of the ruling government regarding the passage or implementation of any legislative act on land reforms.⁴⁵⁵

7.4 Overcoming Obstacles

Legal reforms are essential in the struggle against feudalism, but there are obstacles to their successful application. To overcome these challenges, a multifaceted and collaborative strategy is required.

The main obstacle is opposition to the vested interest. It can be the interest of powerful people, organizations, or organized mafias that have profited from the current system. Implementing enforced reforms that could restrict their operations is frequently difficult due to their considerable political or economic clout. This political support may result in a lack of political will to enact reforms that may encounter resistance from influential people or interest groups. Economic interests frequently benefit from land, particularly in the real estate industry. Since it may affect their earnings and investments, developers and investors having a stake in illegal property deals may oppose reforms that could interfere with their business operations. Lobbying is a tactic used by vested interests to sway lawmakers and policymakers. These lobbying efforts are intended to impede changes to stop land grabbing and influence decisions in their favor. These difficulties highlight the necessity of a thorough and well-considered approach to legal reforms considering the social, political, and economic factors surrounding land grabbing. Such a strategy can facilitate successful reform implementation and lessen opposition from special interest groups.⁴⁵⁶

One significant obstacle to enacting legislative reforms in Pakistan is the bureaucratic system. The effective implementation of changes may be hampered by corruption and bureaucratic inefficiencies in the land administration system. While some officials oppose reform, others might exploit current weaknesses to keep permitting land grabs. Reform implementation frequently necessitates negotiating intricate administrative processes that call for cooperation across numerous government departments and agencies. These complexities may slow down the implementation of reform. It is crucial to ensure bureaucrats have the necessary tools and training to implement reforms. The bureaucracy's limited capabilities may hamper the implementation of

⁴⁵⁵ Quizon, Antonio B, "Land Governance in Asia: Understanding the debates on land tenure rights and land reforms in the Asian context," *Framing the Debate Series* 3 (2013), 45.

⁴⁵⁶ Rana U. Khan, Ali Shahid, and Rao Q. Idrees, "Combating Land Grabbing in Pakistan: Legal Challenges and Reforms," *Qlantic Journal of Social Sciences* 4, no. 3 (2023): 262-263, doi:10.55737/qjss.503641381.

new policies and initiatives efficiently. Addressing these bureaucratic obstacles necessitates concentrating on administrative responsibility, transparency, and training to guarantee that legal reforms are implemented successfully and efficiently.⁴⁵⁷

The general lack of knowledge on the significance of feudalism and the possible advantages of legal reforms is a major barrier to its eradication. There can be less pressure on decision-makers to prioritize and implement reforms if the public is uninformed and involved. Generating public support and lobbying for change requires educating and enlightening the public about the problems associated with land grabbing and the benefits of legal reforms.

Coordinating activities with NGOs and civil society organizations at various government levels might be difficult. Successful dynamic implementation requires effective collaboration, yet disparate agendas and interests may hamper coordination. A dedication to common objectives, candid communication, and create procedures for collaboration and dispute settlement to guarantee that all parties collaborate amicably are frequently necessary to overcome these obstacles.⁴⁵⁸

7.5 Revisiting Qazalbash Waqf Case

The Qazalbash waqf case did not discuss the public/ purpose cause / public interest embedded in land reforms. Land reforms should be measured against public purpose standards, as Vasu Aggarwal and Aastha Asthan established in their article *Scope of Public Purpose in Land Acquisition Law*⁴⁵⁹, which states that the standard must consider three factors. Firstly, the expected number of sufferers and the people benefiting from land acquisition. Secondly, the degree of positive and negative effects on the lives of concerned people which can be measured on points scale or a continuum. These two factors are imperative to measure the overall impact of the acquisition. The sufferings caused due to land acquisition must be comparatively considered with the resulting benefits. The suffering must be lesser than the general benefits of land reforms to justify its public purpose. Thirdly, the effect and cost of mitigation must be measured. The effect and cost of mitigation would be relevant when the impact on the price of mitigation ratio would be more than one. This is because in any other scenario, when the productivity of mitigation is not much greater than its cost, the government will not choose to take up mitigation projects. If

⁴⁵⁷ Khan, Shahid, and Idrees, "Combating Land Grabbing in Pakistan," 263.

⁴⁵⁸ Ibid.

⁴⁵⁹ Aggarwa Vasu I, Asthana Aastha, "Scope of Public Purpose in Land Acquisition Law," HPNLU JOURNAL OF ENVIRONMENT AND DISASTER MANAGEMENT: 42-52, Vol. I, 2020.

mitigation leads to a productive outcome regarding its effect-to-cost ratio, it will reduce the burden on the government.⁴⁶⁰

Land reforms, as previously done, involved the acquisition of surplus land from big landlords, which were annulled by the Shariat Appellant bench due to adverse possession”, lack of consent of the landlord, non-determination of Surplus Possession and absolute property possession Article 253 of the constitution of Pakistan legitimizes limitation on individual property rights when a public purpose is involved. In *Abu Dhabi Medical Devices Co. LLC v. Federation of Pakistan* (2010 CLC 1253), the court ruled that actions taken in the public interest are justified, even if they impact individual rights. Public interest should always aim to benefit the general population, improving public welfare and security, particularly in land acquisition cases.⁴⁶¹ Federal Government Employees Housing Foundation (FGEHF), Islamabad and others v. Malik Ghulam Mustafa and others, the Court declared that the acquisition of land by the Federal Government Employees Housing Foundation (FGEHF) to provide housing to its employees was a valid exercise due to the public purpose.⁴⁶² Thus, it is deduced that land reforms completely echo public interest, and therefore, the limitation of individual property rights for land reforms is a valid practice. Land reforms, if done fairly, will ensure socioeconomic equity and raise the standard of living of the subjects, fulfilling the state’s responsibility of giving the right to life, including socio-economic prosperity.

Keeping the political, legal, social, and economic landscape, the researcher proposes a midway land reforms model by bringing the distributive justice theory of John Rawls and Robert Nozick.

7.6 Proposed model for Midway Land Reforms

But despite the “Qazalbash Waqf decision”, possibilities are extensive if 'land reform' is taken to include not only redistribution of land but also reform of land usage, as it should be.⁴⁶³

The issue of land reforms in Pakistan has been contentious for a long time and has always ostensibly been redistributing land to the landless and poor, so they have access to shelter and income generation. This thesis aimed to develop a proposed model for land reforms in Pakistan

⁴⁶⁰ Aggarwa Vasu I, Asthana Aastha, “Scope of Public Purpose in Land Acquisition Law,” 49.

⁴⁶¹ Abu Dhabi Medical Devices Co. LLC Vs. Federation of Pakistan, CLC, 1253 (Karachi-high-court-Sindh, 2010).

⁴⁶² Federal Government Employees Housing Foundation (FGEHF), Islamabad and others v. Malik Ghulam Mustafa and others, SCMR 201(Supreme Court, 2021).

⁴⁶³ "COMMENT: QAZALBASH WAQF V. CHIEF LAND COMMISSIONER (PLD 1990 SC 99)," LUMS STUDENT LAW REVIEW, accessed November 23, 2024, <https://lumsstudentlawreview.blogspot.com/2010/12/comment-qazalbash-waqf-v-chief-land.html>.

that would incorporate the principles of distributive justice, as suggested by John Rawls, and the procedural guidelines of Nozick, allowing for a potentially fair and comprehensive way of land reforms in Pakistan. Furthermore, the model is structured into three key steps: Just acquisition, transfer, and rectification.

7.6.1 Rectification

One of the first steps in land reform is rectifying land ownership, more so in states where historical injustices in land acquisition and transfer have led to uneven land distribution — and Pakistan is no different. Rectification refers to reviewing, correcting, and, if necessary, redistributing land to create legitimate ownership that accords with principles of justice and fairness. The process for rectification of landownership is given in detail as follows, which the government can follow to achieve it:

Step 1: Land Record Digitization and Centralization

Digitalization of Records: Digitalization of Records: The first step would be to digitize all the land records and put them into a single, centralized database that would serve as a model for the three divisions of Grundbuch. It will ensure that the documents can be accessed; they are transparent and less likely to be manipulated or have fraud issues.

Step 2: Comprehensive Land Survey

Conducting a Land Survey: There should be a national-level land survey to map all the land holdings of all landholders. Geographical data, land usage, size, and current ownership are the survey data it should contain. The land and encroachments can be mapped accurately using modern technologies like satellite imaging, GIS (Geographic Information System), and drones. To implement, this is a technology-driven approach that is transparent and eliminates human error.

Step 3: Establishment of a Land Ownership Review Body

The government should have an independent land ownership review body to investigate the sources of land ownership and unearth those questionable. This body should be vested with legal authority to access land records and to inquire and take corrective action if required.

Criteria for Illegitimacy:

The body must establish criteria for deciding illegitimate land ownership. There are common cases of illegitimacy include:

- That was acquired through fraud or coercion
- Public or state lands that were once legally designated for possession by a private individual but improperly transferred.
- Historically unsound practices that led others to own the land (such as colonial land grants or feudal holdings).

Step 4: Investigating Ownership Claims

Historical Review: In the case of every landholding, the review body should go into how the land was acquired and investigate the origins of the ownership. Valid documentation is required to certify the legitimacy of transfers involving individuals or entities.

Verification of Tax and Payment Records: We must cross-verify the ownership claims with the tax records and payment histories. Irregular ownership will appear as any gaps or inconsistencies in these records.

If there are illegitimate holdings, these four steps will separate them, resulting in the government's acquisition by just acquisition.

7.6.2 Just Acquisition

Land acquired illegally, through fraud, coercion, or corruption – especially large holdings of land acquired by feudal elites, politicians, or business interests in violation of legal and ethical standards – should be confiscated by the state.

Seizure of Land: Having determined land to be illegitimate, the government should return it to its legitimate owner or reclaim it. Legal processes are required to honor a state to grab ownership rights and to provide such landowners fair (if appropriate) compensation. Compulsory acquisition may also be made as and when needed.

Establishing rules for compensation, organizational structure, timeline, etc., is a procedure that may be documented for land acquisition. Phrases about common village land and barren land may be part of the procedure.

Land Bank for Redistributed Lands: Find a way to set up a Land Bank whose purpose will be to take care of confiscated land before it is redistributed. Concerning the Land Bank, they shall formalize land records, correctly record the land, and prepare land for redistribution or utilization.

Temporary Productive Use: The government may lease land to cooperatives or farmers until they have leased it for productive purposes, and it is not idle.

7.6.3 Just Redistribution of Land

Steps in redistributing the reclaimed land, which should be given to and received by marginalized, landless, and disadvantaged groups most equitably and productively possible, are as follows.

Phase 1: Land for Basic Shelter (Addressing Homelessness)

Free or Discounted Land: Make land available free or at nominal prices to homeless individuals or families so that their right to shelter is made good. This ties up with the distributive justice principle of supporting the least advantaged and the Islamic principle of *Maslaha* (public welfare) in society.

Housing Cooperatives: Create community-driven housing cooperatives that will help in the collective development of residential land and help in self-reliance and communal ownership. The Supreme Court of Pakistan went on to hold that providing housing was a public purpose: “Provision of residences is not by itself a matter falling outside the concept of a ‘public purpose’ provided that it is part of a scheme for making general provision of that character.” Consequently, compulsory acquisition can also be done for housing purposes”.⁴⁶⁴ Thus, compulsory acquisition can also be done for housing purposes.

Phase 2: Land for Marginalized Farmers (Agricultural Productivity)

Land for Landless Farmers and Marginalized Communities: To increase agricultural productivity and promote economic self-reliance, redistribute land to tenant farmers, landless peasants, and marginalized communities. Under distributive justice, the poorest and most disadvantaged will have priority.

Agricultural Support and Training: Training and subsidies for their agrarian use with access to microcredit ensure the land recipients can meaningfully and sustainably produce on their land.

Phase 3: Land for Productive Use

⁴⁶⁴ Ibid, Cornelius, J, page 69.

Productivity-Based Redistribution: Distribute remaining land to individuals or entities who can demonstrate the capacity to use the land productively (e.g., cooperatives, small farmers, women-led businesses).

Conditional Ownership: Its productive use will be the precondition to its ownership. The recipient must meet predefined productivity thresholds within a defined period, or else the land is re-assigned. It, therefore, eliminates underutilized land and makes full economic and social use.

7.7 Conclusion

Land reforms and the Constitution of Pakistan are analyzed to reveal how historical, legal, and socio-economic factors have influenced land ownership and distribution. A historical analysis identifies the colonial legacy, feudal structures, vested interests, and entrenched powers that have fortified deep-seated systemic disparities while stifling national growth and perpetuating socioeconomic injustice. The concentration of land ownership in the hands of a few has restricted educational facilities, thwarted economic development, and deprived the people of equitable distribution of resources. As a result, a large section of the rural population is landless and wretched.

A review of Islamic history and principles demonstrates that land reforms are dynamic and context-dependent, and that land utilization must be equitable and serve social welfare purposes. Nevertheless, the present Land Distribution System in Pakistan goes against the grain of these principles and the constitutional provisions of social justice and Equity and elimination of exploitation. Articles 3, 11, 25, and 38 of key constitutional provisions propel the foundation toward abolishing unsustainable and exploitative practices, securing social and economic well-being while creating equitable opportunities. Despite these tenets, the feudal structures and land distribution patterns violate these times and again, leading to a glaring dissonance between constitutional ideals and ground realities. Later, the interpretation of land reforms by the judiciary, particularly the Qazalbash Waqf case, has also served to complicate the issue by being influenced more by individual property rights than wider socio-economic objectives. While we have no constitutional impediment to these policies, farmers overlooked the possibility of reforming land tenure to advance public welfare and right historical wrongs. However, the tension between individual property rights and collective socio-economic benefits can deteriorate using a balanced approach that takes advantage of constitutional provisions like Articles 23 and 24 that allow limitations of property rights for public purposes.

The way forward entails a distributive, justice-rooted, equitable, and comprehensive model of land reforms. It means correcting historical inequities, digitizing records about land, and creating transparent land ownership systems. Land redistribution must focus on redistribution to those who were marginalized and most in a position of social justice as economic productivity. Such reforms also have legitimacy from an Islamic point of view and international perspective that such reforms are needed for social welfare.

To conclude, the issue of land reform in Pakistan is complex, which demands that constitutional mandates, Islamic values, and necessities of modern socio-economic times be nicely compiled and harmonized. Land reforms taking a full sweep with the tenets of equity and justice can un-cement the feudal structure, increase agricultural productivity, and develop a more just and richer nation. Our approach to transforming land destined for development must prioritize the well-being of the landless and those who have been disadvantaged so that land (and its most fundamental resource, land itself) will be used to uplift the nation and its people instead of perpetuating inequality and exploitation.

7.7.1 Answers to Research Questions

1. What is the relationship between distributive justice and land reforms?

There is a close connection between distributive justice and land reforms because both strive for fairness in distributing resources in society. Distributive justice, an important principle derived from moral and social equity, demands confronting historical injustices and guaranteeing each member of society to receive such resources as aid in their well-being. This goal can be fulfilled using the revolutionary practical land reforms that redistribute land from the few privileged to the many underprivileged. In Pakistan, the present pattern of land distribution, grounded in a feudalistic socio-economic system, violates the principles of distributive justice. Economic and social inequalities persist because the rural landholdings are concentrated in the hands of a small elite, and the landless rural majority is marginalized. Through land reforms, Pakistan can close the gap between the privileged and the underprivileged, promoting social justice and economic progression. As such, the importance of fair land distribution is highlighted not only from the economic viewpoint but also from a moral and social perspective based on Islamic teachings stressing equity and justice. It is thus clear that land reforms are essential for economic development, social harmony, and distributive justice.

2. Has international law addressed the issues of land reforms?

While general law has not directly responded to the question of land reform, international law has made land reform issues an indirect subject of its terms through human rights frameworks focused on equitable access and poverty eradication. Although land reforms are not required by international law per se, principles obliging resource equity for sustainable development are set out in treaties such as the “Universal Declaration of Human Rights” and the “International Covenant on Economic, Social, and Cultural Rights”. Case studies comparing land reforms being conducted under international influence provide practical insights into solutions that countries have adopted. For example, internal and international demand for equity inspired India’s attempts to abolish zamindari systems and to introduce land ceilings. Bangladesh’s East Bengal State Acquisition and Tenancy Act is similar in that it reveals the impact that international norms held regarding land reform policy. This can, however, be highly dependent on domestic political will, institutional capacity, and ability to overcome challenges such as corruption and elite resistance. Aligning with international standards in land reform policy increases its legitimacy and gives the basis for eradicating systemic inequities in the land reform of Pakistan.

3. What is the Shariah perspective regarding land reforms?

According to Islam, when the corresponding divine blessing exists, the land is a sacred trust for humanity. Thus, Shariah principles recommend equal wealth and resource distribution so that lands are owned based on social justice and welfare. Land Reforms that seek to prevent exploitation and wealthy concentration and to guarantee active use of the land are permissible in Islamic jurisprudence. Examples of such regulations, drawn from history, include those that are included in the land policy of the Caliphate of Umar ibn al Khattab, which regulate land ownership, forbid its hoarding and specify its equitable use and distribution. In Pakistan, for instance, the Qazalbash Waqf case involved judicial interpretations that, in practice, favor individual property rights over those of the community. Confronting the interpretations with the Islamic principles of justice and equity is necessary to formulate an ethical basis for land reform. *Shariah* can inform the design of land reform policies in Pakistan so that religion aligns with socio-economic disparities.

4. What is the legislative history and case law surrounding land reforms in Pakistan?

The legislative history of land reforms in Pakistan reflects a series of efforts to address land concentration and promote equity. Initiatives during the Ayub Khan and Zulfikar Ali Bhutto eras introduced land ceilings and tenant protections. Ayub Khan's reforms in 1959 sought to limit landholdings and redistribute surplus land to tenants, while Bhutto's reforms in the 1970s aimed to reduce land ceilings further and strengthen tenant rights. However, these efforts faced significant challenges, including legal loopholes that allowed large landholders to evade restrictions by fragmenting their holdings among family members. Additionally, resistance from powerful elites and weak enforcement mechanisms limited the impact of these reforms. The Qazalbash Waqf case further constrained reform efforts by declaring certain provisions of land reform laws un-Islamic. This decision created a legal impasse, highlighting the need for robust legislation that addresses historical loopholes and incorporates safeguards against misuse. Future reforms must learn from these experiences to create a more equitable land distribution system.

5. How has the judiciary responded to land reform legislation in Pakistan?

Land reform legislation in Pakistan has generated ambivalent judicial responses due to tensions between property rights and the principle of distributive justice. In the beginning, courts endorsed land reforms as a means to economic and social equity. Yet landmark cases like the Qazalbash Waqf decision altered the course of this trajectory, as the judiciary came to favor individual property rights over communal welfare in its decision-making. The ruling from the Shariat Appellate Bench declared that certain provisions of land reform laws that force the acquisition of surplus land conflict with Islamic principles. 'Such an interpretation posed a huge obstacle for future reform efforts to address land concentration and stalled progress. Therefore, all these judicial interpretations should be revisited through constitutional amendments or fresh judicial reviews if land reform initiatives are to be revived. Judges can thus actually play a role in advancing equitable land reform by emphasizing the broader welfare objectives of *Shariah* and the Constitution and allowing the presumption of reasonableness to operate without further interference.

6. What is the current status of land reforms in Pakistan?

Thus, the current status of land reforms in Pakistan is stagnant due to a scarcity of comprehensive policy frameworks. Despite continued court challenges to its constitutionality, feudalistic land ownership continues to concentrate in the hands of a tiny elite, producing high rural poverty, unemployment, and social stratification. While Ayub Khan and Bhutto had done

their bit historically, the political will to do something substantive, or the determination of vested interests not to, had worked against achieving anything meaningful. In addition, reform efforts are undermined by administrative inefficiencies, corruption, and faulty implementation mechanisms. The absence of digitized land records and transparent dispute-resolution mechanisms further complicates the problem. Solving these problems will entail a careful recommitment by policymakers to prioritize land reforms as pillars of socio-economic development. A hard and institutional framework is necessary to revitalize reform efforts and achieve equitable land distribution.

7. What are the suggested land reforms for Pakistan?

For land concentration and inequality, Pakistan needs to adopt a two-pronged strategy of land reforms. The proposed model of the researcher for land reforms in Pakistan consists of several incorporated sections that make a viable structure for the equitable distribution of land along with socio-economic development. The first thing needed to limit the concentration of land ownership is the enactment of comprehensive legislation establishing enforceable ceilings on landholdings. Moreover, digitizing land records will increase transparency and curb administrative inefficiencies and corruption, laying the groundwork for successful reform implementation.

Legal protections for tenancy farmers in secure tenure, fair rental terms, and justice are also stressed by the model. Such reform aligns policies with the *Shariah* principles of equity and justice, lends moral and cultural legitimacy to the reforms, and underscores the communal benefits of land redistribution using a language that is culturally persuasive to that of the society. Building on international best practices in sectoral land consolidation efforts in India and *khas* land distribution in Bangladesh, this model draws lessons on balancing equity and sustainability while adapting to Pakistan's specific socio-political context.

Investments should also be made in complementary areas such as rural infrastructure, education, and healthcare. Agricultural productivity and market access will be improved by introducing better irrigation systems, roads, and markets; better education and health care services will improve the living standards of the rural population. Such initiatives work together to turn the land reforms into useful socio-economic progress. When integrated with a seamless framework, Pakistan can resolve Systemic Inequalities, empower marginalized communities, and build an inclusive development compatible with what the Constitution, Islamic principles, and global standards require.

7.8 Recommendations

This study has conducted a critical analysis of land reforms in Pakistan through historical, legal, and constitutional along with religious perspectives. A meaningful land reform needs to incorporate an integrated approach because previous reform attempts and judicial restrictions together with inconsistencies in *Shariah* interpretation create a struggle between distributive justices. The recommendations built from this analysis present a strategic alignment between Pakistani constitutional framework and Islamic jurisprudence as well as international standards and national socioeconomic needs. Every proposed action addresses particular structural issues highlighted in the previous chapters while making sure reform plans avoid theoretical concepts by establishing real-world policies which promote enforceability and fairness.

7.8.1 Policy and Legislative Reforms

The finding of policy and legislative reform stems directly from the gaps in laws and landowners' evasive behavior and unenforceable tenant protection measures discovered in Chapter 4. The total resolution of Pakistan's issues in land reform requires both new policies and legislative changes. Land reform policies require complete and thorough legislation as an essential measure for solving existing gaps in past legislation and supporting both failed experiences and Islamic land principles. A new legislation needs to establish strong systems that prevent landlords from circumventing ownership via subdivision and nominee arrangements. Policies should protect tenant rights by means of legislation which secures tenant farmers against exploitation and establishes clear rental standards while making affordable legal remedies accessible for settling disputes.

7.8.2 Judicial and Constitutional Reconciliation

The obstacles standing in the way of reform continue from court limitations in which the Qazalbash Waqf case plays a significant role alongside vague constitutional provisions. Irrigational reforms experience success based on how well judiciary and constitutional mandates align. Modern distributive justice theories require a review of judicial interpretations to unite with *Shariah* principles to suit current debates about distributive justice. The interpretation of welfare would shift from property rights to encompass societal benefits when all citizens receive proper care under this approach. Under Article 253 (1) the Parliament can enact property ownership limit

regulations due to this empowering measure. Such a measure will empower legislators to address landownership disparities and determine the legal and constitutional aspects associated with them.

7.8.3 Administrative and Implementation Mechanisms

Research from Chapter 6 indicates that deficient implementation together with weak institutional capacity causes most failures in land reform programs. The implementation process will be successful by using strong robust administrative systems along with transparent procedures. A top priority for contemporary land administration should be digitizing land records since this measure would fight ineffective bureaucracy, lower corruption levels and establish transparent processes while eliminating duplicative procedures. A digital transition can enforce fair and effective land ceiling and redistribution policies. To quickly and fairly handle disputes the establishment of specific land tribunals becomes essential. A combination of land law professionals and proper staff resources should operate these tribunals as those in Germany. Nationwide public awareness campaigns should be organized to teach the public about their land reform laws and rights alongside enabling their active participation in implementation efforts.

7.8.4 Integration of Islamic and International Best Practices

Chapter 2 and 3 establish that both Islamic histories together with international best practices provide essential guidance for implementing successful reforms. With integration of best practices from both Islamic and international perspectives the success probability of land reforms in Pakistan increases significantly. Policymaking through Islamic principles should emanate from justice and equity concepts so distribution of land resources properly advances communal well-being and socioeconomic progress of people. The development of policy requires following traditional Islamic concepts about productive land management and barring widespread land accumulation. International models show positive results while Bangladesh's *Khas* land distribution system and India's land consolidation methods stand as excellent examples. This combined method demonstrates the importance of equity over sustainability and shows the necessity of building specific policies based on area-related socioeconomic factors.

7.8.5 Economic and Social Interventions

The rural socioeconomic inequalities in Pakistan enable disparities in land ownership which create barriers for implementing reform measures according to Chapter 7. Therapeutic

success of land reforms requires additional economic measures together with social interventions. Democratic subsidies alongside accessible credits and technical agriculture programs aid small farmers to increase farm yield while developing economic stability. An investment must follow these interventions by developing rural infrastructure which includes irrigation systems and transportation networks and markets to allow efficient operations and market accessibility. An investment of resources to expand rural education and healthcare programs will boost living conditions while creating a sustainable development base. Through these reforms landless communities will gain empowerment which lets redistribution of land happen to produce sustained socio-economic transformation.

This research proposes a systematic land reform plan that follows the nation's constitutional and *Shariah* and international standards. The policy demands thorough institutional reforms focused on legislative changes and judicial reinterpretation and administrative oversight to eliminate both structural and operational defects. The reforms will promote equitable land distribution through social and economic interventions combined with Islamic and global best practices.

7.9 Implications of the Study

This study's theoretical contributions fill this gap between Islamic jurisprudence, constitutional law, and distributive justice through a comprehensive framework for just land reforms. Additionally, it adds to knowledge about how land reforms can be undertaken without upsetting religious, legal, or social norms and offers a blueprint for the design of such policy in other socio-political contexts. Policymakers can practically use the recommendations to draft land reform legislation that balances equity and economic sustainability, and advocacy groups and civil society organizations can use the findings to mobilize public support for equitable land redistribution.

Through the comparative analysis of land reforms globally, land reforms have similarities, such as resistance by vested interests and the requisite for a proper implementing mechanism. These findings can be useful for reforming efforts in other developing countries with similar problems. Future research directions might include pilot projects in selected regions to assess the socio-economic impacts of proposed land reforms and the potential to use technology to modernize land administration systems to become more efficient and transparent.

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Glossary

Reichssiedlungsgesetz	Imperial Settlement Act
Flüchtlingssiedlungsgesetz	Refugee Settlement Act
Grundbuch	German Land Registry
GBO (Grundbuchordnung)	German Land Register Code
BGB (Bürgerliches Gesetzbuch)	German Civil Code
Rechtspfleger	Legal Officer
RpflG	German Legal Officers Act
Grundbuchblatt	Land Register Sheet
Grund gesetz	German constitution
§	Section of law
FamFG	Family Procedure Act
FGG	Voluntary Jurisdiction Act
ERVGBG	Electronic Legal Transactions Act
Grundakte	File Management System
DaBaGG	Land Register Database Act
Acres	A unit of land area equal to 4,840

	square yards
<i>Adl</i>	Justice
<i>Shura</i>	A consultative council or assembly
<i>Maslaha</i>	Public Interest
<i>Qist</i>	Equity
<i>Zamindars</i>	Intermediaries
<i>Mansabdari</i>	Used to be given charge of a specific area, and it was his duty to maintain the allotted troops from the revenue collected.
<i>Bhumidah</i>	The giver of land
<i>Ksetrika Or Ksetrin</i>	Peasant/Controller of land/Cultivator/ Agriculturist
<i>Waqfs</i>	Endowment lands
<i>Imams</i>	Land grants
<i>Jagirdars</i>	Landlords
<i>Ashrafia</i>	Noble men
<i>Choudhris, Khuts, And Muqaddams</i>	The Chief cluster of Landlords
<i>Khalsa</i>	King's lands/ crown lands
<i>Iqta</i>	Granting of ownership or usufruct rights over state land by the state to individuals in recognition of their services for the sake of Islam.
<i>Muqtis</i>	Holders of iqta/ governors
<i>Idarat Madad-I-Maash</i>	Land grants
<i>Ashab Al-Sayf</i>	Masters of the sword
<i>Ashab Al-Amamah</i>	Religious scholars
<i>Ashab Al-Qalam</i>	Masters of the pen
<i>'Khudkashta' And</i>	The crofters who ploughed their lands

'Pahikashta'	Landless crofters who cultivated other's land
<i>Ryotwari</i>	A system of land revenue collection in which the government deals directly with the cultivators, or "ryots," to collect taxes.
Shamilat	Joint village lands
<i>Mahalwari</i>	The word "Mahalwari" is derived from the Hindi word Mahal, which means a community made from one or more villages..
<i>Wafaqi Sharai Adalat</i>	Federal Sharia Court
Bhoodan And Gramdan	These two important movements of Bhoodan and Gramdan were mostly related to social equity and land-owning rights for the poor and lower classes
<i>Bargadar</i>	Bargadar is a person who takes care of agricultural land
Khas Land	Land owned by the government that has not been settled.
‘ <i>Al-Milkily</i> ’ Or ‘ <i>Al-Milk</i> ’	Ownership
Mawat Land	Dead land
<i>Maslahah Ammah</i> ’	Public Interest
<i>Taraadhin</i>	Mutual Consent
<i>Dharuriyat</i>	Needs
<i>Tahsiniyat</i>	Beautification
<i>Hajiyat</i>	Needs
Yad	Possession
<i>Hima</i>	The Arabic word hima means "a protected place" or "protected area."
<i>Tamim</i>	Nationalizing personal assets to be public assets.
<i>Ijara</i>	Lease

Fa'i

Sadaqah

Salus Populi

War spoils

Charity

Salus populi is a Latin phrase that means let the welfare of the people be the supreme law