

FINANCIAL RIGHTS OF WIFE IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM

**A thesis submitted in partial fulfillment of the requirements for the Degree of
Ph.D. (Islamic Law & Jurisprudence)**



Haleema Sadia

Reg. No.74-FSL/PHDIJ/S18

Supervised By

Dr. Mudasra Sabreen

Assistant Professor, Faculty of Shari'ah & Law

Department of Shari'ah

Faculty of Shari'ah and Law

INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD

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Haleema Sadia

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DEDICATION

Research is dedicated to the great teacher of the world

PROPHET (PEACE BE UPON HIM)

And

To my great parents

worthy father, the late Abd Ur Rahman

(Retired District Qazi, Shariat Court (AJK)

&

Saiqa Bibi

Acceptance certificate

Acceptance by the viva voice committee

DECLARATION

1, Haleema Sadia hereby declares that this dissertation is original and has never been presented in any other institution. I, further, declare that any secondary information used in this dissertation has been duly acknowledged.

Candidate: Haleema Sadia

Signature:

Date:

Supervisor: **Dr. Mudasra Sabreen**

Signature:

Date:

TRANSLITERATION TABLE

ا	a	ڻ	d	غ	gh	ڳ	bh	Long Vowels	
ٻ	b	ڙ	dh	ڦ	f	ڳڻ	ph	ا	
ڦ	p	ڙ	r	ڦ	q	ڳڙ	th	ا	
ڻ	t	ڙ	r	ڪ	k	ڳڙ	th	ي	
ڻ	t	ڙ	z	ڱ	g	ڳڙ	jh	ي	
ڻ	th	ڙ	z	ڦ	l	ڳڙ	ch	و (Urdu)	
ج	j	ڙ	s	ڙ	m	ڳڙ	dh	و (Urdu)	
ڙ	ch	ڙ	sh	ڙ	n	ڳڙ	dh	ء	
ڻ	h	ڙ	s	ڙ	ڻ	ڳڙ	rh	ا	
ڻ	kh	ڙ	t	ڙ	h	ڳڙ	kh	ي	
ڏ	d	ڙ	z	ڙ	y	ڳڙ	gh	و	

ا (ء), when it appears at the middle or end of a word, is transliterated as elevated comma (‘) followed by the letter representing the vowel it carries. However, when ا appears at the beginning of a word it will be represented only by the letter representing the vowel it carries.

ڙ is transliterated as elevated inverted comma (‘).

ڻ as an Arabic letter is transliterated as (d), and as a Persian/Turkish/Urdu letter as (ڙ).

ڙ as an Arabic letter is transliterated as (w), and as a Persian/Turkish/Urdu letter is transliterated as (v).

ڻ is transliterated as (ah) in pause form and as (at) in construct form.

Article ڦ is transliterated as (al-) whether followed by a moon or a sun letter, however, in construct form it will be transliterated as ('l).

ڙ as a Persian/Urdu conjunction is transliterated as (-o) whereas as an Arabic conjunction ڙ is transliterated as (wa).

Short vowel (ي) in Persian/Urdu possessive or adjectival form is transliterated as (-i).

Diphthongs

ا	ا	(Arabic)	aw
ا	ا	(Persian/Urdu)	au
ا	ا	(Turkish)	ev

ي	ي	(Arabic)	ay
ي	ي	(Persian/Urdu)	ai
ي	ي	(Turkish)	ey

Doubled

و	و	(Arabic)	uww
و	و	(Persian)	uvv
و	و	(Urdu)	uvv

ي	ي	ي	yy
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ABSTRACT

This thesis critically examines the financial rights of wives specifically dower; maintenance and inheritance as articulated in Islamic law and their application within Pakistan's statutory framework and judicial practice. Through a doctrinal and comparative legal analysis, it explores the normative foundations of these rights in the Qur'ān, Sunnah, and Fiqh interpretations, while evaluating their enforcement under constitutional provisions, statutory enactments, and judicial decisions in Pakistan. The study situates these rights within their historical evolution, emphasizing the transformative reforms introduced by Islam to safeguard financial protection of women and dignity.

The research highlights significant conflict between Sharī'ah principles and their implementation in Pakistan, revealing statutory ambiguities, inconsistent judicial interpretation, weak enforcement mechanisms, and entrenched socio-cultural barriers that hinder the effective realization of women's financial entitlements. Particular attention is given to the right of inheritance, where the study dispels the widespread misconception that women invariably inherit half the share of men, demonstrating instead that Islamic law prescribes a range of allocations sometimes equal to, greater than, or exclusive of male heirs. In relation to dower and maintenance, the thesis underscores persistent legislative and procedural gaps that reduce their protective value for women.

In response to these deficiencies, the study proposes reform grounded in Sharī'ah, including clearer statutory provisions, enhanced judicial accountability, and institutional mechanisms for effective enforcement. By integrating critical analysis with context-specific reform strategies, the thesis bridges the gap between normative Islamic law and Pakistan's legal realities. It not only advances scholarly understanding of financial rights of wives' in Islamic law but also offers practical pathways for strengthening their protection in Pakistan.

TABLE OF CONTENTS

ACKNOWLEDGMENT	I
ABSTRACT	II
TABLE OF CONTENTS	III
ABBREVIATIONS AND ACRONYMS	VIII
LIST OF CASES	XI
CHAPTER 1: INTRODUCTION OF THE STUDY	1
INTRODUCTION	1
1.1 SCOPE AND SIGNIFICANCE	2
1.2 PROBLEM STATEMENT	4
1.3 RESEARCH QUESTIONS	5
1.4 OBJECTIVES OF THE STUDY	5
1.5 LITERATURE REVIEW	6
<i>1.5.1 Women's Right to Dower, Maintenance, and inheritance in Islamic Law</i>	6
<i>1.5.2 Reformist Interpretations on Financial Rights of Women</i>	11
<i>1.5.3 Critical Legal Theory and its Impact on Legal Reform</i>	13
<i>1.5.4 Research Gap</i>	15
1.6 LIMITATIONS OF THE STUDY	16
1.7 RESEARCH METHODOLOGY	17
1.8 THEORETICAL FRAMEWORK	20
1.9 ORGANIZATION OF THE STUDY	23
CHAPTER 2: THE CONCEPT OF FINANCIAL RIGHTS –A COMPARATIVE LEGAL ANALYSIS	25
INTRODUCTION	25
2.1 CONCEPTUALIZING RIGHTS IN WESTERN LEGAL THOUGHT	26
<i>2.1.1 Historical and Philosophical Foundations</i>	26
<i>2.1.2 Legal Institutionalization: From Theory to Enforcement</i>	27
<i>2.1.3 Liberty, Equality, and the Distribution of Rights</i>	27
<i>2.1.4 Enforcement of Right and the Role of the State</i>	28
<i>2.1.5 Bridging Western and Islamic Paradigms</i>	28
2.2 CONCEPT OF RIGHTS IN ISLAMIC LAW	28
<i>2.2.1 Qur'ān and Sunnah as Foundational Sources</i>	28
<i>2.2.2 Theological and Moral Foundations of Rights</i>	29
<i>2.2.3 Financial Rights of Women</i>	29

2.2.4 <i>Equality and Human Dignity</i>	29
2.2.5 <i>Rights and Duties: A Balanced Framework</i>	30
2.2.6 <i>Contemporary Discourse and Ijtihād</i>	30
2.2.7 <i>Comparative Analysis: Islamic and Western Legal Systems</i>	30
2.3 RIGHTS OF WOMEN IN ISLAMIC LAW	31
2.3.1 <i>Status of Women in Pre-Islamic Arabia</i>	33
2.3.2 <i>Social Status of Women after the Advent of Islam</i>	36
2.3.3 <i>Prohibition of Female Infanticide in Islamic Sources</i>	36
2.3.4 <i>Women in the Society of Prophet ﷺ and Implications for Modern Legal Systems</i>	38
2.4 CLASSIFICATION OF RIGHTS IN ISLAMIC LAW	39
2.5 FINANCIAL RIGHTS OF WOMEN IN ISLAM AND THEIR APPLICATION IN PAKISTAN.....	41
2.5.1 <i>Dower in Islamic and Pakistani Law</i>	42
2.5.2 <i>Maintenance (Nafaqah) in Islamic and Pakistani Law</i>	44
2.5.3 <i>Inheritance: Qur'ānic Entitlement versus Cultural Resistance</i>	44
2.5.4 <i>Property Ownership and Financial Autonomy in Sharī'ah</i>	45
2.5.5 <i>Women's Right to Work and Employment Rights</i>	45
2.6 GENDER JUSTICE IN SHARĪ'AH	49
2.6.1 <i>Marital Autonomy and Dissolution</i>	50
2.6.2 <i>Financial Rights</i>	52
2.6.3 <i>Comparative Perspective with CEDAW</i>	53
CONCLUSION	55
CHAPTER 3: DOWER IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM	58
INTRODUCTION	58
3.1 THE CONCEPT OF DOWER IN ISLAM	59
3.1.1 <i>From Pre-Islamic Practices to Islamic Reforms</i>	61
3.1.2 <i>The Significance of Dower in Islamic Law</i>	62
3.1.3 <i>Modern Interpretations and Legal Applications</i>	64
3.2 LEGITIMACY OF DOWER IN ISLAM.....	65
3.2.1 <i>Nature and Quantum of Dower</i>	68
3.2.2 <i>The Marriage Without Fixation of Dower</i>	71
3.3 TYPES OF DOWERS.....	74
3.4 AN OVERVIEW OF PROVISIONS RELATED TO DOWER IN PAKISTANI LAW.....	77
3.4.1 <i>The Muslim Family Laws Ordinance, 1961 (MFLO)</i>	77
3.4.2 <i>The Family Courts Act, 1964</i>	79
3.4.3 <i>The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962</i>	80
3.4.4 <i>The Dissolution of Muslim Marriages Act, 1939 (DMMA)</i>	80
3.5 THE ROLE OF JUDICIARY IN PROTECTION OF RIGHT TO DOWER IN PAKISTAN	83
3.5.1 <i>Analytical Overview of Case Law on Dower</i>	85

3.6 COMPARATIVE APPROACHES ON FINANCIAL RIGHTS: PAKISTAN, IRAN, AND MOROCCO.....	97
CONCLUSION	100
CHAPTER 4: MAINTENANCE IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM..... 102	
INTRODUCTION	102
4.1.CONCEPT OF MAINTENANCE IN ISLAMIC LAW.....	103
<i>4.1.1 Definition and Scope of Maintenance in Islamic Law.....</i>	<i>103</i>
4.2 COMPARATIVE PERSPECTIVE ON WIFE'S RIGHT TO MAINTENANCE	106
<i>4.2.1 Right to Maintenance in Western Legal Thought.....</i>	<i>107</i>
<i>4.2.2 International Perspective on Maintenance Right of Wife.....</i>	<i>107</i>
<i>4.2.3 Comparative Analysis: Maintenance in Islamic and Western Legal Systems.....</i>	<i>108</i>
4.3 LEGITIMACY OF MAINTENANCE IN ISLAMIC LAW.....	109
<i>4.3.1 Entitlement of Maintenance for the Wife in Islamic Law.....</i>	<i>113</i>
4.4 TYPES OF MAINTENANCE IN ISLAMIC LAW	115
<i>4.4.1 Post-Divorce Maintenance during 'Iddah (Nafaqah al-Talāq)</i>	<i>115</i>
<i>4.4.2 Maintenance during Pregnancy and Lactation (Nafaqah al-Ḥāmil wa-l-Murdi 'ah)....</i>	<i>117</i>
<i>4.4.3. Maintenance in Case of Khul' and Mubārāt</i>	<i>119</i>
<i>4.4.4 Maintenance Right of Widowed and Divorced Daughters in Islamic Law</i>	<i>119</i>
<i>4.4.5 The Quantum of Maintenance in Islamic Law.....</i>	<i>135</i>
4.5 MAINTENANCE LAWS IN PAKISTAN	140
<i>4.5.1 Evolution of Maintenance Laws in Pakistan.....</i>	<i>141</i>
<i>4.5.2 Incorporation of Islamic Law in Legal Framework of Pakistan</i>	<i>143</i>
<i>4.5.3 Criminal Law on Maintenance of Wives (1947-1961)</i>	<i>145</i>
<i>4.5.4 Commission on Marriage and Family Laws (1956)</i>	<i>146</i>
4.6 STATUTORY LAW ON RIGHT OF MAINTENANCE IN PAKISTAN	147
<i>4.6.1 Muslim Family Laws Ordinance, 1961.....</i>	<i>148</i>
<i>4.6.2 West Pakistan Family Courts Act, 1964.....</i>	<i>149</i>
<i>4.6.3 The Punjab Family Courts (Amendment) Act, 2015.....</i>	<i>150</i>
<i>4.6.4 Analysis of Statutory Framework on Maintenance Rights</i>	<i>152</i>
4.7 JUDICIAL PROTECTION OF WOMEN'S MAINTENANCE RIGHTS.....	153
<i>4.7.1 Judicial Interpretation on Maintenance Rights</i>	<i>154</i>
<i>4.7.2 Critical Analysis of Case Law on Maintenance Rights in Pakistan</i>	<i>169</i>
CONCLUSION	171
CHAPTER 5: INHERITANCE IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM..... 173	
INTRODUCTION	173
5.1 WOMEN'S INHERITANCE RIGHTS IN ISLAMIC LAW	174
<i>5.1.1 Definition and Legitimacy of Inheritance Rights in Islam</i>	<i>176</i>
<i>5.1.2 Fundamental Principles of Islamic Inheritance Rights.....</i>	<i>181</i>
<i>5.1.3 Essential Conditions and Legal Impediments to Inheritance</i>	<i>182</i>

<i>5.1.4 Global Appreciation of the Islamic Inheritance System.....</i>	185
5.2 HISTORICAL CONTEXT AND REFORMS INTRODUCED BY ISLAM	189
5.3 INHERITANCE SHARE OF WOMEN IN ISLAMIC LAW	193
<i>5.3.1 Equal Shares for Men and Women.....</i>	194
<i>5.3.2 Greater Shares for Women.....</i>	196
<i>5.3.3 Lesser Shares for Women.....</i>	199
<i>5.3.4 Exclusive Shares for Women</i>	201
<i>5.3.5 Analysis of Inheritance Rights for Women in Islamic Law</i>	204
<i>5.3.6 Contextual Analysis and Clarification of Misconceptions</i>	205
5.4 STATUTORY FRAMEWORK ON INHERITANCE IN PAKISTAN.....	207
<i>5.4.1 Constitutional Framework for Inheritance Right of Women</i>	207
<i>5.4.2 Muslim Family Laws Ordinance, 1961 and Succession Act, 1925</i>	208
<i>5.4.3 Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011</i>	208
<i>5.4.4 International Obligations of Pakistan.....</i>	210
5.5 JUDICIAL INTERPRETATION AND CASE LAW ANALYSIS.....	213
<i>5.5.1 Superior Courts on Women's Inheritance Rights</i>	213
<i>5.5.2 Islamic Law and Statutory Frameworks for Inheritance Right of Women</i>	221
5.6 BARRIERS OF ENFORCEMENT AND ROLE OF JUDICIARY	223
<i>5.6.1 Cultural and Social Barriers to Women's Inheritance</i>	223
<i>5.6.2 Procedural and Institutional Challenges in Enforcement</i>	225
<i>5.6.3 Role of the Judiciary in Protection of Women Right to Inheritance</i>	227
<i>5.6.4 The Federal Shariat Court's Expanding Role.....</i>	229
CONCLUSION	230
CHAPTER 6: CONCLUSION & RECOMMENDATIONS	233
INTRODUCTION	233
6.1 IMPLICATIONS FOR ADVANCING FINANCIAL RIGHTS OF WOMEN IN PAKISTAN	234
6.2 CONCLUSION.....	235
6.3 DOWER RIGHT OF WOMEN	236
6.4 MAINTENANCE RIGHT OF WOMEN	236
<i>6.4.1 Role of Supreme Court in Protection of Women Right to Maintenance</i>	237
6.5 INHERITANCE RIGHT OF WOMEN	239
<i>6.5.1 Women's Inheritance Shares in Islam: A Misunderstood Principle</i>	239
<i>6.5.2 Role of Supreme Court and Federal Shariat Court in Protection of Right.....</i>	242
6.6 RECOMMENDATIONS	246
<i>6.6.1 Judicial Recommendations.....</i>	247
<i>6.6.2 Legislative Recommendations.....</i>	248
BIBLIOGRAPHY	251

APPENDIX I: LIST OF QUR'ĀNIC VERSES 274

APPENDIX II: LIST OF AḤADĪTH 277

ABBREVIATIONS AND ACRONYMS

A. General Legal and Judicial Abbreviations

AD	After Death
ADJ	Additional District Judge
AH	After Hijrah
AJ&K	Azad Jammu and Kashmir
DB	Division Bench
FB	Full Bench
FC	Full Court
FSC	Federal Shariat Court
HC	High Court
KPK	Khyber Pakhtunkhwa
NWFP	Northwest Frontier Province
PBUH	Peace Be Upon Him
RA	Rađīyallāhu 'Anhu
SAB	Shariat Appellate Bench
SB	Single Bench
SC	Supreme Court

B. Codes, Statutes, and Acts

CCI (Iran)	Civil Code of the Islamic Republic of Iran, 2006
CPC	Code of Civil Procedure, 1908
Cr.PC	Code of Criminal Procedure, 1898
DMMA	Dissolution of Muslim Marriage Act, 1939
EFSA	Enforcement of Shariat Act, 1991
FCA	Family Courts Act, 1964

MCA (UK)	Matrimonial Causes Act, 1973 (United Kingdom)
MFL (Morocco)	Moroccan Family Law (Mudawwanah), 2004
MFLO	Muslim Family Laws Ordinance, 1961
PAWPA	Prevention of Anti Women Practices Act, 2011
PFCA	Punjab Family Courts (Amendment) Act, 2015
PPC	Pakistan Penal Code, 1860
SA	Succession Act, 1925
WFCA	West Pakistan Family Courts Act, 1964
WPMPLSA	West Pakistan Muslim Personal Law (Shariat) Application Act 1962

C. International Conventions, Treaties, and Declarations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979
CRC	Convention on the Rights of the Child, 1989
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
NGO	Non-Governmental Organization
SDGs	Sustainable Development Goals (United Nations)
UDHR	Universal Declaration of Human Rights, 1948
UN	United Nations
UNGA	United Nations General Assembly

D. Law Journals and Reports

AIR	All India Reporter
CLC	Civil Law Cases

CLD	Corporate Law Decisions
GBLR	Gilgit Baltistan Law Reports
ILR	Indian Law Reports
ILR Cal.	Indian Law Reports, Calcutta Series
MLD	Monthly Law Digest
NLR	National Law Reporter
PCr.LJ	Pakistan Criminal Law Journal
PLC	Pakistan Labour Cases
PLD	Pakistan Legal Decisions
PLJ	Pakistan Law Journal
PTD	Pakistan Tax Decisions
SCMR	Supreme Court Monthly Review
YLR	Yearly Law Reporter

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R

Rabia Bibi v. Safdar Hussain, PLD 374 (Lahore-High-Court 1997).

Rahilan v. Sanaullah, PLD 470 (Lahore High Court 1959).

Rahim Jan v. Muhammad, PLD 122 (Lahore-High-Court Lahore 1955).

Raj Bibi v. Province of Punjab, YLR 1500 (Lahore High Court 2015).

Rashid Ahmad Khan v. Nasima Ara, PLD 93 (Lahore-High-Court-Lahore 1968).

Rashida Begum v. Muhammad Younis, PLD 553 (Lahore High Court 2006).

Razia Begum v. Jang Baz, CLC 105 (Lahore High Court 2012).

Razia Begum v. Saghir Ahmad, CLC 1586 (Karachi High Court 1982).

Rehmat Bibi v. Muhammad Sharif, YLR 1424 (Lahore High Court 2013).

Rehmat Bibi v. Sharifan Bibi, SCMR 1812 (Supreme Court 1988).

Riffat Abrar v. Sheila Sabri, PLD 148 (Lahore High Court Lahore 1994).

S

Saeedunnisa v. Mirza Muhammad Latif, SCMR 1050 (Supreme Court 1996).

Sajjad Ahmed v. Shahnaz Begum, PLD 217 (Lahore High Court 2012).

Sakina Bibi v. Amina Bibi, YLR 2247 (Lahore High Court 2018).

Sakina Bibi v. Fazal Karim (1983 SCMR 534), SCMR 534 (Supreme Court 1983).

Sakina Bibi v. Muhammad Yousaf, CLC 1822 (Lahore High Court 2016).

Sakina Bibi v. Province of Punjab, SCMR 1621 (Supreme Court 2020).

Sakina Bibi v. Sher Muhammad, PLD 632 (Lahore High Court 1970).

Samia Anwar v. Nasir Hussain, MLD 731 (Lahore High Court 2022).

Sardar Muhammad v. Nasima Bibi, PLD 703 (Lahore High Court 1966).

Sardar Muhammad v. Shahida Bibi, PLD 591 (Supreme Court 2007).

Shah Abu Ilyas v. Ulfat Bibi, 19 ILR (Calcutta High Court 1896).

Shah Jehan Begum v. Zafar Ahmad, PLD 426 (Lahore High Court 2018).

Shahida Adeeb v. Nauman Ejaz, CLC 1160 (2007).

Shahida v. Habib Ahmad, MLD 1085 (Lahore High Court 2007).

Shamim Akhtar v. Additional District Judge Rawalpindi, PLJ 981 (Lahore High Court 2024).

Sohail Ahmed Ansari v. Irfan Ahmed Ansari, YLR 1559 (Sindh High Court 2018).

Sohail v Nazia Amin, CLC 1374 (Quetta High Court 2015).

State v. Muhammad Nabi Khan, PLD 553 (Supreme Court 2013).

Subhan Begum v. Allah Ditta, SCMR 635 (Supreme Court 2007).

Suleman v. Asma Bibi, CLC 2400 (Lahore-High-Court-Lahore 1983).

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Syed Hamid Ali Shah v. Razia Sultana, KLR 439 (1991).

Syed Mudassar Altaf v. Deputy Commissioner Lahore, PLJ 387 (Lahore High Court Lahore 1994).

Syed Muhammad v Zeenat, PLD 128 (Supreme Court 2001).

Syeda Asia Rizvi v. Federation of Pakistan, PLC 364 (Sindh High Court 2024).

Syeda Fouzia Jalal Shah v. Federation of Pakistan, PLD 1 (Federal Shariat Court 2025).

T

Tanvir Sarfraz Khan v. Federation of Pakistan, SCMR 98 (Supreme Court 2005).

Tayyaba Khanum v. Federation of Pakistan, CLC 775 (Islamabad High Court 2022).

Z

Zainab Bibi v. Muhammad Ibrahim, PLD 657 (Supreme Court 2002).

Zarina Begum v. Aziz-Ul-Haq, CLC 1525 (Lahore High Court 2006).

Zarina Bibi v. Land Acquisition Collector, SCMR 201 (Supreme Court 2022).

Zarina Bibi v. Muhammad Yaqoob, SCMR 211 (Supreme Court 2009).

CHAPTER 1: INTRODUCTION OF THE STUDY

Introduction

The financial rights of women, particularly the financial rights of wives, have been an important subject of legal and socio-political discourse within both Islamic law and Pakistani law. Islam, since its inception, introduced revolutionary reforms that secured distinct financial entitlements for women, including the rights to dower, maintenance (*nafaqah*), and inheritance. These rights not only elevated the economic status of women in Arabia in the seventh century but also laid down unique principles of justice and dignity within the framework of Islamic family law.

In contemporary Muslim societies, including Pakistan, the interpretation and enforcement of these financial rights are shaped by the combination of Islamic law, statutory law, and case laws. Despite the legal recognition of financial rights of women in Islamic law, many women continue to face innumerable obstacles in exercising these rights. Deep-rooted patriarchal attitudes, procedural barriers, and inconsistencies in legal enforcement often limit women's access to justice. The disparity between the principles of Islamic teachings and their application in daily life has sparked ongoing scholarly discussions, prompted legal reforms, and encouraged judicial efforts to bridge the gap between religious principles, constitutional protections, and international human rights standards.

This research investigates the financial rights of wives in the context of Islamic law and the Pakistani legal system. It explores how key institutions including the legislature and judiciary conceptualize, protect, and enforce women's financial entitlements in marriage and upon its dissolution or the death of a spouse. Central to this inquiry is a doctrinal and comparative legal analysis of three core financial rights: *dower*, *nafaqah*, and

inheritance, evaluated both in the light of Islamic law and Pakistan's constitutional and statutory frameworks.

1.1 Scope and Significance

This study is significant on numerous accounts, carrying significant impact to reshape the women rights. By drawing on classical Islamic legal texts, statutory provisions, and a wide body of case law from Pakistani courts, this study aims to present a critical and comprehensive account of how these rights have evolved historically, how they are situated in modern legal structures, and to what extent judicial trends align with or diverge from the Sharī‘ah principles. In doing so, the research not only highlights the normative richness of Islamic law but also interrogates the role of the Pakistani legal system in either upholding or undermining the financial protection and dignity of married women.

This chapter lays the foundation of the study by outlining the research objectives, the questions guiding the investigation, and the scope and limitations of the research. It also includes a review of relevant literature and identifies the gaps this research intends to fill. The chapter concludes by introducing the theoretical framework and providing an overview of the structure of the study.

A key debate centers on reinterpreting Islamic law to promote gender equity without compromising religious authenticity. In Pakistan, the superior judiciary plays a crucial role by blending Islamic principles with modern legal frameworks. This review analyzes these perspectives, contrasts their approaches, and highlights the existing gaps that this thesis seeks to address. Islamic law provides a comprehensive foundation for financial rights of women including dower, maintenance, and inheritance forming its central pillars. Across the four Sunni schools including Ḥanafī¹ these rights were conceptualized not as

¹ Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *Al-Bahr Al-Rā‘iq Sharḥ Kanz Al-Daqā‘iq*, vol. 6 (Egypt: Al-Maṭba‘ah al-‘Ilmīyah, 1894), 148.

discretionary acts but as enforceable legal rights² based on Qur'anic directions³ and Prophetic traditions foundational texts such as *Kitāb al-Nafaqāt*, *Kitāb al-Šidāq*, and *Kitāb al-Mīrāth* represent a juristic consensus (*ijmā'*) affirming these obligations. Hanafi scholars al-Marghīnānī in *Al-Hidāyah*⁴ and Al-Sarkhāsī in *Al-Mabsūt* established the legal basis and enforceability of these rights, particularly right to *dower* and *nafaqah and Mirāth*.⁵

This study bridges the gap between Islamic law and statutory law by examining foundational sources such as *Kitāb al-Nafaqāt*, *Kitāb al-Šidāq*, and *Kitāb al-Mīrāth* and the positions of the four Sunni legal schools on dower and maintenance. While rich in jurisprudential detail, these texts remain underutilized in shaping contemporary legal practices in Pakistan. By tracing the evolution of financial rights like dower, maintenance and inheritance, this research highlights legal relevance and potential for reform in current statutory frameworks. This obligation is rooted in Qur'anic guidance:

لِيُنْفِقَ ذُو سَعَةٍ مِّنْ سَعَةٍ وَمَنْ قُدْرَةُ عَلَيْهِ رِزْقٌ فَلْيُنْفِقْ مِمَّا أَنْتَهُ اللَّهُ أَعْلَمُ⁶

“Let him who has abundance spend out of his abundance, and he whose provision is restricted let him spend from what Allah has given him.”⁷

Hanafi jurists closely tied *nafaqah* with the continuation of the marital contract and the wife's submission to conjugal duties. Al-Marghīnānī in *Al-Hidāyah* asserts that maintenance is a binding debt on the husband so long as the wife does not refuse marital cohabitation without lawful excuse.⁸ Al-Kāsānī in *Badā'i al-Šanā'i* elaborates that the

² Ibn Qudāmah Abū Muḥammad 'Abd Allāh b. Aḥmad b. Muḥammad, *Al-Muġhnī*, vol. 11 (United Kingdom: Rufoof, 1968), 564.

³ Al-Qur'ān, 2:233,

⁴ Burhan al-Din Abu al-Hasan Ali ibn Abi Bakr Al-Marghīnānī, *Al-Hidāyah*, vol. 2 (Lebanon: Dar al-Kutub al- 'Ilmiyyah, 2010), 308.

⁵ Abū Bakr Muḥammad ibn Ahmad Al-Sarkhāsī, *Al-Mabsūt*, vol. 5 (Beirut: Dar al-Ma'rifah, 1987).

⁶ *Al-Qur'ān*, n.d., 65:7.

⁷ Ibid., Abdullah Yusuf Ali, trans., *The Holy Quran: English Translation* (India: Wordsworth Editions, 2014), 289.

⁸ Burhan al-Din Abu al-Hasan Ali ibn Abi Bakr Al-Marghīnānī, *Al-Hidāyah*, trans. Imran Ahsan Khan Nyazee, vol. 2 (Islamabad: Center for Excellence in Research, 2006), 287.

obligation of nafaqah persists even during periods of marital discord, provided the wife remains within the marital home.⁹ Mālikī¹⁰ and Shāfi‘ī jurists introduce the concept of *ma‘rūf* local custom as a basis for quantifying *nafaqah*, emphasizing the preservation of personal dignity.¹¹ Hanbalī scholars, particularly Ibn Qudama in *al-Mughnī*, go further by codifying *nafaqah* as a legally enforceable debt.¹²

Inheritance rights are among the most explicitly detailed components of Islamic law, grounded in *‘Ilm al-Farā’iq* the science of inheritance. The Qur’ān mandates fixed shares for wives, ensuring economic stability for women following the death of a husband: “*And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave.*”¹³ Classical jurists, including al-Shāfi‘ī and Ibn Qudama, emphasized the divinely ordained nature of these allocations, treating them as non-negotiable rights.¹⁴

1.2 Problem Statement

Despite the foundational guarantees of wives’ financial rights in Islamic law, statutory law and judicial practice in Pakistan remains inadequate and inconsistent. Rights such as dower, maintenance and inheritance are fragmented across statutes and unevenly enforced. Judicial interpretations at times converge with, and at other times diverge from, Sharī‘ah principles, leading to legal uncertainty and practical deprivation. This thesis examines these inconsistencies and evaluates how reforms aligned with Islamic law may ensure protection of financial rights of wives.

⁹ ‘Alā’uddīn Abū Bakr bin Mas‘ūd Al-Kāsānī, *Badā’i‘ al- Ṣanā’i ‘Fī Tartīb al-Sharā’i*, vol. 3 (Beirut: Dār al- Kutub al- ‘Ilmiyyah, 2010), 15.

¹⁰ *Al-Mudawwanah*, vol. 3 (Beirut: Dār al-Kutub al- ‘Ilmiyyah, 1994), 956.

¹¹ “West Pakistan Muslim Personal Law (Shariat) Application Act, 1962” (1962), sec. 2.

¹² Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 11:564.

¹³ *Al-Qur’ān*, 4:12.

¹⁴ Ibn Qūddāmah Abū Muḥammad ‘Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, vol. 6 (United Kingdom: Rufoof, 1968), 87.

1.3 Research Questions

Accordingly, this research is based on the following research questions:

1. What are the financial rights of wives under Islamic law and Pakistani statutory law? How does Islamic law conceptualize these rights, and how does Western legal thought engage with similar concepts?
2. How is the right to dower protected under Islamic law and Pakistani statutory law, and how have Pakistani courts interpreted and applied these principles?
3. How does Islamic law regulate the right to maintenance, and how is it addressed under Pakistani family laws? To what extent have Pakistani courts implemented Islamic principles in their rulings on maintenance?
4. How does Islamic law define women's inheritance rights, and what misconceptions surround them? How have Pakistani statutory provisions and judicial decisions applied these principles, and are they consistent with Sharī'ah rulings?

1.4 Objectives of the Study

The present study aims to achieve specific objectives to fulfill the broader goals of the research, which include:

1. To critically analyze the recognition and enforcement of wives' financial right to dower, maintenance, and inheritance under Islamic law and Pakistani statutory law.
2. To evaluate judicial interpretations and the practical implementation of these rights in Pakistani courts, identifying legal inconsistencies and enforcement challenges.
3. To identify and analyze gaps between Islamic law, Pakistani statutory law, and judicial practice in safeguarding financial rights of wives.
4. To clarify misconceptions surrounding women's rights to maintenance and inheritance in Islamic law and to examine the role of the superior judiciary in protecting these rights.

1.5 Literature Review

The financial rights of wives, particularly within the frameworks of Islamic law and the Pakistani legal system, have been the subject of extensive scholarly inquiry. This literature review critically engages with existing research to identify key gaps in the discourse and to situate the current study within these gaps, highlighting its contribution to the broader academic conversation. The literature on financial rights of women in Islamic contexts can be categorized into three central thematic areas: 1) financial rights of wives in Islamic law and contemporary legal discourse 2) Reformist interpretations on financial rights of women, and 3) Critical Legal Theory and Its impact on legal reform for financial rights of women.

1.5.1 Women's Right to Dower, Maintenance, and inheritance in Islamic Law

Dower, maintenance, and inheritance form the cornerstone of Islamic matrimonial law, embodying both the spiritual dignity and concrete financial rights of women as established in classical jurisprudence and affirmed by Qur'ānic injunctions such:

“And give the women their dower as a free gift”¹⁵ And “Let him who has abundance spend out of his abundance, and he whose provision is restricted let him spend from what Allah has given him”¹⁶

The Qur'ān mandates fixed shares for wives, ensuring economic stability for women following the death of a husband:

“And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave.”¹⁷

¹⁵ *Al-Qur'ān*, 4:4., Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, vol. 7 (United Kingdom: Rufoof, 1968), 564.

¹⁶ *Al-Qur'ān*, 65:7.

¹⁷ *Ibid.*, 4:12.

Foundational juristic books *Al-Hidāyah* by al Marghīnānī¹⁸ and *Al-Mabsūt* by al-Sarkhāsī.¹⁹ Al-Kāsānī in *Badā'i al-Šanā'i* and Ibn Qudama in *al-Mughnī*, elaborated the doctrinal foundations of dower, maintenance and inheritance within Islamic law, elaborate the legal rationale, classifying *dower* as a civil debt (*dayn*) binding upon the husband.²⁰ This research moves beyond purely juristic exposition to critically assess how these financial rights are operationalized, constrained, or reinterpreted within Pakistan's contemporary legal system, thereby addressing the gap between normative theory and lived legal realities for Muslim women. Al-Marghīnānī in *Al-Hidāyah*²¹ Al-Kāsānī in *Badā'i al-Šanā'i* discussed the jurisprudential details regarding obligations and entitlement of maintenance and inheritance.²² And Islamic jurists like Mālikī²³ and Shāfi'ī jurists introduce the basis for quantifying *nafaqah*, emphasizing the preservation of personal dignity²⁴ Ḥanbalī scholars, particularly Ibn Qudama in *al-Mughnī*, go further by codifying *nafaqah* as a legally enforceable debt.²⁵ Unlike earlier studies that focus primarily on doctrinal or exegetical analysis, this thesis adopts a comparative legal approach, integrating classical Islamic principles with Pakistan's statutory and judicial systems. It critically explores how financial rights particularly dower, maintenance, and inheritance can be interpreted and reinforced through contemporary legal frameworks and reform-oriented interpretations.

¹⁸ Imran Ahsan Khan Nyazee and Burhan al-Din Abu al-Hasan Ali ibn Abi Bakr Al-Marghīnānī, trans., *Al-Hidāyah: The Guidance* (CreateSpace, 2016), 2:287.

¹⁹ Al-Sarkhāsī, *Al-Mabsūt*, 5:118.

²⁰ Ibn Qudāmah Abū Muḥammad 'Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 11:564.

²¹ Nyazee and Al-Marghīnānī, *Al-Hidāyah*, 2:287.

²² Al-Kāsānī, *Badā'i al-Šanā'i* 'Fī Tartīb al-Sharā'i, 2010, 3:15.

²³ *Al-Mudawwanah*, 3:956.

²⁴ West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, sec. 2.

²⁵ Ibn Qudāmah Abū Muḥammad 'Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 11:564.

The incorporation of classical doctrines into legal systems, of Pakistan has exposed significant challenges. While the Muslim Family Laws Ordinance (MFLO) of 1961 codified maintenance obligations, it left critical issues particularly the duration and amount of post-divorce maintenance ambiguous.²⁶ Judicial decisions, such as *Bilqis Fatima v. Najm-ul-Ikram Qureshi*, have attempted to bridge this gap by reaffirming the husband's duty to provide maintenance during the '*iddah* period.²⁷

Contemporary scholars have responded by critically evaluating both the theoretical foundations and practical enforcement of *nafaqah*. The book by Dr. Tahir Mansoori *Family Law in Islam: Theory and Application* offers a comprehensive theoretical overview of Islamic family law, presenting classical juristic views and their relevance to modern contexts. While it sheds light on the foundational concepts of dower, maintenance, and inheritance, its focus remains largely theoretical, without a detailed analysis of how these rights are interpreted or enforced in specific legal systems.²⁸ In contrast, this thesis adopts a comparative legal approach that engages with both classical jurisprudence and the statutory, judicial, and procedural dimensions of Pakistan's legal framework to identify gaps and propose actionable reforms for the enforcement of financial rights of women.²⁹

Dr. Muhammad Munir, in his article *Dower in Islamic Law and Pakistani Legal System*, offers a detailed analysis of dower, exploring its origins, classifications, and enforcement in Islamic law and its statutory treatment in Pakistan. His focus is primarily on the legal status and procedural handling of dower within the court system, with limited attention to broader issues of women's financial autonomy or the socio-legal impact of

²⁶ "The Muslim Family Laws Ordinance 1961," Pub. L. No. VIII (1961), sec. 9,10.

²⁷ *Bilqis Fatima v. Najm-ul-Ikram Qureshi*, PLD 83 (Supreme Court 1959).

²⁸ Muhammad Tahir Mansuri, *Family Law in Islam: Theory and Application* (Islamabad: IPS Press, 2021), 145.

²⁹ Muhammad Tahir Mansuri, *Family Law in Islam: Theory and Application* (Islamabad: IPS Press, 2021), 145.

symbolic dower practices.³⁰ In contrast, this thesis takes a multidimensional comparative approach, analyzing dower not only doctrinal and statutorily but also in terms of its practical enforcement, its relationship with maintenance and inheritance, and its reform potential within Pakistan's evolving legal framework to strengthen financial rights of women.

Economic Rights of Women in Islam: Some Reflections article by Asma Kounzar offers a thematic exploration of women's financial entitlements such as dower, maintenance, and inheritance within the Islamic tradition, emphasizing their moral and spiritual dimensions over legal enforceability. Rooted in classical jurisprudence, it does not engage with how these rights function within contemporary legal systems.³¹ In contrast, this research employs a comparative legal methodology to critically assess the implementation of these rights within Pakistan's statutory and judicial frameworks, identifying key gaps and inconsistencies while proposing reforms grounded in Islamic law.

In Gender and Property Law in Pakistan: Resources and Discourses, Rubya Mehdi examines how gender, culture, and legal pluralism intersect, highlighting the gap between formal legal rights and social realities especially within patriarchal family structures that limit women's inheritance. While Mehdi provides a valuable sociological and anthropological analysis,³² this thesis takes a doctrinal and comparative legal approach, focusing specifically on wives' financial right to dower, maintenance, and inheritance within Islamic law and Pakistan's legal framework, aiming to propose legal reforms.

³⁰ Muhammad Munir, "Dower in Islamic Law and Pakistani Legal System," *SSRN Electronic Journal*, 2022.

³¹ Asma Kounzar, "Economic Rights of Women in Islam: Some Reflections," *International Journal of Interdisciplinary and Multidisciplinary Studies* 4, no. 2 (2017): 37–43.

³² Rubya Mehdi, *Gender and Property Law in Pakistan: Resources and Discourses* (Lahore: Vanguard, 2002).

In *Gender and Human Rights in Islam and International Law*, Shaheen Sardar Ali uses a critical, interdisciplinary approach to examine the intersection of Islamic law, international human rights, and gender justice, advocating for interpretive flexibility within Sharī‘ah to support gender equity. While her work highlights the normative potential of Islamic law in advancing women’s rights, it remains largely theoretical and rights-focused.³³ In contrast, this thesis adopts a legal-structural approach, concentrating on financial rights of women dower, maintenance, and inheritance through a comparative analysis of Islamic law and Pakistan’s legal system, addressing the practical challenges of enforcement.

Pakistani courts have occasionally attempted to uphold women’s inheritance rights. In *Ghulam Ali and 2 Others v. Ghulam Sarwar Naqvi* the Supreme Court held that women cannot be deprived of their Qur’ānic shares due to prevailing cultural practices, affirming that Islamic law must override custom.³⁴ Similarly, in *Aksar Jan v. Shamim Akhtar* the Court invalidated oral waivers of inheritance rights and emphasized the need for strict procedural compliance.³⁵ These judgments reflect an encouraging shift toward jurisprudential alignment with Islamic injunctions. However, the frequency of such rulings remains low, and enforcement remains uneven.

This study calls for a coherent legal framework that harmonizes Islamic principles of justice and public welfare with statutory clarity and procedural reforms. It proposes institutional mechanisms such as specialized inheritance support units and mandatory legal aid to ensure effective enforcement and consistency between Sharī‘ah and state law. Despite progress in scholarship and judicial rulings, gaps remain in the recognition and

³³ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* (The Hague ; Boston: Kluwer Law International, 2000), 101–8., Ruby Mehdi, *The Islamization of the Law in Pakistan*, Routledge Library Editions: Politics of Islam (Hoboken: Taylor and Francis, 2013), 204–2210.

³⁴ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD 1 (Supreme Court 1990).

³⁵ *Aksar Jan v. Shamim Akhtar*, SCMR 88 (Supreme Court 2025).

enforcement of financial rights of wives particularly dower and maintenance due to statutory ambiguities, weak implementation, and entrenched social pressures. By combining comparative legal analysis with practical reforms, this research seeks to bridge Islamic jurisprudence and Pakistan's statutory system to secure wives' financial rights in a more systematic and enforceable manner.

1.5.2 Reformist Interpretations on Financial Rights of Women

Reformist interpretations of financial rights of women in Islam offer a critical rethinking of classical jurisprudence by emphasizing justice, equity, and the ethical aims of the Qur'an. Scholars like Amina Wadud reinterpret in her book *Qur'ān and Woman: Rereading the Sacred Text from a Woman's Perspective* key concepts such as dower and marital obligations to reflect mutual respect.³⁶ While this literature makes significant normative contributions, it often remains within the theological realm and does not address the practical challenges of legal reform within codified systems of Pakistan an institutional gap this thesis aims to address through a comparative legal analysis.

In *Towards Gender Equality: Muslim Family Laws and the Shari'ah*, Ziba Mir Hosseini critiques patriarchal interpretations of Islamic personal status laws, advocating for reform rooted in the ethical foundations of Islam and contemporary notions of justice and equity. While her work offers a valuable framework for rethinking gender roles, it treats financial rights of women such as dower, maintenance, and inheritance only as part of a broader critique.³⁷ In contrast, this thesis provides a focused, comparative legal analysis of these specific entitlements within Islamic law and Pakistan's legal system, aiming to develop concrete statutory reforms. In *The Veil and the Male Elite: A Feminist*

³⁶ Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999).

³⁷ Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, Princeton Studies in Muslim Politics (London: Tauris, 2000).

Interpretation of Women's Rights in Islam, Fatima Mernissi offers a sociological perspective, arguing that the marginalization of women's rights financial or otherwise was shaped by early political dynamics rather than Islamic doctrine.³⁸ In contrast, this thesis specifically examines these entitlements through a comparative legal analysis of Islamic law and Pakistani law, aiming to bridge the gap between Islamic principles and Pakistani law.

Leila Ahmed³⁹ and Fatima Seedat⁴⁰ apply postcolonial and inter-sectional frameworks to the study of gender in Muslim societies. Ahmed, in particular, examines how colonial legal interventions reconfigured Islamic gender norms, arguing that colonialism often reinforced rather than dismantled patriarchal structures. While their analyses offer critical insights into the historical and ideological shaping of gender discourse, they do not directly address the doctrinal or statutory dimensions of financial rights of women this thesis engages with through a focused legal analysis of dower, maintenance, and inheritance within Islamic and Pakistani legal contexts

While reformist scholars have made important contributions to Islamic thought, their work often lacks contextual grounding in legal enforcement mechanisms. Few address the procedural and evidentiary challenges faced by women in Pakistan's family courts or the role of patriarchal customs such as jirgas and informal dower waivers in undermining Shari‘ah based rights. This thesis builds on reinterpretations and moves further by proposing a grounded legal framework that integrates and aligned with Islam law with institutional and procedural safeguards within Pakistan's legal system.

³⁸ Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*, 11th ed. (Spain: Basic Books, 2002).

³⁹ Lila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Germany: Yale University Press, 2021), 69.

⁴⁰ Fatima Seedat, "When Islam and Feminism Converge," *The Muslim World* 103, no. 3 (July 2013): 404–20..

1.5.3 Critical Legal Theory and its Impact on Legal Reform

Critical legal theory examines the underlying power dynamics embedded within statutory frameworks, highlighting how seemingly neutral legal provisions often perpetuate gender based hierarchies. In the Pakistani context, although legislative measures such as the Muslim Family Laws Ordinance introduced progressive reforms about the regulation of dower and maintenance, these initiatives remain fragmented and legally inadequate.

A Critical Review of Pakistani Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Laws, by Altaf Hussain Langrial argues that this legislative vagueness undermines financial protection of women, particularly in cases of divorce or widowhood, where judicial interpretation becomes the primary avenue for enforcement, often with inconsistent outcomes.⁴¹ Rubya Mehdi critically observes that colonial duality embedded in Pakistan's legal system obstructs the full realization of Islamic principles.⁴²

Critical Legal Theory critiques by revealing how the legal system is structurally reinforcing patriarchal privilege under the pretext of maintaining familial cohesion. The issue lies not only in textual ambiguity but in the ideological role of law itself, which, as Critical Legal Theory contends, perpetuates these ambiguities to sustain existing power hierarchies.⁴³ A key example is the legal neglect of *Talāq e-tafwīd* (delegated divorce), which, if properly recognized, could strengthen women's financial autonomy. Muhammad Munir critiques the courts' reluctance to enforce such contractual rights, arguing that this reflects a broader resistance to female agency and undermines the contractual flexibility

⁴¹ Altaf Hussain Langrial and Syed Abrar Hussain Shah, "A Critical Review of Pakistani Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Laws," n.d.

⁴² Rubya Mehdi, *The Islamization of the Law in Pakistan*, 152.

⁴³ Duncan Kennedy, *A Critique of Adjudication* (Cambridge, Mass.: Harvard University Press, 2009), 125–127.

permitted within Islamic law.⁴⁴ This thesis builds on such critiques by examining how the structural biases identified by Critical Legal Theory manifest in the inconsistent enforcement of financial rights of women particularly dower, maintenance, and inheritance in Pakistan. By integrating doctrinal analysis with statutory and judicial review, the study seeks to uncover how legal ambiguities and institutional inertia continue to undermine Islamic principles intended to safeguard women's economic autonomy.

Judicial decisions in Pakistan have oscillated between progressive recognition and conservative restraint, often influenced more by socio-cultural norms than jurisprudential clarity. For instance, in *Amtul Habib v. Mussarrat Parveen*, the court acknowledged a wife's right to maintenance but avoided addressing post-divorce support, perpetuating ambiguity in the absence of legislative direction.⁴⁵ Critical Legal Theory critiques this discretionary ambiguity as symbolic of systemic inequities. The lack of a binding framework for maintenance decisions not only fuels inconsistency but reinforces male economic dominance under the pretext of religious fidelity.⁴⁶

In *Ghulam Ali v. Ghulam Sarwar Naqvi*,⁴⁷ the Supreme Court affirmed a woman's right to inheritance but did not establish enforcement mechanisms, revealing the limits of judicial recognition without institutional support. Critical Legal Theory underscores that such legal victories are often ineffective without genuine redistribution of power. Likewise, lower courts frequently prioritize 'urf over clear Sharī'ah principles, interpreting dower as symbolic rather than substantive. This demonstrates how law, influenced by existing social hierarchies, often undermines the Qur'ānic mandate for financial equity.

⁴⁴ Muhammad Munir, "Stipulations in a Muslim Marriage Contract with Special Reference to Talaq Al-Tafwid Provisions in Pakistan," in *Yearbook of Islamic and Middle Eastern Law*, vol. 12, 2005, 254.

⁴⁵ *Amtul Habib v. Mussarrat Parveen*, SCMR 185 (Supreme Court 1974).

⁴⁶ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law*, 115–18.

⁴⁷ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

Much of the existing literature, including works by Mehdi and Munir, offers valuable insight into financial rights of wives but lacks an integrated framework that systematically analyzes law, judicial practice, and mechanisms for enforcement. While these studies identify inconsistencies and recommend reforms, they do not fully address the gaps between Islamic law, Pakistani statutory law, and judicial application. This dissertation fills that gap by employing Critical Legal Theory, aligned with Shari‘ah, to evaluate both doctrinal principles and practical enforcement, thereby moving beyond the assumption that reform rests solely on legislative change or judicial activism.

1.5.4 Research Gap

Despite substantial scholarly work on financial rights of women in Islamic law and Pakistan's legal system, key gaps remain. Most studies focus on doctrinal interpretations of dower, *nafaqah*, and inheritance, with limited attention to how these rights are applied or contested in Pakistan's legal and judicial practice. While scholars like Dr. Muhammad Munir and Dr. Tahir Mansoori offer important juristic insights, they often overlook the practical challenges women face, leaving a gap between Islamic principles and their enforcement on the ground.

Reformist scholars like Amina Wadud and Ziba Mir-Hosseini emphasize ethical justice and gender-equitable readings of the Qur'ān, but their analyses often remain abstract and theological. They seldom engage with statutory law, judicial practice, or offer context specific reforms particularly for countries like Pakistan, where legal pluralism and custom heavily influence women's access to justice.

Critical Legal Theory remains underutilized in analyzing financial rights of women in Pakistan. While scholars like Rubya Mehdi and Shaheen Sardar Ali expose structural and ideological flaws, their critiques often lack integration into a reform-oriented framework. They fall short of fully theorizing how patriarchal interpretations are sustained

through judicial discretion, legal ambiguity, and cultural norms, and rarely propose practical reforms grounded in Islamic legal principles.

There is a notable gap in legal scholarship that integrates Islamic law, statutory law, judicial practice and Sharī‘ah based unified, enforceable reform model. While the *Maqāṣid* framework is often discussed theoretically, it is seldom applied to develop concrete statutory measures or institutional mechanisms that advance women’s financial autonomy in contexts like Pakistan.

Another key gap is the limited engagement with case law. While legal provisions are discussed in the literature, there is little in-depth analysis of how courts interpret and apply these laws in real cases. Judicial decisions play a crucial role in shaping financial rights, Even so, the inconsistency in judicial reasoning and the potential for gender-biased interpretations remain under explored. Addressing this gap is vital for assessing the practical enforcement of financial rights of women.

This thesis fills important gaps by providing a comparative legal analysis that connects Islamic law with Pakistan’s statutory laws and proposes a *Maqāṣid* based legislative model emphasizing enforcement, procedural clarity, and accountability. Unlike much existing work, it centers women lived experiences and legal agency. The study contributes by (1) analyzing contradictions between Islamic and Pakistani laws, (2) critically reviewing biased judicial interpretations, and (3) offering practical legislative reforms that align Islamic principles with enforceable statutes on dower, maintenance, and inheritance. This comprehensive approach aims to strengthen financial rights of women in Pakistan.

1.6 Limitations of the Study

The study is subject to several methodological limitations. Firstly, it is a qualitative and doctrinal legal analysis and thus does not incorporate empirical methods such as fieldwork,

interviews, or first hand accounts from affected women or legal practitioners. Secondly, the research is practically limited to the formal legal framework statutory provisions and judicial interpretations and does not extend to informal, customary, or tribal practices that are prevalent in many rural and urban areas of Pakistan. This study is limited by its exclusion of customary norms, which often shape women's access to financial rights and may conflict with Islamic or statutory law, thereby overlooking how law operates in diverse social contexts. It also focuses solely on Muslim women, leaving out the financial rights of non-Muslim women governed by different personal laws.

The study is limited by its institutional scope, focusing on legislation and judicial rulings while overlooking the role of enforcement bodies such as family courts, revenue departments, and legal aid systems. This gap weakens the practical applicability of its findings. Notably, a 2023 report by the Human Rights Commission of Pakistan found that nearly 70% of women are unaware of their legal rights to maintenance and inheritance, underscoring the urgent need for legal literacy, institutional reform, and stronger alignment with both Islamic principles and international human rights standards.⁴⁸

Despite these limitations, the study offers a meaningful contribution to legal and policy discussions on in Islamic and Pakistani legal contexts. By highlighting judicial trends and statutory frameworks, it provides foundation for future empirical work and policy reforms aimed at strengthening the financial rights of women.

1.7 Research Methodology

This research discuss the principles recognized by Sharī'ah for the protection and preservation of the status of women, particularly focusing on the financial rights of wife as interpreted and applied by Pakistani courts. The research is primarily doctrinal, involving

⁴⁸ *State of Human Rights in 2023* (Human Rights Commission of Pakistan, 2023), 107.

a comprehensive analysis of legal texts, case law, and statutory provisions.⁴⁹ combined with qualitative methods to provide a thorough examination of the socio-legal context. This methodology incorporates historical, descriptive, analytical, comparative, and explanatory approaches, applying each as necessary to address the research questions.

The research is qualitative, with a doctrinal approach at its core. This include thorough exploration of legal sources including primary and secondary sourced to examine the existing legal framework and its application in Pakistan.⁵⁰ The doctrinal methodology is chosen to construct a narrative for reform, referencing established legal doctrine from legislation and case law, promoting coherency in the official legal framework.⁵¹ Doctrinal legal research is also reform oriented, in that it evaluates the adequacy of the existing rules and recommends changes to any rules found wanting it through deductive and inductive reason, as well as reasoning by analogy.⁵²

The data for this research is collected from a combination of primary and secondary sources: Primary Sources includes statutes, legislative texts including the Family Courts Act of 1964, the Muslim Family Laws Ordinance of 1961, and other relevant legal provisions. Case Laws or judicial decisions from Pakistani courts, particularly the Supreme Court and High Courts, focusing on rulings related to the financial rights of wives.

Secondary Sources have been utilized including academic Journals: Peer reviewed articles and papers focusing on family law, Islamic law, and financial rights of women. Comprehensive texts on Pakistani family law and Islamic law. Reports published by NGOs, international organizations, and legal bodies on the status of Rights of Women in Pakistan.

⁴⁹ Terry Hutchinson and Nigel Duncan, “Defining and Describing What We Do: Doctrinal Legal Research,” *Deakin Law Review* 17, no. 1 (2012): 84–119.

⁵⁰ P. Ishwara Bhat, “Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles,” in *Idea and Methods of Legal Research* (Oxford University Press, 2020), 143.

⁵¹ Hutchinson and Duncan, “Defining and Describing What We Do: Doctrinal Legal Research,” 24.

⁵² *Ibid.*, 101.

Online Databases, Legal databases such as Pakistan law site and JSTOR for accessing relevant literature and legal documents.

Doctrinal Legal Research method has been used to examine of the relevant legislative provisions to understand the legal framework governing financial rights of wife. This includes a detailed review of the texts and amendments of the Family Courts Act, Muslim Family Laws Ordinance, and other pertinent laws. Detailed analysis of landmark judicial decisions, interpretations, and judicial attitudes towards financial rights of wife. This will involve reading and summarizing court rulings, identifying legal principles, and noting any inconsistencies or trends.

Qualitative Analysis of Legal Texts was done by Content analysis of legal texts to identify themes and patterns in the treatment of issues related to financial rights of wife. Contextual analysis was helpful to understand their implications and effectiveness. This includes examining how cultural norms and societal attitudes influence the enforcement and interpretation of laws.

In analyzing the legal issues in a structured way, IRAC method is in vogue, which stands for Issue, Rule, Application, and Conclusion. IRAC method was employed for case studies.⁵³ In-depth examination of specific cases that illustrate key issues and challenges in the application of financial rights of wife. These case studies will provide practical insights into how the laws operate in real life scenarios. Comparison of different cases to highlight variations in judicial decisions and their impact on financial rights of wife . This will help identify any judicial biases or discrepancies in legal interpretations.

Analytical techniques were adopted for critical examination of the legal framework to identify gaps, inconsistencies, and areas needing reform by evaluating the effectiveness

⁵³ Mark van Hoecke, ed., *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (United Kingdom: Bloomsbury Publishing, 2011), 209.

of current laws in protecting rights of wife and identifying potential improvements. For the translation of verses of Holy the translation of Abdullah Yusuf Ali and for the interpretation of relevant verses, books of tafsir are consulted. The rules of transliteration have been applied from the transliteration table issued by the Islamic Research Institute Islamabad.

This research methodology aims to provide a comprehensive analysis of the legal provisions regarding dower, maintenance and inheritance right of wives in Pakistani law. By employing a combination of doctrinal legal research, qualitative analysis, and case studies, the research seeks to highlight both the strengths and weaknesses of the current legal framework. The work offer actionable recommendations for legal reform that enhance the protection and enforcement of financial rights of women within the matrimonial context in Pakistan.

1.8 Theoretical Framework

This theoretical framework addresses key gaps in the literature on financial rights of women under Islamic and Pakistani law by integrating legal theory and classical jurisprudence. It offers a comparative analysis of Islamic principles and Pakistani statutes, which are often studied separately, to provide a nuanced understanding of the foundations, scope, and enforcement of these rights. Chapter 2 will further examine this framework alongside Western legal thought, highlighting how these intersecting legal systems impact women's financial entitlements in Pakistan. This framework analyzes judicial interpretations of financial rights of women in Pakistan through legal realism and theory. It reviews landmark cases and judicial activism, critiquing decisions that undermine these rights. By integrating legal perspectives, the study offers a deeper understanding of the judiciary's role in shaping financial rights in Pakistan.

This framework combines socio-cultural and legal perspectives to examine how patriarchal norms, and societal attitudes hinder financial rights of women, especially maintenance, often conflicting with Islamic teachings. Grounded in *Shari‘ah*, it seeks to align Islamic principles with Pakistani law through practical reforms, with enforceable maintenance standards, penalties for inheritance denial. Drawing on case law and reforms from other Muslim countries, it offers a comprehensive, context-sensitive approach that centers women’s experiences and legal agency to close gaps in financial rights protection.

The concept of *Maqāṣid al-Shari‘ah* the objectives or higher aims of Islamic law provides a powerful lens through which the financial rights of women can be analysed and protected. Traditionally, Muslim jurists have outlined five essential objectives of *Shari‘ah* ‘ah: preservation of religion (*dīn*), life (*nafs*), intellect (*‘aql*), lineage (*nasl*), and property (*māl*). This formulation was famously articulated by Imām al-Ghazālī, who emphasized that *Shari‘ah* ‘ah seeks to secure these five necessities for the welfare of humanity and to prevent harm and corruption in society.⁵⁴ Later scholars such as al-Shāṭibī elaborated on this framework, asserting that the purpose of Islamic law is the realization of human welfare (*maṣlahah*) in both worldly and spiritual affairs.⁵⁵

From this perspective, financial entitlements such as dower, maintenance, and inheritance are not merely legal obligations but essential components to realize justice, dignity, and socio-economic security for women. The denial, of these rights is a violation of objectives of *Shari‘ah*, which is to promote welfare and prevent harm (*jalb al-maṣāliḥ wa dar’ al-mafāṣid*)⁵⁶ For example, the failure to provide timely maintenance or rightful

⁵⁴ Muḥammad Muḥyī Uddīn ‘Abdul-Ḥamīd, *Al-Muṣṭaṣfā Min ‘ilm Al-Usūl*, vol. 1 (Cairo: Al-Maktabah al-Tijāriyyah, n.d.), 287–88.

⁵⁵ Ibrahim ibn Musa al-Shatibi, *Al-Mūwāfaqāt Fi Usūl Al-Shari‘ah*, vol. 2 (Egypt: Dar al-Kutub al-‘Ilmiyah, 1991), 8–10.

⁵⁶ Muḥammad al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid Al-Shari‘ah al-Islāmiyyah*, ed. Muḥammad al-Ṭāhir al-Miṣāwī (Amman: Dār al-Nafā’is, 2001), 84–86.

inheritance to a wife undermines her autonomy, security, and human dignity contradicting the objectives of Sharī‘ah.

Furthermore, *Maqāṣid al-Sharī‘ah* encourages a dynamic and purposive interpretation of legal texts, allowing jurists and lawmakers to consider changing social contexts and structural injustices that women may face. Ibn ‘Āshūr, a modern Mālikī jurist, expanded the concept of *Maqāṣid* to include values like justice, freedom, and human dignity, and emphasized the importance of applying Islamic law in a way that aligns with these universal ethical principles⁵⁷ This is particularly significant in the Pakistani legal context, where cultural practices, procedural delays, and lack of awareness often hinder the effective enforcement of financial rights of women.

Recent scholarship by thinkers like Jasser Auda has further advanced *maqāṣid* based reasoning, introducing a systems theory approach that emphasizes values such as dignity (*karāmah*), justice (*‘adl*), and removal of hardship (*raf‘ al-haraj*) as central to legal reasoning. He calls for a transformative understanding of Islamic law that is flexible, and rooted in human development. A *Maqāṣid* informed legal reform agenda in Pakistan could thus enhance protections, streamline enforcement, and close interpretive gaps between traditional fiqh and contemporary realities.

Moreover, grounding the financial rights of women within the *Shari‘ah* framework elevates these entitlements from mere legal formalities to core elements of Islamic justice. It urges both religious scholars and state institutions to prioritize the realization of women’s dignity and socioeconomic protection in both private law (family law) and public policy.

⁵⁷ Jasser Auda, *Maqāṣid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 43–45.

1.9 Organization of the Study

This dissertation is structured into six chapters, each building on the previous to develop a comprehensive and critical understanding of the financial rights of wives under Islamic law and the Pakistani legal system. The Chapter One introduces the research problem, objectives, significance, and methodology. It outlines the key research questions and provides a clear articulation of the research gap. The chapter also presents the theoretical framework and reviews the study's relevance in light of existing scholarship. Chapter Two is on Conceptual Foundations of financial rights of women in Islamic and Western Legal Traditions. This chapter explores the historical and jurisprudential foundations of financial rights of women in Islamic law, including the rights to dower, maintenance, and inheritance. It also compares these with Western legal thought to highlight key similarities, differences, and the influence of colonial legal structures on the Pakistani legal framework.

Chapter Three is on dower it critically examines the concept of dower in Islamic law and Pakistani law. It analyses the relevant legislation, and practices of courts and assesses the coherence with Islamic legal principles.

Chapter Four discusses the Right to Maintenance of the Wife Judicial Interpretation Focusing specifically on the right to maintenance analyses key judicial decisions and the application of Islamic and statutory law in Pakistani courts. It highlights gaps in enforcement, gender biases, and challenges in post-divorce maintenance, particularly during the *'iddah* period

Chapter Five is on the Right to Inheritance of wife delves into the practical challenges surrounding the enforcement of women's rights to inheritance. It provides a detailed study of case law to evaluate how Pakistani courts interpret and implement these rights, with attention to inconsistencies and socio-cultural barriers that hinder compliance with Islamic principles. In the last chapter findings of the study and Conclusion and recommendations

are presented which offers judicial and legislative recommendations for bridging the gap between Islamic principles and the Pakistani legal system

CHAPTER 2: THE CONCEPT OF FINANCIAL RIGHTS –A COMPARATIVE LEGAL ANALYSIS

Introduction

This chapter establishes the analytical and theoretical foundation for understanding the concept of financial rights through a comparative legal lens, with a particular focus on the status and entitlements of women in Islamic law and the Pakistani legal system. It moves beyond historical or doctrinal summaries to critically engage with how financial rights are conceptualized, institutionalized, and enforced within both Western and Islamic legal traditions.

Recognizing the hybrid character of Pakistan's legal framework shaped by Islamic law and British colonial influence the chapter begins by examining the philosophical and legal foundations of rights in Western legal thought. It traces how Western notions of liberty, equality, and distributive justice have influenced modern legal systems and explores their impact on Pakistan's post-colonial constitutional and statutory landscape. This part also introduces key themes such as state enforcement of rights and evolving interpretations of gender equity.

The chapter then turns to Islamic law, analyzing the theological and moral foundations of rights in the Qur'an and Sunnah, especially the categorization between *Huqūq Allah* (rights of God) and *Huqūq al- 'Ibād* (rights of human beings). Within this framework, particular attention is devoted to financial entitlements of women such as dower, maintenance (*nafaqah*), inheritance, and property ownership as rooted in divine injunctions and ethical imperatives. Rather than reiterating traditional fiqh positions, the discussion critically engages with Sharia to illuminate the normative principles behind these rights.

In doing so, the chapter interrogates gendered dimensions in both legal traditions, exploring issues such as economic agency, the right to work, and legal subject hood of women. These issues are further analyzed considering contemporary frameworks, including Pakistan's constitution and international commitments under instruments like CEDAW. Through this comparative legal approach, the chapter contributes to the broader inquiry into how Islamic law and Pakistani judicial interpretations converge or diverge in safeguarding financial rights of women.

2.1 Conceptualizing Rights in Western Legal Thought

The concept of rights in Western legal thought has evolved through a complex interplay of philosophy, jurisprudence, and political theory. Rooted in classical natural law traditions and later shaped by enlightenment liberalism, Western legal systems conceptualize rights primarily as entitlements inherent to individuals by virtue of their humanity. Thinkers such as John Locke, Immanuel Kant, and later legal theorists like H.L.A. Hart and Ronald Dworkin contributed significantly to defining rights as moral claims enforceable within legal and constitutional frameworks. This rights-based discourse often emphasizes individual autonomy, equality before the law, and state accountability, forming the foundation of modern human rights regimes.

2.1.1 Historical and Philosophical Foundations

Western legal theory developed through the tension between natural law, legal positivism, and constitutionalism. Classical thinkers like Plato, Aristotle, and Cicero emphasized justice and virtue as central to civic order, influencing Roman legal notions such as unsatisfactory the idea that rights are inherent due to human rationality.⁵⁸

⁵⁸ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University press, 1989), 54–57.

Medieval synthesis by figures like Thomas Aquinas integrated these ideas with Christian theology, framing natural law as divinely ordained.⁵⁹ Enlightenment thinkers like Locke framed this into a secular argument for inalienable rights such as life, liberty, and property.⁶⁰ Conversely, legal positivists like Hobbes and Bentham argued that rights do not exist independently but are constructs of sovereign authority. This transition from metaphysical to institutional legitimacy significantly reshaped the discourse on rights in western legal systems.⁶¹

2.1.2 Legal Institutionalization: From Theory to Enforcement

The theoretical evolution of rights gained enforceability through legal instruments such as the Magna Carta (1215), the English Bill of Rights (1689), and later, constitutional documents like the American Bill of Rights (1791) and the French Declaration of the Rights of Man (1789).⁶² These codifications translated abstract principles into actionable legal norms, laying the foundation for modern human rights instruments and the rule of law.

2.1.3 Liberty, Equality, and the Distribution of Rights

Modern legal theory recognizes that liberty and equality are operationalized through enforceable rights. Scholars such as Harold Laski emphasized that liberty requires access to rights, and equality must be reflected in the distribution of these rights.⁶³ Theoretical definitions Austin's "faculties granted by law," Salmond "protected interests," or Black's Law Dictionary's emphasis on state enforcement all converge on one theme: rights are only meaningful if legally recognized and institutionally protected.

⁵⁹ John Finnis, *Natural Law and Natural Rights*, 2nd ed., Clarendon Law Series (Oxford ; New York: Oxford University Press, 2011), 79–82.

⁶⁰ John Locke and Peter Laslett, *Two Treatises of Government*, Student ed, Cambridge Texts in the History of Political Thought (Cambrid: New York: Cambridge University Press, 1988), 86–89.

⁶¹ Jeremy Bentham and John Bowring, *The Works of Jeremy Bentham* (United State: United States: Adegi Graphics, 2008), 123–26.

⁶² Lynn Hunt, *Inventing Human Rights: A History*, 1st ed (New York: W.W. Norton & Co, 2007), 110–13.

⁶³ Harold Joseph Laski, *A Grammar of Politics* (United Kingdom: The Yale University Press, 1925), 141–42.

2.1.4 Enforcement of Right and the Role of the State

The realization of rights is based on state mechanisms, courts, administrative bodies, and legal frameworks. Without enforceability, rights remain aspirational. Bentham's assertion that "rights are the fruits of the law" underscores the centrality of the state in the operationalization of rights.⁶⁴ This has direct implications for financial rights of women, which require more than legal recognition they demand institutional guarantees and remedies.

2.1.5 Bridging Western and Islamic Paradigms

While Western rights discourse is shaped by secular individualism, Islamic law derives its conception of rights from divine revelation and moral duty. Islamic law emphasizes the interconnection of rights and responsibilities, viewing legal entitlements within a broader ethical and communal framework. This distinction significantly influences the legal understanding and implementation of financial rights, particularly those concerning women.

2.2 Concept of Rights in Islamic Law

The concept of rights in Islamic law is deeply rooted in the divine framework of Sharī'ah, where obligations and entitlements are intricately linked to the moral, spiritual, and social dimensions of human life, reflecting a holistic balance between individual interests and communal responsibilities.

2.2.1 Qur'ān and Sunnah as Foundational Sources

In Islam, rights originate from divine sources: the Qur'an and Sunnah. These texts not only establish legal norms but also offer ethical guidance. The Qur'ān articulates universal values of justice, dignity, and mutual responsibility, while the Sunnah exemplifies their

⁶⁴ Jeremy Bentham and John Bowring, *The Works of Jeremy Bentham*, 123–26.

application. This dual-source model ensures that rights in Islamic law are not merely procedural but deeply moral and socially integrative.⁶⁵

2.2.2 Theological and Moral Foundations of Rights

Islamic rights are intertwined with duties. Unlike the secular model, which often isolates individual claims, Islamic law embeds every right within a moral obligation.⁶⁶ The Qur’ān repeatedly emphasizes mutual responsibility towards parents, orphans, the poor thereby aligning individual rights with communal welfare.⁶⁷ This moral underpinning prevents the commodification of rights and promotes social harmony.

2.2.3 Financial Rights of Women

Islam transformed women’s legal status by granting them distinct financial rights. Pre-Islamic customs denied women autonomy; Islam introduced reforms that entitled women to own property, receive dower, maintenance, and inherit from relatives.⁶⁸ These provisions reflect not only legal protection, but an ethical vision of gender equity rooted in divine justice. Importantly, these rights are not contingent on marital status or male guardianship but are recognized as individual entitlements.

2.2.4 Equality and Human Dignity

The Islamic principle of (*karāmah*) dignity affirms the intrinsic worth of every human being. The Qur’ān emphasizes the equality of men and women⁶⁹ highlighting their shared origin and their mutual rights and responsibilities.⁷⁰ The Qur’ān and the Prophet’s final sermon

⁶⁵ “The Principle of Original Permissibility (Ibahah),” in *Shariah and the Halal Industry*, by Mohammad Hashim Kamali (New York: Oxford University Press, 2021), 26.

⁶⁶ Mashhood A. Baderin, *Islamic Law: A Very Short Introduction* (United Kingdom: Oxford University Press, 2021), 7.

⁶⁷ *Al-Qur’ān*, 2:177.

⁶⁸ *Ibid.*, 4:7,11.

⁶⁹ Yusuf Ali, *The Holy Quran: English Translation*, 34.

⁷⁰ Jamal J. Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, 3rd ed., Brill’s Arab and Islamic Laws Series, v. 1 [i.e. 3] (Netherland: Brill, 2009), 48.

emphasize racial and gender equality.⁷¹ While Islamic law recognizes certain gendered distinctions in responsibilities, these are not framed as hierarchies but as functional complements within a just social order.

2.2.5 Rights and Duties: A Balanced Framework

Islamic law insists on a symbiotic relationship between rights and duties. For instance, property ownership entails the duty of Zakat, linking economic rights with social responsibility. This equilibrium ensures that rights serve not only individual interests but broader social justice goals.⁷²

2.2.6 Contemporary Discourse and *Ijtihād*

Contemporary scholars have explored the adaptability of Islamic law to modern challenges. Abdullahi An-Na'im and Asma Afsar Uddin advocate for *Ijtihād* (independent reasoning) to reinterpret classical doctrines considering current human rights norms.⁷³ Similarly, Asma Afsar Uddin emphasizes the dynamic nature of Islamic law and the role of *Ijtihād* in adapting legal principles to changing social conditions. She argues that Islamic law is not static but has the capacity to evolve in response to new challenges, particularly in women's rights.⁷⁴ While retaining fidelity to the Qur'ān and Sunnah, this approach promotes dynamic engagement with evolving social realities, particularly regarding gender justice.

2.2.7 Comparative Analysis: Islamic and Western Legal Systems

While Western legal systems posit rights as human constructs legitimized through political struggle and legal codification, Islamic law treats rights as divine mandates, inseparable

⁷¹ Riaz Ahmad Saeed, "Human Rights in Islam and West: (The Last Sermon of the Prophet and UDHR)," *Jihāt Al-Islām* 6, no. 2 (2013): 7–27.

⁷² "The Principle of Original Permissibility (Ibahah)," 26.

⁷³ Abdullah Ahmād An-Na'īm, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, 1st ed., Contemporary Issues in the Middle East (United States: Syracuse University Press, 1990), 106.

⁷⁴ Asma Afsar Uddin, *Contemporary Issues in Islam*, The New Edinburgh Islamic Surveys (United Kingdom: Edinburgh University Press, 2015), 101.

from duties and moral accountability. Western models prioritize individual autonomy; Islamic frameworks emphasize community, accountability, and divine justice. Particularly in the domain of financial rights for women, Western systems often rely on statutory mechanisms and judicial activism, whereas Islamic law establishes financial entitlements as fixed legal rights with moral and spiritual implications. For instance, the concept of dower is both a contractual and religious obligation, unlike Western matrimonial property systems which are largely governed by state law and equitable considerations.

The comparative analysis of Western and Islamic legal traditions reveals foundational differences in how rights are conceptualized, legitimized, and enforced. Western law focuses on individual autonomy and evolving norms, while Islamic law roots rights in divine justice and reciprocal duties. In the realm of financial rights of women, Islamic law offers a robust framework grounded in ethical obligation and legal enforceability.

This comparative foundation is essential for understanding how these paradigms influence Pakistan's hybrid legal system. The next chapters will explore the practical implications of these legal philosophies in relation to dower, maintenance, and inheritance, and how Pakistani courts navigate between Islamic mandates and statutory provisions in adjudicating financial rights of women.

2.3 Rights of Women in Islamic Law

Islam accords women a dignified status, recognizing their rights as daughters, sisters, wives, mothers, and integral members of society. The religion liberates women from historical injustices, ensuring they receive honor and respect equal to that of men. The Qur'ān emphasizes the equality of men and women,⁷⁵ highlighting their shared origin and mutual

⁷⁵ Yusuf Ali, *The Holy Quran: English Translation*, 34.

rights and responsibilities. Women's rights in Islam encompass the right to education, inheritance, maintenance, and protection from harm. Islam invalidated pre-Islamic customs that oppressed women, affirming their dignity, and establishing their rightful place within the family and society, as reflected in the Qur'anic verse: "*O you who have believed, it is not lawful for you to inherit women by compulsion...*"⁷⁶ which commentators like al-Tabarī interpreted as a direct abolition of unjust tribal practices that treated women as property.⁷⁷

For instance, mothers are accorded with the highest respect. The Prophet ﷺ famously stated, in response to Jahimah (R.A) who asked for advice about participating in Jihad:

أَنْ جَاهِمَةَ، جَاءَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ أَرْدَثْ أَنْ أَغْرِيَ وَقَدْ جِئْتَ أَسْتَشِيرُكَ . فَقَالَ
" هَلْ لَكَ مِنْ أُمٍّ " . قَالَ نَعَمْ . قَالَ " فَأَلْرِمْهَا فَإِنَّ الْجَنَّةَ تَحْتَ رِجْلِهَا "

"Do you have a mother? Jahimah replied, "Yes." The Prophet ﷺ then said, "Then stay with her, for Paradise is beneath her feet."⁷⁸

This narration underscores the revered status of motherhood in Islam.

The right to privacy is another fundamental aspect of human dignity in Islam. The Qur'ān commands believers not to enter homes without permission, emphasizing the importance of respecting others' privacy. The Prophet ﷺ also practiced and taught these principles, ensuring that the rights to privacy and dignity were upheld in society.⁷⁹ Islam places a strong emphasis on the right to chastity, requiring both men and women to protect their modesty as ordained in Quran:

⁷⁶ *Al-Qur'ān*, 4:19.

⁷⁷ Abi Ja'far Muhammad ibn Jarīr al-Tabarī, *Tafsīr Al-Tabarī Jāmi‘ al-Bayān ‘an Ta’wīl al-Qur’ānis* (Qahirah: Dar al-Ma‘ārif, 1954), he explains that Qur'ān 4:19 was revealed to prohibit the *jahili* (pre-Islamic) practice where women were inherited against their will after a husband's death essentially treated like property., David Pearl, *A Textbook on Muslim Personal Law*, 2. (London: Croom Helm, 1987), 52.

⁷⁸ Ahmad ibn Shu‘ayb Al-Nasā‘ī, *Sunan Nasa‘ī*, trans. Muhammad Iqbal Siddiqi (New Delhi, India: Kitab Bhavan, 2008), 3106.

⁷⁹ Yūsuf Qardāwī, *The Lawful and the Prohibited in Islam*, 2nd ed. (New Delhi: Kitab Bhavan, 2011), 318., Pearl, *A Textbook on Muslim Personal Law*, 93.

وَقُل لِّلْمُؤْمِنَاتِ يَنْضُضنَ مِنْ أَبْصَرِهِنَ وَيَحْفَظنَ فُرُوجَهُنَ وَلَا يُبَدِّيْنَ زِينَتَهُنَ إِلَّا مَا ظَاهَرَ مِنْهَا وَلِيَضْرِبَنَ بِخُمُرِهِنَ نَّعَلَى جُبُوبِهِنَ وَلَا يُبَدِّيْنَ زِينَتَهُنَ⁸⁰

The Qur’ān instructs men to lower their gaze and guard their modesty, and similarly, women are advised to maintain their modesty and not display their beauty beyond what is necessary. This reflects the broader Islamic principle of protecting the dignity and honor of individuals.

The Prophet ﷺ and his successors took concrete steps to protect the chastity of women, including slave women, by punishing those who violated these rights. For example, in a case where a man forced a slave woman into adultery, the punishment was meted out to the man, while the woman was spared due to the coercion she faced.⁸¹

2.3.1 Status of Women in Pre-Islamic Arabia

Understanding the status of women in Arab culture, including tribal organization and the legal system, is crucial for comprehending their rights and place within society, as the rights of women are intertwined with their status.⁸² The Muslim Women's League states: "There can be no fair discussion of the status of women in pre-Islamic Arabia unless the tribal system is understood because tribal structure and customs had the greatest impact on the rights of women.⁸³ Before the Prophet ﷺ, women had no legal rights and were considered commodities. The husband became their master after contract of marriage. Polygamy was widespread in society divorce was a common practice, and female infanticide was widespread.⁸⁴ The traditional tribal law of the Arabs allowed husbands to dissolve marriages, and women had no property rights. Traditional tribal law denied women legal

⁸⁰ *Al-Qur’ān*, 24:31.

⁸¹ Ruby Mehdi, *The Islamic Law of Punishment and Its Application in Saudi Arabia* (Karachi: Royal Book Co, 1991), 117.

⁸² Muslim Women's League, "Women in Pre-Islamic Arabia," 2002, <https://www.mwlu.org/topics/history/herstory.html>.

⁸³ James Robson, "Law and Religion Among the Arabs Before Islam," *The Muslim World* 44, no. 2 (1954): 133.

⁸⁴ Majid Khadduri, "Marriage in Islamic Law: The Modernist Viewpoints," *The American Journal of Comparative Law* 26, no. 2 (1978): 216.

status and financial rights, and wives were often sold by their guardians for marriage. Fathers exploited women by selling them to the highest bidder for marriage, while the husband had the unrestricted right to terminate the marriage at any time.⁸⁵

Some Islamic scholars argue that Islam deprived Arabian women of their ancient liberty, citing poetry and proverbs from the Age of Ignorance, where an Arab woman was respected for her beauty, modesty, strength and virtue.⁸⁶ Traditional Muslim writers rely on the Qur'ān and Sunnah as their primary sources, claiming they represent practices prevalent in Arab society before advent of Islam. However, these views are refuted by others, making it difficult to draw a definitive decision on the matter. Reuben Levy advises not to accept the views of primary Muslim jurists as their views often aim to contrast the blessings of Islam with the past.⁸⁷

Hadrat Khadija, a wealthy widow from Makkah, submitted a marriage proposal to the Prophet ﷺ due to his honesty with consultation of his uncle, which the Prophet ﷺ accepted it, which indicated that women could own businesses, inherit property, and marry the person of their choice.⁸⁸ However, this applied specifically to women from Mecca, a prominent hub of commerce and cultural development. Women from Medina, a rural and nomadic region, faced unfavorable circumstances as they could not inherit from the estate of their husband, as they were considered part of his estate.⁸⁹

The second group of scholars refers to modern Arab proverbs, legends, and poetry to demonstrate that poetry served as a widespread and universal form of expression.⁹⁰

⁸⁵ Ibid., 217.

⁸⁶ Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law*, 4th ed (New Delhi India: Oxford University Press, 1993), 4.

⁸⁷ Reuben Levy, *The Social Structure of Islam*, Orientalism, v. 12 (London: Routledge, 2002), 96.

⁸⁸ Lila Ahmed, *Women and Gender in Islam*, 69.

⁸⁹ Muslim Women's League, "Women in Pre-Islamic Arabia."acessed 1st August 2024., Niaz Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Brill | Nijhoff, 2006), 38, <https://brill.com/view/title/12832>.

⁹⁰ Fyzee, *Outlines of Muhammadan Law*, 4.

Researchers can explore tribal relations, virtue principles of pre-Islamic Arab society, and the position of women through these poems. These poems and legends lack social voices and focus on physical attributes rather than moral beauty, with the burial of daughters being considered virtuous.⁹¹ The tribal system greatly affected the rights of women. Arab civilization contained of various tribal groups, some semi-nomadic and others nomadic, with the defense against offenses being a key feature. The religion of Arab tribes differed by region but played a limited role in everyday life. In this culturally diverse tribal society, women's rights were shaped primarily by local customs, traditions, and religious beliefs.⁹² The chief of the tribe resolved disputes, ensuring tribal life and honor, and his decisions were enforceable.⁹³

The philosophy of good warriors reduced the status of women in society, perpetuating the belief in physical inferiority. Arab tribes had no unified legal system but had laws related to security, property, family affairs, and inter-tribal ties. In the case of murder, the rules of *qisāṣ* (retaliation) were established. The system of punishments was introduced, where defendants could be released if the plaintiff remain unsuccessful to provide eyewitnesses, and the defendant refuted the accusation under oath.⁹⁴

The global devaluation of women and negative attitudes toward them are linked to gender discrimination and female oppression, exemplified by practices like female infanticide.⁹⁵ Female infanticide was widespread due to the lack of religious, social, and economic value of daughters Islam eliminated and strictly prohibited the widespread pre-

⁹¹ Reynold Alleyne Nicholson, *A Literary History of the Arabs* (United Kingdom: T. Fisher Unwin, 1907), 89.

⁹² Syed Mohammed Ali, *The Position of Women in Islam: A Progressive View* (New York: State University of New York Press, 2004), 29.

⁹³ William Robertson Smith, *Kinship and Marriage in Early Arabia*, 1st ed. (New York: AMS Press, 1979), 73..

⁹⁴ Ali, *The Position of Women in Islam*, 30.

⁹⁵ Abū 'Abdullah Muḥammad ibn Ahmad al-Qurṭubī, *Al-Jāmi' Li Aḥkām al-Qur'ān*, vol. 5 (Beirut: Dar al-Kutub Al- 'Ilmiyyah, 1964), 81:8-9.

Islamic practice of female infanticide through several measures, most notably under divine condemnation of the Qur'ān.⁹⁶

2.3.2 Social Status of Women after the Advent of Islam

The transformation in women's status following the advent of Islam represents a foundational shift with continuing relevance for legal and social reform in modern Muslim societies, including Pakistan. Pre-Islamic Arab customs were deeply rooted in patriarchy, resulting in widespread injustices such as female infanticide and the denial of basic legal identity. Islam introduced a comprehensive framework aimed at recognizing women's dignity and their entitlement to life, property, and independent legal identity.⁹⁷ However, contemporary Muslim societies, including Pakistan, often fall short in implementing these foundational Islamic reforms. The discrepancy stems not from Islamic doctrine but from persistent cultural norms and inadequate dissemination of Islamic legal principles regarding gender justice.⁹⁸ Therefore, any discussion on the social uplift of women must critically engage with how Islamic teachings can be actualized through legal framework,⁹⁹ to overcome patriarchal interpretations and societal inertia.¹⁰⁰

2.3.3 Prohibition of Female Infanticide in Islamic Sources

Islam's moral revolution included an explicit prohibition of female infanticide, a practice common in pre-Islamic Arabia. The Qur'ān categorically denounces this act in several verses,¹⁰¹ establishing it as a grave sin and a deviation from divine law:

⁹⁶ *Al-Qur'ān*, 81:9.

⁹⁷ Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2019), 43.

⁹⁸ *Ibid.*

⁹⁹ Ziba Mir-Hosseini, "Islam, Gender, and Democracy in Iran," in *Islam, Gender, and Democracy in Comparative Perspective*, by Jocelyne Cesari, 1st ed. (Oxford: Oxford University Press, 2017), 76.

¹⁰⁰ Amina Wadud, *Qur'ān and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd ed. (New York: Oxford University Press, 1999), 54–56.

¹⁰¹ *Al-Qur'ān*, 6:137,140; 16:58-59; 17:31.,

وَلَا تَقْتُلُوا أُولَئِكُمْ خَشِيَةَ إِمْلَاقٍ تَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَاتِلَهُمْ كَانَ خَطِئًا كَبِيرًا¹⁰²

“Do not kill your children for fear of poverty. We provide for them and for you.”¹⁰³

This directive counters not only economic justifications for infanticide but also challenges broader gender-based prejudices that persist in various Muslim-majority societies today.

“And when the girl [who was] buried alive is asked, for what sin she was killed¹⁰⁴

Moreover, the verse provides a powerful framework for accountability, reinforcing the sanctity of life regardless of gender.

These verses are not merely historical references but serve as guiding principles for contemporary legal systems. In Pakistan, although the act of female infanticide is criminalized under secular penal laws, the persistence of such crimes in rural and impoverished communities underscores the disconnect between legal norms and societal realities. A robust legal strategy rooted in both Islamic ethics and state enforcement is necessary to bridge this gap.¹⁰⁵ Prophetic tradition on reward on raising of daughters as

مَنْ كَانَ لَهُ ثَلَاثٌ بَنَاتٍ فَصَبَرَ عَلَيْهِنَّ وَأَطْعَمَهُنَّ وَسَقَاهُنَّ وَكَسَاهُنَّ مِنْ جُدْتِهِ - كُنَّ لَهُ جَجَابًا مِنَ النَّارِ

106 يوم القيمة

“Whoever has three daughters and is patient towards them, and feeds them, gives them to drink, and clothes them from his wealth; they will be a shield for him from the Fire on the Day of Resurrection.”¹⁰⁷

This narration reinforces the Qur'an ic stance, linking the act of raising daughters with spiritual reward and moral virtue. The Prophet ﷺ condemned infanticide:

¹⁰² Ibid., 17:31.,

¹⁰³ Ibid.,

¹⁰⁴ Ibid., Yusuf Ali, *The Holy Quran: English Translation*, 133.

¹⁰⁵ Asifa Quraishi, “Interpreting the Qur'an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence,” *SSRN Electronic Journal*, 2007, 123–29.

¹⁰⁶ Muḥammad ibn Yazid Ibn Mājah, *Sunan Ibn Mājah*, 2nd ed. (New Delhi: Kitab Bhavan, 2013), 3669.

¹⁰⁷ Muḥammad ibn Yazid Ibn Mājah, *Sunan Ibn Mājah*, trans. Muḥammad Tufail Ansari, 2nd ed. (New Delhi: Kitab Bhavan, 2013), no. 3670.

إِنَّ اللَّهَ حَرَمَ عَلَيْكُمْ عُشُوقَ الْأُمَّهَاتِ، وَمَنْعَ وَهَاتِ، وَوَأْدَ الْبَنَاتِ، وَكَرْهَ لَكُمْ قِيلَ وَقَالَ، وَكُثْرَةَ السُّؤَالِ،

وَإِضَاعَةَ الْمَالِ¹⁰⁸

"Allah has forbidden you to be undutiful to your mothers to withhold (what you should give) or demand (what you do not deserve), and to bury your daughters alive. And Allah has disliked that (A) you talk too much about others ask too many questions (in religion) or waste your property."¹⁰⁹

This hadith emphasized compassionate parenthood. Contemporary legal reform must translate this ethical imperative into proactive legal and educational interventions that challenge harmful customs and elevate the status of girls and women within society.

2.3.4 Women in the Society of Prophet ﷺ and Implications for Modern Legal Systems

The life of the Prophet ﷺ offers critical insights into women's public and private roles. Women actively participated in social, economic, and political life, assuming roles as business owners, educators, medical professionals, and market regulators. The case of Khadīja (RA), a successful merchant and the Prophet's wife, and 'Asmā daughter of 'Umais used to tan the skin of animals to make it leather (*Dibāghah*). It is said that she used to tan 40 skins per day.¹¹⁰ During Prophet ﷺ's time, women worked as nurses, midwives, and doctors. Umm Kalsūm, daughter of 'Alī, assisted women as midwives. that of Rufaidah, a battlefield nurse, demonstrate that professional engagement by women was neither marginal nor conditional on extreme necessity.¹¹¹

¹⁰⁸ Muḥammad Ibn Ismā'īl Al-Bukhārī, *Šaḥīḥ Al-Bukhārī* (Beirut: Dār Ibn Kathīr, 2002), 6473.

¹⁰⁹ Muḥammad Ibn Ismā'īl Al-Bukhārī, *Šaḥīḥ Al-Bukhārī*, trans. Muhammad Muhsin Khan (Riyadh: Dar-us-Salam, 1995), 5975.

¹¹⁰ Abū 'Abdullah Muḥammad ibn Sa'ad ibn Manī' al-Hāshimī, *Tabaqāt Al-Kubrā*, vol. 8 (Beirut: Dār al-Kutub al-'Ilmiyah, 1990), 220.

¹¹¹ Maulana Qazi Athar al- Mubarakpuri, *Achievements of Muslim Women in the Religious and Scholarly Fields*, trans. Rafiq Abdur Rahman (Karachi: Darul Ishaat, 2005), 17., Karen Armstrong, *Muhammad Biography of the Prophet*, 2023, 66.

These historical precedent challenges restrictive interpretations of women's economic and social participation, often justified under the guise of tradition. The appointment of *Al-Shifā bint 'Abdullāh* as a market inspector by Caliph 'Umar ibn al-Khaṭṭāb¹¹² exemplifies institutional trust in women's leadership during Islam's formative period.

In Pakistan, the Constitution provide equal right to work, but societal and institutional barriers continue to undermine these guarantees. The historical role of Muslim women should thus inform legal consciousness, one that reconciles Islamic precedent with the lived realities of Muslim women today. Policies concerning women's employment, guardianship, and legal autonomy must reflect not only constitutional values but also the expansive inclusive of early Islamic practice.

The current Islamic legal discourse must move beyond apologetic or historical romanticism and instead engage in contextual *Ijtihād* (legal reasoning) that aligns classical jurisprudence with the demands of contemporary justice. Restrictive interpretations that prioritize patriarchal customs over prophetic precedent contradict the Islamic legal spirit of equity and balance. Therefore, the Pakistani legal system must foster interpretations that enable women's active participation in all spheres of life, harmonizing faith with function.

2.4 Classification of Rights in Islamic Law

Islamic law, or Shariah, offers a comprehensive framework for understanding the rights and responsibilities of individuals within society. These rights are primarily categorized into two main groups first is rights of Allah and second is rights of individuals.

Rights of Allah (*Huqūq Allah*) are obligations directly owed to Allah and encompass acts of worship and devotion. Fulfillment of these rights is essential for

¹¹² Yūsuf ibn 'Abdullah ibn 'Abdul-Barr, *Al-Isti 'āb Fī Ma 'rifah al-Āshāb*, vol. 4 (Beirut: Dār al-Kutub al- 'Ilmiyyah, 2010), 186.

maintaining one's relationship with the Creator and ensuring societal harmony key aspects include Acts of Worship which include performing the five daily prayers (*Salat*), fasting during the month of Ramadan (*Sawm*), giving *Zakat*,¹¹³ and undertaking the pilgrimage to Mecca (*Hajj*) are fundamental duties that reinforce one's submission to Allah.¹¹⁴ *Hudūd* (Fixed Punishments): Islamic law prescribes specific punishments for certain offenses, such as theft, adultery, and false accusation (*Qazf*). These measures aim to deter crime and uphold moral standards within the community.¹¹⁵ Religious Obligations: Observing religious taxes like *zakat* and *ushr* (a form of tax) ensures wealth distribution and supports societal welfare, reflecting the community's collective responsibility. These rights are considered inviolable and are enforced to maintain the moral and social fabric of society.¹¹⁶

Rights of Individuals pertain to the interactions and relationships among individuals, emphasizing justice, equity, and mutual respect. They can be broadly classified into personal rights, property rights, family rights and social rights. Personal rights include the right to life, security, dignity, and privacy. For instance, the Qur'ān emphasizes the sanctity of human life, stating that killing an innocent soul is a grave sin.¹¹⁷ Islamic law safeguards individual ownership and the fair distribution of wealth. It prohibits unlawful appropriation of others' property and emphasizes just transactions.¹¹⁸ Family rights encompass the rights and duties of family members towards each other, such as the husband's responsibility to

¹¹³ Zayn al-‘Ābidīn ‘Alī ibn al-Ḥusayn and Sayyid Saeed Akhtar Rizvi, *The Charter of Rights-Risālatu 'l-Huqūq*, 2nd rev. ed (Richmond, B.C.: Vancouver Islamic Educational Foundation, 1989), 5–7.

¹¹⁴ Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, trans. Abū Ṭāhir Zubayr ‘Alī Za’ī and Nasiruddin Khattab, 1st ed (Riyadh: Darussalam, 2007), 306.

¹¹⁵ Mehdi, *The Islamic Law of Punishment and Its Application in Saudi Arabia*, 83–85.

¹¹⁶ Mohammad Afzal Wani, *The Islamic Law on Zakat* (New Delhi: Kitab Bhavan, 1995), 21–22.

¹¹⁷ al-Shatibi, *Al-Mūwāfaqāt Fi Usūl Al-Shari‘ah*, 2:539.,Adnan Bin Muhamad Bin Abdul Aziz al-Wazzan, *Mawsū‘ah Huqūq al-Insan Fi al-Islam*, vol. 1 (Beirut: Risalah, 2005), 24.,Abd al-Hakim Hasan, *Al-Hurriyat al Ammah Fi al-Fikr Wa al-Nizam al-Siyasi Fi al-Islam* (Cairo: Dar al-Fikr al-Arabi, 1974), 176.

¹¹⁸ Jamal J. Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, 56.

provide for his wife and the children's obligation to honor their parents.¹¹⁹ "Social rights in Islam pertain to mutual obligations within society, such as enjoining justice, helping the needy, and preserving social cohesion and welfare. These rights are grounded in Qur'ānic commandments and Prophetic traditions that emphasize the collective responsibility of the community to uphold moral and social justice."¹²⁰ Social Rights are related to community interactions, including the duty to uphold justice, help those in need, and maintain societal welfare.

It is important to note that while individuals can waive or forgive certain personal rights, rights directly owed to Allah, such as punishments for specific offenses, cannot be waived by personal forgiveness. These rights are designed to promote a just and compassionate society where the dignity and well-being of every individual are protected.¹²¹ In summary, Islamic law meticulously delineates the rights of both Allah and individuals, creating a balanced and just framework that addresses the spiritual, moral, and social dimensions of human life.

2.5 Financial Rights of Women in Islam and their Application in Pakistan

Islam affirms the financial autonomy and dignity of women through a structured set of legal rights, including dower, maintenance, inheritance, and property ownership. These provisions not only reflect the commitment of Sharī'ah to justice and equity but also challenge cultural norms that undermine women's economic status. This section critically examines how these rights are defined in Islamic law and the extent to which they are realized within Pakistan's legal and judicial framework.

¹¹⁹ 'Abdul-Qādir 'Awdaḥ, *Al-Tashrī' al-Jinā'ī al-Islāmī Muqārānan Bil-Qānūn al-Wad'ī*, vol. 1 (Beirut: Dar al-Kutub al- 'Ilmiyah, 2009), 79.

¹²⁰ Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Cambridge: Islamic Texts Society, 2002), 57–60.

¹²¹ 'Awdaḥ, *Al-Tashrī' al-Jinā'ī al-Islāmī Muqārānan Bil-Qānūn al-Wad'ī*, 1:79.

Islamic law enshrines a comprehensive and progressive system of financial rights for women, underscoring their economic agency and moral equality. These rights dower, maintenance, inheritance, property ownership, and the freedom to engage in lawful employment are not merely theological constructs, but enforceable legal entitlements designed to ensure justice, autonomy, and dignity for women. While these principles emerged as revolutionary reforms in the seventh century.

2.5.1 Dower in Islamic and Pakistani Law

The institution of dower is a foundational element of Islamic marriage, rooted in divine command and juridical consensus. It is not a gratuitous gift or symbolic gesture, but a mandatory financial obligation imposed on the husband. The Qur'ān clearly instructs: "*And give the women [upon marriage] their [bridal] gifts graciously.*"¹²² This verse underscores *dower* as a rightful entitlement of the wife, affirming her economic dignity and autonomy within the marital relationship.

Classical Islamic jurists unanimously agree that *mahr* must be stipulated in the marriage contract and becomes payable either immediately or upon the occurrence of a specified event like divorce or death of the husband. It is grounded not only in contract law but also in broader objectives of Shariah, which emphasize protection of property, dignity, and fairness in gender relations. However, the implementation of *dower* in many Muslim societies, including Pakistan, often deviates from these foundational principles. In practice, dower is frequently set at nominal sums, deferred indefinitely, or treated as a ceremonial formality undermining its intended legal and moral function.

Despite constitutional recognition of Islamic family law and statutory provisions such as the Muslim Family Laws Ordinance (1961), the judicial enforcement of dower in

¹²² Al-Qur'ān, 4:4

Pakistan has been uneven. Nevertheless, the superior judiciary has, in several landmark decisions, affirmed dower as a proprietary right of the wife. In *Nazia Tabasam v. The Additional District Judge, Multan* (the Lahore High Court emphasized that dower is a legally binding obligation, not a conditional gift. The Court ruled that once dower is transferred to the wife, it becomes her exclusive property.¹²³

Importantly, the judiciary emphasized that the wife's consent is essential in any agreement affecting her financial rights. Silent compliance or coerced agreements cannot constitute valid waivers. This jurisprudence aligns with Islamic principles of free will (*Ikhtiyār*) and informed consent (*radā*) in contractual obligations.

While superior courts have generally upheld the enforceability of *dower*, the broader legal and social framework in Pakistan often dilutes its effectiveness. One critical issue is the absence of minimum thresholds for dower amounts, leading to the frequent use of token figures. Furthermore, delays in *dower* registration and enforcement, coupled with weak procedural safeguards, make it difficult for women to access their rights without lengthy litigation. For instance, in *Kaneez Fatima v. Wali Muhammad* the court reaffirmed the binding nature of dower.¹²⁴ However, the case also highlighted inconsistencies in implementation

The institution of *dower* reflects a profound commitment for financial protection of women and marital dignity within Islamic law. Pakistani jurisprudence has, in several cases, upheld this principle. However, social practices, legal loopholes, and inconsistent enforcement continue to reduce *dower* to ritual symbolism in many contexts. For *dower* to function as a true legal guarantee, reforms must bridge the gap between doctrinal commitments and lived realities. Only then can the principles of justice and equity

¹²³ *Nzia Tabbassam v. ADJ Multan* (Lahore High Court 2013).

¹²⁴ *Kaneez Fatima v. Wali Muhammad*, PLD 901 (Supreme Court 1993).

envisioned by Sharī‘ah and the Constitution of Pakistan be fully realized in the domain of matrimonial right.

2.5.2 Maintenance (*Nafaqah*) in Islamic and Pakistani Law

Sharī‘ah obligates a husband to provide for his wife proportionate to his financial means, covering food, shelter, clothing, and medical needs. This duty persists during marriage and the ‘iddah period post-divorce.¹²⁵ The Prophet’s ﷺ final sermon emphasized the ethical and legal significance of treating women kindly and fulfilling their financial rights.

Recent cases¹²⁶ such as in Dr. Faryal Maqsood v. Khurram Shehzad Durrani,¹²⁷ the Supreme Court of Pakistan upheld the trial court’s judgment granting the wife dowry articles, and maintenance, while also affirming her right to seek divorce under Section 7 of the Muslim Family Laws Ordinance 1961 due to her husband’s unauthorized second marriage. Same was reenforce in Muhammad Jamil v. Sajida Bibi that if husband conducted second marriage without permission either from existing wife or union council then dower of first wife become payable immediately whether prompt or deferred.¹²⁸

2.5.3 Inheritance: Qur’ānic Entitlement versus Cultural Resistance

Islamic law broke with pre-Islamic patriarchy by allocating fixed inheritance shares to women.¹²⁹ A wife is entitled to one-eighth of her deceased husband’s estate if they had children, and one-fourth if not. Yet, in practice, Pakistani women are routinely denied inheritance due to informal settlements, coercion, and forged documentation.

Despite the promulgation of the Enforcement of Women’s Property Rights Act 2020, enforcement remains patchy. Cultural customs, especially in rural areas, override In *Khurshid Bibi v. Baboo* statutory and Sharī‘ah mandates. Courts such as Ghulam Ali v.

¹²⁵ *Al-Qur’ān*, 65:6,7.

¹²⁶ Dr. Asma Ali v. Masood Sajjad, PLD 221 (Supreme Court 2011).

¹²⁷ Dr. Faryal Maqsood v. Khurram Shehzad Durrani, PLD 262 (Supreme court 2025).

¹²⁸ Muhammad Jamil v. Sajida Bibi, PLJ 28 (Supreme Court 2021).

¹²⁹ *Al-Qur’ān*, 4:7,11.

Ghulam Sarwar¹³⁰ have upheld women's entitlement, but effective remedies require digitization of land records, public awareness campaigns, and legal aid tailored to inheritance disputes.

2.5.4 Property Ownership and Financial Autonomy in Sharī'ah

Qur'an confers full proprietary rights to women, allowing them to own, manage, and dispose of property independently:

لِلرِّجَالِ نَصِيبٌ مِّمَّا أَكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا أَكْتَسَبْنَ¹³¹ وَسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا

“For men is a share of what parents and close relatives leave, and for women is a share of what parents and close relatives leave, be it little or much a determined share”¹³²

This principle is reflected in constitution of Pakistan, but social constraints and bureaucratic hurdles persist. Women's economic autonomy is often curtailed by familial control and fear of social ostracism.¹³³ Strengthening institutional support for women's property transactions, removing documentary barriers, and sensitizing legal officers can help actualize this right.

2.5.5 Women's Right to Work and Employment Rights

Islam permits women to work in all lawful professions, provided they uphold modesty and maintain a balance with familial responsibilities. Historical precedents from Khadījah's commercial success to Rufaidah's medical contributions¹³⁴ and 'Ā'ishah's juristic role demonstrate that women's participation in public life was not only accepted but valued in early Islam.¹³⁵

¹³⁰ Ghulam Ali v. Ghulam Sarwar Naqvi, PLD.

¹³¹ *Al-Qur'ān*, 4:32.

¹³² *Ibid.*, 4:7,11.

¹³³ “Constitution of Pakistan, 1973” (n.d.), art. 23.

¹³⁴ Maulana Qazi Athar al- Mubarakpuri, *Achievements of Muslim Women in the Religious and Scholarly Fields*, 17., Karen Armstrong, *Muhammad Biography of the Prophet*, 66.

¹³⁵ Lila Ahmed, *Women and Gender in Islam*, 47–50.

2.5.5.1 Sharī‘ah and Constitutional Paradigms

Sharī‘ah acknowledges that women may pursue careers in diverse fields medicine, education, trade, administration so long as religious obligations and ethical guidelines are observed.¹³⁶ Is it allowed for women to have careers It is *mubāh* (permissible) for a woman to do the job or have a career in Islam. Rather when the necessity calls for it, it is recommended.¹³⁷ Badawi notes that women in Islam are not confined to domestic responsibilities and may engage in economic, social, and public spheres. This engagement is guided by the Islamic principles of modesty and ethical conduct.¹³⁸ Historically, Muslim women have contributed to public, economic, and religious life. Figures such as Ḥadīrat Khadijah (RA), a leading merchant, and ‘Ā’ishah (RA), a renowned jurist, exemplify women’s participation in leadership, trade, education, and even political counsel.¹³⁹ The Prophet ﷺ himself endorsed women’s active roles, including their service in battle and administration as seen in the appointment of al-Shifā’ bint ‘Abdullāh as a market supervisor during the caliphate of ‘Umar ibn al-Khaṭṭāb (RA).¹⁴⁰

Classical jurists expressed diverse opinions on the issue of spousal permission. According to Imām Abū Ḥanīfa, a husband can restrict his wife from going out for work since Islam has exempted her from financial obligations. Some Ḥanafī scholars, however, allowed women to work outside if no harm results.¹⁴¹ Imām Mālik and Imām Shāfi‘ī permitted restriction only if the nature of work was insulting or compromised marital

¹³⁶ Jamal Badawi, *Gender Equity in Islam: Basic Principles* (Plainfield, Ind: American Trust Publications, 1995), 16–18.

¹³⁷ Amr ‘Abdul Karīm al-Sa‘ādawi, *Qadāyaah Al-Mar‘ah Fī Fiqh al-Qardāwī* (Saudi Arabia: Qatr al-Nada, 2006), 230. , Muḥammad Qāsim al-Mansī, ‘Amal Al-Mar‘ah Fī Dow Aḥkām al-Shar‘ah All-Islāmiyyah (Egypt: Dār al-‘Ulūm Ja‘miah Qāhirah, 2006), 337.

¹³⁸ Badawi, *Gender Equity in Islam*, 16–18.

¹³⁹ Lila Ahmed, *Women and Gender in Islam*, 47–50.

¹⁴⁰ Fatima Mernissi, *The Forgotten Queens of Islam* (United State: Univ. Minnesota Press, 2009), 17–19.

¹⁴¹ Muslim ibn al-Hajjaj al-Qushayrī, *Al-Minhāj Fī Sharḥ Sahīh Muslim*, vol. 1 (Riyadh: Darussalam, 2007), 63.

rights¹⁴² while the Ḥanābilah held that a woman should not work without the permission of her guardian except in cases of necessity.¹⁴³ Despite these differences, the general principle remained that women's employment is permissible when it does not compromise faith, dignity, or family obligations.

The Constitution of Pakistan guarantees equality of opportunity under Article 25¹⁴⁴ and prohibits gender-based discrimination in public employment article 27.¹⁴⁵ Moreover, Pakistan's ratification of CEDAW reinforces this guarantee at the international level, though with certain reservations. In practice, however, cultural norms, workplace discrimination, and harassment often obstruct women's ability to exercise this right freely.

Shari'ah and the Constitution converge in affirming that women may work and contribute economically. The key requirement is not prohibition, but ensuring that women's work is safe, dignified, and balanced with their familial role. Shari'ah and the Constitution converge in affirming that women may work and contribute economically. The key requirement is not prohibition, but ensuring that women's work is safe, dignified, and balanced with their familial role.

2.5.5.2 Comparative Analysis of Employment Rights: Shari'ah and CEDAW

Once women enter the workforce, their employment rights become a matter of both religious and international concern. CEDAW obligates states to guarantee women equality in job opportunities, equal pay for equal work, maternity protection, vocational training, safe working conditions, and protection against harassment. It emphasizes formal equality, aiming to eliminate any gender-based distinction in employment.

¹⁴² Anas, *Al-Mudawwanah*, 3:222.

¹⁴³ Muslim ibn al-Hajjaj al-Qushayrī, *Al-Minhāj Fī Sharḥ Ṣaḥīḥ Muslim*, 1:63.

¹⁴⁴ Constitution of Pakistan, 1973, art. 25.

¹⁴⁵ *Ibid.*, art. 27.

Shari‘ah, by contrast, emphasizes substantive justice. It grants women the right to earn and manage their income and property independently, while exempting them from financial responsibilities such as household maintenance.¹⁴⁶ Thus, Islamic law provides women with both the freedom to work and financial security, regardless of whether they work.¹⁴⁷ Historical Islamic practice illustrates this protection: women could claim unpaid dower before consummation, demand maintenance, and, in some schools, seek dissolution of marriage if their financial rights were persistently denied.¹⁴⁸

Pakistan’s commitment to CEDAW has prompted legal reforms, but significant reservations remain, particularly concerning family law (Article 16). For example, while CEDAW envisions absolute equality in inheritance and financial responsibilities¹⁴⁹ Shari‘ah differentiates shares based on financial duties placing the burden of nafaqah solely on men. This difference reflects two philosophical approaches: CEDAW promotes identical roles, whereas Shari‘ah promotes complementary but balanced roles.¹⁵⁰

In practice, patriarchal traditions often prevent women from enjoying their Shari‘ah right. Denial of inheritance, workplace harassment, and discriminatory hiring policies persist despite legal guarantees. Bridging this gap requires Shari‘ah-based enforcement of financial and workplace rights. Harmonization of international obligations with local norms, without undermining Islamic principles. Institutional safeguards including stronger workplace laws, judicial commitment, and social awareness.

¹⁴⁶ Jamal A. Badawi, *Status of Woman in Islam* (United Kingdom: Islamic Society of North America, 1994), 26–27.

¹⁴⁷ Dr. Naseer Khan, “Khawateen Ki Mulazmat Isalm Ki Rashni Main,” *Al-Idah* 21, no. 1 (2010): 45.

¹⁴⁸ *Tafsīr Al-Qur’ān*, vol. 4 (Lahore: Maktabah Tāmīr-e-Insāniyat, 1958), 4.

¹⁴⁹ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, Convention, United Nations, Treaty Series, Vol. 1249 (New York, December 18, 1979), art. 16(h).

¹⁵⁰ *Al-Qur’ān*, 4:11.

Thus, both Sharī‘ah¹⁵¹ and CEDAW affirm women’s dignity and participation in economic life. Where CEDAW seeks equality of opportunity and outcome, Sharī‘ah guarantees justice through recognition of distinct but complementary roles. A balanced approach rooted in Islamic ethics yet responsive to international human rights frameworks offers the

2.6 Gender Justice in Sharī‘ah

Gender justice is a central principle of Sharī‘ah, which seeks to balance rights and responsibilities between men and women within the framework of family and society. Rather than equating justice with strict numerical equality, Islamic law emphasizes fairness, dignity, and protection of women through legal safeguards in marriage, financial entitlements, and social roles. This section examines how Sharī‘ah affirms women’s marital autonomy, secures their financial rights, and compares with international human rights instruments, particularly CEDAW. Sharī‘ah affirms the intrinsic equality of all human beings, rejecting discrimination based on race, caste, gender, or lineage. The Qur’ān emphasizes this universal dignity:

وَلَقَدْ كَرَّمْنَا بَنَىٰ عَادَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الْطَّيَّابَاتِ وَفَخَلَقْنَاهُمْ عَلَىٰ كَثِيرٍ مِمْنُ خَلْقَنَا تَقْصِيْلًا¹⁵²

“Indeed, we have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures.”

Gender does not reduce individual worth or spiritual capacity Sharī‘ah acknowledges moral and spiritual equality

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَتَىٰ لَا أَضِيقُ عَمَلَ عَلَيْمٍ مِنْكُمْ مَنْ ذَكَرَ أَوْ أَنَّىٰ بَعْضُكُمْ مِنْ بَعْضٍ¹⁵³

¹⁵¹ Constitution of Pakistan, 1973, 27.

¹⁵² *Al-Qur’ān*, 17:70.

¹⁵³ *Ibid.*, 3:195.

“I will never deny any of you male or female the reward of your deeds.”

Islam acknowledges certain functional differences between the roles of men and women such as motherhood and financial provision these distinctions do not imply inequality. In fact, Islam honours the unique sacrifices of women in matters of pregnancy, childbirth, and nurturing, recognizing them as acts of spiritual merit as stated in Qur'an

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا حَتَّىٰ إِذَا

154 بلَغَ أَشْدَدَهُ وَبَلَغَ أَرْبَعِينَ سَنَةً

“We have commanded people to honour their parents. Their mothers bore them in hardship and delivered them in hardship. Their 'period of' bearing and weaning is thirty months. In time, when the child reaches their prime at the age of forty”

2.6.1 Marital Autonomy and Dissolution

Islamic law grants women the right to dissolve marriage through *khul'*. A wife may seek separation from her husband if she is unable to continue married life, usually by returning the dower or offering compensation. This principle is derived from a Prophetic ḥadīth, where the Prophet ﷺ accepted the request of a woman who sought release from her marriage:

، أَنَّ امْرَأَةً، ثَابِتَ بْنُ قَيْسٍ أَتَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ ثَابِتَ بْنُ قَيْسٍ أَمَا إِنِّي مَا

أَعِيبُ عَلَيْهِ فِي حُلُقٍ وَلَا دِينٍ وَلَكِنِي أَكْرَهُ الْكُفَّارَ فِي الْإِسْلَامِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "

أَنْرِدَيْنَ عَلَيْهِ حَدِيقَةً" . قَالَتْ نَعَمْ . قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "أَقْبِلُ الْحَدِيقَةَ وَطَافَهَا تَطْلِيقَةً

155 "The wife of Thabit bin Qais bin Shammas came to the Prophet ﷺ and said, 'O Allah's Messenger ﷺ! I do not blame Thabit for any defects in his character or his religion, but I am afraid that I (being a Muslim) may become unthankful for Allah's Blessings.' On

¹⁵⁴ Ibid., 46:15.

¹⁵⁵ Muhammad Ibn Ismā'īl Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, 3463.

that, Allah's Messenger (ﷺ) said (to her), 'Will you return his garden to him?' She said, 'Yes.' So, she returned his garden to him and the Prophet (ﷺ) told him to divorce her."¹⁵⁶

This ḥadīth demonstrates the Prophet ﷺ's recognition of women's right to seek *khul'*, even where the husband was without fault, establishing a legal precedent in Islamic family law. Islam also granted women the right to dissolve marriage upon liberation from slavery. In the case of Barīrah (RA), the Prophet ﷺ gave her the choice to remain with her husband or separate. She chose separation despite her husband's pleas. The Prophet ﷺ interceded but did not impose his will, respecting her autonomy.¹⁵⁷ This highlights women's empowerment in making marital decisions. Furthermore, the Qur'ān affirms women's right to be heard in marital disputes, as illustrated by the case of Khaulah bint Tha'labah (RA). Her plea regarding her husband's unjust pronouncement of *zihār* was heard by Allah, leading to the revelation of Surah al-Mujādilah:

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي رَوْجَهَا وَتَشْتُكِي إِلَى اللَّهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ¹⁵⁸

"Allah has indeed heard (and accepted) the statement of the woman who pleads with thee concerning her husband and carries her complaint (in prayer) to Allah: and Allah (always) hears the arguments between both sides among you: for Allah hears and sees (all things)."¹⁵⁹

"Allah has indeed heard (and accepted) the statement of the woman who pleads with thee concerning her husband and carries her complaint (in prayer) to Allah: and Allah (always) hears the arguments between both sides among you: for Allah hears and sees all things."

¹⁵⁶ Al-Bukhārī, *Sahih Al-Bukhari*, 3493.

¹⁵⁷ Ibid., 5283.

¹⁵⁸ *Al-Qur'ān*, 58:1.

¹⁵⁹ Yusuf Ali, *The Holy Quran: English Translation*.

Islam abolished *zihār* as a valid form of divorce and instead required expiation (*kaffārah*) on the husband freeing a slave, fasting for two consecutive months, or feeding sixty poor people reinforcing women's dignity and justice in marital relations.

2.6.2 Financial Rights

A central aspect of gender justice in Shari‘ah is women's financial security. The dower (*mahr*) is a mandatory financial right of the wife, symbolizing respect, security, and commitment. Unlike a token gesture, it is enforceable, and Islamic law allows its increase, amendment, or modification after marriage with mutual consent.¹⁶⁰ Pakistani courts have upheld this principle, affirming the wife's right to demand enhancement of dower even after marriage, ensuring it remains a practical financial guarantee.

Islam also mandates the husband's obligation of maintenance, even if the wife is wealthier. This underscores her protection and financial independence within marriage.¹⁶¹ On inheritance, the Qur‘ān provides clear shares for women. While the verse “Allah ﷺ directs you as regards your children to the male a portion equal to that of two females.”¹⁶² is often cited, this is only one scenario. Women receive equal or greater shares in several cases for example, both parents inherit one-sixth when children exist, and the mother may inherit one-third when no children survive. However, this is only one small part of inheritance rule and only in four cases women get lessor share than male and secondly this rule is linked within a comprehensive legal framework that places financial responsibilities, such as *nafaqah* solely upon men.

¹⁶⁰ Kaneez Fatima v. Wali Muhammad, PLD.

¹⁶¹ Jamal J. Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, 26.

¹⁶² Yusuf Ali, *The Holy Quran: English Translation*, 35.

Classical jurists such as al-Qurtubī¹⁶³ and Ibn al-‘Arabī explained that differentiated shares are linked to men’s financial responsibilities, not women’s inferiority.¹⁶⁴ Despite these safeguards, women in many parts of Pakistan are denied land inheritance under the guise of tribal customs or family “honour,” in contradiction to Qur’ān ic injunctions. Contemporary scholars like Ibn ‘Āshūr¹⁶⁵ and Jasser Auda¹⁶⁶ stress the need to apply *Maqāṣid al-Sharī‘ah* (objectives of law) to uphold justice and protect wealth. Yet institutional weakness and judicial inertia perpetuate the denial of women’s inheritance rights.¹⁶⁷

2.6.3 Comparative Perspective with CEDAW

Pakistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1996 with reservations, particularly regarding Article 16, which advocates absolute equality in marriage and family relations.¹⁶⁸ This stands in contrast to Sharī‘ah, which emphasizes complementary rights and duties rooted in justice.¹⁶⁹

CEDAW demands equal rights for spouses in entering and dissolving marriage.¹⁷⁰ Islamic law affirms women’s right to consent to marriage such as:

النِّسْبَةُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيَّهَا وَالْبِكْرُ تُسْتَأْمَرُ وَإِنَّهَا سُكُونُهَا¹⁷¹

¹⁶³ Abū ‘Abdullah Muḥammad ibn Ahmad Al-Qurtubī, *Al-Jāmi‘ Li Aḥkām al-Qur’ān*, 5:60.

¹⁶⁴ Qadi Abu Bakr Ibn Al Arabi, *Ahkām al-Qurān*, vol. 1 (Beirut: Dar al-Kutub Al- ‘Ilmiyyah, 1996), 291–92.

¹⁶⁵ Muḥammad al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid Al-Sharī‘ah al-Islāmiyyah*, 252–54.

¹⁶⁶ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 116–20.

¹⁶⁷ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law*, 113–16.

¹⁶⁸ United Nations General Assembly, *The Universal Declaration of Human Rights*, Resolution 217A (III), 1948, art. 16.

¹⁶⁹ *Al-Qur’ān*, 4:11.

¹⁷⁰ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, art. 16(1).

¹⁷¹ Muslim ibn al-Hajjaj al-Qushayrī, *Al-Minhāj Fī Sharḥ Ṣaḥīḥ Muslim*, 1:1421.

A woman who has been previously married (Thayyib) has more right to her person than her guardian. And a virgin should also be consulted, and her silence implies her consent.¹⁷²

Another hadith provides avenues for divorce (*talāq*) for men as “Divorce belongs to men, and women have the iddah”¹⁷³ *And right to seek Khul*¹⁷⁴ or and another narration provides the women right to judicial annulment for women such as:

أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا يُقَالُ لَهُ مُغِيْثٌ كَانَ يُنْظَرُ إِلَيْهِ يَطْوُفُ خَلْفَهَا يَبْكِي، وَذُمُّوْعَهُ شَيْلٌ عَلَى لِحْيَتِهِ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِعَبَّاسٍ " يَا عَبَّاسُ أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيْثٍ بَرِيرَةَ، وَمِنْ بُعْضِ بَرِيرَةَ مُغِيْثًا " . فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " لَوْ رَاجَعْتَهُ " . قَالَتْ يَا رَسُولَ اللَّهِ ثَأْمُرْنِي قَالَ " إِنَّمَا أَنَا أَنْفَعُ " . قَالَتْ لَا حَاجَةَ لِي فِيهِ¹⁷⁵

“Barira's husband was a slave called Mughith, as if I am seeing him now, going behind Barira and weeping with his tears flowing down his beard. The Prophet (ﷺ) said to 'Abbas, "O 'Abbas ! are you not astonished at the love of Mughith for Barira and the hatred of Barira for Mughith?" The Prophet (ﷺ) then said to Barira, "Why don't you return to him?" She said, "O Allah's Messenger (ﷺ)! Do you order me to do so?" He said, "No, I only intercede for him." She said, "I am not in need of him."¹⁷⁶

CEDAW envisions equal financial responsibilities, whereas Sharī'ah places this obligation solely on husband.¹⁷⁷ Inheritance: CEDAW calls for identical rights; Sharī'ah prescribes differentiated shares based on financial duties, but not always

¹⁷² al-Qushayrī, *Sahīh Muslim*, 3307.

¹⁷³ Imam Malik ibn Anas, *Al-Muwatṭā Imam Malik* (United Kingdom: Taylor & Francis, 2013), 70.

¹⁷⁴ Al-Bukhārī, *Sahih Al-Bukhari*, 5273.

¹⁷⁵ Ibid., 5283.

¹⁷⁶ Muhammad ibn Ismā‘il Bukhārī, *The English Translation of Sahīh Al Bukhārī with the Arabic Text*, trans. Muhammad Muhsin Khan (Egypt: Al-Saadawi Publications, 1996), 206.

¹⁷⁷ *Al-Qur'ān*, 4:34., Yusuf Ali, *The Holy Quran: English Translation*, 35.

unequal.¹⁷⁸ Custody and Guardianship: CEDAW supports equal parental authority;

Shari‘ah prioritizes mothers in early physical custody while fathers retain legal guardianship and financial responsibility.

CEDAW advances formal equality by erasing gender distinctions, while Shari‘ah seeks substantive justice through differentiated yet complementary roles. However, in practice, patriarchal customs often override Shari‘ah, undermining women’s guaranteed entitlements like inheritance and maintenance. The contradiction between theory and practice in Pakistan highlights the need for *ijtihād* (reinterpretation), institutional reform, and harmonization of domestic law with both Shari‘ah and international commitments.

In sum, Shari‘ah establishes a coherent framework for gender justice by granting women autonomy in marital decisions, securing enforceable financial rights such as dower, maintenance, and inheritance, and protecting their dignity in family life. While this framework differs from CEDAW’s model of formal equality, both share common goals of fairness and protection against exploitation. The challenge in Pakistan lies not in Shari‘ah itself but its partial implementation, cultural distortions, and weak enforcement. Bridging these gaps requires renewed commitment to the authentic principles of Islamic law alongside constructive engagement with international standards to ensure women’s rights are fully realized in practice.

Conclusion

This chapter undertook a comprehensive comparative legal analysis of the concept of financial rights through the lens of both Western and Islamic legal traditions, with a specific focus on women’s financial entitlements. The inquiry began by conceptualizing rights in Western legal thought, highlighting the evolution from philosophical theories of liberty and

¹⁷⁸ *Al-Qur’ān*, 4:11.

equality to the institutional mechanisms that enforce individual rights through the authority of the state. In contrast, Islamic law approaches rights from a theologically rooted framework, wherein the Qur'ān and Sunnah provide the normative basis for both rights and duties. The Islamic paradigm emphasizes balance between individual entitlement and moral responsibility, underlining the interconnectedness of rights and obligations. This divine orientation reconfigures financial rights as not only legal claims, but also ethical duties grounded in accountability before Allah Almighty. The framework of women's rights in Islamic law especially concerning dower, maintenance, inheritance, and property ownership reveals a system that predates many modern legal safeguards but continues to face challenges in practical enforcement due to socio-cultural and interpretive constraints.

The historical analysis of women's status in pre-Islamic Arabia and its transformation under Islamic reform demonstrates a profound moral and legal shift. Islam's prohibition of female infanticide, its recognition of women as legal subjects, and the own practices of Prophet Muḥammad ﷺ in uplifting the status of women set foundational precedents. Yet, despite the clear textual entitlements, financial rights of women often remain contested in modern Muslim societies due to cultural resistance and patriarchal customs that have obscured or distorted Sharī'ah principles.

By classifying rights in Islamic law and mapping them onto the financial rights of women, the chapter explored key areas such as the legal recognition of dower, maintenance obligations, and inheritance rights. The comparative exploration between Islamic norms and modern human rights discourse underscores that while the two traditions differ in foundations, there are meaningful areas of convergence, particularly regarding dignity, equality, and justice.

Ultimately, this chapter establishes the theoretical foundation by presenting the conceptual divergences and convergences between Islamic and Western law. It argues that

while Islamic law offers a coherent and morally grounded framework for financial rights of women, the disconnect between classical jurisprudence and modern statutory systems particularly in Pakistan necessitates reinterpretation (*ijtihād*), institutional reform, and legal harmonization.

CHAPTER 3: DOWER IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM

Introduction

This chapter delves into the concept of dower within Islamic law and its application under Pakistani law, focusing on its pivotal role in safeguarding financial rights of wife in marriage. The chapter is framed around the core research question: How do the principles of the right of dower in Islamic law and Pakistani law protect financial rights of wife, and how do Pakistani courts interpret and apply these principles in resolving disputes related to dower? The chapter explores the concept significance and legitimacy of the dower as established by Islamic law, emphasizing its mandatory nature and different types of dowers, the criteria for determining their amount, and the implications of marriages contracted without a specified dower. This exploration is essential to understanding how dower functions within Islamic legal traditions for protecting wife financial right.

In line with the research objective of analyzing the regulatory framework for the protection of wives' financial rights, the chapter critically examines the legal provisions in Pakistan concerning dower. It scrutinizes the role of the judiciary in interpreting and enforcing these rights, highlighting key judicial interpretations and rulings by superior courts that have shaped the enforcement of dower rights. By analyzing relevant case laws, the chapter provides insight into how disputes related to dower are resolved within the Pakistani legal system, offering a practical perspective on the application of Islamic principles in contemporary legal practice.

The chapter highlights shortcomings in Pakistan's legal framework, where cultural practices and statutory ambiguities continue to undermine the protection of financial rights of wives', particularly dower, maintenance, and inheritance. It evaluates how judicial interpretation sometimes diverges from Sharī'ah principles and identifies the resulting gaps

between Islamic law, statutory provisions, and judicial practice. In line with the research objectives, the chapter proposes reforms to clarify misconceptions, strengthen enforcement, and align Pakistan's regulatory framework more closely with Sharī'ah, thereby ensuring effective protection of financial rights of wives.

3.1 The Concept of Dower in Islam

Dower, known as *mahr* in Islamic law, holds significant importance as both a religious obligation and a legal requirement in Muslim marriages. It serves as a fundamental right for women and symbolizes the husband's commitment to the marital relationship. The dower is not merely a token gesture; it represents an acknowledgment of the financial rights and dignity of the wife within the marriage. Across different Islamic schools of thought, the nature, amount, and enforcement of dower vary, reflecting the diversity of interpretations within Islamic law.

The concept of *dower*, plays a crucial role in Islamic marriage contracts, ensuring a woman's financial independence and security. Unlike the Roman concept of dowry, which was a voluntary gift, dower is an obligatory condition of marriage in Islam. It is paid by the husband to his wife, serving as a symbol of respect, honor, and a form of financial empowerment. The term *mahr* (مهر) originates from the Arabic root word مهـر and various Arabic terms used for *mahr* including *Mahr*, 'ṣadāq or ṣidāq, *Nahl*, *Ajr*, and *Fard*, while *Sidāq* and *mahr* is mostly used.¹⁷⁹ The Holy Qur'ān employs various words for dower as:

وَأَئُلُّو الْأَيْمَانَ صَدَقَاتِهِنَّ نَحْلَةٌ فَإِنْ طَبِنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَعْسَنَا فَكُلُّهُ هَنِيَّةٌ مَّرْبَيَّةٌ¹⁸⁰

¹⁷⁹ Ibrāhīm Muṣṭafā, *Al-Mu'jam al-Wasīt* (Cairo: Arabic Academy, 1960).

¹⁸⁰ Al-Qur'ān, 4:4

*“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer”.*¹⁸¹

بِإِنَّمَا أَنْهَا اللَّهُ أَنَّا أَحَلْنَا لَكَ أَزْوَاجَكَ الَّتِي ءاتَيْتَ أُجُورَهُنَّ¹⁸²

“O Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers”

The above verse used these words for dower. The Holy Qur’ān and the Prophetic traditions have laid down the guidelines for dower, emphasizing its obligatory nature. The dower symbolizes respect and honor and is a sum of money or property that the husband must pay to his wife as a significant wedding gift. The husband is obligated to pay the dower in cash or property, regardless of whether it is mentioned in the *nikah Nama* (marriage form).¹⁸³ This practice represents a traditional transfer of wealth to the bride as a form of gift. According to Islamic jurists, the dower is defined as the financial gain which the wife is entitled to receive in the marriage contract in exchange for the conjugal rights the husband enjoys.¹⁸⁴ According to the Hanafī jurist Kamal al-Din Muhammad:

Mahr is a gift given by the husband to his wife, acknowledging her honor and status. The mahr is not intended as a consideration like a price or wage but is mandated to emphasize the prestige and importance of the marriage contract. It is a symbol of pride, self-confidence, and empowerment for women, encouraging a harmonious relationship between spouses and reinforcing the husband's responsibility within the marriage.¹⁸⁵

Al-Kāsānī explains that dower was legislated as an integral part of the marriage contract to promote marital stability. It ensures that the husband does not take the marriage

¹⁸¹ Yusuf Ali, *The Holy Quran: English Translation*, 34.

¹⁸² *Al-Qur’ān*, 33:50.

¹⁸³ ‘Al-Marghīnānī, *Al-Hidāyah*, 2:59–84.

¹⁸⁴ Abdul Rahman Al-Jazīrī, *Al-Fiqh ʻalā al-Madhāhib Al-Arba‘ah*, vol. 4 (Beirut: Dar al-Kutub Al-‘Ilmiyyah, 1392), 89.

¹⁸⁵ Kamal al-Din Muhammad ibn ’Abd al-Wahid ibn ’Abd al-Hamid ibn Mas’ud, *Fath al-Qadīr*, vol. 3 (Beirut: Dar al-Kutub Al-‘Ilmiyyah, 2003), 316.

for granted, thereby reducing the likelihood of divorce for trivial reasons.¹⁸⁶ A woman feels more secure and honored when she receives dower from her husband, as it assures her of her economic security and rights. Hammūdah ‘Abd al-‘Ātī further emphasizes that the payment of dower to the bride herself minimizes the self-interest and control of male guardians in the marriage process, empowering women and granting them greater autonomy over their affairs. maintained.¹⁸⁷ The dower thus plays a crucial role in maintaining respect, honor, and smooth marital relationships, as per Islamic law.

3.1.1 From Pre-Islamic Practices to Islamic Reforms

Before Islam, the payment of dower was a common practice in Arab culture, though it was often paid to male guardians of the bride rather than the bride herself.¹⁸⁸ As Robertson Smith explains, in pre-Islamic Arabia, the dower was typically paid by the son-in-law to the parents of the bride as a form of compensation.¹⁸⁹ This payment was not intended for the bride's personal use but was rather a transfer of wealth within the family, often reflecting a form of purchase price. However, the advent of Islam significantly reformed this practice. Islam transformed the concept of dower from a purchase price into bridal wealth, directly benefitting the bride. The Qur'ānic teaching of giving the wedding wealth to the woman herself marked a significant departure from pre-Islamic customs, ensuring that the dower became a gift to the bride, symbolizing her honor and independence. Islamic scholars describe dower as “compensation for the authorization to engage in marital relations but also emphasize its role beyond a mere financial transaction, reflecting the broader socio-economic rights Islam granted to women.” Maher or dower is a sum of money or other

¹⁸⁶ ‘Alā’uddīn Abū Bakr bin Mas‘ūd Al-Kāsānī, *Badā’i‘ al-Šanā’i‘ Fī Tartīb al-Sharā’i* (Beirut: Dar al-Kutub al- ‘Ilmiyyah, 1982), 275.

¹⁸⁷ Hammūdah ‘Abd al-‘Ātī, *The Family Structure in Islam*, 40.

¹⁸⁸ Cheris Kramarae and Dale Spender, *Routledge International Encyclopedia of Women: Global Women’s Issues and Knowledge* (New York: Routledge, 2000), 1159., Smith, *Kinship and Marriage in Early Arabia*, 98.

¹⁸⁹ Smith, *Kinship and Marriage in Early Arabia*, 79–80.

property which the wife is entitled to receive from the husband for consideration of marriage and is regarded as a mark of respect.¹⁹⁰

3.1.2 The Significance of Dower in Islamic Law

Islamic jurists have extensively debated the nature and significance of dower, leading to varying interpretations across the different schools of thought. According to the Ḥanafī School, dower is considered a fundamental right of the wife¹⁹¹ and an essential condition for the validity of marriage.¹⁹² It is emphasized that the amount of dower should be specified at the time of marriage to avoid disputes and ensure the financial empowerment of wife.¹⁹³ In contrast, the Mālikī School views dower as a debt upon the husband,¹⁹⁴ which he must pay to his wife.¹⁹⁵ This payment is seen not only as a financial obligation but also as a means of honoring the wife and showing respect for her.¹⁹⁶ The Mālikī jurists stress that the dower should be reasonable and proportionate to the husband's financial means.¹⁹⁷

The Shāfi‘ī School also considers dower a necessary condition for the validity of marriage,¹⁹⁸ viewing it as a symbol of the husband's willingness to take responsibility for his wife.¹⁹⁹ The Shāfi‘ī scholars argue that the dower should be paid promptly unless both parties agree on a deferred payment.²⁰⁰ Similarly, the Ḥanbalī School emphasizes that dower is a fundamental right of the wife, designed to secure her financial stability.²⁰¹ The

¹⁹⁰ Shah, *Women, the Koran and International Human Rights Law*, 157.

¹⁹¹ Al-Marḡīnānī, *Al-Hidāyah*, 2:354.

¹⁹² Kamal al-Din Muhammad ibn 'Abd al-Wahid ibn 'Abd al-Hamid ibn Mas'ud al-Siwasī, *Fath al-Qadīr*, 1st ed., vol. 3 (Beirut: Dar al-Kutub Al-‘Ilmiyyah, 2003), 3:234.

¹⁹³ Al-Kāsānī, *Badā'i' al-Šanā'i' Fī Tartib al-Sharā'i*, 2010, 3:123.

¹⁹⁴ Khalid Saif Ullah Rahmani, *khwateen ke Mali Haqiq Shariat Islami ki Roshani Main* (India: All India Muslim Personal Law Board, n.d.).

¹⁹⁵ Abu al- Walīd Muḥammad ibn Aḥmad Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, vol. 2 (Lebanon: Dar al-Ma‘rifah, 1982), 21–27.

¹⁹⁶ Abū ‘Abdullah Muḥammad ibn Aḥmad Al-Qurtubī, *Al-Jāmi‘ Li Aḥkām al-Qur’ān*, 5:5:145.

¹⁹⁷ Ibid.

¹⁹⁸ Muḥammad ibn Idrīs Al-Shāfi‘ī, *Al- Um*, vol. 5 (Beirut: Dar- al-Mā‘rif, 1989), 123.

¹⁹⁹ Abū-Ḥāmid Muḥammad Ibn-Muḥamma al-Ghazālī, *Al-Wajīz Fī Fiqh al-Imām al-Shāfi‘ī*, vol. 2 (Lebanon: Dār al-Arqam, n.d.), 45.

²⁰⁰ Imam al-Nawawī, *Minhaj et Talibin* (India: W. Thacker & Company, 1914), 234.

²⁰¹ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:123.

Ḥanbalī jurists assert that the dower is a debt upon the husband, and like the Mālikīs,²⁰² they advocate for a reasonable amount that aligns with the husband's financial capabilities.

²⁰³ This nuanced understanding of dower across different Islamic schools reflects the diversity of thought within Islamic law, emphasizing both the legal and ethical dimensions of this institution.

The Ḥanafī, Shāfi‘ī, Mālikī, and Ḥanbalī schools of jurisprudence all recognize the obligatory nature of dower but differ in their views on its amount, timing, and conditions. The Ḥanafī school holds that while the mention of dower in the marriage contract is not a prerequisite for the validity of marriage, its payment is nonetheless obligatory.²⁰⁴ If a specific amount is not stipulated, the wife is entitled to *mahr al-mithl*, a dower that is customary for women of similar status.²⁰⁵ The Shāfi‘ī school also recognizes the validity of marriages without a specified dower but emphasizes that the husband is still required to pay a reasonable amount based on the social and economic status of the wife.²⁰⁶ The Mālikī jurists argue that the dower should ideally be mentioned in the marriage contract, but its absence does not invalidate the marriage. They place greater emphasis on the symbolic and financial aspects of dower as a form of security for the wife like the Mālikī school, the Ḥanbalī jurists hold that the dower should be specified but is not a condition for the validity of the marriage. However, they stress the importance of fulfilling this obligation promptly.

²⁰² Mansūr ibn Yūnus al-Buhūtī, *Kashshāf Al-Qinā‘ ‘an Matn Al-Iqnā‘*, vol. 5 (Lebanon: al-Maktabat Nizar Mustafa al-Baz, 1996), 235.

²⁰³ Ibn Taymiyah, *Majmoo‘ al-Fataawa by Shaykh al-Islaam Ibn Taymiyah*, vol. 20 (Saudi Arabia: Dar al-hHdith, n.d.), 123.

²⁰⁴ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtasid*, 2:223.

²⁰⁵ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:182., Al-Sarkhasī, *Al-Mabsūt*, 5:92.

²⁰⁶ Abū Iṣhāq Ibrāhīm al-Shīrāzī, *Al-Muhaḍhab Fī Fiqh Al-Imām Al-Shāfi‘ī*, vol. 2 (Cairo: Maṭba‘ah Muṣṭafā al-Bābī, 1976), 462., Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa-Adillatuhū*, vol. 5 (Dimashq: Dār al-Fikr, 1417), 243.

The Qur'ānic verse "And give the women their dower as a free gift"²⁰⁷ is often cited by jurists to emphasize the husband's obligation to pay dower as a form of financial security for the wife. Moreover, the payment of dower is seen as a manifestation of the husband's commitment to the marriage, with scholars like Al-Kāsānī asserting that the dower's purpose is to ensure marital stability by deterring hasty divorces.²⁰⁸

3.1.3 Modern Interpretations and Legal Applications

In modern contexts, the practice of dower continues to evolve, with contemporary Islamic jurists and legal scholars advocating for reforms that align with the socio-economic realities of Muslim women today. For instance, Kecia Ali critiques traditional interpretations of dower that reduce it to a form of compensation for sexual access, arguing that such views are incompatible with the broader principles of gender equity in Islam. The dower should be understood within the framework of Islamic teachings that promote mutual respect and economic security for women.²⁰⁹

Moreover, modern legal systems in Muslim-majority countries, including Pakistan, have sought to codify and enforce the payment of dower to protect women's rights within marriage. The Muslim Family Laws Ordinance (MFLO) of 1961 in Pakistan, for example, mandates the payment of dower and allows for legal recourse if a husband fails to fulfil this obligation. This legislative framework reflects an ongoing effort to ensure that the principles of Islamic law are applied in a manner that upholds the financial rights and dignity of women.²¹⁰

²⁰⁷ Al-Qur'ān, 4:4

²⁰⁸ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtāṣid*, 2:184–86.

²⁰⁹ Dinshah Fardunji Mulla and Mohammed Hidayatullah, *Principles of Mahomedan Law*, 19. ed., 18. reprint (New Delhi: LexisNexis Butterworths, 2008), 246–49., Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*, Reprint (Oxford: Oneworld, 2012), 49–53.

²¹⁰ The Muslim Family Laws Ordinance 1961, sec. 10,11.

3.2 Legitimacy of Dower in Islam

The legitimacy of dower is firmly established in Islamic legal tradition, recognized as a fundamental right of the wife. This section examines the religious and legal foundations supporting dower, drawing on Qur'ānic injunctions and prophetic traditions. It highlights the consensus among Islamic jurists that dower is essential for a valid marriage, as mandated by divine commandment. The Qur'ān, the primary source of Islamic law, provides detailed guidance on the concept, purpose, nature, and types of dowers underscoring its significance and legitimacy through specific verses:

وَأَنْوَأُ الْنِسَاءَ صَدْقَهُنَّ نِحْلَةً إِنْ طَبِنَ لَكُمْ عَنْ شَيْءٍ مِنْهُنَّ فَكُلُوهُ هُنَّا مَرِيٰ²¹¹

And give the women [on marriage] their dower as a gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.²¹²

The verse urges women to abandon pre-Islamic practices related to dowers by ensuring they receive their rightful dowers, as emphasized by the imperative form of the word 'give.' Muslim jurists assert that it is the responsibility of husbands and guardians to provide dowers to women, while women have the option to voluntarily return a portion of their dowers if they choose.²¹³ In the Muslim world, husbands are required to pay the dower voluntarily. This verse demonstrates that the full dower is compulsory in every marriage contract."²¹⁴ General directives regarding the obligation of the dower are also mentioned in the Holy Qur'ān.

فَإِنْ كُحُونَ بِإِذْنِ أَهْلِهِنَّ وَأَنْوَهُنَّ أَجُورَهُنَّ بِالْمَعْرُوفِ²¹⁵

²¹¹ Al-Qur'ān, 4:4

²¹² Abdullah Yusuf Ali, ed., *The Qur'an: Translation*, 20th U.S. ed (Elmhurst, N.Y: Tahrīke Tarsīle Qur'an, Publishers and Distributors of Holy Qur'an, 2007), 36.

²¹³ Ismā'īl ibn 'Umar Ibn Kathīr, *Tafsīr Ibn Kathīr* (Beirut: Mu'assasah Al-Rayyān, 1999), 202.

²¹⁴ Abū 'Abdullah Muhammad ibn Ahmad Al-Qurtubī, *Al-Jāmi 'Li Aḥkām al-Qur'Ān*, 5:127.

²¹⁵ Al-Qur'ān, 4:25

“Wed them with the leave of their owners, and give them their dowers, according to what is reasonable.”²¹⁶

Regarding marriage with Kitābiyah the Holy Qur’ān says:

الْيَوْمَ أَحَلَ لَكُمُ الْطَّيْبَاتِ وَطَعَامُ الَّذِينَ أَوْثَوْا الْكِتَبَ حَلَ لَكُمْ وَطَعَامُكُمْ حَلَ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أَوْثَوْا الْكِتَبَ مِنْ قَبْلِكُمْ إِذَاءَاتِهِنَّ أُجُورَهُنَّ²¹⁷

This day is (all) good and purely made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time, when ye give them their due dowers.²¹⁸

Marriage with believing women who have migrated from the land of non-believers, as well as with Kitābiyah is allowed after the payment of a proper dower, which is obligatory according to the Holy Qur’ān. The obligatory nature of dower is further supported by various *ahādīth*, some of which are quoted below. The Sunnah of the Prophet ﷺ also explain what was revealed in the Holy Qur’ān regarding a woman’s right to her dower. For instance, Ibn Abbass said:

When Hadrat Ali (R.A) married Hadrat Fatima (RA), the Prophet ﷺ instructed him to provide something as a dower. Hadrat Ali (R.A) responded that he had nothing to offer. The Prophet ﷺ then asked, 'Where is your Hutmīyyah shield?' Hadrat Ali (R.A) replied It is with me. The Prophet ﷺ then said, Give it to her.²¹⁹

There is another *hadīth* narrated by Abū Salama Raḍī Allah Ḥu `anhu:

²¹⁶ Abdullah Yusuf Ali, *The Qur'an*, 36.

²¹⁷ *Al-Qur'ān*, n.d., 5:6.

²¹⁸ Abdullah Yusuf Ali, *The Qur'an*, 47.

²¹⁹ Al-Nasā'ī, *Sunan Nasa'i*, no. 180.

I inquired of Ḥadrat ‘Ā’isha Radī Allahū ‘anhā about the amount of dower paid to the wives of the Prophet ﷺ. She answered that he used to give twelve ‘uqiyyas and one nash as a dower to his wives. She also stated that the total dower of the Prophet ﷺ to his wives was five hundred dirhams.²²⁰

The Prophet ﷺ established the practice of paying the full dower, which was five hundred dirhams, to his wives. Muslim jurists universally agree on a woman's right to receive her dower as stipulated in the marriage contract. Deceiving or misleading a woman about her dower is considered a serious offense, with severe punishment, as highlighted in ḥadīth of the Prophet ﷺ.

He who marries a woman and intends not to give her dower, and then dies before she receives what she deserves, will face Allah ﷺ on the Day of Judgment as a fornicator.²²¹

A husband who withholds the dower is warned of Allah ﷺ's punishment, as emphasized in several *Ahādīth*. The Holy Qur'ān permits the adjustment of dower during marriage, providing clear guidance on this allowance:

فَأَلْوَهُنَّ أُجُورٌ هُنَّ فَرِيضَةٌ وَلَا جُنَاحَ عَلَيْمُ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا²²²

Give them their dowers (at least) as prescribed; but if after a dower is prescribed ye agree mutually (to vary it) there is no blame on you, and God is All- Knowing All-Wise.²²³

Regardless of circumstances. If the marriage ends, any unpaid dower must be settled immediately. The wife may choose to return the dower as a gift, confirming her ownership.

²²⁰ Muslim ibn al-Hajjāj al-Qushayrī, *Sahīh Muslim* (Riyadh: Darussalam, 2007), no. 3318., Abū ‘Abd Allah Muḥammad Yazīd Ibn Mājah, *Sunan Ibn-e-Mājah*, vol. 1 (Beirut: Dar al-Kutub Al-‘Ilmiyyah, 2000), no. 2556.

²²¹ Sulaymān ibn Aḥmad al-Ṭabrānī, *Al-Mu'jam Al-Kabīr*, vol. 8 (Beirut: Dār Ihyā' al-Turāth al-‘Arabī, 1983), 40.

²²² Al-Qur'ān, 4:24

²²³ Abdullah Yusuf Ali, *The Qur'an*, 36.

Settlement of dower should follow Qur'ānic teachings and mutual agreement, with the husband obligated to pay if the wife demands it. Ḥaḍrat 'Umar (RA) states that if a wife demands remitting dower, the husband will be obligated to pay it.²²⁴

3.2.1 Nature and Quantum of Dower

The dower amount in Islamic marriage can be flexibly set by mutual agreement, with different schools of thought offering various perspectives on adequacy. Dower can be paid in money or other assets, with Ḥanafī jurists setting a minimum of ten dirhams²²⁵ and Mālikī jurists at three. There are no limits on the maximum dower, which is influenced by factors like financial status and personal qualifications. While customs and traditions guide the dower's value, it must not be forbidden by Sharī'ah. The maximum amount should not be legislated but should align with the husband's financial capacity. It is expressed in the following verse of the Holy Qur'ān :

وَلَنْ أَرِدُّتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَّاَنْتُمْ احْدِهِنَ قِطْرَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْنَانًا
وَلَأَنَّمَا مُبِينًا²²⁶

But if ye decide to take one wife in place of another even if ye had given the latter a whole treasure for dower take not the least bit of it back: would ye take it by slander and a manifest wrong.²²⁷

Ibn Kathīr interpreted the term "*qintār*" differently from other jurists. Al-Dahhāk described a *qintār* as a substantial amount of money, with estimates varying widely. Some scholars speculated that it might be equivalent to 1,000 dinars, while others suggested amounts ranging from 200 to 1,000 dinars. Additional estimates placed their value between twelve thousand and sixty or seventy thousand dinars. According to a report by Abū Hurairah (RA), the Prophet ﷺ stated that a *qintār* is equivalent to twelve *uqiyahs*.²²⁸

²²⁴ *Tafsīr Al-Qur'ān*, 4:4.

²²⁵ Abū 'Eisā Muḥammad Ibn 'Eisā al-Tirmidhī, *Al-Jāmi' al-Tirmidhī* (Riyadh: Darussalam, 2007), no. 1113.

²²⁶ Qur'ān, 4:20

²²⁷ Abdullah Yusuf Ali, *The Qur'an*, 36.

²²⁸ Ismā'īl ibn 'Umar Ibn Kathīr, *Tafsīr Ibn Kathīr*, 2nd ed (Riyadh: Darussalam, 2003), 359.

The Qur'ānic text does not set a maximum limit for the dower, as evidenced by historical instances like offer of 40,000 dinars 'Umar ibn al-Khaṭṭāb for Umm Kulthūm. Islamic jurists generally agree that there is no upper limit to the dower. However, opinions differ regarding the minimum amount. Hanafī jurists, for example, stipulate that the dower should not be less than ten dirhams, based on specific *hadīth*.

“No dower for less than ten dirhams.”²²⁹

They reinforce this viewpoint through the analogy that there is a similarity between the amount of dower and the amount for the enforcement of punishment for theft, as a thief's hand may be severed if the value of stolen goods surpasses ten dirhams.

It is established that the determination of *Şidāq* (dower) is based on the financial and social status of the wife, whereas *mut‘ah* (compensatory gift upon divorce) is determined by the financial status of the husband, according to the preferred opinion. However, the dominant view of the two leading scholars (Abū Ḥanīfah and Abū Yūsuf) considers the financial condition of both spouses. secondly, it is recommended that the *Şidāq* should not be less than ten dirhams, while the *mut‘ah* should ideally not be less than thirty dirhams. Thirdly, the *Şidāq* is an obligation upon the husband and, in certain cases, upon others as well. However, *mut‘ah* is exclusively obligatory on the husband.²³⁰

According to Mālikī jurists, “a dower cannot be less than a quarter of a dinar in gold or three dirhams in pure silver. Imām Mālik bin Anas says: I do not think anyone should get married with a dower of less than a quarter of a *dīnār*.”²³¹ Mālikī jurists assert that a man cannot pay less than three dirhams for a dower, and a contract of marriage is void in the case of non-payment of a dower if no marital relationship exists. The third viewpoint is

²²⁹ al-Tirmidhī, *Al-Jāmi‘ al-Tirmidhī*, no. 1113., Al-Maṛghīnānī, *Al-Hidāyah*, 2:547.

²³⁰ Ibn Nujaym Zain Ul Abidin Bin Ibrahim Bin Muhammad, *Al-Ashbāh Wa'l Naṣā'ir* (Lebanon: Dar al-Kutub al- 'Ilmiyah, 1999), 204.

²³¹ Anas, *Al-Mudawwanah*, 3:152.

that of Shāfi‘ī and Ḥanbalī jurists.²³² Islamic jurists agree that there is no upper limit on the amount of dower, and it can include any valuable item that can be used to purchase goods. They also refer to a ḥadīth of the Prophet ﷺ, “where he was asked about the dower, to support the idea that the dower can be any asset agreed upon by the parties. “The Prophet ﷺ asked, “Do you have anything to offer her as dower?” The man replied, “No.” The Prophet ﷺ then said, “Look for something to give her, even if it is just an iron ring.”²³³ Another ḥadīth supporting this perspective is attributed to 'Abdullah bin 'Amir ibn Rab'ah, who reported it as follows: “It was narrated from Abdullah bin Amir bin Rabiah from his father, that: A man among Banu Fazarah got married for a pair of sandals, and the Prophet ﷺ permitted his marriage.”²³⁴

The Prophet ﷺ confirmed that a woman's satisfaction with a pair of shoes as a dower indicates the validity of her marriage contract. The Sharī‘ah advises choosing convenient dowers for both husbands and wives, avoiding exaggeration as it may lead to misery and future problems. As the Prophet ﷺ said: “The women who take the modest dower are considered blessed ones.”²³⁵ There is another *hadīth* of Ḥadrat Umar Ibn Al-Khattab (RA):

Do not go to extremes in giving women their dower, for if it represented honor in this world and piety in Allah's sight, the one of you most entitled to do so would have been the Prophet ﷺ. The Messenger of Allah ﷺ did not marry any of his wives or give any of his daughters in marriage for more than twelve *uqiyahs*.²³⁶

In this regard, Ibn Taymiyyah says: “It is disliked but not forbidden for a man to offer a dower that he cannot pay in cash nor can be repaid if it is a debt.”²³⁷ Hence, Islamic law

²³² al-Shīrāzī, *Al-Muhaqhab Fī Fiqh Al-Imām Al Shāfi‘ī*, 2:55.

²³³ Muslim ibn al-Hajjāj al-Qushayrī, *Sahīh Muslim*, no. 89.

²³⁴ Ibn Mājah, *Sunan Ibn Mājah*, 1888.

²³⁵ al-Tirmidhī, *Al-Jāmi‘ al-Tirmidhī*, no. 36.

²³⁶ Abū Dāwūd Sulaymān ibn al-Ash‘ath Sajistānī al-Sijistānī, *Sunan Abū Dāwūd* (Pakistan: Sh. M. Ashraf, 1988), no. 2106.

²³⁷ Ibn Taymīyah Ahmad, *Majmū‘ al-Fatāwā*, vol. 16 (Riyadh: Obeikan Publishing, 1998), 192.

encourages flexibility, moderate estimation, and avoidance of exaggeration in dowers to facilitate marriage, rather than setting strict limits.

3.2.2 The Marriage Without Fixation of Dower

This subsection addresses situations where the dower amount is not specified at the time of marriage. It explores the legal implications and default rules that come into play under such circumstances. The discussion includes the different approaches within Islamic law regarding this issue and examines the potential outcomes for the wife. The four Muslim schools of thought Ḥanafī²³⁸ Shāfi‘ī,²³⁹ Mālikī and Ḥanbalī²⁴⁰ hold that it is possible for the exact value of the dower not to be determined at the time of the marriage contract, and this does not affect the validity of the marriage. However, the Ḥanafī Jurists agree that if the dower amount is not specified at the time of marriage, the woman is entitled to a dower equivalent to that of women of similar status (*mahr mithl*),²⁴¹ irrespective of whether the marriage has been consummated. They emphasize that the dower is a fundamental duty under Islamic law, making it impossible to marry a woman without providing a dower. As Badr-Uddīn al-‘Aynī noted, “the dower is an obligation meant to honor the woman, and specifying the amount is not necessary for the validity of the marriage.”²⁴²

Furthermore, the Mālikī, Shāfi‘ī, and Ḥanbalī schools of thought all advocate for specifying the dower amount in the marriage contract. They believe that this practice safeguards the interests of both the husband and wife. Nonetheless, the Holy Qur’ān

²³⁸ Abū Bakr Muḥammad ibn Aḥmad al-Sarkhaṣī, *Al-Mabsūt*, vol. 5 (Beirut: Dār al-Ma‘rifah, 1987), 403.

²³⁹ Al-Shāfi‘ī, *Al- Um*, 5:238.

²⁴⁰ Ibn Qūdāmah Abū Muḥammad ‘Abdullah ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, vol. 7 (United Kingdom: Rufoof, 1968), 48.

²⁴¹ Al-Marghīnānī, *Al-Hidāyah*, 2:548.

²⁴² Mahmud ibn Aḥmad, *Al-Bināyah Fi Sharḥ al-Hidāyah*, vol. 5 (Beirut: Dār al-Fikr, 1990), 403.

supports the validity of a marriage contract even if the dower is not fixed, as indicated by the following Qur'ānic injunction:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوْهُنَّ أَوْ تَقْرُضُوهُنَّ فَرِيْضَةً وَمَنْتَهُوْهُنَّ عَلَى الْمُوْسِعِ قَدْرُهُ وَعَلَى
الْمُفْتَرِ قَدْرُهُ مَتَّعُوا بِالْمَعْرُوفِ حَقًا عَلَى الْمُحْسِنِينَ²⁴³

*"There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right thing."*²⁴⁴

This verse establishes the validity of marriage even when the dower is not specified, with divorce often occurring after marriage. Several ahādīth support this view, including a narration by Abdullah Ibn Mas'ūd:

عَنْ عَبْدِ اللَّهِ، فِي رَجُلٍ تَرَوَّجَ امْرَأَةً فَمَاتَتْ عَنْهَا وَلَمْ يَدْخُلْ بِهَا وَلَمْ يَفْرُضْ لَهَا الصَّدَاقُ فَقَالَ لَهَا الصَّدَاقُ
كَامِلًا وَعَلَيْهَا الْعِدَةُ وَلَهَا الْمِيرَاثُ . فَقَالَ مَعْقُلٌ بْنُ سَيَّانٍ سَمِعْتَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى بِهِ
فِي بِرْوَعَ بِنْتَ وَاشِقِيْ .

"Abdullah (ibn Mas'ud) was asked about a man who had married a woman without cohabiting with her or fixing any dower for her till he died. Ibn Mas'ud said: She should receive the full dower (as given to women of her class), observe the waiting period ('Iddah), and have her share of inheritance. Thereupon Ma'qal ibn Sinan said: I heard the Messenger of Allah (ﷺ) giving the same decision regarding Birwa' daughter of Wāshiq (as the decision you have given)."²⁴⁵

This was a case where a man married a woman without specifying the dower and died before consummating the marriage. Ibn Mas'ūd stated that the woman

²⁴³ Al-Qur'ān, 2:236

²⁴⁴ Yusuf Ali, *The Holy Quran: English Translation*, 17.

²⁴⁵ al-Tirmidhī, *Al-Jāmi' al-Tirmidhī*, 1145., al-Sijistānī, *Sunan Abū Dāwūd*, no. 2114.

should receive a dower equivalent to what is customary for women of her status, neither more nor less. She must observe the ‘iddah, the waiting period and be entitled to maintenance and inheritance during the Iddah period and cannot get married. Additionally, Ma‘qal Bin Sinān noted that this principle is in accordance with the Prophet’s decision in a parallel to case of Birwa‘ bint-e-Wāshiq.²⁴⁶ In a *hadīth* narrated by ‘Uqbah Bin ‘Aāmir (RA), that:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لِرَجُلٍ "أَتَرْضَى أَنْ أُرْوِجَكَ فُلَانَةً" . قَالَ نَعَمْ . وَقَالَ لِلْمُرْأَةِ
 أَتَرْضِينَ أَنْ أُرْوِجَكَ فُلَانَةً . قَالَتْ نَعَمْ . فَرَوَجَ أَحَدُهُمَا صَاحِبَةُ فَدَخَلَ بِهَا الرَّجُلُ وَلَمْ يَفْرُضْ لَهَا صَدَاقًا
 وَلَمْ يُعْطِهَا شَيْئًا وَكَانَ مِنْ شَهِيدِ الْحُدَيْبِيَّةِ وَكَانَ مِنْ شَهِيدِ الْحُدَيْبِيَّةِ لَهُ سَهْمٌ بِخَيْرٍ فَلَمَّا حَضَرَ رَسُولُ اللَّهِ قَالَ
 إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَوَجَنِي فُلَانَةً وَلَمْ أَفْرُضْ لَهَا صَدَاقًا وَلَمْ أَعْطِهَا شَيْئًا وَإِنِّي أَشَهُكُمْ
 إِنِّي أَعْطَيْنَاهَا مِنْ صَدَاقِهَا سَهْمِي بِخَيْرٍ فَلَأَخْذَنَّ سَهْمًا فَبَاعَتْهُ بِمَا نَفَقَ فِي

The Prophet (ﷺ) said to a man: Would you like me to marry you to so-and-so? He said: Yes. He also said to the woman: Would you like me to marry you to so-and-so? She said: Yes. He then married one to the other. The man had sexual intercourse with her, but he did not fix any dower for her, nor did he give anything to her. He was one of those who participated in the expedition to al-Hudaybiyyah. One part of the expedition to al-Hudaybiyyah had a share in Khaybar. When he was nearing his death, he said: The Messenger of Allah (ﷺ) married me to so-and-so, and I did not fix a dower for her, nor did I give anything to her. I call upon you as witness that I have given my share in Khaybar as her dower. So, she took the share and sold it for one lakh of dirhams.²⁴⁷

²⁴⁶ al-Tirmidhī, *Al-Jāmi‘ al-Tirmidhī*, 1145., al-Sijistānī, *Sunan Abū Dāwūd*, no. 2114.

²⁴⁷ Abū Dāwūd Sulaymān ibn al-Ash‘ath al-Sajistānī, *Sunan Abū Dāwūd*, trans. Tahir Zubair Ali Zai, Yaser Qadhi, and Abu Khaliyl (Riyadh: Darussalam, 2008), 2112.

Prophet ﷺ arranged a marriage without specifying a dower. The man, who did not initially set a dower, later mentioned that he had given the woman an arrow from the Khaybar Battle as her dower. She sold the arrow for one hundred thousand dirhams, demonstrating that even an unspecified dower can be fulfilled in accordance with Islamic principles.²⁴⁸

In summary, the legitimacy of Dower in Islamic law is firmly rooted in both Qur'anic injunctions and prophetic traditions, affirming its crucial role as a woman's right and a key component of the marriage contract. Qur'anic verses and ahādīth establish that marriages remain valid even if the dower is not initially specified, with the wife retaining the right to claim it. All Islamic jurists agree that the dower is a non-waivable legal right, even if not set at the time of marriage or following the husband's death. While Ḥanafī, Shāfi'ī, and Ḥanbalī schools maintain that the absence of a specified dower does not invalidate the marriage, Mālikī jurists distinguish between consummated and non-consummated marriages, providing *mahr mithl* (a customary equivalent) in the latter case. Overall, the principle of dower, as upheld by Islamic law, not only serves as a financial safeguard for the wife but also as a mark of respect and responsibility, highlighting its essential role in ensuring justice and fairness within marital relationships.

3.3 Types of Dowers

In Islamic law dower is a mandatory financial provision given by the husband to the wife at the time of marriage. It serves as a measure of financial protection and respect. The dower can be categorized into two main types: 1) *Mahr Mu'ajjal* (Prompt Dower) and 2) *Mahr Ghair Mu'ajjal* (Deferred Dower), each with distinct characteristics and applications.

²⁴⁸ Abū Dāwūd Sulaymān ibn al-Ash'ath al-Sajistānī, *Sunan Abū Dāwūd*, trans. Tahir Zubair Ali Zai, Yaser Qadhi, and Abu Khaliyl (Riyadh: Darussalam, 2008), 2112.

Prompt Dower refers to the portion of the dower that is paid immediately after the marriage contract is completed. It can take the form of money, property, or other valuable items agreed upon by both parties.²⁴⁹ This immediate payment provides the wife with financial independence and security from the outset of the marriage. The prompt dower is designed to be accessible to the wife right after the marriage, thus ensuring her financial stability. If this dower is not paid at the time of marriage, the wife can claim it later, particularly if the marriage ends in divorce or the husband's death.²⁵⁰ Deferred Dower, on the other hand, refers to the dower that is postponed to a later time, usually payable upon the husband's death or divorce. This type of dower provides long-term financial security to the wife and is intended to cover unforeseen circumstances.²⁵¹

Another term is used in the context of dower rights, that is, *Mahr Musammā* (Specified Dower). It is an amount specified and agreed upon at the time of marriage. It is usually documented in the marriage contract or recorded in a register.²⁵² In Ḥanafī law, if the dower is fixed by the father for his minor son, it binds the son, though the father is not liable for payment.²⁵³ The specified dower can be either prompt or deferred. A prompt specified dower must be paid immediately,²⁵⁴ whereas a deferred specified dower will be paid later, in accordance with the agreement. In Ḥanafī law, the amount of dower fixed by the father for his minor son binds the son to that amount, but the father himself is not liable for payment. The specified dower can be classified as prompt or deferred; the prompt dower must be paid promptly on the date of marriage.²⁵⁵

²⁴⁹ Al-Sarkhasī, *Al-Mabsūt*, 5:181., Shams al-Dīn Muhammad bin Aḥmed al-Khaṭīb al-Shirbīnī, *Mughnī Al-Muhtāj Ilā Ma 'rifati Ma 'ānī al- 'Alfāz al-Minhāj*, vol. 5 (Beirut: Dār Al- Kutub Al- 'Ilmiyyah, 1415), 441.. Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, 2:45..

²⁵⁰ Wahīduddīn Khan, *Woman in Islamic Sharī'ah* (India: Good Word Books, 2000), 206.

²⁵¹ Jamal J. Nasir, *The Islamic Law of Personal Status*, 2nd ed, Arab and Islamic Laws Series (London ; Boston: Graham & Trotman, 1990), 89.

²⁵² Fyzee, *Outlines of Muhammadan Law*, 136.

²⁵³ Nasir, *The Islamic Law of Personal Status*, 90.

²⁵⁴ Fyzee, *Outlines of Muhammadan Law*, 136.

²⁵⁵ Ibid.

In case of an unspecified dower, where the exact amount is not fixed at the time of marriage,²⁵⁶ the husband grants his wife her dower based on her family's social status and her own qualifications.²⁵⁷ When a specific amount of dower is not mentioned, *Mahr al-Mithl* (the dower equivalent to that of similar women) is applicable.²⁵⁸ An unspecified dower is a legal responsibility which is not dependent on any contract between the parties and does not specify a particular time or event for payment. However, the wife can request payment at any time, and the husband is obligated to fulfill this request. The amount of power is determined by the financial status and social position of the family of the wife and her qualifications, rather than the financial position of the husband.²⁵⁹

According to the Shafi'i and Hanafi schools of thought, a marriage without a stipulated dower is valid. However, if the dower is not specified or if the amount is too low, the wife is entitled to an appropriate dower (*mahr al-mithl*).²⁶⁰ Prompt dower is a payment made at the time of marriage but is often left unpaid. In case of divorce or the death of the husband, the woman can demand full payment. The dower becomes the first claim on the estate after funeral expenses, and the law regards it as a debt.²⁶¹ If a marriage ends due to divorce or death, the deferred dower becomes payable. The claim of a wife for the unpaid portion of her dower is legally considered an unsecured debt, ranking equally with other unsecured debts due from her husband after his death, from his estate.²⁶²

²⁵⁶ “The Encyclopedia of Islam” (Netherlands: Brill, 1991), 79.

²⁵⁷ Fyze, *Outlines of Muhammadan Law*, 137.

²⁵⁸ “The Encyclopedia of Islam,” 79.

²⁵⁹ Fyze, *Outlines of Muhammadan Law*, 137.

²⁶⁰ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:182.

²⁶¹ Burhan al-Din Abu al-Hasan Ali ibn Abi Bakr Al-Marḡīnānī, *Al-Hidāyah*, trans. Imran Ahsan Khan Nyazee, vol. 1 (Islamabad: Center for Excellence in Research, 2006), 122.

²⁶² Khan, *Woman in Islamic Sharī‘ah*, 206.

3.4 An Overview of Provisions Related to Dower in Pakistani Law

This section provides an overview of the statutory provisions and legal frameworks governing dower in Pakistan. It outlines the relevant laws, including the Muslim Family Laws Ordinance, and other legislative measures that ensure the enforcement of rights to dower. This research outlines the relevant laws and provisions related to dower in the Pakistani legal system. There are several legal provisions of Pakistani laws which cover the Dower. The family laws do not define the term dower. Nonetheless, based on a legal interpretation, it refers to a type of property, consideration, or Māl that the husband pays, fixes, prescribes, or agrees to pay to the woman upon marriage. Asia case also determined that the term dower as defined in the Schedule to the West Pakistan Family Court Acts, 1964, might refer to monetary, in-kind, or immovable property.

3.4.1 The Muslim Family Laws Ordinance, 1961 (MFLO)

Section 5 of the Muslim Family Laws Ordinance, 1961, discussed the registration of marriages and the documentation of key details such as the amount of dower agreed upon at the time of marriage. This section ensures that the dower amount is formally documented and legally binding.²⁶³ Section 6 is particularly focused on ensuring the protection of the financial rights of the existing wife or wives by mandating the immediate payment of the entire dower amount. According to Section 6 of the *Muslim Family Laws Ordinance, 1961*, the regulation of polygamous marriages is subject to strict procedural and legal requirements:

6. Polygamy. – (1) “No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.”²⁶⁴

²⁶³ The Muslim Family Laws Ordinance 1961, sec. 5.

²⁶⁴ “The Muslim Family Law Ordinance 1961,” VIII § (1961), sec. 6.

(2) “An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.”²⁶⁵

(3) “On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.”²⁶⁶

(4) “In deciding the application, the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision to the Collector concerned and his decision shall be final and shall not be called in question in any Court.”²⁶⁷

(5) “Any man who contracts another marriage without the permission of the Arbitration Council shall (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year and with fine of five hundred thousand rupees.”²⁶⁸

Section 6 of the MFLO, 1961, is a critical provision that safeguards the financial rights of wife in polygamous marriages. Section 10 of same law deals specifically with the dower in the context of marriage. “Where no details about the mode of payment of dower are specified in the *Nikah Nama* or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.”²⁶⁹ Accordingly, Section 10 plays a vital role in protecting the financial rights of wives by establishing a default rule for the payment of

²⁶⁵ The Muslim Family Laws Ordinance 1961, 6(2).

²⁶⁶ Ibid., 6(3).

²⁶⁷ Ibid., 6(4).

²⁶⁸ Ibid., 6(5) a and b.

²⁶⁹ “The Family Court Act 1964” (1964), sec. 10.

dower even when the marriage contract lacks specific details. By presuming that the dower is payable on demand, this section ensures that wives have a straightforward means of claiming their financial entitlement, thereby enhancing the clarity and enforceability of their rights under Islamic law.

3.4.2 The Family Courts Act, 1964

The Family Courts Act of 1964 in Pakistan establishes a legal framework for family courts to adjudicate disputes, including those related to dower. Section 7 of the Act delineates the jurisdiction and powers of family courts in handling dower-related issues, explicitly allowing the wife to file suits for the recovery of dower against her husband.²⁷⁰ The schedule attached to the Act includes dower as a subject matter under the jurisdiction of family courts, thereby ensuring the efficient resolution of disputes pertaining to dower.²⁷¹

Furthermore, Section 10 of the Family Courts Act, 1964, provides specific guidelines for handling dower-related cases within the family courts. According to this section, in a suit for the dissolution of marriage, should reconciliation efforts fail, the Family Court is mandated to immediately issue a decree for the dissolution of the marriage.

The supreme court in *Syed Amir Raza v. Rohi Mumtaz* held that once reconciliation fails, the Family Court must pass a decree without delay. The Supreme Court reinstated that in cases of dissolution through Khul' the court may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.²⁷² Section 10 further empowers family courts to issue orders for payment, grant additional reliefs, and enforce compliance with the court's rulings. This section is pivotal in upholding the financial rights of wives and ensuring a fair and effective resolution of dower-related issues. A thorough understanding and implementation of these

²⁷⁰ Ibid., sec. 7.F

²⁷¹ Ibid., schedule.

²⁷² *Amir Raza v. Rohi Mumtaz*, SCMR 1394 (Supreme Court 2023).

provisions are crucial for maintaining justice and protecting the rights of individuals within the family law system.

3.4.3 The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962

Section 2 of The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 states that in all questions regarding the personal status of Muslims, the rule of decision shall be according to the Muslim Personal Law. This includes matters related to dower, ensuring that Islamic principles govern such issues.²⁷³ Section 3 deals with the application of Muslim Personal Law in cases where the dower is not paid or disputed. This act confirms rights of Dower, Gifts, inheritance, and contractual entitlements strengthens protection of female financial rights. Declares that personal property of women is governed by Islamic law.²⁷⁴

3.4.4 The Dissolution of Muslim Marriages Act, 1939 (DMMA)

Section 2 of the Dissolution of Muslim Marriages Act, 1939 outlines the grounds on which a Muslim woman can seek dissolution of her marriage, including non-payment of dower. It provides legal recourse for women who are deprived of their rightful dower.²⁷⁵ Its clause (c) specifically mentions the right of a wife to demand her dower if it has not been paid within the stipulated time, emphasizing the importance of timely fulfilment of this obligation. Likewise, section 5 of this Act, is another crucial provision that ensures the protection of a married woman's right to dower.

Nothing contained in this act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.²⁷⁶

²⁷³ “The West Pakistan Family Courts Act, 1964,” XXXV § (1964), sec. 2.

²⁷⁴ Ibid., sec. 3.

²⁷⁵ “The Dissolution of Muslim Marriage Act 1939,” VIII § (1939), sec. 2.

²⁷⁶ Ibid., sec. 5.

The section explicitly safeguards a woman's entitlement to dower under Muslim law, irrespective of the dissolution process. By explicitly preserving these rights it upholds the principles of Islamic law and provides a clear legal framework for the enforcement of dower claims, thereby protecting the financial entitlements of women in marriage dissolution cases.

Moreover, section 5 grants divorced women the right to claim dower, regardless of the method of dissolution of their marriage. Family courts have jurisdiction to try the suit for dower recovery. However, a proviso added to section 10(4)²⁷⁷ adversely affects the right to dower of wife in case of failure in reconciliation regardless of the ground for dissolution of marriage. The Proviso was added to the Family Court Act, 1964 by virtue of the Family Court Amendments Ordinance (No. LV of 2002) dated 01/10/2002. A woman can assert her important right to dower at any time following the contract of marriage especially if she has already been through a divorce. If no method for the payment of the dower was specified in Nikah Nama at the time of the contract of marriage the applicable law is silent on the subject. The MFLO, 1961 addressed the issue of dower as under:

Where no details about the mode of payment of dower are specified in the Nikah nama or the contract of marriage, the entire amount of dower shall be prescribed to be payable on demand.²⁷⁸

The question arises in the case of an unspecified dower concerning time, whether the dower will be prompt or deferred in the contract of marriage. Muslim jurists and contemporary scholars have discussed the issue concerning the mode of payment and time, regarding the time it could be a prompt dower and concerning quantity it should be *mahr mithl*. Dr. Tanzil Ur Rahman states in this regard: "In case of non-specification of the kind

²⁷⁷ The Family Court Act 1964, sec. 10(4).

²⁷⁸ The Muslim Family Law Ordinance 1961, sec. 10.

of dower as to its mode of payment in a contract of marriage, the whole of it shall be deemed to be prompt dower.”²⁷⁹ Likewise we find Imām Kāsānī elaborating the issue, “If there is no specification that the dower is prompt or deferred, the entire dower shall be assumed to be prompt.”²⁸⁰

The Family Courts are responsible for resolving all family conflicts listed in the schedule of the Family Courts Act 1964, including dowers and the recovery of dowers.²⁸¹ The statutory provisions exist to address the issue of dissolution of marriage that affect the entitlement of right to dower in cases of failure of the reconciliation process as Section 10 (4) of the Family Court Act 1964 reads:

Provided that notwithstanding any decision or judgment of any court or tribunal the family court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the dower received by the wife in consideration of marriage.²⁸²

There is no criterion set down by law for determining the amount of dower. *Mahre-fātāmī* or the dower sum set for the daughter of Prophet ﷺ Fatima, which was 32 dirhams more than 1400 years ago is typically considered without taking inflation into account or the current worth of money in relation to its goals. Under the DMMA, 1939, a wife should not be required to forgo her dower or provide any other compensation when seeking dissolution of marriage. Any offer or undertaking by the wife to waive her dower as a condition for dissolving the marital relationship shall be deemed legally void.

²⁷⁹ Dr. Tanzil-Ur- Rahman, *A Code of Muslim Personal Law* (Pakistan: Hamdard Academy, 1978), art. 21.

²⁸⁰ Al-Kāsānī, *Badā'i' al- Ṣanā'i' Fī Tartīb al-Sharā'i*, 1982, 291..

²⁸¹ The West Pakistan Family Courts Act, 1964, schedule.

²⁸² The Family Court Act 1964, sec. 10(4)., Muhammad Arif v. Saima Noreen, SCMR 804 (Supreme Court 2015).

Legal framework on dower in Pakistan, mainly under the Muslim Family Laws Ordinance, 1961, is weak in enforcement and registration. Although the law recognizes a wife's right to dower, it does not set clear penalties for non-payment or delay. Registration of dower agreements is not compulsory, and there is no standard minimum amount, which often allows misuse. As a result, women lack proper safeguards to claim their dower effectively.

3.5 The Role of Judiciary in Protection of Right to Dower in Pakistan

This section critically examines the role of Pakistan's judiciary in protecting women's financial rights, with particular focus on the enforcement and interpretation of the right to dower. It highlights key statutory provisions and judicial pronouncements that have shaped the legal understanding of dower and its enforceability in marital disputes.

Pakistan's judicial system, inherited from the British colonial framework, continues to follow the common law tradition where judicial precedent carries significant weight.²⁸³ Although this structure has provided continuity, it has also limited the development of independent, Sharī'ah-based jurisprudence on dower. Courts often rely on procedural and technical grounds rather than substantive protection of women's rights. This colonial legacy, combined with gaps in statutory law, has contributed to inconsistent judicial enforcement of dower, thereby weakening its role as a financial safeguard for women.²⁸⁴

The superior judiciary in Pakistan, comprising the Supreme Court, High Courts, and the Federal Shariat Court, plays a vital role in protecting a wife's right to dower. Through their judgments, these courts interpret statutory provisions and Islamic principles to ensure that dower is recognized as a binding financial right of the wife. By setting legal

²⁸³ Constitution of Pakistan, 1973.

²⁸⁴ Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2005), 143–57.

precedents, the judiciary not only resolves disputes between spouses but also strengthens enforcement mechanisms, thereby safeguarding women against denial or delay of dower.²⁸⁵

Family judges, under the West Pakistan Family Courts Act, 1964, play a central role in deciding dower claims. While the law aims to provide speedy relief, in practice women often face long delays and repeated appeals, sometimes up to the Supreme Court. These delays weaken judicial protection of dower rights, leaving many women burdened emotionally and financially.

An illustrative example of judicial intervention in a prolonged dower dispute is found in *Khalid Pervaiz v. Samina*, the wife instituted a suit for recovery of Rs. 500,000 as her stipulated dower along with maintenance after her husband defaulted on his marital obligations. The Trial Court decreed in her favour, awarding the claimed dower and ordering annual maintenance with a 10% increment. The husband pursued multiple appeals, prolonging litigation until the matter reached the Supreme Court. The Supreme Court dismissed his appeal, upheld the Trial Court's decision, and strongly criticized the husband's misuse of the judicial process. It imposed Rs. 100,000 as compensatory costs to deter frivolous litigation and directed that execution proceedings, including attachment of the husband's property, could be initiated in case of non-compliance.

This ruling demonstrates the judiciary's active role in safeguarding women's financial rights, particularly dower, by penalizing delaying tactics and strengthening enforcement mechanisms. It reflects judicial recognition that prolonged litigation undermines women's access to justice and perpetuates financial insecurity.²⁸⁶

²⁸⁵ Shaheen Sardar Ali, *Modern Challenges to Islamic Law* (United Kingdom: Cambridge University Press, 2016), 72–85.

²⁸⁶ *Khalid pervaiz v. Samina*, SCMR 142 (Supreme Court 2024).

Pakistan has specialized tribunals for certain disputes,²⁸⁷ but the doctrine of precedent remains central, requiring lower courts to follow superior court rulings. This ensures consistency in family law, including dower cases. Overall, judiciary has been crucial in defining and enforcing women's right to dower through interpretation and precedent, though delays and procedural inefficiencies still weaken these protections. A more timely and effective judicial approach is needed to uphold the spirit of Islamic and constitutional principles on women's financial rights.

3.5.1 Analytical Overview of Case Law on Dower

Judicial interpretations in Pakistan have treated the determination, nature, and classification of dower as a central issue in safeguarding Muslim women's financial rights. As a fundamental component of the Islamic marriage contract, dower is recognized not only as a legal obligation but also as a symbol of the wife's dignity and social status. Pakistani superior courts have consistently affirmed that dower constitutes a binding civil debt, enforceable through judicial processes, rather than a mere customary or symbolic practice.

This reflects the view of all four Sunni schools, especially the Hanafi school followed in South Asia, which treats dower as a compulsory outcome of marriage and a woman's inalienable right. Courts have confirmed its enforceability, ownership status, and various forms. However, issues remain over nominal amounts, delayed enforcement, and the need to balance classical principles with modern standards of fairness and constitutional rights. The determination, nature, and classification of dower have been repeatedly clarified by the superior judiciary in Pakistan, with landmark rulings affirming its legal status and enforceability. In *Kaneez Fatima v. Wali Muhammad*, the Supreme Court held that dower is an essential part of a Muslim marriage which must be fixed, determined, and paid. The

²⁸⁷ Dr Faqir Hussain, *The Judicial System of Pakistan* (Islamabad: Law & Justice Commission of Pakistan, 2011), 24.

Court clarified that prompt dower becomes payable immediately upon demand and affirmed that dower is a civil debt recoverable by the wife through legal action.²⁸⁸

Classical jurists across all four Sunni schools (Hanafī, Mālikī, Shāfi‘ī, and Hanbalī) recognize dower as the wife’s obligatory right. Imām Abū Hanīfah emphasized that dower arises directly from the marriage contract and symbolizes honoring the woman. It may be specified (*Musammā*) or left unspecified (*mithl*), but once fixed, it becomes an enforceable financial obligation. The Supreme Court in Kaneez Fatima v. Wali Muhammad reflected this traditional Hanafī position by holding that prompt dower (*mahr mu‘ajjal*) is payable immediately upon demand and constitutes a civil debt recoverable through the courts. However, unlike the classical juristic discourse which also examined the wider marital consequences of non-payment such as the wife’s right to refuse cohabitation or seek redress the ruling focused narrowly on enforceability, leaving broader implications underexplored.

In Anjum Ali v. Mehar Shah, the Supreme Court further affirmed that dower is a debt owed by the husband to the wife, declaring it a binding and enforceable financial obligation. The Court held that a wife has the unequivocal right to claim dower regardless of the circumstances of the marriage, thereby placing it on par with any civil liability.²⁸⁹ Likewise, in Nazia Tabbassum v. The Additional District Judge, the Lahore High Court, affirmed that dower is a legally binding obligation rather than a conditional gift. The Court held that once dower is transferred to the wife, it becomes her exclusive property and cannot be reclaimed upon divorce unless explicitly stipulated in the contract.²⁹⁰ By rejecting any presumption of refundability, the judgment reinforced the proprietary nature of dower, emphasized the importance of clear contractual terms in marital agreements, and

²⁸⁸ Kaneez Fatima v. Wali Muhammad, PLD.

²⁸⁹ Anjum Ali v. Mehar Shah and others, CLC 1942 (2023).

²⁹⁰ Nzia Tabbassum v. ADJ Multan.

highlighted the judiciary's role in safeguarding women's financial rights within the framework of Islamic law.

The Lahore High Court in *Sakina Bibi v. Sher Muhammad Akhtar* clarified that fixation of dower is not a condition precedent for the validity of marriage, but it is still a mandatory right accruing to the wife, whether specified or unspecified.²⁹¹ Similarly, in *Mukhtar Ahmed v. District Judge and others*, the court upheld the sanctity of the Nikah Nama as *prima facie* evidence of the agreed terms, distinguishing between prompt dower (payable immediately) and deferred dower (payable on divorce or death).²⁹² Significantly, the court conditioned restitution of conjugal rights upon payment of dower, reflecting the Sharī'ah principle that a wife may lawfully refuse cohabitation until her dower is paid. These judgments collectively affirm that while marriage is valid without prior fixation of dower, the wife is always entitled to *mahr al-mithl* (customary dower), with prompt and deferred dower both recognized as enforceable rights.

In *Ghania Hassan v. Shahid Hussain Shahid*, the court clarified that dower may consist of any cash, object, or property, movable or immovable, thus affirming its flexible and inclusive nature under Islamic and Pakistani law.²⁹³ This recognition reflects the adaptability of dower to diverse social and economic contexts while ensuring women's entitlement to valuable assets.

The issue of nominal dower was considered in *Nasira Bibi v. Muhammad Akhtar Sher*, where the Lahore High Court upheld the validity of a token amount (Rs. 500) fixed at marriage, stressing that once agreed it is binding. However, the court also cautioned that symbolic dower undermines the protective purpose of dower in Sharī'ah, which is meant

²⁹¹ *Sakina Bibi v. Sher Muhammad*, PLD 632 (Lahore High Court 1970).

²⁹² *Mukhtar Ahmed v. District Judge and other*, YLR 193 (Lahore High Court 2023).

²⁹³ *Ghania Hassan v. Shahid Hussain Shahid*, SCMR 2170 (Supreme Court 2016).

to secure a wife's dignity and financial stability.²⁹⁴ While classical jurists permitted low dower amounts, the judgment noted that contemporary socio-economic realities demand fairness and adequacy in fixation. This purposive interpretation highlights a shift towards aligning dower practice with the higher objectives of Sharī'ah particularly justice and equity.

In *Ghulam Sakina v. Falak Sher*, the Lahore High Court upheld the right of a minor Muslim girl to repudiate her marriage upon reaching puberty, unless she had ratified it voluntarily thereafter. This ruling is consistent with classical Ḥanafi jurisprudence granting the option of puberty to safeguard the autonomy and dignity of women married during childhood. Across these rulings, Pakistani courts have largely upheld Islamic law principles by affirming dower as a compulsory, enforceable financial obligation and a civil debt. They recognize that marriage remains valid even without prior fixation of dower, entitling the wife to *mahr al-mithl*. The division into prompt and deferred dower is consistently applied, and dower is enforceable through judicial means, particularly upon divorce or the husband's death. Courts have also expressed concern over nominal or symbolic dower, increasingly viewing it as incompatible with modern social norms and the ethical objectives of Sharī'ah. Through these judgments, courts have sought to balance fidelity to classical jurisprudence with contemporary demands for fairness, thereby enhancing women's access to financial justice within the Pakistani legal system.

The issue of dower in cases of marital dissolution has been addressed by Pakistani courts in several important rulings. In *Shahida v. Habib Ahmad*, the Lahore High Court held that where *Khul'* is sought due to the husband's misconduct, the wife is not obligated to return the dower.²⁹⁵ This ruling reflects the Sharī'ah principle that a wife should not

²⁹⁴ Nasira Bibi v. Muhammad Akhtar, CLC 190 (Lahore High Court 2012).

²⁹⁵ Shahida v. Habib Ahmad, MLD 1085 (Lahore High Court 2007).

bear financial loss caused by the husband's fault. Under Islamic law, if harm (darar) is proven, the court may grant judicial separation (faskh) without requiring repayment of dower.²⁹⁶ The decision resonates with the opinion of Imām Mālik and contemporary jurists who emphasize gender justice as central to Sharī'ah, demonstrating the judiciary's commitment to protecting women's financial rights in cases of dissolution. It reflects a progressive interpretation aligned with the shariah, particularly justice ('adl) and protection from harm.

Similarly, the Supreme Court in Ibrahim Khan v. Saima Khan clarified the limits of judicial authority in Khul' cases. The Court ruled that Khul' is a specific right of the wife under Islamic law and must be expressly sought by her; a court cannot grant Khul' without the wife's clear intention to waive her dower and seek release from the marriage. The Court further distinguished Khul' from dissolution under the Dissolution of Muslim Marriages Act, 1939, emphasizing that while Khul' involves waiver of dower, dissolution on statutory grounds such as cruelty does not affect the wife's entitlement.²⁹⁷ By reaffirming the requirement of the wife's explicit request, the Supreme Court reinforced the principle that women's agency and consent must remain central in marital dissolution, ensuring that judicial intervention does not override the protections afforded to them under Islamic law. In comparison, other Muslim-majority jurisdictions adopt stricter approaches to Khul' and dower. Egyptian law (2000 reforms) allows a wife to obtain Khul' without proving fault but requires her to return the dower in all cases. Jordan's Personal Status Law of 2010 follows a similar model, making repayment of dower a condition for dissolution, while Iranian law under the Civil Code also treats dower as a binding debt, usually requiring its return unless the husband's misconduct is proven. Pakistani jurisprudence, however

²⁹⁶ Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Comparative Law, 2008), 126.

²⁹⁷ Ibrahim Khan v. Saima Khan, PLD 645 (Supreme Court 2024).

illustrated in *Shahida v. Habib Ahmad* is comparatively more flexible, allowing courts to waive the return of dower where the husband is at fault, thereby aligning with the Sharī‘ah principle of preventing harm (*raf‘ al-darar*) and advancing gender justice.

Another significant area of one of the most significant areas of adjudication concerns the enforceability of prompt dower, especially its implications for conjugal rights and maintenance. In *Rahilan v. Sanaullah*, the Court held that a wife is entitled to live separately and still claim maintenance if the husband fails to pay the prompt dower upon demand.²⁹⁸ The judgment emphasized that non-payment justifies the wife’s refusal to cohabit, while the husband remains obligated to provide maintenance during this period. This position was reinforced in *Muhammadi v. Jamil-ud-Din*, where the judiciary recognized a wife’s refusal to reside with her husband due to non-payment of prompt dower as legally justified.²⁹⁹ Similarly, in *Muhammad Aslam v. Safia Bibi*, it was affirmed that a wife’s refusal to live with her husband is justified if dower remains unpaid, and her right to maintenance remains intact.³⁰⁰ These rulings are consistent with classical Ḥanafī jurisprudence, which acknowledges the wife’s right to withhold conjugal relations until prompt dower is paid.³⁰¹ The Supreme Court further confirmed in *Syed Muhammad v. Zeenat* that dower is demandable within the subsistence of marriage and is a binding obligation on the husband.³⁰² Turning to deferred dower, the Supreme Court in *Sardar Muhammad v. Shahida Bibi* emphasized that deferred dower becomes immediately payable upon dissolution of marriage, whether through divorce or death. The widow or divorcee retains a strong legal right to recover this amount as a debt against the husband’s estate.³⁰³

²⁹⁸ *Rahilan v. Sanaullah*, PLD 470 (Lahore High Court 1959).

²⁹⁹ *Muhammadi v. Jamil-Ud-Din*, PLD 663 (Sindh High Court 1960).

³⁰⁰ *Muhammad Aslam v. Safia Bibi*, PLD 189 (Supreme Court 1990).

³⁰¹ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:137.

³⁰² *Syed Muhammad v. Zeenat*, PLD 128 (Supreme Court 2001).

³⁰³ *Sardar Muhammad v. Shahida Bibi*, PLD 591 (Supreme Court 2007).

In Ghulam Rasool v. Khursheed Bibi, the Lahore High Court further reiterated that dower must be satisfied out of the husband's estate before its distribution among heirs, reinforcing its character as a prioritized debt under Islamic inheritance principles.³⁰⁴ Similarly, in Kaniz Fatima³⁰⁵ and Sabira Sultana, the courts clarified that deferred dower becomes payable immediately upon demand, thereby strengthening women's financial agency even after separation. In Fazal Mahmood v. Ummatur Rasool, the court went further by converting deferred dower into prompt dower to prevent financial hardship for the wife³⁰⁶ an interpretation aligned with the Islamic law, especially justice and protection of rights.

Pakistani courts have consistently underscored that dower constitutes a legally enforceable debt. In Iqbal Bibi v. Habib Ahmad, the Supreme Court held that unpaid dower could lead to execution proceedings, including attachment of the husband's property.³⁰⁷ This reflects the Islamic position, as noted by *Imām al-Marghīnānī*, that the wife may refuse conjugal relations until the dower is paid. While this strengthens enforcement mechanisms, the ruling also highlighted persistent delays in recovery, suggesting a need for procedural reforms to ensure timely realization of women's rights.

Judicial interpretations have also extended to non-monetary forms of dower, such as immovable property. In Razia Begum v. Jang Baz, the Lahore High Court held that a wife is entitled either to the possession of a house given as dower or, alternatively, to recover its market value, even if the property was not owned by the husband but promised by him or his representative. The Court further ruled that a father-in-law could be held liable for dower if he acted as a *wakeel* (representative) or surety at the time of marriage. It clarified that failure by the Family Court to assess the house's value at the time of decree

³⁰⁴ Ghulam Rasool v. Khursheed Bibi, CLC 56 (Lahore High Court 2012).

³⁰⁵ Kaniz Fatima v. Muhammad Munir, PLD 802 (Supreme Court 2006).

³⁰⁶ Fazal Mahmood v. Ummatur Rasool, PLD 604 (Lahore High Court 1977).

³⁰⁷ Iqbal Bibi v. Habib Ahmad, SCMR 1156 (Supreme Court 2013).

does not invalidate the decision, as such valuation can be determined during execution proceedings.³⁰⁸ This reasoning was later affirmed in *Ayesha Bibi v. Muhammad Faisal*, where the Lahore High Court recognized that a father-in-law could be impleaded in a family suit for dissolution of marriage, recovery of maintenance, and dower obligations.³⁰⁹ Together, these cases significantly strengthen the enforceability of non-monetary dower and broaden the scope of liability to third parties who guarantee the arrangement.

Courts have also played a crucial role in invalidating coerced relinquishments of dower and enforcing contractual stipulations in the *Nikāh nāma*. In *Shamim Akhtar v. Additional District Judge Rawalpindi*, the marriage contract contained a clear condition requiring the husband to pay Rs. 300,000 as dower if he divorced the petitioner or contracted a second marriage. When the condition was triggered, the Court upheld the wife's claim, treating the amount as deferred dower.³¹⁰ Similarly, in *Sohail v. Nazia Amin*, the Quetta High Court upheld the enforceability of a stipulation requiring the husband to provide a five-Marla house as deferred dower. The Court affirmed that once such contractual terms are accepted, they are binding and presumed valid unless rebutted.³¹¹ These judgments reflect the judiciary's commitment to voluntariness in marital financial arrangements and reinforce dower as a compulsory obligation rooted in Islamic law, symbolizing both the wife's dignity and protection.

The question of whether a wife is obliged to forgo dower in exchange for khula has been interpreted variably by Pakistani courts, often drawing upon classical jurisprudence to balance equity and Sharī'ah principles. The Lahore High Court in *Muhammad Aslam v. Additional District Judge, Jhelum* held that return of dower could be denied where the

³⁰⁸ *Razia Begum v. Jang Baz*, CLC 105 (Lahore High Court 2012).

³⁰⁹ *Ayesha Bibi v. Muhammad Faisal*, PLD 498 (Lahore High Court 2014).

³¹⁰ *Shamim Akhtar . Additional District Judge Rawalpindi*, PLJ 981 (Lahore High Court 2024).

³¹¹ *Sohail v Nazia Amin*, CLC 1374 (Quetta High Court 2015).

dissolution of marriage was due to the husband's misconduct. This reasoning is grounded in the classical view that khula operates as a form of mubārāt (mutual release), and the return of dower is not a rigid precondition but subject to judicial discretion.³¹² This case demonstrates the court's willingness to apply equitable discretion, aligning with Shari'ah principles that protect women from financial loss when marital breakdown results from the husband's fault.

The Supreme Court in *Khurshid Bibi v. Baboo Muhammad Amin* recognized a woman's right to seek dissolution of marriage (*khula*) on grounds of incompatibility, even without the husband's consent. The Court held that the wife may be required to forgo her dower in such cases.³¹³ Classical Ḥanafī and Mālikī views support this, as khula is considered a dissolution where the wife returns her dower or part thereof. Imām Mālik further recognized emotional harm and dissatisfaction as valid grounds for khula. This case was groundbreaking in expanding judicial recognition of women's autonomy in marital dissolution, though the requirement to surrender dower remains debatable where the husband bears responsibility for the breakdown.

The Federal Shariat Court in *Khurram Shehzad v. Federation of Pakistan* upheld the validity of judicial khula without the husband's consent, ruling that Section 10(4) of the Family Courts Act, 1964, was not repugnant to Islamic injunctions. The Court emphasized that the doctrine of necessity (*darūrah*) under Shari'ah justifies allowing women to exit oppressive marital situations.³¹⁴ The decision reinforced women's substantive right to judicial khula, though the practice of requiring dower forfeiture remains vulnerable to critique, particularly where harm originates from the husband.

³¹² Muhammad Aslam v. Additional District Judge, Jhelum, YLR 1544 (Lahore High Court 2011).

³¹³ *Khurshid Bibi v. Muhammad Amin*, PLD 97 (Supreme Court 1967).

³¹⁴ *Khurram Shehzad v. Federation of Pakistan*, PLD 1 (Federal shariat Court 2023).

The Federal Shariat Court in *Imran Anwar Khan v. Government of Punjab* declared that Islamic law, as derived from the Qur’ān and Sunnah, does not permit the legislature to fix a statutory amount as *badl-i-khula*. The Court held that if a woman voluntarily forgoes her dower in exchange for khula, the decree must be granted after reconciliation attempts. However, in cases of abuse or mistreatment, the Court must evaluate the party responsible and determine whether any dower should be returned.³¹⁵ This ruling reflects fidelity to Qur’ānic injunctions by rejecting statutory rigidity in khula, affirming that judicial discretion must govern compensation, particularly in cases involving spousal abuse.

The Pakistani judiciary has consistently emphasized that any relinquishment of dower obtained under coercion or undue influence is legally void and morally unacceptable. These rulings reflect a firm judicial commitment to safeguarding women’s financial entitlements in line with Sharī‘ah and statutory law.

In *Suleman v. Asma Bibi*, the appellate court rejected the husband’s claim that the wife had validly waived her dower, holding that the waiver had been extracted under duress at the time of divorce. The Court affirmed that a woman’s consent must be free, informed, and unequivocal for the waiver to be enforceable.³¹⁶ This aligns with classical jurists such as Imām Abū Hanīfah, who maintained that dower cannot be waived unless done voluntarily and without compulsion. The Court’s insistence on fairness and gender justice underscores its proactive role in preventing exploitation during marital dissolution.

Similarly, in *Saeedunnisa v. Mirza Muhammad Latif and others*, the Supreme Court reiterated that a woman’s waiver of dower during divorce proceedings must be voluntary and free from coercion. Any relinquishment made under emotional or societal pressure—particularly common in khula or reconciliation settings would be deemed invalid.³¹⁷ The

³¹⁵ *Imran Anwar Khan v. Government of Punjab*, PLD 25 (Federal Shariat Court 2022).

³¹⁶ *Suleman v. Asma Bibi*, CLC 2400 (Lahore-High-Court-Lahore 1983).

³¹⁷ *Saeedunnisa v. Mirza Muhammad Latif*, SCMR 1050 (Supreme Court 1996).

judgment established foundational principles for assessing the legitimacy of bra (waiver), aligning with Islamic law, which requires *riḍā* (free consent) and absence of *ikrāh* (coercion) for financial concessions to be valid.

The Lahore High Court in *Khalid Mehmood v. Additional District Judge, Okara* and others further held that a wife's waiver of dower as part of a khula settlement cannot be presumed voluntary unless independently verified. The Court emphasized that the burden rests on the husband to prove that the waiver was made freely, without external pressure or duress.³¹⁸ By imposing judicial scrutiny, the Court ensured that women's financial protections are not undermined in emotionally charged divorce proceedings.

In *Nasira Bibi v. Muhammad Rafique*, the Supreme Court intervened to protect the wife's rights when it was proven that she had signed a document relinquishing her dower under pressure to obtain a khula. The Court declared the waiver invalid and ordered full payment of the dower amount, reaffirming that any agreement secured through coercion or undue influence is not legally binding.³¹⁹ This intervention demonstrates the judiciary's protective stance toward women's rights in vulnerable contexts.

Finally, in *Haseena Bibi v. Abdul Haleem*, the Supreme Court went further by holding that dower is both a statutory and Islamic right that cannot be waived through private agreements such as *iqrār-nāma*. The Court declared that attempts to waive dower or child custody through informal or coercive settlements are void, as these rights are safeguarded by law and public policy.³²⁰ This judgment reinforced the principle that no estoppel can operate against statutory entitlements, reflecting a synthesis of Islamic jurisprudence and constitution on financial protection of women.

³¹⁸ *Khalid Mehmood v. Additional District Judge, Okara*, CLC 1039 (Lahore High Court 2015).

³¹⁹ *Nasira Bibi V. Muhammad Aslam*, SCMR 301 (Supreme Court 2019).

³²⁰ *Haseena Bibi v. Abdul Haleem*, SC 291 (Supreme Court 2024).

Collectively, these rulings demonstrate a clear judicial trend: Pakistani courts refuse to legitimize dower waivers extracted through coercion, pressure, or informal settlements. By aligning with classical Sharī‘ah principles of free consent, the judiciary has positioned itself as a guardian of gender justice, ensuring that women’s financial rights remain non-draggable even in the most contentious stages of marital breakdown.

Issues occasionally arise regarding the role of third parties, such as fathers-in-law, in dower arrangements. Under Section 2(1)(d) of the West Pakistan Family Courts Act, 1964, a family suit may include any third party necessary for the adjudication of the matter. Accordingly, a father-in-law can be considered a proper party for effective resolution of dower disputes.

In *Allah Ditta v. Sakina Bibi*, the Lahore High Court clarified that third parties are not automatically liable for dower unless there is explicit agreement or independent evidence of a binding promise. Merely fixing dower in a nikah-nama does not create liability on the father-in-law.³²¹ This aligns with the broader Islamic legal principle that financial obligations must be borne by the contracting party unless clear evidence of agency or independent undertaking exists. The principle was reinforced in *Muhammad Fayyaz v. A.D.J.*, where the Lahore High Court held that a father-in-law who signs the nikah-nama as a wakeel (agent) of the bridegroom assumes legal responsibility for the dower if the groom fails to fulfil the obligation.³²² This ruling expands the scope of contractual liability in matrimonial matters and strengthens the enforceability of women’s financial rights within marriage.

These cases collectively highlight that dower rights cannot be undermined by technical defences or attempts to avoid liability. Pakistani courts have consistently affirmed

³²¹ *Allah Ditta v. Sakina Bibi*, SCMR 868 (Supreme Court 2013).

³²² *Muhammad Fayyaz v A.D.J.*, PLD 446 (Lahore High Court 2023).

that dower, whether prompt or deferred, is a mandatory and enforceable obligation under both Islamic and statutory law. Waivers must be made voluntarily, and informal arrangements such as Iqrar Namas cannot override these rights. This judicial approach upholds Islamic principles of free consent and absence of coercion, in accordance with the Qur'ānic mandate to protect women's entitlements.

Overall, the case law demonstrates a strong alignment between Islamic law and judicial interpretation. Courts recognize dower as a legally enforceable right rather than a symbolic or ceremonial gesture, uphold claims even after the husband's death, and reject token or nominal payments. The judiciary's concern for equity reflects a purposive interpretation of Sharī'ah objectives, emphasizing justice and protection from exploitation. Nonetheless, procedural delays and socio-economic challenges in dower fixation continue to limit the full realization of these rights. Incorporating context-sensitive approaches, evolving customs and gender-responsive principles of Islamic legal theory could further strengthen the protection and enforcement of women's financial rights in marital relations.

3.6 Comparative Approaches on Financial Rights: Pakistan, Iran, and Morocco

To better understand the strengths and limitations of Pakistan's inheritance and related financial laws, it is useful to examine how other Muslim-majority jurisdictions address similar issues. Comparative perspectives from Iran and Morocco illustrate how Islamic principles can be operationalized to protect women's financial rights more effectively.

Reforms introduced by Morocco in 2004 in Mudawwanah recognize dower (*Sidāq*) as the wife's exclusive property, which she may manage freely.³²³ It can be paid immediately or deferred, with deferred dower constituting a debt on the husband.³²⁴ The law emphasizes mutual rights, joint household management, and shared decision-making,

³²³ "Moroccan Family Law (Mudawwanah)" (2004), art. 29.

³²⁴ Ibid., art. 30.

enforced through specialized family courts to ensure financial rights are actionable.³²⁵ Under the Civil Code of Iran dower becomes the wife's property at the time of marriage³²⁶ and may be deferred creating a binding debt on the husband.³²⁷ Courts enforce dower rigorously, including years after marriage, with penalties for non-payment, demonstrating strong procedural support.

In Pakistan dower is obligatory and recorded in the *Nikāhnāma*, but statutory regulation is minimal. Courts often permit token amounts without assessing adequacy, and enforcement relies on individual litigation. Procedural delays and lack of standardization weaken financial protection of women. Morocco and Iran demonstrate how Islamic law can be implemented to protect women's rights through statutory clarity and judicial enforcement. Pakistan, by contrast, illustrates gaps in application and enforcement that undermine the effectiveness of legal provisions.

In Morocco maintenance is codified with clear criteria, balancing the wife's customary standard of living with the husband's means. Family courts expedite claims and enforce decisions efficiently, reflecting a shift toward equity and justice.³²⁸ In Morocco, the *Mudawana* codifies. Iran strictly enforces Maintenance obligations. Courts assess the husband's income, and failure to provide support may result in criminal penalties, ensuring compliance and protection of women's economic security.³²⁹ Maintenance is a legal duty during marriage and the 'iddah period, in Pakistan but statutory definitions are lacking. Courts rely on discretionary assessments, and enforcement is inconsistent, leaving women

³²⁵ Ibid., art. 51.

³²⁶ "The Civil Code of the Islamic Republic of Iran" (n.d.), art. 1082.

³²⁷ "The Civil Code of the Islamic Republic of Iran" (2006), art. 1083.

³²⁸ Fatima Sadiqi and Moha Ennaji, "The Feminization of Public Space: Women's Activism, the Family Law, and Social Change in Morocco," *Journal of Middle East Women's Studies* 2, no. 2 (July 1, 2006): 86.

³²⁹ Léon Buskens, "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere," *Islamic Law and Society* 10, no. 1 (2023): 70–131.

vulnerable.³³⁰ Both Morocco and Iran provide models of procedural and enforcement-oriented frameworks, demonstrating the benefits of clear standards and judicial support. Pakistan's discretionary system highlights the need for reform to ensure timely and equitable enforcement.

Morocco retains Qur'ānic inheritance shares but encourages debate on equitable distribution. Civil society initiatives advocate for more balanced interpretation, though legislative reforms remain limited.³³¹ Iran following the Ja'farī school, gender-based differences exist, but inheritance rights are legally protected and consistently enforced, providing greater procedural reliability compared to Pakistan.³³²

In Pakistan, although Qur'ānic shares are formally recognized, women often face forced waivers, property manipulation, and delays in succession procedures. Courts frequently fail to penalize violations, leaving these rights unprotected in practice. In contrast, Morocco and Iran demonstrate that codification, judicial enforcement, and societal engagement can significantly strengthen women's inheritance rights. While Pakistan's superior judiciary has consistently upheld women's financial entitlements through landmark judgments, persistent implementation gaps and socio-cultural barriers continue to limit practical access, despite formal recognition under Islamic law.

The comparison shows that Islamic law is not inherently discriminatory; in Pakistan, inequalities mainly result from weak enforcement, selective application, and patriarchal norms. The Supreme Court and Federal Shariat Court have clarified legal

³³⁰ Hafiz Muhammad Siddique, "Women's Right to Maintenance in Legal System of Pakistan with Special Reference to Judgments of Superior Courts," *AIOU: Ma'arif-e-Islami* 18, no. 2 (2019): 17–37.

³³¹ Sanja Kelly and Julia Breslin, eds., *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, 2010 ed, Freedom in the World Ser (New York Lanham [Md.]: Freedom House, 2011), 11.

³³² Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, Rev. ed (London: New York: New York: I.B. Tauris ; St. Martin's Press [distributor], 2000), 97.

principles and reinforced women's financial rights through landmark rulings on dower, maintenance, and inheritance, however practical gaps remain. These include delays in litigation, inconsistent judicial decisions, vague statutory definitions, and limited enforcement mechanisms. Morocco illustrates procedural modernization and gender-sensitive reforms, Iran emphasizes strict enforcement, while Pakistan relies heavily on litigation-dependent rights. These lessons suggest that Pakistan could strengthen women's financial rights by combining clear laws, effective judicial mechanisms, and gender-responsive interpretation under Sharī'ah. Moving beyond formal recognition to timely, actionable enforcement is essential to fully realize women's entitlements.

Conclusion

This chapter has demonstrated that dower (mahr) in Islamic law is not a symbolic custom, but a substantive legal and moral obligation designed to protect women's dignity, financial independence, and marital security. Rooted in the Qur'ān and Sunnah and affirmed by classical jurists, mahr embodies both a financial entitlement and an ethical duty, thereby affirming women's independent legal status within marriage. Its dual character positions dower as a cornerstone of Islamic family law, intended to ensure equity and safeguard women's rights within the marital framework.

From a Pakistani perspective, the judiciary has played a pivotal role in affirming and expanding the enforceability of women's right to dower. Superior courts have consistently treated dower as a civil debt, legally recoverable through family courts and execution proceedings, while landmark rulings such as *Kaneez Fatima v. Wali Muhammad* and *Iqbal Bibi v. Habib Ahmad* have reinforced its compulsory nature. The judiciary has further invalidated coerced waivers, upheld a wife's right to withhold cohabitation until dower is paid, and confirmed its priority over inheritance distribution. These developments

reflect a progressive jurisprudence that seeks to harmonize statutory law with Shari‘ah principles of justice and equity.

Nevertheless, a wide gap persists between theory and effective enforcement. Procedural delays, weak statutory mechanisms, and entrenched patriarchal norms often obstruct women’s access to timely relief. The practice of fixing nominal dower, combined with reliance on a colonial legal framework that privileges technicalities over substantive justice, undermines the protective purpose of mahr. This gap underscores the need for institutional reforms such as standardized marriage documentation, expedited family litigation, presumptions favouring enforceability, and stricter scrutiny of waivers and settlements.

Comparative insights from Morocco and Iran highlight the importance of codification, procedural clarity, and institutional commitment in strengthening women’s marital rights. Morocco’s Mudawwanah and Iran’s strict enforcement of dower as a binding debt illustrate how Islamic law, when combined with effective legal frameworks, can provide robust financial safeguards for women. For Pakistan, bridging the divide between normative recognition and practical implementation is essential. Doing so would not only align judicial practice with Shari‘ah in protection from exploitation but also transform dower into financial security of wife.

CHAPTER 4: MAINTENANCE IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM

Introduction

This chapter critically examines the wife's and female family members' right to maintenance under Islamic law and the Pakistani legal system, situating the discussion within both Sharī'ah objectives and contemporary statutory and judicial frameworks. In line with the research questions and objectives, the chapter explores the recognition, enforcement, and practical implementation of maintenance rights for wives, as well as for unmarried, widowed, and divorced daughters, highlighting both doctrinal coherence in Islamic jurisprudence and gaps in Pakistan's legal mechanisms.

It addresses inheritance rights, modern entitlements such as pensions and post-retirement benefits, maintenance of working wives, and the consolatory gift upon divorce (*mut'at al-talāq*). The discussion begins with the concept, definition, and scope of maintenance in Islamic law, emphasizing Qur'ānic and Prophetic foundations and classical juristic interpretations on entitlement and non-entitlement. The chapter then examines forms of maintenance, including during marriage, post-divorce, and in specific cases like *Khul'* and *mubārāt*, while exploring divergent juristic views on determining its quantum.

Comparative and international perspectives are also presented, drawing parallels between Islamic principles, Western legal thought, and global human rights discourses on spousal support. Finally, statutory provisions under the Muslim Family Laws Ordinance, 1961, the West Pakistan Family Courts Act, 1964, along with judicial interpretations, are analyzed to assess the alignment of Pakistani law with Sharī'ah principles and the effective protection of financial rights of wife's. The study underscores the need for coherent implementation and reform to align Pakistan's legal system more closely with Sharī'ah

4.1. Concept of Maintenance in Islamic Law

The concept of maintenance is deeply rooted in the protection and welfare of women within the marital relationship in Islam. The financial dependence of a woman on her husband post-marriage is not perceived as a sign of intellectual or personal weakness but rather as a safeguard of her rights. Islamic teachings exempt women from financial responsibilities, placing the duty of earning and providing essentials such as food, clothing, and shelter on the husband.³³³ This obligation extends to the 'iddah period after divorce and includes maintenance for children. It is not merely a social practice but a divinely ordained duty, supported by clear Qur'anic injunctions and Prophetic traditions that emphasize the importance of ensuring the financial protection of both married and divorced women.³³⁴

4.1.1 Definition and Scope of Maintenance in Islamic Law

Islamic law imposes duty on husband to provide maintenance to his wife and dependents. This duty is established in the Qur'an and further reinforced by Prophetic traditions. The Qur'an declares:

أَلْرَجَالُ قَوْلُهُنَّ عَلَى الْأَنْسَاءِ بِمَا فَطَّلَ اللَّهُ بَعْضَهُنَّ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

Men are the protectors and maintainers of women because Allah ﷺ has given the one more (strength) than the other, and because they support them from their means.³³⁵

This verse underscores the husband's duty to ensure the financial well-being of his wife. Furthermore, Allah ﷺ commands:

أَسْكِلُو هُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُو هُنَّ لِلصَّنِيفُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَئِكَ حَمِلَ فَأَنْفَقُوا عَلَيْهِنَّ
حَتَّى يَضَعُنَ حَمَلُهُنَّ³³⁶

³³³ Dr. Naseer Khan, "Khawateen Ki Mulazmat Isalm Ki Rashni Main," 45.

³³⁴ Maulana Mohammad Razi Khan Afridi and Mohammad Ilyas Navaid, *Encyclopaedia of Quranic Studies: Quran and Customs*, vol. 8 (India: Anmol Publications., 2006), 267.

³³⁵ *Al-Qur'an*, 4:34., Yusuf Ali, *The Holy Quran: English Translation*, 35.

³³⁶ *Al-Qur'an*, 65:6.

Let the women live (in 'iddat) in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden.³³⁷

This verse emphasizes the obligation to maintain his wife during and after the marriage. Prophetic traditions also affirm this obligation, as the Prophet ﷺ stated, "You have rights over your women, and They (women) have rights over you (the men)." ³³⁸ So, husband is obliged to maintain them with their sustenance and clothing in a reasonable manner.³³⁹ These foundational texts clearly establish that the provision of maintenance is not just a societal expectation but a religious duty that ensures the financial empowerment and dignity of women within marriage.

The word *nafaqah* is generated from the root word "*nafāq*," that literally refers to the expensis or consumption of something. *Nafaqah* literally refers to the expenditure or consumption of something.³⁴⁰ Islamic jurists have offered various definitions of *nafaqah*, each emphasizing different aspects of its scope and application. Al-Marḡīnānī defines *nafaqah* as "The obligation of a husband to provide his wife with food, clothing, and shelter based on his financial capacity and her social standing is considered a fundamental component of marital support. the Hanafi jurists regard *nafaqah* to imply "food, clothing and accommodation."³⁴¹ Imām Raghib al-Asfahānī states that *nafaqah* refers to what is spent on sustenance.³⁴² Al-Sarkhasī defined *nafaqah* in al-Mabsūt, "as part of the husband's obligation, encompassing all necessities required for survival, such as shelter, food,

³³⁷ Ibid. , Yusuf Ali, *The Holy Quran: English Translation*, 289.

³³⁸ Muḥammad ibn Yazīd Ibn Mājah, *English Translation of Sunan Ibn Mājah*, trans. Nasiruddin Khattab and Abū Khalīl (Riyadh: Darussalam, 2007), 1851.

³³⁹ Hafiz Ibn Hajar Al-Asqalani, *Bulugh Al-Marām*, 1st ed. (Riyadh: Dar-us-Salam, 1999), 1142.

³⁴⁰ Ahmad Ibn Muḥammad Fayyūmī, "Al-Miṣbāḥ al-Munīr" (Beirut: Maktabah al-Ilmiyyah, 1986), 6.

³⁴¹ Al-Marḡīnānī, *Al-Hidāyah*, 2:285–86.

³⁴² Al-Rāghib al-Isfahānī, "Al-Mufradāt Fi Gharīb al-Qur'ān" (Beirut: Dār al-Qalam, 1412), 8.

clothing, and other marital-related items accepted by the community.”³⁴³

The Hanbali jurists provide a similar definition by stating that *nafaqah* is, “What is sufficient for maintaining a family with food, clothing and accommodation and their supplements.”³⁴⁴ Meanwhile, the Shafi’i jurists have widened the scope of *nafaqah* by including,

Whatever is eaten as food, clothing, cleaning tools, house appliances like cooking equipment, accommodation, and servant in the case where the wife has ever used the service of a servant before her marriage in proportion to his financial capacity.³⁴⁵

Abu Ishaq al-Shirazi elaborates that

Nafaqah is the provision of food, clothing, and lodging that a husband is required to provide for his wife, in accordance with his means and her social status, to maintain her in a manner befitting her position.³⁴⁶

Ibn Hazm defines *nafaqah* as “the obligation of a man to provide maintenance to his wife post-marriage, regardless of her age, wealth, or status, according to his means.”³⁴⁷

According to Ibn Hazm, the contract of marriage itself obliges the husband to provide maintenance to the wife, and she is eligible for maintenance as soon as the marriage is consummated. The amount of maintenance for the wife can be fixed according to the resources and financial status of the husband as per practices of court. maintenance can be given on a daily, weekly, monthly, or yearly basis.”³⁴⁸ Currently, monthly payments are the norm. Superior courts generally consider the provision of maintenance as a financial

³⁴³ Al-Sarkhasī, *Al-Mabsūt*, 5:181.

³⁴⁴ al-Buhūtī, *Kashshāf Al-Qinā’ ‘an Matn Al-Iqnā’*, 5:459–60.

³⁴⁵ Ibn Qūddāmah Abū Muḥammad ‘Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:195–96., al-Siwasi, *Fath al-Qadīr*, 3:379.

³⁴⁶ al-Shīrāzī, *Al-Muhaḍhab Fī Fiqh Al-Imām Al-Shāfi‘ī*, 2:148–49.

³⁴⁷ Ibn Hazm, *Al-Muḥallā Bil-Āthār*, vol. 9 (Egypt: Dar al-Kutub al-‘Ilmiyyah, 1995), 249.

³⁴⁸ Muhammad Abu Zahra, *Ibn Hazm His Life And His Era His Opinions and Jurisprudence* (Egypt: Dar al-Fikr al-‘Arabi, 2009), 457–59.

right. Abdul Rahman Al-Jaziri notes that *nafaqah* refers to "the financial obligation of a person to their dependents, which includes providing food, clothing, and shelter."³⁴⁹ Ibn al-Hmmām similarly describes *nafaqah* as "providing the necessities of life to another person, specifically referring to the maintenance of a wife, including food, clothing, and housing."³⁵⁰

Modern legal interpretations also reflect this understanding. The Encyclopaedia of Islam defines maintenance as "necessities of life, consisting of food, clothing, and shelter, which obligation arises from marriage."³⁵¹ Similarly, the Oxford Dictionary of Islam describes *nafaqah* as "financial support or maintenance provided by a husband to his wife, or by a father to his children, in accordance with Islamic law. It includes food, clothing, shelter, and other necessities, and is a fundamental aspect of family law in Islam."³⁵²

4.2 Comparative Perspective on Wife's Right to Maintenance

This section aims to enrich the core thesis by offering an international and comparative perspective on the wife's right to maintenance, thereby enhancing our understanding of how Islamic law and Pakistani jurisprudence intersect with or diverge from global legal trends., a comparative approach is vital for identifying both the universality and distinctiveness of the Islamic legal tradition in this domain. By situating Islamic law within a broader legal context, the section highlights similarities, contrasts, and lessons that can inform judicial interpretation and legal reform in Pakistan.

³⁴⁹ Abdul-Rahman ibn Muhammad al-Jazīrī, *Al-Fiqh 'alā al-Madhahib- al-Arba'ah*, vol. 4 (Beirut: Dar al-Kutub al- 'Ilmiyyah, 2003), 485.

³⁵⁰ Muḥammad ibn 'Abdul-Wāḥid ibn Hammām, *Sharḥ Fath Al-Qadīr 'Alá al-Hidāyah Sharḥ Bidāyat al-Mubtadī*, vol. 4 (Egypt: al-Maktabah al-Tijārīyah al-Kubrā, 1974), 378.

³⁵¹ "The Encyclopaedia of Islam" (Netherlands: Brill, 1960), "Nafaka."

³⁵² Al-Sarkhasī, *Al-Mabsūt*, 5:181.

4.2.1 Right to Maintenance in Western Legal Thought

In Western legal traditions, especially under English law, spousal maintenance commonly known as alimony refers to financial support one spouse may be required to provide to the other after divorce or legal separation. Its primary aim is to reduce economic inequality resulting from separation and help the financially dependent spouse maintain a standard of living similar to that during marriage. According to Black's Law Dictionary, "maintenance is financial support that a court orders one person to pay to another, typically a former spouse"³⁵³ The Matrimonial Causes Act 1973 governs spousal maintenance in England and Wales, allowing courts to order periodic payments, lump sums, or property transfers to achieve financial equity.³⁵⁴

This Western concept contrasts significantly with the Islamic doctrine of *nafaqah*, which is a continuous marital obligation based on divine command rather than post-divorce remedy. While English law treats maintenance as contingent on the needs and circumstances of both spouses after separation, Islamic law embeds maintenance within the marital contract, requiring the husband to fulfill this duty.

4.2.2 International Perspective on Maintenance Right of Wife

Globally, maintenance rights for women are increasingly shaped by international human rights standards, particularly those articulated in CEDAW. Many jurisdictions recognize maintenance as a mechanism to uphold gender equality and provide economic protection to spouses, often women, during and after marriage. However, the degree of enforcement and the scope of rights differ widely. The Hague Conventions on the International Recovery

³⁵³ Bryan A. Garner, ed., "Black's Law Dictionary" (St. Paul, Minn: West, 2011), s.v. maintenance.

³⁵⁴ "Matrimonial Causes Act 1973" (1973), secs. 18, 23.

of Child Support and Other Forms of Family Maintenance provide a framework for cross-border enforcement. However, disparities remain in practical implementation.”³⁵⁵

4.2.3 Comparative Analysis: Maintenance in Islamic and Western Legal Systems

Islamic law offers a detailed, faith-based framework for the wife's right to maintenance, grounded in the Qur'ān and Sunnah. The husband's obligation is not only financial but moral and religious, covering food, shelter, clothing, and healthcare. This duty remains in effect during marriage and under certain conditions, such as pregnancy or the waiting period. The amount and form of maintenance may vary depending on the husband's financial capacity and local customs, but the obligation itself is absolute in principle.

In contrast, Western legal systems approach maintenance through secular legal reasoning. In English law, for instance, spousal maintenance post-divorce is often temporary and rehabilitative, designed to facilitate the financial independence of the economically weaker spouse. Courts exercise discretion based on factors such as the length of the marriage, the earning capacities of both parties, and contributions to the household.³⁵⁶ Unlike Islamic law, Western legal systems do not typically tie maintenance to moral conduct, and the notion of *nushūz* has no counterpart in secular frameworks.

Ayesha Shahid's comparative work on post-divorce maintenance in Pakistan and Iran underlines the divergence in both interpretation and enforcement of Islamic principles. She argues for harmonizing Islamic obligations with international human rights norms, stressing the need for reforms that both respect religious tradition and promote gender justice.³⁵⁷ Similarly, Azizah al-Hibri critiques patriarchal applications of Sharī'ah that

³⁵⁵ Nikos Lavranos and Ruth A. Kok, eds., *Hague Yearbook of International Law*, International Law E-Books Online, Collection 2012 (Leiden: Brill, 2011), 111–13.

³⁵⁶ Matrimonial Causes Act 1973, sec. 25(2).

³⁵⁷ Ayesha Shahid, “Post-Divorce Maintenance Rights for Muslim Women in Pakistan and Iran: Making the Case for Law Reform,” *Muslim World Journal of Human Rights* 15, no. 1 (2018): 59–61.

dilute financial rights of women, advocating reinterpretation aligned with the egalitarian spirit of Islam and international standards.³⁵⁸

These comparative insights are particularly relevant for Pakistani jurisprudence, which often deals with balancing classical Islamic injunctions and modern statutory mandates. Mohammad Afzal Wani's research highlights inconsistencies in judicial enforcement of *nafaqah* in Pakistan, attributing them to cultural norms and legal ambiguities. His findings further reinforce the value of integrating comparative legal analysis to support coherent, just, and enforceable maintenance regimes in Pakistan.³⁵⁹

4.3 Legitimacy of Maintenance in Islamic Law

The legitimacy of maintenance in Islamic law is established through multiple sources: the Holy Qur'ān, the Sunnah, the *Ijmā'* (consensus), and the *Qiyās* (analogy). Allah ﷺ Almighty has designated men with a status akin to that of a head within the family system due to their role and responsibilities. As a result, men are obligated to meet the financial needs of their families. This is further emphasized in a verse from the Qur'ān, where Allah ﷺ Almighty states:

الرَّجُلُ قَوْمٌ عَلَى النِّسَاءِ بِمَا فَضَلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ³⁶⁰

Men are the protectors and maintainers of women, because Allah ﷺ has given the one more [strength] than the other, and because they support them from their means.³⁶¹

This duty is discussed in various *ahādīth* of the Prophet ﷺ. The Prophet ﷺ emphasized that the most important right among the rights of a woman is that maintenance should be

³⁵⁸ Azizah al-Hibri and Kelly Dawn Askin, "Islam, Law, and Custom: Redefining Muslim Women's Rights," in *Women and International Human Rights Law*, 1st ed (Boston: BRILL, 2000), 379.

³⁵⁹ Mohammad Afzal Wani, *The Islamic Law on Maintenance of Women, Children, Parents & Other Relatives*, 1st ed. (Kashmir: Upright Study Home, 1995), 158–72., Dr. Shehla Riaz and Dr. Salma Begum, "Non-Maintenance Creates the Right of Separation for Woman: A Study of Shariah Law and Pakistani Court Practices," *IQĀN* 4, no. 01 (December 28, 2021): 19.

³⁶⁰ *Al-Qur'ān*, 4:34.

³⁶¹ Abdullah Yusuf Ali, *The Qur'an*, 37.

provided to her. In the last sermon, the Prophet^ﷺ stated. “A man is the guardian of his family (household) and is responsible for his subjects.”³⁶² The Holy Qur’ān clearly orders the maintenance of divorced women,

وَلِلْمُطَّلِّقَاتِ مَنَاعٌ بِالْمَعْرُوفِ حَقًا عَلَى الْمُنْتَقِيْنَ³⁶³

“For divorced women Maintenance [should be provided] on a reasonable scale]. This is a duty on the righteous.”³⁶⁴

The Qur’ān does not set a specific time limit for the maintenance of divorced women but provides clear guidance for the ‘iddah period, leaving room for state legislation to regulate beyond that. Islamic law assigns financial responsibilities primarily to male family members, ensuring the basic needs of wives and children are met. For example, a father must provide for his family, and a husband is required to cover his wife’s essential expenses, including food, clothing, and housing. Clothing is necessary for modesty and protection. The Qur’ān explicitly addresses the right to maintenance for wives and children in the following verse:

وَعَلَى الْمُؤْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ³⁶⁵

“The father shall bear the cost of their food and clothing on equitable terms.”³⁶⁶

In this verse, the term “*al-mawlūd lahu*” refers to the father, while the word “*rizquhuna*” refers to unspecified food, as “*rizq*” encompasses everything necessary for sustenance. The verse affirms that a divorced woman is entitled to maintenance from her former husband if she breastfeeds his child. According to Imām Qurṭubī, the term *rizq* here

³⁶² Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, 1218.

³⁶³ *Al-Qur’ān*, 2:241.

³⁶⁴ Yusuf Ali, *The Holy Quran: English Translation*, 17.

³⁶⁵ *Al-Qur’ān*, 2:233

³⁶⁶ Yusuf Ali, *The Holy Quran: English Translation*, 16–17.

refers to a financial provision adequate for her basic sustenance.³⁶⁷ The Qur'ān declares that "it is the father's duty to provide fair and equitable maintenance and clothing for the mother of his child."³⁶⁸ The husband is responsible for providing housing, clothing, food, and other essential needs for his wife and children, in line with his financial means. However, the wife is not entitled to demand support beyond what he can reasonably afford.³⁶⁹

"Let the women live (in 'iddah) in the same style as ye live, according to your means: annoy them not, to restrict them. And if they carry (life in their wombs, then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense."³⁷⁰

This verse establishes clear principles of dignified treatment for divorced wives during waiting periods by ensuring financial support and prohibiting any form of harassment or coercion that may force them out of their homes. This verse highlights the obligation of the husband to provide housing and financial support to the wife during her 'iddah period, ensuring her well-being and honouring her rights as stipulated by Islamic law

Al-Kāsānī elaborates on this verse, "Allah ﷺ commands husbands to provide maintenance and residence to their divorced wives, forbidding them from causing harm or distress. In his view, this verse by reinforcing the husband's non-negotiable duty to maintain the divorced wife. Moreover, it emphasizes that any attempt to withhold support or push her out of the house actions equivalent to causing harm which is strictly prohibited under Islamic law and that such conduct would constitute a direct violation of both Qur'ānic

³⁶⁷ Abū 'Abdullah Muḥammad ibn Aḥmad al-Qurtubī, *Al-Jām' Li- Aḥkām al-Qur'ān*, vol. 3 (Cairo: Dar al-Kutub Al-'Ilmiyyah, 1348), 163.

³⁶⁸ Ismā'īl ibn 'Umar Ibn Kathīr, *Tafsīr Ibn Kathīr*, 370.

³⁶⁹ Al-Kāsānī, *Badā'i' al- Ṣanā'i' Fī Tartīb al-Sharā'i*, 2010, 3:120.

³⁷⁰ Al-Qur'ān, 2:233

principles and the broader injunctions of Sharī‘ah.³⁷¹ Another verse emphasizes on standard of maintenance provided by husband to his wife,

لِيُنْفِقُ ذُو سَعَةٍ مِّنْ سَعَةِهِ وَمَنْ فَرَّ عَلَيْهِ رِزْقٌ فَلْيَنْفِقْ مِمَّا أَنْهَ اللَّهُ³⁷²

Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him.³⁷³

This verse emphasizes that maintenance should be according to financial status of husband during marriage and ‘iddah period, irrespective of their financial means. In case of revocable divorce, she is not required to observe the hijab or wear a veil. However, in an irrevocable divorce, she must observe the hijab and wear a veil.³⁷⁴ The verses emphasize that a husband is obligated to cover the expenses of a divorced woman during the iddah period. A man who fails to provide maintenance to his wife may be deprived of certain rights because of his negligence in fulfilling this duty.³⁷⁵

وَلِلْمُطَّافَتِ مَنْعُ بِالْمَعْرُوفِ حَفْظًا عَلَى الْمُنْكَرِينَ³⁷⁶

“For divorced women Maintenance should be provided on a reasonable scale this is a duty on the righteous.”³⁷⁷

Divorced women should be gifted something of clothing, money etc. This is to make-up for their emotional suffering because of the divorce. Such provision must be in keeping with the financial position of the husband; and it is a duty on those who are mindful of Allah by fulfilling His instructions and avoiding His prohibitions.

³⁷¹ Al-Kāsānī, *Badā’i‘ al- Ṣanā’i ‘Fī Tartīb al-Sharā’i*, 2010, 3:15.

³⁷² *Al-Qur’ān*, 65:7.

³⁷³ Yusuf Ali, *The Holy Quran: English Translation*, 289.

³⁷⁴ Al-Kāsānī, *Badā’i‘ al- Ṣanā’i ‘Fī Tartīb al-Sharā’i*, 2010, 3:15.

³⁷⁵ *Ibid.*

³⁷⁶ *Al-Qur’ān*, 2:241

³⁷⁷ Yusuf Ali, *The Holy Quran: English Translation*, 17.

4.3.1 Entitlement of Maintenance for the Wife in Islamic Law

The entitlement of a wife to maintenance in Islamic law depends on the validity of the marriage, the wife's fulfilment of marital obligations, and co-residence with the husband. Maintenance is a fundamental right designed to ensure fairness and protection within marriage, but classical jurisprudence outlines specific conditions under which this right may be limited or forfeited.

Maintenance is fundamentally linked to the validity of the marriage contract. According to Imām Al-Khaṣṣāf, “a woman who got married under a contract that is invalid deserves no *nafaqah*.³⁷⁸ Invalidity may arise from procedural defects or apostasy by either spouse. While expenses incurred during an invalid marriage are generally non-refundable, the entitlement of a wife depends on compliance with Islamic legal requirements. This principle underscores that financial rights are inherently tied to legal and contractual legitimacy, reinforcing accountability within marital contracts. A wife must fulfil her marital duties, including cohabitation and submission to her husband, to claim maintenance. Ibn Qudama states: “If the woman gives herself in marriage to her husband properly, she has the right to receive food, clothing, and housing.”³⁷⁹ Entitlement is thus conditional on both legal marriage and adherence to marital responsibilities.

The entitlement of a minor wife to maintenance in Islamic law is subject to nuanced juristic debate. While the marriage contract (‘aqd al-nikāh) is valid from a legal standpoint, schools differ on whether maintenance is due immediately or only after the wife reaches puberty and can fulfill marital obligations. The Mālikī and Ḥanbalī schools generally withhold maintenance until puberty, linking it to sexual maturity and the ability to

³⁷⁸ Abū Baker Ahmad ibn Amr Al-Khaṣṣāf, *Kitāb Al-Nafaqāt*, ed. Abū Al-Wafā Al- Afghānī (India: Al- Dār al-Salafiyyah, 1900), 32.

³⁷⁹ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 11:195.

cohabit,³⁸⁰ whereas the Shāfi‘ī school grants maintenance based solely on the validity of the contract, regardless of age. Within the Ḥanafī school, opinions vary al-Sarkhāsī ties entitlement to cohabitation,³⁸¹ while Imām Abū Yūsuf allows maintenance if the minor wife resides with her husband, performs household duties, and submits to him, even if sexual relations are not possible. This framework highlights that entitlement depends on four interrelated factors: age, sexual capability, actual cohabitation, and contract validity. The diversity of opinions underscores the complexity of classical jurisprudence and its relevance for contemporary debates on early marriage, women’s rights, and the protection of financial entitlements for minor wives.

The husband’s age does not automatically relieve him of financial obligations. Ibn Qudama maintains that a wife of marriageable age is entitled to maintenance even if the husband is a minor, provided she fulfils her marital duties.³⁸² Imām Mālik, however, conditions maintenance on both spouses’ sexual maturity.³⁸³ This distinction emphasizes equity and responsibility in marriage, balancing rights and duties irrespective of age.

Maintenance may be forfeited if the wife unjustifiably denies conjugal rights or leaves the marital home without permission.³⁸⁴ Ibn ‘Abidin explains that a disobedient wife loses entitlement, a view supported by most jurists. Conversely, withholding³⁸⁵ conjugal rights for valid reasons such as non-payment of dower does not affect maintenance. This framework protects the wife from abuse while ensuring compliance with marital responsibilities, balancing autonomy and duty.

³⁸⁰ Abū al-Walīd Sulaymān ibn Khalāf al-Bājī, *Al-Muntaqā: Sharḥ Muwaṭṭā*, vol. 4 (Egypt: Maktabah al-Ṯaqāfah al-Dīnīyah, 2004), 126.

³⁸¹ Al-Sarkhāsī, *Al-Mabsūt*, 5:187.

³⁸² Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 11:229..

³⁸³ al-Bājī, *Al-Muntaqā: Sharḥ Muwaṭṭā*, 4:126.

³⁸⁴ Muḥammad bin Alī bin Muḥammad Alā‘uddīn Al-Haskafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Absār*, vol. 3 (Beirut: Dar al-Kutub Al-‘Ilmiyyah, 2002), 5.

³⁸⁵ Ibid.

Islamic law establishes the husband's obligation to provide maintenance as absolute during marriage, subject to specific conditions for entitlement and non-entitlement. Classical jurisprudence provides nuanced guidance that remains relevant for modern legal contexts, especially regarding child marriage, disputes over cohabitation, and socio-economic constraints. Integrating these principles with contemporary statutory and judicial mechanisms can strengthen women's financial rights and ensure equitable implementation in line with both Sharī'ah and constitution.

4.4 Types of Maintenance in Islamic Law

Maintenance is a fundamental right in Islamic law and the Pakistani legal system, ensuring the financial and social well-being of women within the marital contract. A wife's maintenance is a mandatory obligation in Islam, unlike the maintenance of other relatives which applies only when they cannot support themselves. It serves as a right of the wife in return for the marital bond and, if denied, becomes a debt on the husband. Maintenance includes food, clothing, housing, medical care, and other necessities according to the husband's means and the wife's standard of living.³⁸⁶ Maintenance is obligatory for the wife from her husband, whether she is Muslim or non-Muslim. If she resides in his house, he is obligated to provide for her maintenance, clothing, and housing.³⁸⁷

4.4.1 Post-Divorce Maintenance during 'Iddah (*Nafaqah al-Talāq*)

Post-divorce maintenance (*nafaqah al-talāq*) refers to the financial support a wife is entitled to receive during her 'iddah the mandatory waiting period following divorce or the husband's death. The ur'ān prescribes this period as three menstrual cycles, or until childbirth in the case of a pregnant woman. The purpose is to ensure financial stability and

³⁸⁶ Ayatollah Shaheed Murtaza Mutahari, *Islam Mein Khwateen Ke Huquq* (Karachi: Dar al Thaqafah al-Islamiah, 2019), 259.

³⁸⁷ Ahmad, *Al-Bināyah Fi Sharh al-Hidāyah*, 5:559.

protect the dignity of the woman during the transitional phase of marital dissolution as stated:

يَأَيُّهَا النِّسَاءُ إِذَا طَلَقْتُمُ الْأَسْوَاءَ قُطِّلُوهُنَّ لِعِدَّتِهِنَّ وَاحْصُنُوا الْعِدَّةَ وَأَتُقْوِيَ اللَّهُ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبِينَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحِدِّثُ بَعْدَ ذَلِكَ أَمْرًا³⁸⁸

O Prophet! When ye do divorce women, divorce them at their prescribed periods and count (accurately), their prescribed periods: and fear Allah ﷺ your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness.³⁸⁹

Maintenance is obligatory during the waiting period, as she is still regarded as the wife during this time.³⁹⁰ Shāfi‘ī and Mālikī holds that wife is entitled to residence but not maintenance in irrevocable divorce. They rely on the ḥadīth of Fātimah bint Qays, where the Prophet ﷺ told her she had no right to maintenance after an irrevocable divorce, though she should complete her ‘iddah in another woman’s house.³⁹¹ They support their position with the *hadīth* narrated by fātimah bint qays that my husband divorced me with three repudiations, and the Prophet ﷺ made no provision for residence and maintenance.”³⁹² According to Ḥanbalī jurist to right to either residence or maintenance exists in irrevocable divorce citing the same narration of fātimah bint qays.³⁹³

A contemporary scholar, Hussain Hāmid Hassan, interprets verse no six of surah al-talaq broadly, holding that “every divorced woman has a right to residence and, by implication, maintenance if she remains in the marital home during ‘iddah.”³⁹⁴ This shows the interpretive flexibility of Islamic law in balancing textual directives with women’s

³⁸⁸ *Al-Qur’ān*, 65:1.

³⁸⁹ Ibid., Yusuf Ali, *The Holy Quran: English Translation*, 288.

³⁹⁰ Al-Sarkhasī, *Al-Mabsūt*, 5:188., al-Shirbīnī, *Mughnī Al-Muhtāj Ilā Ma’rifati Ma’ānī al-’Alfāz al-Minhāj*, 5:176.

³⁹¹ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, 2:114.

³⁹² Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, no. 1480.

³⁹³ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, 2:114.

³⁹⁴ Hussain Hāmid Hassān, *Al-Madkhāl Li Dirasāt al-Fiqh al-Islāmī* (Sharikat al-Tubji, 1981), 49.

welfare. Maintenance during ‘waiting period reflects the Qur’ānic principles of justice and compassion. While jurists differ on the scope of this entitlement in irrevocable divorce, the central aim remains the protection of women’s dignity and financial security during a vulnerable period.

4.4.2 Maintenance during Pregnancy and Lactation (*Nafaqah al-Hāmil wa-l-Murdi ‘ah*)

Islamic law expressly recognizes the husband’s obligation to provide maintenance for his wife during pregnancy and lactation. During pregnancy, the husband is obligated to provide for the needs of wife, irrespective of whether the marriage is ongoing or has ended due to divorce. This maintenance covers adequate housing, food, clothing, and other necessary living expenses. Special attention should be given to the nutritional requirements of the pregnant wife to support the health and development of the unborn child the basis for this obligation is found in Qur’ānic directive.

أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنُوكُمْ وَلَا تُضَارُوْهُنَّ لِتُضَيِّقُوْا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَئِكَ حَمْلٌ فَانْقُضُوا عَلَيْهِنَّ حَتَّىٰ يَضْعُنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَأَتُوْهُنَّ أُجُورَهُنَّ وَأَتْمِرُوا بِيَتِكُمْ بِمَعْرُوفٍ وَإِنْ تَعَسَّرُنَّمْ فَسَتْرِضُعْ لَهُ أُخْرَىٰ³⁹⁵

And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf.”³⁹⁶

This verse highlights the obligation of the husband to provide financial support and residence, ensuring the wife’s well-being and honouring her right during the pregnancy of wife and lactation period ensuring her well-being and that of the unborn child. Caliph ‘Umar (RA) also affirmed, based on Qur’ān and Sunnah, that a husband is responsible for

³⁹⁵ *Al-Qur’ān*, 65:6.

³⁹⁶ Yusuf Ali, *The Holy Quran: English Translation*, 289.

the maintenance of his divorced wife during 'iddah³⁹⁷ However, jurists differ regarding maintenance in the case of an irrevocable divorce (*talāq bā'in*). According to Ahnaf the wife remains entitled to residence and maintenance during 'iddah, based on Qur'ānic rulings in Surah al-Talāq which prohibit turning a divorced woman out of her home during this period ³⁹⁸

Maintenance during lactation extends the husband's financial responsibilities beyond pregnancy into the breastfeeding period. Maintenance during lactation involves the husband providing for the living expenses of wife, healthcare, and nutritional support. The Qur'ān emphasizes the obligation of the husband to provide compensation and nutrition for breastfeeding as elaborated:

And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman.³⁹⁹

This verse underscores the husband's duty to provide compensation and support to the wife for breastfeeding, emphasizing the collaborative and respectful nature of this arrangement. In the light of the verse, a waiting period of widow is four months and ten days, or until the pregnancy terminates, whichever comes first.⁴⁰⁰ Additionally, in case of divorce a pregnant lady husband is required to pay her maintenance.⁴⁰¹

Maintenance during pregnancy and lactation is a vital aspect of ensuring the well-being of women and their children under Islamic law. By obligating the husband to provide for the needs of wife during these critical periods, these laws uphold the principles of care, respect and responsibility that are central to both Islamic law and modern legal frameworks.

³⁹⁷ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtasid*, 2:114.

³⁹⁸ Al-Marḡīnānī, *Al-Hidāyah*, 2:290..

³⁹⁹ *Al-Qur'ān*, 65:6., Yusuf Ali, *The Holy Quran: English Translation*, 289.

⁴⁰⁰ *Al-Qur'ān*, 2:234., Yusuf Ali, *The Holy Quran: English Translation*, 17.

⁴⁰¹ Abū 'Abdur-Rahmān Ahmad ibn Shu'ayb al-Nasā'ī, *Sunan Al-Nisā'ī* (Pakistan: Hāmid Ayind Kompani, 1970), 3585.

4.4.3. Maintenance in Case of *Khul'* and *Mubārāt*

Khul' and *Mubārāt* are forms of dissolution of marriage initiated with the consent of the wife. In *Khul'* the wife seeks separation by offering compensation to the husband, while in *Mubārāt* both spouses mutually agree to end the marriage, often with terms of settlement.⁴⁰² The question of the wife's entitlement to maintenance after such dissolution has been debated among jurists. The majority of jurists (Hanafī, Mālikī, Shāfi‘ī, and Ḥanbalī) agree that the wife is entitled to maintenance during her waiting period. This includes food, clothing, and shelter, similar to maintenance during a revocable divorce.⁴⁰³ Maintenance obligations cease on expiry of waiting period as the marital bond no longer exists. However, Mālikī jurists allow certain discretionary support (*mata‘ al-ṭalāq*) to prevent hardship, emphasizing the Sharī‘ah's objective of fairness and protection.⁴⁰⁴

If wife offer financial compensation for *Khul'*, it does not absolve the husband duty to provide maintenance during the *iddah*, since this is considered her independent right, distinct from the compensation.⁴⁰⁵ In *Mubārāt* generally rules of *Khul'* are applicable the husband remains bound to provide maintenance during the waiting period unless explicitly waived in the settlement.⁴⁰⁶ Maintenance in cases of *Khul'* and *mubārāt* is obligatory on husband while the wife forgoes her dower rights. Islamic law ensures that the wife is not left without basic support during her transition, safeguarding her dignity and financial right.

4.4.4 Maintenance Right of Widowed and Divorced Daughters in Islamic Law

Islamic law provides a coherent framework for maintenance rights of daughters irrespective of marital status that combines patrimonial rights with enforceable maintenance

⁴⁰² Al-Kāsānī, *Badā‘i‘ al-Šanā‘i‘ Fī Tartīb al-Sharā‘i*, 2010, 3:151.

⁴⁰³ Al-Sarkhasī, *Al-Mabsūt*, 5:193.

⁴⁰⁴ Ibn ‘Abd al-Barr, *Al-Kāfi Fī Fiqh Ahl Al-Madīna*, vol. 2 (Riyadh: Maktabah al-Rushd, 1992), 593–94.

⁴⁰⁵ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:286–87.

⁴⁰⁶ *Al-Hidāyah*, 2:433.

obligations, while the duty of maintenance is imposed upon male guardians after death of husbands or divorce.⁴⁰⁷ Classical Hanafi jurists held that a father must maintain his dependent daughter whether unmarried, divorced, or widowed so long as she lacks independent means. Upon his death or incapacity, this obligation may shift to other 'asabah relatives in order of proximity, subject to their financial ability.⁴⁰⁸ These dual principles women's patrimonial security and exemption from reciprocal financial burdens are consistently emphasized in authoritative manuals.⁴⁰⁹ They underpin the protective logic of Islamic family law: men's larger inheritance shares are paired with the legal duty to support female relatives, including widowed and divorced daughters who lack means.

Pakistani case law has developed this doctrinal foundation through the Family Courts Act, 1964. In *Mian Muhammad Sabir v. Uzma Parveen*, the Lahore High Court held that a divorced daughter could claim maintenance from her father despite a prior plaint having been rejected on technical grounds.⁴¹⁰ The Court clarified that res judicata did not apply because the first suit had not been decided on merits and reaffirmed the father's obligation to support a divorced daughter until remarriage.

Similarly, Waqar Ahmed Seth in *Farid Khan v. Saeeda Bibi* rejected a father's argument that the mother had waived their child's right to maintenance. The Court emphasized that the duty to maintain children rests with the father "whether they are in the custody of their mother or in his own custody,"⁴¹¹ the Peshawar High Court extended right to maintenance even to divorced daughters living with their mother.

⁴⁰⁷ *Al-Qur'an*, 2:233, 65:7.

⁴⁰⁸ Al-Kāsānī, *Badā'i' al-Šanā'i' Fī Tartīb al-Sharā'i*, 1982, 344.

⁴⁰⁹ Ibn Qūddāmah Abū Muhammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:240–42.

⁴¹⁰ *Mian Muhammad Sabir v. Uzma Parveen*, PLD 154 (Lahore High Court 2012).

⁴¹¹ *Farid Khan v. Saeeda Bib*, MLD 351 (Peshawar High Court 2014).

Earlier precedents confirm the same principle the supreme court in Gakhar Hussain v. Surayya Begum held that a father must maintain unmarried daughters even if they are earning.⁴¹² Lahore High Court held in Ch. Muhammad Bashir v. Ansa run Nisa that even father must maintain unmarried daughters even where an adult daughter refuses to marry according to her father's wishes.⁴¹³ The Lahore High Court in Manzoor Hussain v. Safiya Bibi reiterated that a divorced daughter living with her mother is entitled to support from her father.⁴¹⁴ These rulings consolidate the doctrinal rule: dependency and need, not marital status, determine the obligation of *nafaqah*.

4.4.4.1 Inheritance Right of Unmarried, Widowed and Divorced Daughter

Islamic inheritance law guarantees a daughter her Qur'ānic share irrespective of marital status. If she is the only child, she inherits one-half; two or more daughters share two-thirds; where sons exist, the Qur'ānic ratio applies, with sons bearing subsequent support duties.⁴¹⁵ Pakistani superior courts have consistently condemned the practice of excluding women from inheritance on customary grounds. In *Ghulam Ali v. Ghulam Sarwar Naqvi*, the Supreme Court declared such deprivations un-Islamic and unlawful.⁴¹⁶ In Muhammad Boota (deceased) through L.Rs. v. Fatima, the Supreme Court settled a long dispute over female inheritance rights in agricultural tenancy and declare the exclusion of female heirs' void. The Court emphasized that colonial statutory provisions cannot override women's Qur'ānic shares, reaffirming Islamic and constitutional mandate to protect inheritance rights of women.⁴¹⁷

⁴¹² Gakhar Hussain v. Surayya Begum, PLD 464 (Lahore High court 2013).

⁴¹³ Ch. Muhammad Bashir v. Ansarun Nisa, MLD 1394 (Lahore High Court 2012).

⁴¹⁴ Manzoor Hussain v. Safiya Bibi, PLD 683 (Lahore High Court 2015).

⁴¹⁵ *Al-Qur'an*, 4:11–12, 176., Rubya Mehdi, *The Islamization of the Law in Pakistan (RLE Politics of Islam)* (United Kingdom: Routledge, 2013), 165–70.

⁴¹⁶ Ghulam Ali v. Ghulam Sarwar Naqvi, PLD.

⁴¹⁷ Muhammad Boota v. Fatima, SCMR 1901 (Supreme Court 2023).

Pakistani courts have repeatedly intervened to uphold women's Qur'ānic rights of succession. Supreme Court declared in *Syeda Fouzia Jalal Shah v. Federation of Pakistan*, that depriving women of their inheritance is un-Islamic and illegal and have no legal force violates both Islamic law and constitution. Court directed that such customs are repugnant to the Qur'ān and Sunnah.⁴¹⁸ The court directed that denial of women's inheritance be treated as criminal offences under section 498-A of the Pakistan Penal Code.⁴¹⁹ The supreme court in *Atta Mohammad v. Munir Sultan* noted that litigants often misuse appellate proceedings to delay execution of inheritance decrees and condemned habitual disregard for court orders.⁴²⁰

4.4.4.2 Pension and Post-Retirement Benefits (Modern Entitlements)

Although classical Fiqh predates modern pension systems, Pakistani jurisprudence has extended its protective principles, such as the entitlement of a dependent daughter to the pension of his deceased father. Notably, the Finance Division's 1983 Office Memorandum amended the Pension Rules to include widowed and divorced daughters as eligible recipients of family pension until remarriage. Further, the Punjab Finance Department in 2018 clarified that such entitlement applies only if the widowed/divorced daughter has no other regular source of income, regardless of her children's ages.⁴²¹

In *Syeda Asia Rizvi v. Federation of Pakistan*, the Sindh High Court directed equal distribution of pension benefits between an unmarried and a divorced daughter, rejecting administrative arguments that divorced daughters were excluded.⁴²² The Court relied on earlier Lahore High Court precedent *Zakia Shaukat Rizvi v. Controller Military Accounts*.

⁴¹⁸ *Syeda Fouzia Jalal Shah v. Federation of Pakistan*, PLD 1 (Federal Shariat Court 2025).

⁴¹⁹ "Pakistan Penal Code 1860" (1860), secs. 498-A.

⁴²⁰ *Atta Mohammad v. Munir Sultan*, SCMR 73 (Supreme Court 2021).

⁴²¹ Finance Division, O.M. 23.10.1983; amended O.M.s of 07.07.2015 & 19.06.2018.

⁴²² *Syeda Asia Rizvi v. Federation of Pakistan*, PLC 364 (Sindh High Court 2024).

Justice Qazi Faez Isa in *Tanvir Sarfraz Khan v. Federation of Pakistan* reaffirmed that Islamic inheritance rights are immediate and non-derogable. The Supreme Court of Pakistan also condemned procedural game-playing that undermines women's access to their Qur'ānic shares, thus aligning judicial interpretation with both constitutional mandates and Islamic equity.”⁴²³

Justice Ayesha Malik in *Province of Sindh v. Sorath Fatima* reaffirmed that pension is not a privilege, but a statutory entitlement protected under the West Pakistan Civil Services Pension Rules, 1963. The Supreme Court of Pakistan held that the definition of “family” under these Rules explicitly includes an unmarried, divorced, or widowed daughter, thereby ensuring that such women cannot be excluded from receiving a family pension. Emphasizing the constitutional protection of dignity and livelihood under Article 9, and the guarantee of equality under Article 25, the Court invalidated administrative circulars or departmental practices that sought to deny divorced or widowed daughters their rightful entitlement. The Supreme Court held pensions are a form of deferred wages and constitute inheritable property, thereby protecting widowed daughters against economic vulnerability. Justice Umar Ata Bandial observed that denying such entitlements would defeat both the letter of the law and the spirit of justice enshrined in the Qur'ān. The judgment underscores the Court's pivotal role in protecting vulnerable women from destitution through a purposive and rights-based interpretation of statutory law.

The Supreme Court aligned its reasoning with Islamic injunctions, noting that the Qur'ān emphasizes financial protection and compassion for women without independent means, especially widows and divorcees. By upholding the continuation of a father's pension for his divorced or widowed daughter, the Court harmonized statutory law with the

⁴²³ *Tanvir Sarfraz Khan v. Federation of Pakistan*, SCMR 98 (Supreme Court 2025).

Islamic principle that no woman should be left without sustenance. This reflects a consistent judicial approach that integrates constitutional entitlements, statutory provisions, and Islamic values of justice and equity to safeguard financial rights of women.

The jurisprudence of Pakistani superior courts reflects a gradual but significant expansion of financial entitlements for daughters, particularly in relation to family pension. In Province of Punjab v. Kanwal Rashid), the Supreme Court of Pakistan authoritatively held that an unmarried daughter of deceased civil servant parents is entitled to receive the pension of both her parents simultaneously. The Court clarified that this entitlement persists until the daughter either marries or acquires an independent and regular source of income, regardless of whether she is already receiving family pension from one parent. As the judgment observed:

Unmarried daughter of deceased civil servant parents entitled to draw the pension of both her parents simultaneously however, such daughter would be disentitled from drawing pension, when she was married or acquired a regular source of income on her own, regardless of the family pension received by her.⁴²⁴

This reasoning was subsequently reinforced by the Peshawar High Court in Musarat v. The Govt of KP where the petitioner, a widowed daughter of a retired police official, was denied family pension on the basis that she was residing in her deceased husband's house with her children. The Court categorically rejected this ground as extraneous and ultra vires, holding that widowed or divorced daughters fall squarely within the statutory definition of "family" under Rule 2 of the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021. Justice Wiqar Ahmad observed:

The fact that the petitioner has been residing with her children in the house of her deceased husband cannot be considered a disqualification for the grant of

⁴²⁴ Province of Punjab v. Kanwal Rashid, SCMR 730 (Supreme Court 2021).

family pension... when the law does not impose any restriction on availing the pension in such circumstances, no restriction can be introduced without the backing of any legal provision, as no one is above the law.⁴²⁵

Both judgments underscore a crucial judicial trend that pension is not a matter of state charity, but a vested right protected by law and the Constitution, particularly under Articles 9 and 24. By harmonizing statutory provisions with Qur'ānic injunctions on financial security for women, the courts have tried to mitigate the economic vulnerability of unmarried, widowed, and divorced daughters, ensuring their continued entitlement to family pension against administrative resistance and patriarchal exclusions

Zahida Parveen was appointed under the deceased employee quota, but her appointment was cancelled based on an executive clarification excluding married daughters. A subsequent clarification limited eligibility to separated and dependent married daughters. The supreme court in Zahida Parveen v. Government of KPK held that Rule 10(4) was gender-neutral and did not impose marital status as a disqualification. The executive clarification, by excluding married daughters, amounted to an impermissible amendment of a statutory rule. As Justice Syed Mansoor Ali Shah observed:

Executive instructions or clarifications cannot amend, alter, or override statutory rules. Rule 10(4) grants compassionate appointment rights to the children and spouse of a deceased civil servant without any restriction on gender or marital status. To deny married daughters this benefit is not only ultra virus the parent rule but also violative of Article 25 of the Constitution, which guarantees equality before the law.⁴²⁶

The Court held that the executive clarification unlawfully discriminated between married sons and daughters, lacking any rational basis for compassionate appointments. It

⁴²⁵ Musarat v. The Govt of KP, No. WP No. 5260-P of 2024 (Peshawar High Court 2025).

⁴²⁶ Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary E & SE, Civil Secretariat, Peshawar & others, C.P.L.A. No. 566-P of 2024, Supreme Court of Pakistan, available at: Supreme Court of Pakistan Judgments.

noted that the clarification, issued by a section officer, was without lawful authority. Consequently, the Supreme Court struck it down as ultra vires and unconstitutional, set aside the Tribunal's order and reinstated Zahida Parveen with full benefits, and affirmed that married daughters fall within the scope of Rule 10(4).

The question of whether an adult son should be maintained by his father depends on the circumstances of his father and the son. In general, a son is maintained till attaining the age of puberty. As per the decision of the Supreme Court, the obligation of the father to maintain his son ceases when he attains the age of majority which is 18 years of age. As per pronouncements of the higher Courts in Pakistan, the father is under an obligation to maintain his unmarried daughter. In addition, Courts have ruled that the grandfather is under any obligation to maintain his grandchildren when their father is either incapable or unwilling to maintain them.

4.4.4.3 Maintenance of Working Wife

The jurists have unanimously agreed on the fundamental principle that a husband is obligated to provide maintenance for his wife, and that this obligation is established through the Qur'ān, Sunnah, and consensus. Allah ﷺ says:

“Let the man of means spend according to his means: and the man Whose resources are restricted, let him spend according to what God has given him.”⁴²⁷

In this verse, Allah commands spending according to one's means likewise, the Prophet ﷺ declared in his farewell sermon:

Fear Allah regarding women, for you have taken them by the trust of Allah, and you have made their private parts lawful to you by the word of Allah. Your rights over them are that they do not allow anyone whom you dislike treading

⁴²⁷ *Al-Qur'ān*, 65:7., Yusuf Ali, *The Holy Quran: English Translation*, 289.

on your bedding. If they do so, you may chastise them but not severely. Their rights over you are that you provide them with food and clothing in kindness.⁴²⁸

This *hadīth* clearly establishes that one of the wife's rights upon her husband is maintenance. Similarly, scholars have agreed that wives are entitled to maintenance when they make themselves available to their husbands and do not refuse conjugal relations without a valid Shari'ah excuse.⁴²⁹ However, they differed concerning the maintenance of a working wife. The cause of this disagreement stems from their differing views on the legal basis of maintenance. Some hold that the cause is confinement to the marital bond, others that it is *taslīm wa tamkīn* (submission and availability), while others maintain that it is the marriage contract itself. According to those who consider the cause as confinement submission and availability, maintenance is conditional on these factors; while those who consider the contract itself as the cause, see maintenance as an unconditional right of the wife. And those who hold the view that the cause of maintenance is the mere existence of the marriage contract, they maintain that the wife's right to maintenance is not forfeited so long as the contract remains valid. Based on this, the scholars differed on issue whether a woman's going out to work, with or without her husband's permission, affects her entitlement to maintenance. There are three opinions:

The majority of jurists hold that a wife's right to maintenance is not forfeited if she works with her husband's permission.⁴³⁰ This is because the wife has only foregone her conjugal rights with her husband's consent and approval; thus, it is as though he himself initiated the waiver of his own right. Since this waiver comes from him, nothing from her established Shari'ah rights is nullified. Accordingly, a working woman outside her home

⁴²⁸ Muslim ibn al-Hajjāj al-Qushayrī, *Sahīḥ Muslim*, 1218.

⁴²⁹ Muhammad bin Ahmed Al-Dassūqī, *Hāshiyah Al-Dassūqī, Ala Al-Sharḥ Al-Kabīr*, vol. 2 (Egypt: Dar al- Ahya al-Ktub al-Arabia, 1993), 343.

⁴³⁰ Al-Marghīnānī, *Al-Hidāyah*, 2:378.

remains entitled to maintenance so long as her work is undertaken with her husband's permission. This opinion has also been endorsed by many contemporary jurists and has been incorporated in most Arab personal status law.

Some Shāfi‘ī jurists held that the wife's right to maintenance is forfeited if she leaves her husband's house, even with his permission. This is because the legal cause (*'illah*) for the obligation of maintenance is complete marital availability (*al-tamkīn al-tām*). Once this cause is absent due to her leaving the home, the ruling itself her entitlement to maintenance also lapses.⁴³¹ This is a view attributed to the Hanafis, a position within the Shāfi‘ī school, and it represents the implication of the Hanbali madhhab.⁴³² The Hanbali reasoning is that if she nullifies the husband's right of conjugal availability (*tamkīn*), which is the basis of maintenance, then she is not entitled to it.

A working wife's right to maintenance is not forfeited, even if her husband did not grant permission. This is another position within the Hanafi school.⁴³³ However, the debate on the maintenance of a working wife reflects juristic disagreements over the precise legal cause of *nafaqah*. While the majority opinion recognizes that employment with the husband's permission does not negate her entitlement, the stricter views emphasize conjugal availability (*tamkīn*) as the foundation of maintenance. A minority, however, maintains that the marriage contract alone is sufficient to preserve the right irrespective of her professional engagement. Analytically, the diversity of juristic positions demonstrates both the adaptability and the rigidity within Islamic law. In contemporary contexts, where women's economic participation is both a social necessity and a legal reality, the majority

⁴³¹ Abu Muhammad al-Husayn ibn Mas‘ud al-Baghawi, *Al-Tahdhib*, vol. 6 (Dar al-Kutub Al-‘Ilmiyyah, n.d.), 345.

⁴³² Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *Al-Bahr al-Rā‘iq Sharḥ Kanz al-Dqā‘iq*, vol. 4 (Egypt: Dār al-Kutub al-‘Arabīyah al-Kubrā, 1915), 195.

⁴³³ *Darar Al-Hukkām Fi Sharḥ Gharar al-Ahkām*, vol. 4 (Turkey: Dār al-Tibāh al-Āamirah, 1872), 458.

opinion offers a more equitable balance between marital rights and women's autonomy. Importantly, modern Arab personal status laws and judicial trends have increasingly favored this inclusive approach, while Pakistan's legal practice remains inconsistent, often leaving working wives vulnerable to restrictive interpretations. This indicates the need for a more nuanced legal framework in Pakistan that harmonizes Islamic principles with present-day realities, ensuring that a woman's pursuit of lawful employment does not deprive her of her established right to maintenance in Islam.

4.4.4.4 **Mut'at al-Talāq (Consolatory Gift upon Divorce)**

The concept of *Mut'at al-Talāq* (consolatory gift upon divorce) is firmly rooted in the Qur'ān, which obliges husbands to provide divorced women with a parting gift proportionate to their means, particularly in cases where the marriage ended before consummation and fixation of dower. Quran provides financial protection to the divorced wife before consummation fixation of dower as enumerated in the verse:

لَا جُنَاحَ عَلَيْكُمْ إِن طَّافُتُمُ الْإِنْسَانَ مَا لَمْ تَمْسُوْهُنَّ أَوْ تَقْرِضُوْهُنَّ فَرِيْضَةً وَمَتْعُوهُنَّ عَلَى الْمُوسَعِ قَدْرُهُ
وَعَلَى الْمُفْتَرِ قَدْرُهُ مُتَّعِّداً بِالْمَعْرُوفِ حَقّاً عَلَى الْمُحْسِنِينَ⁴³⁴

There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right thing.⁴³⁵

The juristic treatment of this provision, however, differs across the four Sunni schools of law. The Hanafi's hold that *mut'ah* is legally obligatory only when divorce occurs before consummation and without a specified dower, while in all other cases it remains recommended as an act of kindness and fairness; the amount is determined according to

⁴³⁴ Al-Qur'ān, 2:236

⁴³⁵ Yusuf Ali, *The Holy Quran: English Translation*, 17.

custom (‘urf) and the husband’s financial capacity.⁴³⁶ The Shāfi‘ī adopt a similar position, considering *mut‘ah* obligatory when no dower was fixed and divorce occurs prior to consummation, but recommend it in other cases; classical texts often describe a customary provision of clothing as a baseline, though the amount remains relative to means.⁴³⁷ The Mālikīs generally regard *mut‘ah* as recommended, However some authorities within the school extend its obligatory scope on grounds of equity (*ihsān*) where the wife is vulnerable, thereby framing it more broadly than other schools; in all cases, the provision is to be fair and proportionate to circumstances.⁴³⁸

The Ḥanbalī’s, like the Hanafi’s and Shafī‘ī’s consider it obligatory in the absence of a named dowry and before consummation, and otherwise recommended; while the standard of maintenance is ultimately judged by affordability and custom.⁴³⁹ Thus, in the light of above discussion it is evident that it is obligatory in cases of divorce before consummation and without a specification of dower, it should be treated as a binding duty. However, in all other types of divorces it is a commendable act of benevolence which is recommended in all divorces.

Maintenance payment is a legal right for women and an obligation for husbands. However, divorced women generally have fewer entitlements to support compared to wives during substance of marriage.⁴⁴⁰ The Qur’ānic verses⁴⁴¹ emphasize the importance of considering the husband’s financial capabilities while determining the amount of

⁴³⁶ Al-Sarkhasī, *Al-Mabsūt*, 5:61.

⁴³⁷ Al-Shāfi‘ī, *Al- Um*, 5:114–15.

⁴³⁸ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, 2:50.

⁴³⁹ Ibn Qudāmah Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *Al-Mughnī*, 1968, 7:183.

⁴⁴⁰ Al-Kāsānī, *Badā’i‘ al- Ṣanā’i ‘Fī Tartīb al-Sharā’i*, 2010, 3:23.

⁴⁴¹ *Al-Qur’ān*, 65:7., 4:34.

maintenance. This obligation of maintenance is further supported by the following *ahādīth* of the Prophet ﷺ,

أطعموهن مما تأكلون واكسوهن مما تكتسون ولا تضربوهن ولا تقبحوهن

“Give them food what you have for yourself and clothe them by which you clothe yourself and do not beat them and do not revile them.”⁴⁴²

In above narration Mu‘āwiyah al-Qushayrī said: “I went to the Prophet ﷺ and asked about the financial rights of wives over their husbands. The Prophet ﷺ replied: Husbands are obliged to provide their wives with food and clothing on equitable terms.”⁴⁴³

Another hadith is on the provision of sufficient maintenance for wife and children *narrated that 'Aishah said:*

جاءت هند إلى النبي - صلى الله عليه وسلم - فقالت يا رسول الله إن أبا سفيان رجل شحيح ولا يعطيني ما يكفيه ولدي إلا ما أخذت من ماله وهو لا يعلم. فقال "خذ ما يكفيك ولذلك بالمعروف.

Hind came to the Prophet ﷺ and said: 'O Messenger of Allah, Abu Sufyan is a stingy man, and he does not give me enough for me and my child, except for what I take from his wealth without him realizing.' He said: Take what is sufficient for you and your child, on a reasonable basis.⁴⁴⁴

The Sunnah of Prophet ﷺ affirms that women have the right to the income of their husbands and should be provided for from it. Ibn Qudama explains that this *hadith* indicates the obligation of the husband to provide his wife with *nafaqah*.⁴⁴⁵ Abū Bakr Al-Kāsānī elaborates on this by saying: “The Prophet ﷺ would not have allowed Hind to take *nafaqah* from her husband's money without his permission if maintenance were not obligatory.”⁴⁴⁶ This ḥadīth is crucial because it establishes that maintenance is not optional, but wife's e

⁴⁴² Abū Dāwūd Sulaymān ibn al-Ash‘ath al-Sajistānī, *English Translation of Sunan Abu Dawud*, 2143.

⁴⁴³ Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, 1218.

⁴⁴⁴ Al-Bukhārī, *Sahih Al-Bukhari*, 2293.

⁴⁴⁵ Ibn Qūddāmah Abū Muammad ‘Abdullāh ibn Ahmad ibn Muammad, *Al-Mughnī*, 6:118.

⁴⁴⁶ Al-Kāsānī, *Badā’i’ al-Ṣanā’i’ Fī Tartīb al-Sharā’i*, 2010, 3:144.

enforceable right proportional to needs and means. even if the husband withholds it. Hadith also highlights the balance standard of sufficiency on the basis of custom (*bi-l-ma 'rīf*) it means what society considers reasonable according to time, place, and financial capacity.another hadith discusses reward on maintaining wife as:

إِنَّكَ لَنْ تُثْقِنَ نَفَقَةً تَبْنَغِي بِهَا وَجْهَ اللَّهِ إِلَّا أَجِرْتَ عَلَيْهَا حَتَّىٰ مَا تَجْعَلُ فِي فَمِ امْرَأِكَ

“You will be rewarded for whatever you spend for Allah's sake even if it were a morsel which you put in your wife's mouth.”⁴⁴⁷

This hadith makes nafaqah both a legal duty and an act of worship. Shams al-Haq explains that these *Aḥādīth* encompasses the provision of food, shelter, and clothing in a fair manner, considering the husband's financial status, whether rich or poor.⁴⁴⁸ Wives must be treated decently and with moderation, reflecting the economic circumstances.⁴⁴⁹

The Prophet ﷺ emphasized the importance of providing for one's family members and encouraged men to begin charity with their own families. The Prophet ﷺ stated:

خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهُورٍ غَيْرُهُ، وَأَبْدُأْ بِمَنْ تَعُولُ⁴⁵⁰

“The best alms is that which you give when you are rich, and you should start first to support your dependents.”⁴⁵¹

This *hadīth* emphasizes the importance of prioritizing the financial well-being and security of one's family and dependents before extending help to others. It climaxes the duty of person towards their loved ones, particularly those who are financially dependent on them. In the context of financial rights, this *hadīth* can be interpreted as a reminder to prioritize the financial well-being and security of one's own family, including wives,

⁴⁴⁷ Al-Bukhārī, *Sahih Al-Bukhari*, 56.

⁴⁴⁸ Al-Shāfi‘ī, *Al- Um*, 5:94.

⁴⁴⁹ Muhammad Shams al-Haq, ‘Awn al-Ma ‘būd Sharḥ Sunan Abi Dāwūd, vol. 5 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 2017), 3779.

⁴⁵⁰ Muhammad Ibn Ismā‘il Al-Bukhārī, *Sahīh Al-Bukhārī*, 5356.

⁴⁵¹ Al-Bukhārī, *Sahih Al-Bukhari*, no. 269.

children, and parents, before considering other financial obligations or charitable endeavors.⁴⁵²

The Prophet ﷺ instructed men to show charity to their dependents, including parents and immediate relatives, and disliked those who neglected their responsibilities towards the maintenance of their wives. The Prophet ﷺ said: "It is enough sin for a person to hold back the due of one whose provision is in his hand".⁴⁵³

This *hadīth* highlights the emphasis on treating the dependent with kindness, generosity, and compassion. It emphasizes that withholding resources, support, or care from those who rely on us is a significant moral failing. In the context of financial rights, this *hadīth* can be interpreted as a reminder to fulfill our financial obligations towards our dependents, such as providing for their basic needs, supporting their well-being, and ensuring their financial independence. Ḥadrat Sa‘d bin Abī Waqas (R.A) requested permission from the Prophet ﷺ to donate his entire wealth due to his severe illness. The Prophet ﷺ forbade him and said:

إِنَّكَ أَنْ تَذَرَّ وَرِثَتَكَ أَعْبِيَاءَ خَيْرٌ مِّنْ أَنْ تَذَرَّهُمْ عَالَمَ يَتَكَفَّفُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفْقَةً تَبَرُّغِي بِهَا
وَرْجُهَ اللَّهِ إِلَّا أَجْرُتَ بِهَا، حَتَّىٰ مَا تَجْعَلُ فِي امْرِ أَنِّكَ -

"You'd better leave your inheritors wealthy rather than leaving them poor, begging others. You will get a reward for whatever you spend for Allah ﷺ's sake, even for what you put in your wife's mouth." ⁴⁵⁴

The *hadīth* narrated by Ḥadrat Thawban (R.A) he states:

أَفْضَلُ دِيَنَارٍ يُنْفِقُهُ الرَّجُلُ دِيَنَارٌ يُنْفِقُهُ عَلَىٰ عِيَالِهِ وَدِيَنَارٌ يُنْفِقُهُ الرَّجُلُ عَلَىٰ دَائِيَّتِهِ فِي سَبِيلِ اللَّهِ وَدِيَنَارٌ
يُنْفِقُهُ عَلَىٰ أَصْحَابِهِ فِي سَبِيلِ اللَّهِ -

⁴⁵² Abū ‘Abdullah Muḥammad ibn Aḥmad al-Qurtubī, , *Al-Jām‘ Li- Aḥkām al-Qur’ān*, 3:163.

⁴⁵³ Muslim ibn al-Hajjāj al-Qushayrī, *Sahīh Muslim*, 996.

⁴⁵⁴ Muslim ibn al-Hajjāj al-Qushayrī, *Al-Minhāj Fī Sharh Sahīh Muslim*, 1:2180.

“The most excellent dinar is one that a person spends on his family, and the dinar which he spends on his animal in Allah’s path, and the dinar he spends on his companions in Allah’s path.”⁴⁵⁵

Providing *nafaqah* for one's wife and family is considered an act of charity that will be rewarded both in this life and the Hereafter. This concept is reinforced by the ḥadīth narrated by Ḥadrat Abū Mas‘ūd al-Anṣārī (R.A) who reported that the Prophet ﷺ said: "When a Muslim spends something on his family, intending to receive Allah’s reward, it is regarded as charity for him."⁴⁵⁶

Statutory law and judicial practice in Pakistan have largely confined to financial rights of wives’ including dower, maintenance during marriage and ‘iddah, and inheritance. The issue of post-divorce maintenance beyond ‘iddah particularly in cases where women are divorced before consummation of marriage or without fixation of dower remains almost absent from case law. As a result, many women are left financially vulnerable despite Qur’anic injunctions that explicitly address such situations through the principle of *mut’at al-talāq* (consolatory gift upon divorce). Since both the Family Courts Act, 1964 and the Muslim Personal Law (Shariat) Application Act, 1962 empower courts to adjudicate family matters in accordance with Sharī‘ah, it is proposed that Pakistani courts could adopt an interpretation ensuring alignment with Islamic principles of fairness and protection....

This interpretive approach would not only harmonize Pakistan’s statutory framework with Qur’ānic principles and constitution but also empowers courts with a practical tool to protect financially vulnerable women in divorce cases, thereby strengthening the realization of Sharī‘ah-based justice in contemporary society.

⁴⁵⁵ Muslim ibn al-Hajjāj al-Qushayrī, *Sahīh Muslim*, 994.

⁴⁵⁶ Muḥammad Ibn Ismā‘il Al-Bukhārī, *Sahīh Al-Bukhārī*, 5351.

4.4.5 The Quantum of Maintenance in Islamic Law

The quantum of maintenance, or the amount of financial support a husband is obligated to provide to his wife, is a critical aspect of family law in both Islamic law and the Pakistani legal system. The determination of maintenance involves considering various factors to ensure that the needs of wife are adequately met while aligning with Islamic principles and the practical realities of contemporary society.

Islamic sources do not provide an explicit formula for calculating the quantum of maintenance, but Muslim jurists have developed guidelines based on Qur'anic principles and Prophetic traditions. These guidelines reflect the diversity of opinions within Islamic law, offering multiple perspectives on how to assess the appropriate amount of maintenance. One prominent view, upheld by Mālikī, Ḥanbalī, and some Ḥanafī jurists, emphasizes the financial condition of both the husband and wife when determining maintenance.⁴⁵⁷ According to this perspective, the maintenance provided should be commensurate with the socio-economic status of the couple. For instance, if both spouses are wealthy, the maintenance should reflect their lifestyle, ensuring the wife enjoys a standard of living similar to what she had before marriage. Conversely, if the husband is wealthy and the wife is financially struggling, he is still obligated to provide a level of maintenance that befits his financial standing.

Imām Mālik's approach illustrates this view, suggesting that the husband's financial capacity should primarily guide the determination of maintenance, but the needs and status of wife are also taken into account.⁴⁵⁸ This balanced approach ensures that the wife is

⁴⁵⁷ Ahmad, Al-Dardīr, Al-Sharḥ al-Saghīr ‘ala Aqrab al-Masālik, (Cairo: Dār al- Ma‘ārif, n. d.), 734. Ibn Qūddāmah, Al-Mughnī, 7: 564. Niẓām Al-Shaikh, Al-Fatāwā al-Hindiyah, (Cairo: Dār Al-Fikr li-Al-Tabā‘ah wa Al-Nashr, n. d.), 10: 547.

⁴⁵⁸ Ṣāliḥ Ḥābī al-Samī` al-Ābbī, *Jawāhir Al-Iklīl Sharḥ Mukhtaṣar al- Khalīl*, vol. 1 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997), 570.

provided for in a manner that is both reasonable and fair, considering the couple's overall financial situation.

4.4.5.1 Divergent Juristic Opinions on Basis of Determination of Maintenance

The four major Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali) have nuanced interpretations regarding the extent and nature of the obligation of husband to provide maintenance. Differences also exist in how these schools address maintenance during different stages of marriage and after divorce.

Another significant opinion, particularly among Shāfi'i, Hanbali, and some Hanafi jurists, argues that the quantum of maintenance should be determined solely based on the husband's financial status, without considering the financial situation of wife. This view posits that a poor husband should provide maintenance according to his means, while a wealthy husband should provide more substantial support, reflecting his financial capability.

The second opinion, held by Shāfi'i, Hanbali, and some Hanafi jurists, particularly al-Karhī, states that the amount of *nafaqah* (maintenance) is determined by the position of the husband, not the wife. A poor man pays maintenance based on his affordability and status, while a rich man pays maintenance based on his status and affordability, even if the wife is poor.⁴⁵⁹ Shāfi'i jurists argue that the cost of residence should consider the situation of the woman, not just the status of the man, as she spends most of her time at home, ensuring the residence is comfortable for her. They also cite texts from the Holy Qur'an to reinforce their viewpoint, as Allah ﷺ Almighty stated:

لِيُنْفِقُ ذُو سَعْةٍ مِّنْ سَعْتِهِ وَمَنْ قُدْرَ عَلَيْهِ رِزْقٌ فَلْيُنْفِقْ مِمَّا أَنْتُمْ أَلْهَدُ⁴⁶⁰

⁴⁵⁹ Ibn Qūddāmah Abū Muhammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:157.

⁴⁶⁰ *Al-Qur'an*, 65:7.

“Let the man of means spend according to his means: and the man Whose resources are restricted, let him spend according to what God has given him.”⁴⁶¹

The second opinion of Shāfi‘ī and some Hanafī jurists is that the maintenance amount should consider the status of the husband only, as he is responsible for paying the maintenance of his wife. The woman is already aware of the financial status and ability of the man and consents to marry him after knowing this fact. Almighty Allah ﷺ stated:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا أَكْسَبَتْ⁴⁶²

“Allah ﷺ does not obligate anyone beyond his capacity. For him it is what he has earned and on him that he has incurred.”⁴⁶³

The maintenance amount for a wife is determined by the husband's financial situation and his payment methods. *nafaqah*, which includes housing, clothing, and food, is a universal requirement in Islamic law. However, entitlement to maintenance can vary depending on the nature and culture of a particular society. Islamic jurists have unanimously confirmed this requirement and have addressed the issue of an inability of wife to perform matrimonial duties or pay attention to her husband, children, or family. They have provided a concise response, stating that the opinions of previous jurists can be applied with necessary adjustments.

4.4.5.2 Qur'ānic Framework for Determining Maintenance

In Islamic law, the determination of maintenance (*nafaqah*) is governed by principles rooted in both the Qur'ān and Ḥadīth, which emphasize fairness, equity, and the husband's

⁴⁶¹ Yusuf Ali, *The Holy Quran: English Translation*, 289.

⁴⁶² *Al-Qur'ān*, 2:286.

⁴⁶³ Yusuf Ali, *The Holy Quran: English Translation*, 21.

financial capacity. The Qur'ān provides a foundational guideline in this regard, this perspective is supported by Qur'ānic injunctions, such as the verse:

“Let the man of means Spend according to His means: and the man Whose resources are restricted, let him spend according to what God has given him.”⁴⁶⁴

This verse emphasizes that the husband's financial responsibility is based on his capacity, acknowledging that different men have different levels of financial ability. This verse establishes that a husband is responsible for providing for his wife and children in proportion to his financial ability, ensuring that the maintenance he provides is both fair and commensurate with his economic status. The broader Islamic principle of mutual responsibility within marriage is reflected here, balancing the husband's obligation to support his family with the right of wife to be adequately provided for.

The Shāfi'ī jurists extend this reasoning to the cost of residence, arguing that it should be suitable for the comfort of wife, as she spends most of her time at home. This ensures that the wife is not only provided with basic sustenance but also with a living environment that reflects the husband's financial position.

4.4.5.3 Prophetic Guidance for Determining Maintenance

Prophetic guidance further clarifies these principles through practical examples. A key Ḥadīth involves Hind bint 'Utbah, who approached the Prophet ﷺ to complain about her husband, Abu Sufyan, being miserly and failing to provide sufficient maintenance. The Prophet ﷺ permitted her to take what was necessary from her husband's wealth for herself and their children, as long as it was just and reasonable.⁴⁶⁵ This Ḥadīth underscores the concept that maintenance should be sufficient to meet the legitimate needs of wife taking

⁴⁶⁴ *Al-Qur'ān*, 65:7.. Yusuf Ali, *The Holy Quran: English Translation*, 289.

⁴⁶⁵ Al-Bukhārī, *Sahih Al-Bukhari*, 5359.

into account the husband's financial situation. It highlights that the husband's financial capacity, and the needs of wife are central to determining what constitutes "reasonable" maintenance. Additional Qur'anic verses further support the notion of fairness and adequacy in maintenance. For instance, in Surah Al-Baqarah, Allah ﷺ instructs:

وعلی المولود له رزقهن وكسوتهن بالمعروف.⁴⁶⁶

"The father of the child shall bear the cost of their food and clothing on equitable terms."⁴⁶⁷

This directive emphasizes that maintenance must be provided in a manner that is reasonable, ensuring that the basic needs of wife are met without either extravagance or stinginess. The collective guidance from both the Qur'ān and Ḥadīth ensures that the determination of maintenance is balanced, considering the financial realities of the husband while safeguarding the rights and well-being of the wife and children. This comprehensive framework ensures that the maintenance provided is just, adequate, and reflective of the husband's financial situation, thereby upholding the equitable principles of Islamic law. According to these jurists, the wife is presumed to have accepted her husband's financial status at the time of marriage, and therefore, the maintenance should reflect his capacity. This aligns with the principle that Almighty Allah ﷺ stated:

"Allah ﷺ does not obligate anyone beyond his capacity. For him it is what he has earned and on him that he has incurred."⁴⁶⁸

4.4.5.4 Judicial Interpretations and Practical Applications in Pakistan

In the Pakistani legal context, the quantum of maintenance is influenced by both Islamic principles and statutory provisions. Courts have generally adopted a flexible approach, considering the husband's financial capabilities, the needs of wife according to custom.

⁴⁶⁶ *Al-Qur'ān*, 2:233.

⁴⁶⁷ Yusuf Ali, *The Holy Quran: English Translation*, 16–17.

⁴⁶⁸ *Al-Qur'ān*, 2:286. , Yusuf Ali, *The Holy Quran: English Translation*, 21.

However, challenges in enforcement and determination persist, requiring clear guidelines and judicial discretion to ensure that maintenance orders are fair and adequate. The Pakistani judiciary has also recognized the need for periodic reviews of maintenance orders to account for changes in the financial circumstances of either party. This approach aligns with the dynamic nature of maintenance obligations, ensuring that the rights of wife and children are protected over time. Islamic law emphasizes maintenance as a balance between husband's financial responsibilities and support entitlement of wife. This principle is applied in Pakistan to protect financial rights of women while ensuring realistic and enforceable maintenance obligations. The Qur'ān and Ḥadīth framework balance husband's financial capacity with legitimate needs of wife, upholding the core Islamic principles of mutual responsibility and compassion in marriage.⁴⁶⁹ The complexity of maintenance determination necessitates ongoing judicial interpretation.

4.5 Maintenance Laws in Pakistan

Maintenance constitutes a fundamental financial right of women under both Islamic and Pakistani legal frameworks. It refers to the husband's legal and moral obligation to provide for his wife's basic needs, including food, clothing, shelter, and medical care. While this obligation is firmly rooted in Islamic law and codified in statutory law, its practical enforcement in Pakistan remains inconsistent. The effectiveness of maintenance laws is often hindered by procedural inefficiencies and patriarchal interpretations. This section explores the legal provisions governing maintenance in Pakistan, evaluates their alignment with Islamic principles, and examines the challenges women face in asserting their right to maintenance by judicial system.

⁴⁶⁹ Ibn Qūddāmah Abū Muhammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Muḡhnī*, 6:195–96., al-Siwasī, *Fath al-Qadīr*, 3:379.

4.5.1 Evolution of Maintenance Laws in Pakistan

Pre-Islamic Arabia was characterized by a patriarchal tribal system in which women's rights were largely neglected,⁴⁷⁰ and the notion of a husband's financial responsibility towards his wife was uncertain and irregular. Marriage was often treated as a transactional arrangement, with little recognition of the wife's independent entitlements. As a result, women remained financially vulnerable, relying primarily on the goodwill of husbands or male kin.⁴⁷¹ With the advent of Islam, however, the Qur'ān and Sunnah introduced transformative reforms in family law, establishing maintenance (*nafaqah*) as a binding and enforceable duty of the husband. The Qur'ān explicitly commands husbands to provide for their wives "according to what is fair"⁴⁷² and "according to his means"⁴⁷³ while the Prophet ﷺ emphasized that the best among men is "the one who is best to his wife."⁴⁷⁴

This verse established the principle of maintenance, requiring husbands to provide according to their means, a duty further reinforced by the Prophet ﷺ through his emphasis on fair and compassionate treatment of wives.

In the post-independence period of Pakistan, the adoption of the Code of Criminal Procedure of 1898, inherited from British India, served as the primary legislation addressing the maintenance of wives. This code provided limited provisions for maintenance, which were often insufficient to safeguard financial rights of women. Section 488 of the CrPC was particularly noteworthy as it allowed magistrates to order maintenance for wives and children, albeit with restrictions on the amount and conditions under which such orders could be enforced. Pakistani courts continued to grant maintenance under this provision until the introduction of more comprehensive family laws.

⁴⁷⁰ Khadduri, "Marriage in Islamic Law," 216.

⁴⁷¹ Peter Mansfield, *The Arabs* (United Kingdom: Penguin, 1991), 27.

⁴⁷² Al-Qur'ān, 2:233

⁴⁷³ *Al-Qur'ān*, 65:7.

⁴⁷⁴ al-Tirmidhī, *Al-Jāmi' al-Tirmidhī*, 3895.

The challenges of reconciling Islamic law with the colonial legal framework persisted during this period. Judges often faced difficulties in addressing the rights of Muslim women, particularly regarding maintenance during the ‘iddah period.⁴⁷⁵ The Muslim Family Laws Ordinance of 1961 marked a significant shift, as it codified maintenance obligations and provided women with legal recourse to claim maintenance. This ordinance was a response to the inadequacies of the CrPC and aimed to align Pakistan's legal framework more closely with Islamic principles while promoting the empowerment of women.⁴⁷⁶

The Constitution of Pakistan, 1956, although short-lived, laid the foundational principles for the protection of citizens' rights, including those of women. It included provisions for equality before the law and protection against discrimination,⁴⁷⁷ indirectly supporting financial rights of women. Subsequent constitutions of 1962⁴⁷⁸ and 1973 further expanded these protections, explicitly prohibiting gender-based discrimination and guaranteeing women's rights to participate in economic activities and own property.⁴⁷⁹

The 1973 Constitution, in particular, provided a comprehensive framework for the protection of financial rights of women, mandating the state to take steps to ensure equal opportunities for women in all spheres of life.⁴⁸⁰ Overall, the development of maintenance laws in Pakistan reflects a continuous effort to balance Islamic principles with contemporary legal needs, evolving from the colonial framework of the CrPC to a more

⁴⁷⁵ Muhammad Qasim Zaman, *Islam in Pakistan: A History* (United Kingdom: Princeton University Press, 2020).

⁴⁷⁶ Anita M. Weiss, “Interpreting Islam and Women’s Rights: Implementing CEDAW in Pakistan,” *International Sociology* 18, no. 3 (2003): 581–601.

⁴⁷⁷ “The Constitution of the Islamic Republic of Pakistan 1956” (1956), art. 198.

⁴⁷⁸ “Legislative Assembly of Pakistan, “The Constitution of the Islamic Republic of Pakistan 1962” (1962), art. 5.

⁴⁷⁹ Constitution of Pakistan, 1973, art. 23.

⁴⁸⁰ *Ibid.*, art. 34.

comprehensive and rights-based approach enshrined in Pakistan's constitutional and statutory law.

4.5.2 Incorporation of Islamic Law in Legal Framework of Pakistan

The integration of Islamic principles into Pakistan's legal framework has significantly influenced various aspects of the country's laws, especially family law, including maintenance rights. This incorporation reflects Pakistan's effort to align its legal system with Islamic teachings, ensuring that the laws resonate with the country's religious and cultural values.⁴⁸¹ Pakistan's legal system is a blend of British colonial law, Islamic principles, and modern legal norms. Following independence in 1947, Pakistan sought to establish a legal framework that reflected its Islamic identity. The Objectives Resolution of 1949 marked the beginning of this effort, declaring that all laws in Pakistan must conform to Islamic principles as outlined in the Qur'ān and Sunnah.⁴⁸² This commitment was further solidified in the 1973 Constitution, which embedded Islamic provisions guiding both legislative and judicial processes.⁴⁸³

One of the critical areas where Islamic principles have been most influential is in family law, particularly in the context of maintenance rights. In Islamic law, maintenance refers to the husband's obligation to maintain his wife and children. This duty is deeply rooted in Islamic teachings, derived from Qur'ānic verses and Ahadīth that impose on husband's financial responsibilities toward his family.

Islamic law has significantly shaped maintenance laws in Pakistan. Under Sharī'ah, a husband is obligated to maintain his wife during the marriage and, in certain situations, even after divorce, especially during the 'waiting period. This obligation is grounded in the

⁴⁸¹ Ibid., 227.

⁴⁸² "Objectives Resolution" (Constituent Assembly of Pakistan, 1949).

⁴⁸³ Constitution of Pakistan, 1973, 227.

concept of marriage as a contract, where maintenance is a right acquired by the wife in exchange for her obedience and cohabitation with her husband.

In Pakistan, the influence of Islamic law on maintenance rights is evident in the reforms introduced after independence. Initially, the colonial-era Code of Criminal Procedure of 1898 governed maintenance, but it was not fully compatible with Islamic principles. The Muslim Family Laws Ordinance (MFLO) of 1961 marked a significant shift, aligning the maintenance laws with Islamic teachings. Section 9 of the MFLO stipulated that if a husband fails to maintain his wife, she has the right to seek maintenance through the courts, reflecting the Islamic principle of the husband's obligation to provide for his wife.⁴⁸⁴

Pakistani courts have played a crucial role in interpreting and enforcing maintenance laws in light of Islamic principles. Courts often rely on Islamic law to resolve maintenance disputes, ensuring decisions align with both Islamic teachings and statutory law. Landmark cases, such as *Bilqis Fatima v. Najm-ul-Ikram Qureshi* have upheld the husband's responsibility to maintain his wife, even post-divorce during the 'iddah period, reinforcing the influence of Islamic law on Pakistan's legal system.⁴⁸⁵

Despite the strong influence of Islamic law on maintenance rights, challenges persist in the practical implementation of these principles. Social and cultural factors, along with varying interpretations of Islamic law, have led to inconsistencies in enforcing maintenance rights. Furthermore, the patriarchal nature of Pakistani society has occasionally hindered women's access to justice, particularly in rural areas where traditional norms often override legal rights.

⁴⁸⁴ The Muslim Family Laws Ordinance 1961, sec. 9.

⁴⁸⁵ *Bilqis Fatima v. Najm-ul-Ikram Qureshi*, PLD.

Recent efforts to address these challenges include legal reforms and judicial activism, which have strengthened the protection of women's maintenance rights. The judiciary has increasingly adopted a progressive interpretation of Islamic law, recognizing the need to balance religious teachings with contemporary social realities.

The incorporation of Islamic principles into Pakistan's legal framework has profoundly influenced maintenance laws, ensuring they align with Islamic teachings while protecting women's rights. Although challenges remain, ongoing legal reforms and evolving judicial interpretations continue to shape the landscape of maintenance rights in Pakistan, reflecting the enduring influence of Islamic law.

4.5.3 Criminal Law on Maintenance of Wives (1947-1961)

In the immediate aftermath of Pakistan's independence in 1947, the country adopted the colonial-era Code of Criminal Procedure (CrPC) of 1898 as the primary legislation governing maintenance rights, as there was no new law on this issue. Section 488 of the CrPC specifically addressed the maintenance of wives and children, offering a legal avenue for women to claim financial support from their husbands. This provision allowed a Magistrate of the first class to order a husband with sufficient means to provide a monthly allowance, not exceeding four hundred rupees, for the maintenance of wife and children, if he neglected or refused to do so.⁴⁸⁶

However, this law, rooted in British legal traditions, often conflicted with Islamic principles, which emphasize the husband's religious obligation to support his wife during marriage and even during the 'iddah period. Pakistani courts continued to grant maintenance under Section 488 of the CrPC until the promulgation of the Muslim Family Laws Ordinance (MFLO) in 1961. However, judges frequently struggled with the

⁴⁸⁶ Pakistan: Code of Criminal Procedure 1898, Section, 488 this section was also omitted in 1981.

application of maintenance laws, particularly in reconciling the CrPC with Islamic principles. For instance, the lack of explicit provisions for the maintenance of divorced wives during the 'iddah period created significant legal challenges.

The impact of this early legislation on maintenance rights was mixed. While it provided a mechanism for women to seek maintenance, the colonial law's misalignment with Islamic principles often led to inconsistencies in judicial decisions. The legal system's reliance on British laws, coupled with the absence of comprehensive Islamic legislation on maintenance, left many women without adequate protection during this period. This situation underscored the need for reforms that would integrate Islamic principles into Pakistan's legal framework, leading to significant changes in subsequent years.

4.5.4 Commission on Marriage and Family Laws (1956)

In response to growing concerns about the inadequacies in the legal provisions related to marriage, divorce, and maintenance, the Government of Pakistan established the Commission on Marriage and Family Laws in 1955.⁴⁸⁷ This commission was tasked with reviewing existing family laws and recommending reforms that would align with Islamic principles while addressing contemporary social issues. The commission's formation was influenced by both internal pressures for reform and the global movement for the recognition of women's rights.

The Commission on Marriage and Family Laws (1956) marked Pakistan's first serious attempt to align family law with both Islamic injunctions and contemporary social needs. Its recommendations such as regulating polygamy through prior permission, mandating registration of marriages and divorces, discouraging instantaneous triple *talāq*, enforcing women's inheritance rights, and ensuring maintenance for wives and children

⁴⁸⁷ Parveen Shaukat Ali, *Legal Status of Women in the Third World* (Pakistan: Aziz Publishers, 1979), 9.

were groundbreaking in addressing long-standing injustices faced by women.⁴⁸⁸ While these reforms later shaped the Muslim Family Laws Ordinance, 1961, their partial implementation reflected the state's cautious approach in balancing traditional jurisprudence with reformist needs.⁴⁸⁹ The Commission's work remains significant because it laid the foundation for framing financial rights of women within an Islamic legal paradigm, but its limited adoption highlights Pakistan's recurring struggle between progressive legal reform and conservative resistance.

Despite the progressive nature of the Commission's recommendations, they were met with considerable opposition from conservative religious scholars.⁴⁹⁰ Critics argued that the Commission lacked the authority to reinterpret Islamic law and accused its members of distorting religious texts to align with Western values.⁴⁹¹ The resistance of religious scholars highlighted the tension between traditionalist interpretations of Islamic law and efforts to reform family laws to better protect women's rights in Pakistan. Nevertheless, the Commission's work laid the groundwork for the Muslim Family Laws Ordinance of 1961, which incorporated some of these recommendations into law.⁴⁹²

4.6 Statutory Law on Right of Maintenance in Pakistan

The foundational basis of a wife's right to maintenance in Pakistan emanates from Islamic injunctions, which recognize the husband's financial obligation to support his wife during marriage and the 'iddah period after divorce. Before the formal codification of family law, maintenance disputes were primarily dealt with under personal laws administered by

⁴⁸⁸ Ehtisham ul-Haq Thanvi, *Report of the Commission on Marriage and Family Laws*, 1956, 1203–4.

⁴⁸⁹ Amīn Ahsan Islāhī, *Ā'aelī Commission Ki Report Par Tabṣrah* (Lahore: Istaqlal Press, 1960), 5.

⁴⁹⁰ *Ibid.*, 35.

⁴⁹¹ Ehtisham ul-Haq Thanvi, *Report of the Commission on Marriage and Family Laws*, 1198.

⁴⁹² *Ibid.*

colonial-era courts, often relying on interpretations from classical Fiqh and customary practices. Family-related matters, including maintenance, were addressed under Section 488 of the Code of Criminal Procedure, 1898, which permitted wives to claim a monthly allowance from their husbands in cases of neglect or refusal to maintain them.⁴⁹³

This provision, although limited in scope and amount, laid an early statutory foundation for maintenance claims. With the post-independence need for legal reform, the Constitution of Pakistan reinforced the state's obligation to protect financial rights of women. Article 35 of the Constitution mandates the protection of the marriage and the family,⁴⁹⁴ while Article 38(d) directs the State to ensure women's and children's welfare by providing for their necessities.⁴⁹⁵

4.6.1 Muslim Family Laws Ordinance, 1961

The provisions related to maintenance for a wife under Pakistani law are primarily outlined in the Muslim Family Laws Ordinance, 1961. Section 9 (1) of the Muslim Family Laws Ordinance, 1961 is on maintenance wife it says, in subsection (1) that:

If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may, in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.⁴⁹⁶

This section outlines the obligation of a husband to provide for his wife and children's basic needs, including food, clothing, and shelter. If a husband fails to fulfil this

⁴⁹³ "The Code of Criminal Procedure1898" (1898), sec. 488 (as applicable before repeal for family matters by later laws).

⁴⁹⁴ Constitution of Pakistan, 1973, art. 35.

⁴⁹⁵ Ibid., art. 38(d).

⁴⁹⁶ "Muslim Family Laws Ordinance 1961," Pub. L. No. VIII (1961), sec. 9 (1).

obligation, the wife can seek legal intervention and claim maintenance from family courts. The court determines the appropriate amount of maintenance based on the husband's financial capacity and the needs of the wife and children. Interim orders can be issued to ensure support during legal proceedings. This provision protects the financial rights of wives and children, ensures necessary support, and enforces support if not voluntarily provided.

This provides a wife the right to approach the Arbitration Council if her husband fails to maintain her adequately or equitably (in case of multiple wives). The Council, upon determining the facts, may issue a certificate specifying the amount to be paid as maintenance. Instead, maintenance claims are frequently pursued post-divorce in Family Courts, reflecting a broader underutilization of Section 9 during marital disputes. Furthermore, courts have interpreted this provision to allow for retrospective claims of maintenance. The Supreme Court of Pakistan in *Muhammad Najeeb v. The State* clarified that claims for past maintenance can be entertained even after the dissolution of marriage, so long as they pertain to the period during which the marriage was intact.⁴⁹⁷ This interpretation strengthens the remedial nature of Section 9 and aligns with Islamic injunctions emphasizing fairness and responsibility.

4.6.2 West Pakistan Family Courts Act, 1964

The West Pakistan Family Courts Act, 1964 established a specialized judicial forum to deal with family matters. Section 5 provides Family Courts with exclusive jurisdiction over matters such as marriage, divorce, maintenance, dower, custody, and guardianship. It also addresses territorial jurisdiction and case transfer for convenience or justice.⁴⁹⁸ Section 12-A of the Family Court Act says that:

⁴⁹⁷ Muhammad Najeeb v. The State, SCMR 405 (Supreme Court 2020).

⁴⁹⁸ The West Pakistan Family Courts Act, 1964, sec. 5.

Cases to be disposed of within a specified period. The Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution: Provided that where a case is not disposed of within six months, either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.⁴⁹⁹

This section allows the court to order interim maintenance for the wife and children during the main case, providing financial support during legal proceedings. It will remain in effect until the main case's final decision and may be adjusted or replaced by the final order. The court can decide on the application based on the needs of the wife and the husband's financial capacity. Failure to comply can result in legal consequences for the husband. The inclusion of Section 12-A mandates that all family cases must be decided within six months of institution. Section 21 further reinforces the overriding effect of this law, granting primacy over conflicting provisions in other laws.⁵⁰⁰ The Schedule attached to Section 5 includes maintenance claims, both past and future, thus providing a statutory basis for comprehensive adjudication.⁵⁰¹ Courts have interpreted these provisions considering Islamic teachings. In *Muhammad Akhtar V. Razia Sultana*, the Lahore High Court emphasized that maintenance should not be distinguished based on past or future timelines, aligning the ruling with Islamic principles of financial responsibility during marriage.⁵⁰²

4.6.3 The Punjab Family Courts (Amendment) Act, 2015

The Punjab Family Courts (Amendment) Act, 2015, which revised the Family Courts Act, 1964 for the province of Punjab addresses both interim and ultimate maintenance allowance:

Suit for Maintenance (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, for interim monthly

⁴⁹⁹ Section 12 (A) of the West Pakistan Family Courts Act, 1964

⁵⁰⁰ The West Pakistan Family Courts Act, 1964, sec. 21.

⁵⁰¹ Ibid., secs. 21, Schedule attached to Section 5.

⁵⁰² Muhammad Akhtar v. Razia Sultana, PLD 555 (LHE 2010).

maintenance for the wife or a child and if the defendant fails to pay the maintenance by fourteen days of each month, the defense of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.

(2) "In a decree on maintenance, the Family Court may: (a) Fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstance; and (b) prescribe the annual increase in maintenance.

(3) "If the Family Court does not prescribe the annual increase in maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten per cent each year.⁵⁰³

This section allows a wife to file a maintenance suit against her husband, with the court determining the appropriate amount based on the husband's financial capacity and the needs of wife. The court evaluates both parties' financial circumstances to determine a fair amount and can modify maintenance orders if significant changes occur. It also includes provisions for children's support if they reside with the wife.

A critical development occurred through the Punjab Family Courts (Amendment) Act, 2015, which introduced mandatory timelines and consequences for non-compliance in maintenance suits. It requires the Family Court to provide interim maintenance orders on the first appearance of the husband during the pendency of proceedings, ensuring financial protection to the wife and children during legal battles and if the husband fails to pay by the 14th day of each month, his defence is struck off and the suit may be decreed in the wife's favour based on the plaint and available documents. Furthermore, the court is empowered to fix an amount higher than that claimed in the plaint due to the afflux of time or other circumstances, and annual increases of 10% are automatically applicable unless

⁵⁰³ Punjab Family Courts (Amendment) Act, 2015 (Act XI of 2015).

stated otherwise.⁵⁰⁴ These amendments have significantly strengthened enforcement mechanisms in Punjab and encouraged timely disposal of cases.

4.6.4 Analysis of Statutory Framework on Maintenance Rights

While Pakistan's statutory framework particularly the Muslim Family Laws Ordinance, 1961 and the West Pakistan Family Courts Act, 1964 codifies a wife's right to maintenance, its effectiveness remains constrained by socio-legal barriers and inconsistent enforcement. Although legislation reflects Islamic principles that impose a financial duty on husbands to support their wives during marriage and 'iddah, its practical application has often fallen short.

The underutilization of statutory mechanisms, such as the Arbitration Council under Section 9 of the MFLO, highlights a disconnect between legislative intent and societal practice. Women rarely invoke their right to maintenance during marriage due to social stigma, lack of awareness, and procedural hurdles resorting instead to litigation after separation or divorce. This trend undermines the Qur'ānic concept of *nafaqah* as a continuous marital obligation.

Judicial interpretations have at times, bridged this gap by aligning statutory provisions with Islamic principles. For instance, in *Muhammad Akhtar v. Razia Sultana*, the court upheld claims for past maintenance, affirming that no distinction should be made between past and future maintenance an approach consistent with Islamic law.⁵⁰⁵ Similarly, in *Muhammad Najeeb*, the Court recognized a divorced wife's right to claim maintenance for the period when the marriage was still subsisting, reinforcing the husband's enduring financial responsibility.

⁵⁰⁴ Punjab Family Courts (Amendment) Act, 2015, sec. 12. inserted into West Pakistan Family Courts Act, 1964. Section 17-A

⁵⁰⁵ *Muhammad Akhtar v. Razia Sultana*, PLD.

However, systemic limitations including delayed adjudication, low compliance, and weak enforcement mechanisms continue to impede women's access to maintenance. Although reforms like the Punjab Family Courts (Amendment) Act, 2015 have improved procedural efficiency, the overall legal landscape still falls short of fully realizing the protective spirit of Islamic law. In sum, while the statutory regime for maintenance in Pakistan is formally aligned with Islamic injunctions, its substantive realization is hindered by practical, procedural, and socio-cultural barriers, necessitating further judicial consistency and legislative reform to ensure the right is both accessible and enforceable.

4.7 Judicial Protection of Women's Maintenance Rights

The statutory framework, particularly under Section 9 of the Muslim Family Laws Ordinance, 1961, recognizes a wife's right to maintenance during the subsistence of marriage. However, it remains silent on post-divorce maintenance beyond the 'iddah period. While Islamic law universally affirms a wife's entitlement to maintenance during marriage and 'iddah, the obligation beyond that remains contested and subject to interpretive discretion. This ambiguity has left divorced women reliant on judicial interpretation for financial relief, particularly in the absence of explicit statutory provisions.

Pakistan's superior courts have significantly shaped the interpretation of maintenance rights, often extending protection for vulnerable women. While the dominant judicial stance limits maintenance to the 'iddah period, some rulings drawing on the Qur'ānic principle of *matā* have allowed post-'iddah maintenance in exceptional cases. Courts have also upheld women's right to recover past maintenance where husbands failed in their financial duties and have increasingly factored in the husband's means and the wife's vulnerability, prioritizing equitable relief over rigid traditional limits.

Despite progressive rulings, the lack of a uniform judicial approach and inconsistent application of Islamic injunctions continue to undermine women's access to justice. Most

cases still deny post-‘iddah maintenance, aligning with classical juristic opinions that are not always reflective of the Qur’ānic spirit of equity.

The absence of a comprehensive legal definition of maintenance further complicates enforcement, leaving significant room for judicial discretion both as an opportunity and a challenge. In some instances, courts have interpreted the term “wife” under Section 9 to include divorced women, thereby extending maintenance rights. Others have rejected such claims, citing a lack of legal mandate, despite Islamic injunctions promoting financial support after divorce where necessary. These divergent interpretations reflect a gap between legislative silence and Qur’ānic mandates, calling for harmonization. Given the constitutional directive (Articles 227 and 31 of the Constitution of Pakistan) that all laws must conform to the Qur’ān and Sunnah,⁵⁰⁶ it is imperative to codify the financial rights of divorced women, especially for the post-‘iddah period. This includes incorporating the Islamic principle of *matā‘* and recognizing maintenance not merely as subsistence, but as a holistic financial safeguard.

4.7.1 Judicial Interpretation on Maintenance Rights

The case law governing maintenance rights of wives in Pakistan reflects an ongoing attempt to reconcile Islamic legal principles with statutory frameworks and evolving social realities. Under Islamic law, maintenance is an established financial obligation upon the husband, encompassing the provision of food, clothing, shelter, and other essential needs during marriage and throughout the ‘iddah period following divorce. While this principle is firmly rooted in Islamic law, its practical implementation within Pakistan’s legal system has produced mixed and often inconsistent results. The judiciary has affirmed that a wife is entitled to maintenance during marriage and ‘iddah, but it has generally avoided extending

⁵⁰⁶ Constitution of Pakistan, 1973, 227.

this right beyond that period. This creates a clear gap in legal protection for divorced women, especially when compared to some Muslim jurisdictions and interpretations of Islamic law that allow for post-divorce maintenance in cases of hardship or inequity.

Pakistani case law on wives' maintenance reveals significant challenges, including inconsistent rulings, absence of clear guidelines, and weak enforcement. While some courts have expanded the scope of maintenance to cover medical expenses and a reasonable standard of living,⁵⁰⁷ others have taken a narrow view, overlooking the wife's changing needs or the husband's financial capacity. Questions such as past maintenance, the meaning of necessities and the effect of remarriage or employment have rarely been addressed with clarity. Analysis of landmark decisions shows that Pakistani courts have gradually shifted from a rigid contractual view of maintenance to approach that engages with Islamic lawstatutory law, and contemporary realities.

Muslim Family Laws Ordinance, 1961,⁵⁰⁸ deals with the maintenance obligations of a husband towards his wife and children. Several key cases have helped shape the interpretation and enforcement of this provision and elaborate the nature and scope of maintenance.

In *Khurshid Bibi v. Baboo Muhammad Amin* Supreme Court of Pakistan held that the husband must provide maintenance to his wife during the subsistence of the marriage and even during the '*iddah* period following a divorce. This case reinforced the husband's continuing responsibility for maintenance under Islamic principles.⁵⁰⁹ In *Zeenat Bibi v. Nawazish Ali* Lahore High Court stated that maintenance should not only cover basic needs but also include reasonable expenses for the standard of living of wife. The decision highlighted the need for maintenance amounts to reflect both the husband's financial

⁵⁰⁷ *Rashid Ahmad Khan v. Nasima Ara*, PLD 93 (Lahore-High-Court-Lahore 1968).

⁵⁰⁸ The Muslim Family Laws Ordinance 1961, sec. 9 (1).

⁵⁰⁹ *Khurshid Bibi v. Muhammad Amin*, PLD.

capacity and the living standards of wife.⁵¹⁰ In Akhlaq Ahmad V. Kishwar Sultana Lahore High Court emphasized that the maintenance amount should be determined considering the husband's income and assets. The court also stressed the importance of timely payment of maintenance to avoid financial hardship for the wife.⁵¹¹

in Parveen Akhtar v. Muhammad Arshad court held that the husband's financial hardship does not absolve him of his maintenance obligations. The ruling indicated that the husband must make a genuine effort to fulfil his duty, and the court may issue orders to ensure compliance⁵¹² These cases illustrate the judiciary's approach to enforcing maintenance obligations under Section 9(1) of the Muslim Family Laws Ordinance, 1961. They highlight the principles of fairness, the importance of providing for the needs of wife and the consequences of failing to meet these obligations.

Initial judicial approaches in Pakistan emphasized the contractual obligation of the husband to maintain his wife, largely following classical Islamic principles. The Calcutta High Court in *Abdool Futteh Moulvie v. Zabunnessa Khatun* expanded the nature and scope of maintenance to include housing and essential needs beyond just food and clothing, though it lacked clarity on defining "other necessities" or the impact of variables like the wife's remarriage or the husband's financial condition. This case reaffirmed the classical Sharī'ah perspective but lacked enforcement clarity.⁵¹³ In Rashid Ahmad Khan v. Nasima Ara the Supreme Court ruled that a husband's responsibility includes not just food and clothing but also medical treatment and other necessities. However, "other necessities" remain undefined.⁵¹⁴ The court did not clarify what constitutes these "other necessities" or

⁵¹⁰ Zeenat Bibi v. Nawazish Ali, PLD 208 (Lahore High Court 2000).

⁵¹¹ Akhlaq Ahmad v. Kishwar Sultana, PLD 149 (Lahore-High-Court 2003).

⁵¹² Parveen Akhtar v. Muhammad Arshad, PLD 56 (Lahore High Court 2014).

⁵¹³ Abdool Futteh Moulvie v. Zebunisa Khatun, ILR 631 (Calcutta High Court 1881).

⁵¹⁴ Rashid Ahmad Khan v. Nasima Ara, PLD.

provide a method for determining them, leaving ambiguity that courts must address in future cases.

Moreover, several landmark decisions, such as *Rashid Ahmad Khan v. Nasima Ara* and *Hamida Begum v. Syed Mashar Hussain Shah*, highlighted the evolving recognition of maintenance as encompassing more than basic necessities like food and clothing, extending to medical expenses and other needs. However, the courts often failed to provide a clear framework for what constitutes these other necessities, leading to subjective interpretations. Additionally, despite the broad recognition of maintenance rights, there has been minimal judicial guidance on the role of parental responsibility and how to address situations involving children's maintenance, further complicating the landscape of family law.

In *Muhammad Naeem Khan v. Muqadas Khan* Supreme Court of Pakistan reaffirmed the wife's unconditional right to maintenance, holding that a husband's obligation to provide financial support arises inherently from the marriage contract and is not dependent on the wife's obedience (unless proven through lawful means. The Court emphasized that non-maintenance constitutes neglect and can justify dissolution under Section 2(ii) of the Dissolution of Muslim Marriages Act, 1939.⁵¹⁵ This judgment is significant for its equitable interpretation of maintenance law, reflecting the spirit of Islamic law while reinforcing the judiciary's role in safeguarding financial rights of women and dignity. It sets a progressive precedent against the misuse of behavioural allegations to deny maintenance, promoting consistent enforcement within Pakistan's family law framework.

The court emphasize that maintenance is a fundamental right of the wife under Islamic law, and any failure to fulfil this obligation by the husband would be a breach of

⁵¹⁵ *Muhammad Naeem Khan v. Muqadas Khan*, PLD 99 (Supreme Court 2022).

his marital duties.⁵¹⁶ This case contributed to the legal understanding of a husband's responsibility to maintain his wife, ensuring that women have access to financial support during marriage.

In light of these cases, it becomes apparent that while there has been progress in securing maintenance rights for wives in Pakistan, significant challenges remain. Inconsistent legal interpretations, lack of clarity on key issues, and the absence of effective enforcement mechanisms continue to undermine the equitable application of the law. For the judicial system to truly fulfill its role in protecting financial rights of women, there is a pressing need for legislative reform, clearer judicial guidelines, and stronger enforcement procedures to ensure that maintenance obligations are met and that the financial rights of wives is fully protected.

The court in *Bashiran Bibi v. Muhammad Amin* Confirmed maintenance as a continuous obligation during subsistence of marriage.⁵¹⁷ The Lahore High Court in *Hajiran Bibi v. Abdul Khaliq*⁵¹⁸ reiterated the contractual nature of marriage and maintenance, in accordance with principles from *Gul Bibi* and emphasizing entitlement to both future and past maintenance during the marriage. This ruling reflected the flexibility within Islamic legal schools and underscored a progressive interpretation favorable to financial rights of women.

There are case laws related to evolving scope and adequacy of maintenance such as in *Iffat Kazmi v. Shuja Akbar Shah*, the court declared that maintenance should reflect a reasonable standard of living rather than merely covering necessities. While this acknowledged modern realities did not offer clear operational guidelines, creating potential

⁵¹⁶ *Nagman v. Zullekhan*, AIR 179 (Sind High Court 1939).

⁵¹⁷ *Bashiran Bibi v. Muhammad Amin*, PLD 376 (Lahore High Court 1965).

⁵¹⁸ *Hajiran Bibi v. Abdul Khaliq*, PLD 761 (Lahore-High-Court-Lahore 1981).

for inconsistent enforcement. Furthermore, the case left ambiguity about the duration of maintenance and the husband's responsibilities post-divorce.⁵¹⁹

In Farah Naz v. Judge Family Court Sahiwal and Sardar Muhammad v. Nasima Bibi reflect another crucial gap in maintenance law. the lack of clear guidelines on how to determine a "reasonable standard of living"⁵²⁰ The courts acknowledged the necessity of considering factors like social status, education, and other personal circumstances when determining the amount of maintenance, but left several questions unanswered, creating opportunities for inconsistent application of the law. lack of attention to maintenance payments for children, and unclear duration of maintenance payments. and the impact of changing circumstances like the husband's retirement or income loss. The court's failure to address non-compliance with maintenance orders, penalties, and parental responsibility for maintenance payments for children could lead to inconsistent application and potential injustices in future cases, as these gaps in the law and interpretation may result in inconsistent outcomes. Later judicial precedents reflected an expanded view of maintenance, aiming to cover not just the wife's necessities but a "reasonable standard of living" in line with modern socio-economic realities.

The Supreme Court of Pakistan in Muhammad Nawaz v. Khurshid Begum broadened the husband's responsibilities, mandating that maintenance include residence, education, and medical expenses. The Court also contradicted the Lahore High Court's three-year maintenance limit, suggesting that past maintenance could extend beyond this period. However, the judgment lacked specific guidelines on the duration and on children's maintenance.⁵²¹ this decision raised questions about the criteria for determining an adequate level of maintenance and the impact of changing circumstances on this obligation.

⁵¹⁹ Iffat Kazmi v. Shuja Akbar Shah, PLD 395 (Supreme Court 2005).

⁵²⁰ Farah Naz v. Judge Family Court Sahiwal, PLD 457 (Supreme Court 2006).

⁵²¹ Muhammad Nawaz v. Khurshid Begum, PLD 302 (Supreme Court 1972).

The case also highlighted legal gaps, such as whether maintenance payments should continue indefinitely or only until the wife becomes self-sufficient, and the extent of maintenance obligations for children.

Under Islamic law, the obligation of maintenance (*nafaqah*) arises from the valid marriage contract, and it persists as long as the marriage subsists, and the wife is not disobedient. Pakistani courts have increasingly adopted a progressive understanding of this principle, recognizing factors such as constructive obedience and justifiable non-cohabitation. Here are some cases of maintenance right of wife who lives separate from her husband and not divorced.

In *Bushra Qasim v. Abdul Rashid*, the Lahore High Court recognized a wife's claim for maintenance even after a prolonged separation from her husband, emphasizing her continued financial vulnerability.⁵²² However, the judgment lacked clarity in terms of how the maintenance amount should be assessed in such circumstances, reflecting an area that still requires procedural refinement in Pakistani family law jurisprudence.

Islamic law mandates that a woman is entitled to maintenance during the 'iddah period following divorce. Pakistani courts have generally adhered to this principle. The maintenance rights of a wife during the 'iddah period (a waiting period following a divorce) are well-protected under Islamic law and Pakistani jurisprudence. In *Azmatullah v. Imtiaz Begum*, the court established the right to maintenance during the 'iddah period, a precedent upheld in subsequent cases.⁵²³ This judgment aligns with the traditional Hanafi school. The jurisprudential consistency in these rulings reflects adherence to Islamic principles and legal stability.

⁵²² *Bushra Qasim v. Abdul Rashid*, CLC 2063 (Lahore-High-Court-Lahore 1993).

⁵²³ *Azmatullah v. Imtiaz Begum*, PLD 167 (Lahore-High-Court-Lahore 1959).

In *Samia Anwar v. Nasir Hussain*, the Lahore High Court upheld the Family Court's decision granting the petitioner maintenance of Rs. 7,000 per month for the iddah period and for the minor child, while dismissing her claim for delivery expenses due to lack of evidence.⁵²⁴ The Court emphasized the necessity of substantiating claims with credible documentation in family law disputes. The impact of legislation on the maintenance rights of divorced women is mixed. On the one hand, courts have at times denied past maintenance to divorced wives, citing the limited scope of existing laws.

The Supreme Court in *Muhammad Siddique v. Farzana Bibi* provided authoritative affirmation that even if the wife does not reside with the husband post-divorce, her entitlement to maintenance during 'iddah remains intact. This position harmonizes with the Qur'ānic commandment for equitable treatment during the post-divorce waiting period. The case of *Shah Abu Ilyas v. Ulfat Bibi* addressed a husband's obligation to provide maintenance to his wife under Islamic law. After a dispute led to separation, Ulfat Bibi filed for maintenance, raising the legal question of whether she was entitled to support during the separation and under what conditions this right could be enforced. The Calcutta High Court ruled in her favour, affirming that a husband is obligated to maintain his wife even during periods of separation, provided the separation was not due to the wife's misconduct or fault. The Court emphasized that maintenance is a fundamental obligation arising from the marital contract in Islamic law, and its enforcement is essential for protecting financial protection of women during marital discord.⁵²⁵

This case set a key precedent in safeguarding the financial rights of wives, highlighting that a woman must not be rendered destitute during times of conflict within the marriage. However, while the judgment confirmed the wife's right to maintenance, it

⁵²⁴ *Samia anwar v. Nasir hussain*, MLD 731 (Lahore High Court 2022).

⁵²⁵ *Shah Abu Ilyas v. Ulfat Bibi*, 19 ILR (Calcutta High Court 1896).

fell short in addressing the husband's liability for arrears of maintenance up to the date of divorce. Under Islamic law, a divorced woman is entitled to maintenance during the 'iddah period and may reside in her husband's home in the same manner as before divorce.⁵²⁶ Therefore, the court should have awarded arrears of maintenance based on the husband's financial capacity to better promote the welfare and dignity of the neglected wife.

While classical Hanafi jurisprudence generally limits the wife's entitlement to maintenance only during marriage and 'iddah, Pakistani courts have evolved to allow claims for past and post-divorce and retrospective maintenance in certain circumstances.

The Supreme Court in Muhammad Najeeb v. Saba Farhat allowed retrospective maintenance even after the divorce had been affected, emphasizing that maintenance claims can be pursued through the Arbitration Council under the MFLO framework.¹¹ This decision exemplifies judicial activism in strengthening financial rights of women. A landmark development occurred in Shahzad Yousaf v. Farzana Shahzad, where the Supreme Court declared that non-payment of maintenance constituted valid grounds for dissolution of marriage. The Court emphasized that a wife's entitlement to maintenance is unconditional and rooted both in Sharī'ah and statutory law.⁵²⁷ In Rashida Begum v. Bashir Ahmad, the Supreme Court ruled that failure to provide maintenance constitutes cruelty and can be a valid ground for dissolution of marriage. This case underscored the serious consequences of neglecting maintenance obligations.⁵²⁸

The Lahore High Court in Riffat Abrar v. Sheila Sabri similarly upheld the wife's claim for past maintenance during marriage, even though the marital relationship continued.⁵²⁹ This reflects a growing trend to view financial neglect as an actionable

⁵²⁶ M. Farani, *Manual of Family Laws in Pakistan* (Pakistan: Lahore Law Times Publications, 1980), 336.

⁵²⁷ Shahzad Yousaf v. Farzana Shahzad, SCMR 2069 (Supreme Court 2016).

⁵²⁸ Rashida Begum v. Muhammad Younis, PLD 553 (Lahore High Court 2006).

⁵²⁹ Riffat Abrar v. Sheila Sabri, PLD 148 (Lahore High Court Lahore 1994).

grievance, aligning with both Islamic ethics and contemporary understandings of marital responsibility.

In *Hamida Begum v. Syed Mashar Hussain Shah* The Supreme Court ruled that a wife is entitled to maintenance even if living separately, as long as the separation is justified, such as the husband's failure to fulfill marital duties.⁵³⁰ The case clarifies the entitlement to maintenance despite separation, but it does not establish clear criteria for what qualifies as a valid reason for separation, leading to potential inconsistency. In *Abdul Ghani Yasmin* court emphasized that a husband's obligation to provide maintenance to his wife is unconditional and not contingent on the wife living with him. The court ruled that even if the wife is living separately, she is entitled to maintenance if the separation is justified.⁵³¹

The Lahore High Court ruled in the case of *Muhammad Amin v. Mumtaz Begum*, where the wife filed a maintenance suit against her husband, Muhammad Amin, despite living separately due to irreconcilable differences. The court ruled in favor of Mumtaz Begum, stating that the right to maintenance of wife is an inherent obligation upon the husband, regardless of their living arrangements, provided the separation is justified. The court emphasized that a husband is duty-bound to provide maintenance if the marriage persists unless the conduct first wife explicitly disqualifies her from this right. This decision reinforced the principle that entitlement to maintenance of wife cannot be arbitrarily denied and underscored the court's role in protecting financial rights of women under Islamic law in Pakistan.⁵³²

In *Sardar Muhammad v. Nasima Bibi* the Supreme Court ruled that a wife's right to maintenance is not dependent on living with her husband but did not clarify what

⁵³⁰ *Hamida Begum v. Syed Mashar Hussain Shah*, PLD 284 (Supreme Court 1958).,

⁵³¹ *Abdul Ghani v. Yasmin*, PLD 210 (Karachi High Court 1984).

⁵³² *Muhammad Amin v. Mumtaz Begum*, PLD 685 (Lahore-High-Court-Lahore 1957).

constitutes a valid reason for separation.⁵³³ This ruling underscore the importance of ensuring financial rights during disputes but leaves open questions about when separation is deemed justifiable and the duration of maintenance payments. and the impact of changing circumstances like the husband's retirement or income loss. The court's failure to address non-compliance with maintenance orders, penalties, and parental responsibility for maintenance payments for children could lead to inconsistent application and potential injustices in future cases, as these gaps in the law and interpretation may result in inconsistent outcomes.

Here is some notable case laws related to modification of maintenance orders. In Muhammad Yousaf v. Rukhsana Begum Supreme Court of Pakistan held that a maintenance order can be modified if there is a change in circumstances, such as an increase in the cost of living.⁵³⁴ The case illustrates the flexibility of maintenance orders, but it also points to the absence of clear procedural guidelines for how modifications should be requested and adjudicated. In Sajjad Ahmed v. Shahnaz Begum Lahore High Court clarified that a maintenance order can be modified if the paying spouse's financial circumstances change significantly.⁵³⁵ In Nasreen Akhtar v. Muhammad Aslam Peshawar High Court established that a maintenance order can be modified if the recipient spouse's circumstances change, such as remarriage or improved financial position.⁵³⁶ In Muhammad Iqbal v. Amina Bibi Supreme Court of Pakistan held that a maintenance order cannot be modified unilaterally by the paying spouse; a court order is required.⁵³⁷ In Rashida Begum v. Muhammad Younis Lahore High Court clarified that a maintenance order can be modified if there is a change in the law or regulations affecting the paying spouse's financial

⁵³³ Sardar Muhammad v. Nasima Bibi, PLD 703 (Lahore High Court 1966).

⁵³⁴ Muhammad Yousaf v. Rukhsana Begum, PLD 475 (Supreme Court 2015).

⁵³⁵ Sajjad Ahmed v. Shahnaz Begum, PLD 217 (Lahore High Court 2012).

⁵³⁶ Nasreen Akhtar v. Muhammad Aslam, PLD 104 (Peshawar High Court 2010).

⁵³⁷ Muhammad Iqbal v. Amina Bibi, PLD 178 (Supreme Court 2008).

obligations.⁵³⁸ These cases have contributed to the development of case law on modification of maintenance orders.

Section 17A of the West Pakistan Family Courts Act plays a significant role in the adjudication of maintenance cases. Several case laws illustrate how courts have interpreted and applied this provision to protect the financial rights of spouses and children. Here are a few notable examples in *Farzana Yousaf v. Muhammad Yousaf* court ruled that a wife is entitled to maintenance regardless of the husband's claims of financial hardship. The decision highlighted that the husband must prove his financial incapacity convincingly. This case demonstrated the courts' commitment to ensuring that maintenance obligations are not easily evaded.⁵³⁹

The enforcement of maintenance orders, especially concerning arrears, remains a contentious issue. In *Abdul Majeed v. Razia Begum*, the Lahore High Court ruled that maintenance arrears could be claimed up to three years prior to filing a suit, in accordance with the Limitation Act, but this decision raised concerns about limiting the timeframe for claiming maintenance.⁵⁴⁰

In *Syed Mudassar Altaf v. Deputy Commissioner Lahore* the court held that the husband is still obligated to provide maintenance even if the wife is separated due to the husband's failure to fulfill his marital duties, including forced isolation.⁵⁴¹ The case reaffirms the husband's obligation to maintain his wife, but it does not clarify the impact of prolonged separation or financial hardships on the husband's ability to fulfil this duty, potentially leading to inconsistent application. Similarly, Lahore-High-Court affirmed

⁵³⁸ *Rashida Begum v Muhammad Younis*, PLD.

⁵³⁹ *Farzana Yousaf v. Muhammad Yousaf*, PLD 219 (Karachi High Court 1985).

⁵⁴⁰ *Abdul Majeed v. Razia Begum*, PLD 568 (Lahore High Court 1990).

⁵⁴¹ *Syed Mudassar Altaf v. Deputy Commissioner Lahore*, PLJ 387 (Lahore High Court Lahore 1994).

arrears for non-maintenance over long separation.⁵⁴² A landmark development occurred in *Shahzad Yousaf v. Farzana Shahzad*, where the Supreme Court declared that non-payment of maintenance constituted valid grounds for dissolution of marriage and wife is entitled to maintenance and arrears, regardless of the husband's objections.⁵⁴³ In *Rabia Bibi v. Safdar Hussain*, the Court shifted the burden of proof to the husband, requiring him to demonstrate that he had been providing maintenance during the disputed period. This approach strengthened women positions in maintenance disputes, making it easier for them to claim their entitlements.⁵⁴⁴

In *Naseem Akhtar v. Mohammad Ibrahim* the Supreme Court held that a wife can claim maintenance within three years of divorce.⁵⁴⁵ This case highlights the time limitation for claiming maintenance but does not address what happens when a wife is unaware of her right to maintenance or is unable to claim it within this period due to circumstances beyond her control. These cases have contributed to the development of case law on claims and enforcement of maintenance in Pakistan. In *State v. Muhammad Nabi Khan*, the Supreme Court emphasized the need for effective enforcement of maintenance orders, clarifying that the scope of post-divorce maintenance under Section 488 of the CrPC includes maintenance for divorced wives. Despite this ruling, enforcement remains a challenge, as it does not address the systemic issues related to the non-compliance with maintenance orders.⁵⁴⁶ These cases illustrate the judiciary's struggle to balance the law with Islamic law, often resulting in inadequate financial support for women. In the case of *Nazir*

⁵⁴² *Bushra Qasim v. Abdul Rashid, CLC*.

⁵⁴³ *Shahzad Yousaf v. Farzana Shahzad, SCMR*.

⁵⁴⁴ *Rabia Bibi v. Safdar Hussain, PLD 374 (Lahore-High-Court 1997)*.

⁵⁴⁵ *Naseem Akhtar v. Mohammad Ibrahim, PLD (Supreme Court 2011)*.

⁵⁴⁶ *State v. Muhammad Nabi Khan, PLD 553 (Supreme Court 2013)*.

Ahmad v. District Judge⁵⁴⁷ the court recognized the mutual nature of Khul' upheld the forfeiture of maintenance of wife as part of the divorce agreement.

Maintenance in Case of Mubārāt

However, the agreement between the parties at the time of the divorce can specify different terms, such as the continuation of maintenance for a certain period. In Khatija Begum v. Muhammad Sarwar, the court upheld the agreement made during mubārāt where the husband agreed to provide maintenance for the wife during the 'iddah period.⁵⁴⁸

In Farkhanda v. Muhammad Akram Lahore High Court held that interim maintenance must be granted to the wife to ensure she is supported during the pendency of the suit. The court underscored the importance of interim relief to protect the immediate financial needs of wife.⁵⁴⁹ In Khalid Mahmood v. Additional District Judge court highlighted that the maintenance amount should be reasonable and commensurate with the husband's financial status. It emphasized that the court should consider both the husband's ability to pay and the needs of wife while determining the maintenance amount.⁵⁵⁰ Despite these progressive rulings, some judgments have restricted maintenance claims based on narrow interpretations of Islamic law. Syed Hamid Ali Shah v. Razia Sultana Court denied past maintenance on the grounds that such claims lacked support in personal law.⁵⁵¹ This reflects the traditional Ḥanafī stance, which recognizes maintenance only for present and future periods during cohabitation or 'iddah.

In Gul Bibi v. Muhammad Saleem, the court acknowledged the variance among Islamic schools of thought Ḥanafī, Shāfi'i, and Shi'a but ultimately refrained from applying

⁵⁴⁷ Nazir Ahmad v. District Judge, MLD 2017 (1996).

⁵⁴⁸ Khatija Begum v. Muhammad Sarwar, PLD 137 (2003).

⁵⁴⁹ Farkhanda v. Muhammad Akram, PLD 238 (Lahore High Court 1986).

⁵⁵⁰ Khalid Mahmood v. Additional District Judge, PLD 157 (Lahore High Court 2000).

⁵⁵¹ Syed Hamid Ali Shah v. Razia Sultana, KLR 439 (1991).

non-Ḥanafī perspectives.⁵⁵² This cautious approach signals judicial awareness of doctrinal pluralism without an active commitment to reformist interpretation. However, judicial observations by Justice Zakaullah Lodi have advocated selective application of alternative schools like the Shāfi’ī school in cases where the Ḥanafī view leads to injustice.⁵⁵³ This marks an important jurisprudential opening, allowing for a more contextual and rights-based approach within Islamic legal traditions. Scholars and commissions have also played a pivotal role in shaping judicial perspectives. Khalid M. Ishaque advocated for extending post-divorce maintenance beyond the ‘iddah period, drawing upon the Indian Shah Bano case and Qur’ānic principles of fairness.⁵⁵⁴

The Supreme Court ultimately upheld the lower court’s decision, “holding that if a divorced wife is unable to maintain herself, in addition to maintenance paid during the iddat period under Islamic law, a husband must also provide his ex-wife with a monthly allowance in accordance with the Criminal Procedure Code. The Court noted that civil provisions “do not supplant the personal law of the parties but that simultaneously, the religion of the parties and the personal law that applies to them cannot have any repercussion on the applicability of such laws.”⁵⁵⁵

The Law and Justice Commission and the Marriage Commission of Pakistan have proposed legislative reforms to formally recognize a woman’s right to maintenance beyond ‘iddah, particularly in cases of economic vulnerability.⁵⁵⁶ These proposals emphasize the ethical dimensions of Islamic law and the state’s role in protecting financial rights of women. More radically, Egyptian scholar Dr. Zeinab Radhwan argued that divorced

⁵⁵² Gul Bibi v. Muhammad Saleem, PLD 117 (Balochistan High Court 1978).

⁵⁵³ Ibid., Justice Zakaullah Lodi, judicial remarks in family law reported in *Pakistan Law Digest*.

⁵⁵⁴ Khalid Ishaque, “Shah Bano and the Problem of Muslim Personal Law in South Asia,” *Islamic Law Review* 5, no. 2 (1986): 34–56.

⁵⁵⁵ Mohd. Ahmed Khan v. Shah Bano Begum, SCR 844 (Supreme Court of India 1985).

⁵⁵⁶ Pakistan National Commission on the Status of Women, *The Impact of Family Laws on the Rights of Divorced Women in Pakistan* (Lahore: Pakistan: Aligarh Publishers, 2007), 49.

women should be entitled to maintenance for up to sixty years, especially if they have no source of income.⁵⁵⁷ While this position is not widely accepted in classical Sharī‘ah, it signals a progressive rethinking of the intersection between Islamic ethics and contemporary realities.

The judicial interpretation of maintenance rights in Pakistan reflects an evolving tension between classical Ḥanafi jurisprudence and contemporary statutory frameworks. While early decisions were often restrictive, recent case law shows a marked shift toward a more equitable and Sharī‘ah-aligned understanding of *nafaqah*, recognizing retrospective and post-divorce claims, emphasizing fairness, and constructing spousal conduct in favor of financial protection of women.

Courts have interpreted Section 17A of the Family Courts Act to ensure interim relief and address the financial needs of wives and children, reflecting Islam's ethical imperatives of justice, dignity, and mutual responsibility.⁵⁵⁸ However, despite these advancements, legal inconsistencies persist due to vague legislative standards and limited enforcement mechanisms. To close the gap between doctrine and practice, comprehensive legal reform is urgently needed to harmonize Islamic principles with modern rights-based protections and ensure meaningful realization of women's financial entitlements.

4.7.2 Critical Analysis of Case Law on Maintenance Rights in Pakistan

The case law on maintenance in Pakistan reveals a judiciary navigating between Islamic law and the demands of contemporary legal reform. While Islamic law obligates the husband to maintain his wife during marriage and ‘iddah, statutory law and judicial interpretations have yielded uneven protections. Recent rulings demonstrate a gradual shift from a narrow contractual view to a more inclusive understanding of *nafaqah* that aligns

⁵⁵⁷ Dr. Zeinab Abdul Maguid al-Radhwan, *International Conference on Islamic Laws and Women in the Modern World* (Islamabad: Giant Forum, 1996), 1.

⁵⁵⁸ The West Pakistan Family Courts Act, 1964, sec. 17(A).

with socio-economic realities. Courts have recognized a wife's right to maintenance during justified separation and, in some instances, extended this obligation beyond the 'iddah period, reflecting a partial embrace of progressive interpretations grounded in Islamic law.⁵⁵⁹

The Pakistani legal system has made progress in harmonizing Islamic values with contemporary standards, but enforcement remains a key weakness. Courts often fail to define terms like reasonable standard of living or justified separation, leading to inconsistent decisions. Cases like *Farah Naz v. Judge Family Court Sahiwal*⁵⁶⁰ and *Sardar Muhammad v. Nasima Bibi* emphasize socio-economic factors in determining maintenance, but lack a standardized framework, allowing wide judicial discretion and uncertainty. Additionally, cases involving child maintenance face procedural barriers that undermine both statutory protections and Islamic norms. Despite judicial activism in select cases adopting rights-based reasoning, the absence of clear legislative support limits their impact. To bridge these gaps, comprehensive legislative reform is needed to standardize maintenance determinations, reinforce Islamic legal principles, and ensure consistent legal protections for women in Pakistan.

Pakistani courts have occasionally made progressive rulings upholding women's financial rights, such as granting maintenance beyond iddah or enforcing dower agreements, but these have had limited deterrent impact on entrenched unjust practices. The judiciary operates within a fragmented legal framework, with case-specific judgments and weak enforcement mechanisms. Despite constitutional and Shari‘ah-based rights, many women still face denial of inheritance and maintenance, as courts often defer to

⁵⁵⁹ *Al-Qur’ān*, 2:236.

⁵⁶⁰ *Farah Naz v. Judge Family Court Sahiwal*, PLD.

customary practices or accept informal settlements that compromise women's entitlements.

This highlights the need for institutional reforms beyond isolated rulings.

Pakistani courts are now recognizing the need for maintenance to align with economic realities, such as inflation and rising living costs. Some judgments suggest that maintenance should match the wife's social status and husband's financial ability. However, the decision-making process is often unclear and varies from case to case, making it difficult for women to obtain fair outcomes. This lack of consistency highlights the need for clear legal rules to help courts determine fair maintenance amounts, supporting Islamic law's goals of protecting financial rights and human dignity.

Conclusion

Maintenance (*nafaqah*) is among the most distinctive financial rights in Islam, rooted in the Qur'ān, Sunnah, and the consensus of jurists, and it stands out for its universality and protective character. Unlike contractual rights, it arises directly from the marital bond and the principle of male responsibility (*qiwāmah*), ensuring that the economic burden of family life rests upon the husband, not the wife. The Qur'ān explicitly commands husbands to provide for their wives according to their means, while the Sunnah emphasizes sufficiency, fairness, and compassion. This right encompasses not only food, clothing, and housing but also medical treatment and other reasonable needs, thereby safeguarding a woman's dignity and security. Its uniqueness lies in the fact that it applies regardless of the wife's wealth or employment, continues during the *'iddah* period, protects widowed and divorced daughters, and extends through the principle of *mut'at al-ṭalāq* to a consolatory gift upon divorce, reflecting Islam's ethic of benevolence and protection against destitution.

Despite these Qur'ānic guarantees, the Pakistani legal framework has remained fragmented and weak in practice. The Muslim Family Laws Ordinance 1961 and the Family Courts Act 1964 lack a clear statutory definition of maintenance, provide no uniform

formula for assessment, and do not adequately address post-divorce entitlements. Procedural delays, high litigation costs, and weak enforcement mechanisms further erode the practical effectiveness of decrees, leaving many women without timely or meaningful relief. Husbands frequently evade obligations due to the absence of penal provisions for default, while family courts, without standardized guidelines, issue inconsistent rulings. These gaps leave women, particularly widowed and divorced daughters, exposed to hardship despite the protective intent of Sharī‘ah.

The superior judiciary in Pakistan has played a crucial role in realigning family law with Sharī‘ah principles and constitution. The Federal Shariat Court and Supreme Court have expanded the scope of women's maintenance rights, recognizing them as enforceable debts and addressing the evolving scope and adequacy of maintenance. The Supreme Court has also strengthened financial protection of women, recognizing pensions and service benefits as property rights, inheritable, and distributable among all heirs, including daughters. However, the lack of legislative clarity, procedural reforms, and effective enforcement means that financial rights of wives remain precarious in practice. Maintenance in Islam is not a symbolic or limited right but a comprehensive safeguard that protects wives, widows, and divorcees from economic vulnerability while affirming their dignity and status within family and society. It is proposed that Pakistani courts could adopt an interpretation similar to the one provided by Islamic laws, ensuring that women's rights are not limited to general rights of dower maintenance and inheritance during iddah.

CHAPTER 5: INHERITANCE IN ISLAMIC LAW AND PAKISTANI LEGAL SYSTEM

Introduction

The right to inheritance, particularly for wives, is a critical aspect of Islamic law and has significant implications within contemporary legal systems, including those in Pakistan. This chapter addresses the central question of how Islamic law safeguards wives' inheritance rights and explores the provisions under Pakistani family laws that ensure their financial support. Furthermore, it examines how Pakistani courts interpret and implement these Islamic principles in inheritance cases, assessing the extent to which these principles are successfully reflected in judicial decisions. The objective of this chapter is to critically analyze the regulatory framework protecting the financial right of inheritance for wives considering Shar‘īah principles, while also investigating the relevant provisions under Pakistani laws and judicial practices. Through a detailed examination of case law, this chapter will evaluate the role of the superior judiciary in protecting, promoting, and strengthening the inheritance rights of wife, identifying the successes and shortcomings of the legal system in this regard.

The Chapter provides a comprehensive examination of rights to inheritance of wife. It begins by outlining the significance of inheritance in both Islamic and Pakistani legal contexts. The chapter explores the principles of Islamic inheritance law, historical reforms from pre-Islamic to Islamic practices, and the specific provisions for female heirs. It also discusses the legal framework in Pakistan and challenges in enforcement. Additionally, it analyses key judicial interpretations and identifies gaps between legal theory and practice, ultimately offering recommendations for legal reform to strengthen women's inheritance rights.

5.1 Women's Inheritance Rights in Islamic Law

The right to inheritance is a fundamental aspect of legal systems worldwide, deeply rooted in cultural, religious, and social norms. It ensures the equitable distribution of wealth and assets, maintaining social justice and economic stability.⁵⁶¹ The protection for women Inheritance right in Pakistan sits at the intersection of Islamic law, statutory safeguards, and judicial interpretation. The Qur'ān provides explicit and inviolable shares to female heirs, however customary practices, patriarchal pressures, and bureaucratic malpractice continue to deprive women of their rightful inheritance. This is particularly evident in rural Pakistan, where devices such as *haq-bakhshana* (renunciation of inheritance under family pressure) and fraudulent land mutations remain widespread.⁵⁶²

Islamic law, as outlined in the Qur'ān and Sunnah, provides detailed rules for inheritance to ensure fair distribution of wealth among heirs. These reforms were especially significant in securing women's rights, challenging pre-Islamic gender biases, and promoting social equity as stated in the Qur'ān:

“From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large a determinate share.”⁵⁶³

And in another place

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَرْجِلُ لَكُمْ أَنْ تَرْثُوا النِّسَاءَ كَمْ هَا⁵⁶⁴

“O ye who believes! ye are forbidden to inherit women against their will”⁵⁶⁵

⁵⁶¹ Sayyid Muhammad Yusuf, *Economic Justice in Islam*, 2nd ed. (New Delhi: Kitab Bhavan, 2009), 5.

⁵⁶² Ruby Mehdi, *The Islamization of the Law in Pakistan*, 176–78.

⁵⁶³ *Al-Qur'ān*, 4:7. See Yusuf Ali, *The Holy Quran: English Translation*, 34.

⁵⁶⁴ *Al-Qur'ān*, 4:19.

⁵⁶⁵ Yusuf Ali, *The Holy Quran: English Translation*, 35.

Inheritance rights are vital for women, especially wives, who have long been marginalized due to cultural practices, leading to gender inequality and poverty. Despite existing legal safeguards, their effective realization remains limited in countries like Pakistan, highlighting the urgent need for stronger enforcement and advocacy.⁵⁶⁶ The Islamic inheritance system is unique for its emphasis on justice, equity, and social responsibility. Unlike pre-Islamic Arab customs that excluded women.⁵⁶⁷ Islamic law guarantees them defined shares, with the Qur'ān explicitly prescribing portions for both men and women to ensure no heir is deprived⁵⁶⁸ as the Qur'ān states:

بُو صَيْكُمُ اللَّهُ فِي أَوْلَادِكُمْ مُّثْلُ الذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ⁵⁶⁹

“Allah ﷺ directs you as regards your children to the male a portion equal to that of two females.”⁵⁷⁰

Islamic inheritance is not merely a legal process but a principle of social justice and equity. The Qur'ānic injunctions in Surah al-Nisā' lay down a precise system of fixed shares for heirs children, spouses, parents, and siblings ensuring fair wealth distribution. This framework prevents concentration of wealth, safeguards family members' needs, and promotes both familial stability and broader social welfare.⁵⁷¹ The Sunnah, in conjunction with the Qur'ānic injunctions, plays a pivotal role in shaping Islamic inheritance law. The traditions of Prophet ﷺ provide practical guidance on the application of these divine directives, offering specific solutions to various inheritance scenarios.⁵⁷² Building on

⁵⁶⁶ Nasir, *The Islamic Law of Personal Status*, 123.

⁵⁶⁷ Abdul Majeed Hassan Bello, “Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women,” *Arab Law Quarterly* 29, no. 3 (2015): 261.

⁵⁶⁸ Dawoud Sudqi El Alami, *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco*, Arab and Islamic Laws Series (London: Graham & Trotman, 1992), 132.

⁵⁶⁹ *Al-Qur'ān*, 4:11.

⁵⁷⁰ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁵⁷¹ Alami, *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco*, 132.

⁵⁷² Dr. Abid Hussain, *The Islamic Law of Succession*, ed. Abdul Ahad (Riyadh: Darussalam, 2005), 29.

foundational texts, Islamic scholars have developed a detailed jurisprudence of inheritance that emphasizes the obligatory nature of prescribed shares. This limits individual discretion and ensures that all rightful heirs especially women receive their due portions, protecting them from exclusion.

5.1.1 Definition and Legitimacy of Inheritance Rights in Islam

In Islamic law, the concept of inheritance refers to the legal and obligatory transmission of a deceased individual's estate including movable and immovable property, rights, and liabilities to surviving heirs in accordance with divine principles articulated in the Qur'ān, the Sunnah, and *ijmā'* (juristic consensus).⁵⁷³ The system of inheritance forms a vital part of the Sahirah's broader ethical and legal structure, aiming to ensure economic justice and social equilibrium by prescribing fixed and identifiable shares (*farā'iḍ*) for heirs.⁵⁷⁴

The Qur'ān clearly delineates the categories of heirs and their allotted shares, establishing Islamic inheritance law upon foundational principles of justice, accountability, and compassion.⁵⁷⁵ Inheritance within this framework transcends mere property distribution it is understood as a divine trust, with humans serving as stewards (*khalfah*) who must administer wealth equitably and responsibly.⁵⁷⁶ Accordingly, inheritance becomes a mechanism for redistributing wealth after the fulfillment of debts and execution of wills. thereby balancing individual rights with communal welfare. The science of inheritance holds a distinctive place in Islamic law. It is regarded as a divinely sanctioned discipline that combines jurisprudential principles with intricate arithmetic calculations.⁵⁷⁷

⁵⁷³ Nasir, *The Islamic Law of Personal Status*, 227–28.

⁵⁷⁴ 'Abdullah Bahā' al-Dīn Al-Shanshūrī, *Fath Al-Qarīb al-Mujīb Bi-Sharh Kitāb Al-Tartīb* (Egypt: Al-Matbah al-Bāhiyyah, 1883), 8.; Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire]: Clarendon Press, 1979), 169–71.

⁵⁷⁵ *Al-Qur'ān*, 4:33.

⁵⁷⁶ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3. rev. and enlarged ed (Cambridge: The Islamic Texts Society, 2003), 287.

⁵⁷⁷ Ibn Qūddāmah Abū Muḥammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:127., Muhammad bin Ahmed Ibn-Alīsh, *Mankh Al-Jalil Sharh Mukhtasar al-Khalīl*, vol. 9 (Lebanon: Dār al-Fikr, 1984), 655. Also recognized by

The Prophet Muhammad ﷺ emphasized the significance of this field as Abdullah Ibn Masoud (RA) reported that the Prophet ﷺ said:

تَعْلَمُوا الْعِلْمَ وَعِلْمُهُ النَّاسُ تَعْلَمُوا الْفَرَائِضَ وَعِلْمُهَا النَّاسُ⁵⁷⁸

"Acquire knowledge and teach it to the people, learn the obligatory duties and teach them to the people."⁵⁷⁹

The Prophet ﷺ teaches that seeking and sharing knowledge—especially of religious duties and the Qur'ān is essential for preserving guidance, particularly in uncertain times. Similarly, the Qur'ān provides clear inheritance rules by specifying shares for fixed heirs, residuary relatives, and others, ensuring fair wealth distribution, family harmony, and social equity. Although Fiqh predates modern pension systems, Pakistani jurisprudence has extended its protective principles such as *nafaqah* (financial maintenance) and patrimony to contemporary pension schemes. The major Sunni schools (Hanafī, Maliki, Shafī'i, and Hanbali) largely align on the primary tenets of inheritance law, though they differ subtly in terminology and doctrinal reasoning. The Hanafī school defines inheritance primarily as succession to ownership of property,⁵⁸⁰ placing emphasis on the legal and orderly transmission of wealth.⁵⁸¹ The Shafī'iāh and Abāziyyah schools underscore its residual nature, encompassing both assets and enforceable rights.⁵⁸² Meanwhile, the Mālikī and Hanbalī schools emphasize blood ties and the centrality of Qur'ānic prescriptions in determining rightful shares.⁵⁸³

⁵⁷⁸ Ibn Mājah, *Sunan Ibn Mājah*, 2719.

⁵⁷⁹ Abū 'Abdullah Muḥammad bin 'Abdullah al-Tibrīzī, *Mishkāt Al-Maṣābīh English Translation*, trans. Abdul Hameed Siddiqui (India: Islamic Publications, 1970), 279.

⁵⁸⁰ Ahmad Ibn-Muhammad al-Qudūrī, *Mukhtasar al-Qudūrī* (al-Qāhira, Miṣr: Dār Al- Kutub Al- 'Ilmiyyah, 1997), 245–47.

⁵⁸¹ 'Abdullah ibn Maḥmūd al-Mawṣūlī, *Al-Ikhtiyār li Ta'līl al-Mukhṭār*, vol. 4 (Cairo: Dār al- Ḥadīth, 2009), 92., Noel James Coulson, *A History of Islamic Law* (United Kingdom: University Press, 1978), 121.

⁵⁸² al-Jazīrī, *Al-Fiqh 'alā al-Madhabib- al-Arba'ah*, 4:45–46.

⁵⁸³ Ibn Rushd, *Bidāyat Al-Mujtahid Wa-Nihāyah al-Muqtaṣid*, 2:411.

Furthermore, classical jurists such as Ibn Qudama and Ibn 'Arafah interpreted inheritance in a broader light, extending its scope to include the fulfillment of outstanding religious duties of the deceased, such as unpaid *zakat* or unperformed *hajj*.⁵⁸⁴ Islamic inheritance law is both a legal framework and a spiritual duty: it ensures fairness, protects heirs, prevents arbitrary exclusion, and restores moral and financial balance in families and society by embodying the divine mandate of justice.

The legitimacy of the Islamic inheritance system is firmly rooted in explicit directives from the Qur'ān, which specify precise inheritance shares for various relatives. Islamic inheritance is grounded in clear Qur'ānic directives that assign fixed shares to relatives such as children, parents, spouses to prevent disputes, uphold fairness, and preserve social harmony. These verses form a binding, divinely ordained legal framework that overrides personal discretion when dividing an estate.

يُوصِّيُكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مُثْلُ حَظِّ الْأُنْثَيَيْنِ⁵⁸⁵

“Allah ﷺ directs you as regards your children’s (inheritance): to the male a portion equal to that of two females.”⁵⁸⁶

Inheritance is a central issue in Islamic law, with Allah ﷺ Almighty determining the shares of inheritance. Several verses in the Qur'ān⁵⁸⁷ provide comprehensive rules on inheritance distribution and explanations of inheritance laws. Additionally, when the Prophet ﷺ was consulted on inheritance matters, Allah ﷺ revealed further guidance to address specific issues.⁵⁸⁸ Islamic inheritance law, as outlined in the Qur'ān, delineates the shares for various heirs and the principles governing the distribution of an estate. The

⁵⁸⁴ Ibn Qūddāmah Abū Muḥammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:116–18.

⁵⁸⁵ *Al-Qur'ān*, 4:11.

⁵⁸⁶ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁵⁸⁷ *Al-Qur'ān*, 4:7, 11, 12, 13, 14, and 176.

⁵⁸⁸ Muḥammad Ibn Ismā'īl Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, 6747.

Qur'ān provides detailed instructions on how to allocate inheritance among family members, ensuring fairness and justice in asset distribution. As the Qur'ān states

“From the inheritance left by parents and close relatives, both men and women are entitled to fixed shares, regardless of whether the estate is small or large.”⁵⁸⁹

This verse establishes that both men and women have predetermined shares of inheritance from the estate of deceased relatives, regardless of the size of the estate.

فَرِبْضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا⁵⁹⁰

“These are settled portions ordained by God and God is All-Knowing All-Wise.”⁵⁹¹

This verse emphasizes the importance of following the Qur'ānic guidelines for inheritance, reinforcing the system's legitimacy and fairness as decreed by God.

تِلْكُ حُدُودُ اللَّهِ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلُهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَذَلِكَ الْفَوْزُ⁵⁹²
الْعَظِيم

“Those are limits set by God: those who obey God and His Apostle will be admitted to Gardens with rivers flowing beneath to abide therein (forever) and that will be the Supreme achievement.”⁵⁹³

This verse emphasizes that the shares of inheritance are ordained by Allah ﷺ and are fixed, leaving no room for alteration. Adhering to these divine commandments is not only a matter of legal obligation but also a path to eternal reward, while disobedience is met with severe punishment.⁵⁹⁴ Additionally, the Prophet (ﷺ) underscored the critical importance of

⁵⁸⁹ Yusuf Ali, *The Holy Quran: English Translation*, 34.

⁵⁹⁰ *Al-Qur'ān*, 4:11. See Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁵⁹¹ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁵⁹² *Al-Qur'ān*, 4:13.

⁵⁹³ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁵⁹⁴ Al-Shanshūrī, *Fath Al-Qarīb al-Mujīb Bi-Sharḥ Kitāb Al-Tartīb*, 8.

acquiring knowledge, declaring that all sciences are superfluous except for three essential ones. As narrated by 'Umar, the Prophet (ﷺ) said:

الْعِلْمُ تَلَاثَةٌ وَمَا سِوَى ذَلِكَ فَهُوَ فَضْلٌ أَيْهُ مُحْكَمَةٌ أَوْ سَنَةٌ قَائِمَةٌ أَوْ فَرِيضَةٌ عَادِلَةٌ⁵⁹⁵

“Knowledge falls into three main categories: a clear Qur'ānic verse, an authentic Sunnah (Prophetic practice), or a confirmed obligatory duty; anything beyond these is considered supplementary.”⁵⁹⁶

The knowledge of inheritance is one of the most significant branches of Qur'ānic sciences. Jurists have observed that Allah ﷺ Almighty has articulated the rules of inheritance with exceptional clarity, leaving minimal scope for *Ijtihād* (independent reasoning) in addressing related issues. This characteristic sets inheritance law apart from other branches of *Fiqh*, as it specifically deals with matters arising after a person's death, unlike other legal areas that pertain to the living. This distinction highlights the importance of inheritance knowledge, as emphasized by the Prophet (ﷺ). He instructed Abu Huraira (R.A):

تَعَلَّمُوا الْفَرَائِضَ وَعَلِمُوهَا فَإِنَّهُ نَصْفُ الْعِلْمِ وَهُوَ يُنْسَى وَهُوَ أَوَّلُ شَيْءٍ يُنْتَرَعُ مِنْ أَنَّتِي⁵⁹⁷

“Learn the Ilm ul-Farā'iḍ (knowledge of inheritance) and teach it, for it is half of knowledge. It will be forgotten, and it is the first thing that will be taken away from my nation.”⁵⁹⁸

The Prophet's directive underscores the dual significance of this knowledge, as it pertains to both the living and the dead, emphasizing its importance in matters of ownership and the distribution of wealth. This knowledge is often referred to as 'half of the knowledge' because of its pivotal role in life and death, particularly in determining the distribution of a person's estate among heirs.

⁵⁹⁵ Abū Dāwūd Sulaymān ibn al-Ash'ath al-Sajistānī, *English Translation of Sunan Abu Dawud*, 2825.

⁵⁹⁶ Ibid.

⁵⁹⁷ Ibn Mājah, *Sunan Ibn Mājah*, 2719.

⁵⁹⁸ Ibid.

5.1.2 Fundamental Principles of Islamic Inheritance Rights

The science of inheritance, known as 'Ilm-ul-Farā'īd, occupies a central position in Islamic law, derived directly from the Qur'ān and Sunnah.⁵⁹⁹ It is considered divine knowledge ('ilm) that commands both legal and spiritual significance. Islamic inheritance law ensures the fair and precise allocation of a deceased person's estate, reinforcing justice ('adl) and social welfare.⁶⁰⁰ The Qur'ān establishes fixed shares for heirs spouses, children, parents, and siblings ensuring each receives a predetermined portion.

These shares cannot be altered by personal preference or custom, thereby upholding divine justice.⁶⁰¹ The system discourages wealth concentration, encourages circulation, and protects vulnerable family members like widows and orphans.⁶⁰² A key principle is the order of estate distribution: (1) payment of funeral expenses, (2) settlement of debts, (3) execution of valid wills (up to one-third of the estate), and (4) division among legal heirs. This sequence ensures the protection of creditors and non-heir beneficiaries.⁶⁰³ Testamentary freedom is limited to one-third of the estate to prevent circumvention of the Qur'ānic shares.⁶⁰⁴

Islamic law also recognizes legal impediments to inheritance most notably, intentional killing of the deceased disqualifies the perpetrator. Jurists also differ on funeral expenses. The Ḥanafī school obliges the husband to pay for his wife's burial, regardless of her wealth.⁶⁰⁵ The Mālikī and Shāfi'ī schools offer nuanced views based on the deceased's

⁵⁹⁹ Ibid.

⁶⁰⁰ Mohamed Aslam Haneef, *Contemporary Islamic Economic Thought: A Selected Comparative Analysis* (Kuala Lumpur: S. Abdul Majeed & Co, 1995), 34.

⁶⁰¹ Ibrahim Nuhu Tahir, "Succession in the Muslim Family Law," *International Journal of Economics, Management and Accounting* 23, no. 1 (2015): 4.

⁶⁰² Al-Shanshūrī, *Fatḥ Al-Qarīb al-Mujīb Bi-Sharḥ Kitāb Al-Tartīb*, 8.

⁶⁰³ Al-Asqalani, *Bulugh Al-Marām*, 1142.

⁶⁰⁴ Abdur Rahman I, *Shar'īah: Islamic Law* (United Kingdom: Ta-Ha, 2008), 438.

⁶⁰⁵ Ministry of Awqaf and Islamic Affairs, *Encyclopedia of Jurisprudence*, vol. 13 (Kuwait: Ministry of Awqaf and Islamic Affairs, 1988), 242.

estate and the surviving spouse's financial status.⁶⁰⁶ If no relatives or estate exist, public funds (*Bayt al-Māl*) may cover the costs. Juristically, the Hanafī treat the estate as legally frozen until debts and bequests are discharged, preventing premature inheritance based on Qur'ānic injunctions.⁶⁰⁷ As Dr. Tanzil-Ur-Rahman explains the Qur'ān prioritizes debt clearance and will execution before division of assets, thus safeguarding creditors' rights.⁶⁰⁸ The Shāfi‘ī allow heirs to act as estate managers, not owners, during this process.

Moreover, the Prophet ﷺ advised that leaving one's heirs well-provided is preferable to leaving them destitute, reflecting Islam's forward-looking economic ethics.⁶⁰⁹ The law's recognition of daughters and wives as rightful heirs reflects the inclusive and gender-conscious spirit of Islamic inheritance.⁶¹⁰ Ultimately, inheritance in Islam is not merely a legal transaction it is an act of worship and a means of preserving familial harmony through divinely mandated justice.⁶¹¹

5.1.3 Essential Conditions and Legal Impediments to Inheritance

To ensure the proper application of inheritance principles according to Islamic law, several key conditions must be fulfilled. First and foremost, the distribution of inheritance can only occur after the death of the property owner, ensuring that individuals retain full control over their assets throughout their lifetime.⁶¹² Second, there must be a surviving heir entitled to receive a portion of the deceased's estate, as the existence of such an heir is essential for the distribution process to proceed.⁶¹³ Finally, there must be a legitimate basis for the heir's right to inherit, such as kinship, marriage, or another recognized relationship. This

⁶⁰⁶ Rahman, *A Code of Muslim Personal Law*, art. 135.

⁶⁰⁷ *Al-Qur'ān*, 4:11., Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁶⁰⁸ Rahman, *A Code of Muslim Personal Law*, art. 135.

⁶⁰⁹ Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, 1628.

⁶¹⁰ Haneef, *Contemporary Islamic Economic Thought*, 34.

⁶¹¹ I, *Sharī‘ah: Islamic Law*, 438.

⁶¹² Saira Khatoon, *Islam Ka Qanoon-e-Warasat*, 2nd ed. (Karachi: Printas Publisher, 2007), 23.

⁶¹³ Ibrāhīm Muṣṭafā, *Al-Mu‘jam al-Wasīt*, 1024.

condition ensures that inheritance is distributed exclusively to those with legitimate claims under Islamic law.⁶¹⁴

It is important to distinguish between inheritance and gifts (*Hiba*). While inheritance is subject to specific rules and conditions, gifts can be given at the discretion of the owner during their lifetime.⁶¹⁵ This distinction is crucial in Islamic law, as it differentiates between the mandatory distribution of inheritance and voluntary transfers of wealth. Another important condition is the absence of any legal impediments. The primary condition is that the estate must exist and be free from any encumbrances, such as debts, before it can be distributed among the heirs. Legal impediments to inheritance play a crucial role in Islamic inheritance law. These impediments ensure that the principles of justice and equity are upheld in the distribution of the estate. For instance, an heir who is found guilty of killing the deceased is automatically disqualified from inheriting. This rule serves as a deterrent against potential criminal actions motivated by financial gain and underscores the importance of moral integrity in Islamic law.

The general principle is that every eligible person is entitled to inherit, but certain characteristics can prevent them from doing so.⁶¹⁶ For example, someone who is disqualified from inheriting due to specific reasons cannot prevent other heirs from receiving their shares, and they are treated as if they do not exist in the inheritance process. Impediments to inheritance include slavery and homicide. Slavery, whether absolute or partial, disqualifies a person from inheriting, as slaves cannot hold property independently.⁶¹⁷ Muslim jurists unanimously agree that slavery completely impedes

⁶¹⁴ Muhammad M. 'Abdul-Fattah, *Simplified Islamic Jurisprudence (Based on The Quran and The Sunnah)*, vol. 2 (Egypt: Dar al-Manarah, 2004), 1120–21.

⁶¹⁵ Ibn al-Khuldūn, *Al-Muqaddimah* (Egypt: Dar al-Fiker al-Islami al-Hadith, 2000), 451.

⁶¹⁶ Syed Sabiq, *Fiqh Us Sunnah* (United States: CreateSpace Independent Publishing, 2017), 293.

⁶¹⁷ Neil Benjamin Edmonstone Baillie, *A Digest of Moohummudan Law* (United Kingdom: Smith, Elder & Company, 1887), 697.

inheritance. Similarly, homicide specifically the intentional killing of another person acts as a significant barrier. An individual who unlawfully kills another is barred from inheriting from their victim, as such an act is seen as a serious transgression that disqualifies them from benefitting from the deceased's estate.⁶¹⁸ This principle is based on the ḥadīth that underscores the importance of justice and ethical behaviour in matters of inheritance. “*The murderer will not inherit.*”⁶¹⁹

According to 'Abdullah bin Mas'ūd disqualifying inheritors can partially exclude remaining heirs, such as intentionally killer of father, reduce the share of widow to 1/8. Muslim jurists agree that murderers should not inherit, as it could increase homicide incidents. Sharī'ah prohibits intentional or unjustifiable killing, viewing it as a barrier to inheritance. The four main Sunni schools differ on other forms of killing, but the Ḥanafī jurisprudence states that any killing will prevent inheritance rights, with exceptions such as Justifiable killing according to Sharī'ah, killing in self-defense, killing by a madman or minor and indirect killing. Direct killing by a minor or lunatic is not a bar to inheritance under Ḥanafī Fiqh.⁶²⁰

According to the Imam Shāfi'ī, all forms of killing including the act of a lunatic or a minor are an obstruction to inheritance.⁶²¹ According to the Mālikī Fiqh killing is a bar to inheritance with exceptions such as justifiable killing according to Sharī'ah, unintentional killing, killing in self-defense and retaliation. Minors and lunatic killers are prohibited from inheriting if the killing is intentional.⁶²² The Ḥanbalī Fiqh states that any punishable killing, including monetary punishment, is considered an obstacle to inheritance. Another legal

⁶¹⁸ Muḥammad Amīn ibn 'Umar bin 'Abdul'Azīz Ibn 'Ābidīn, *Radd Al-Mukhtār 'alā al-Durr al-Mukhtār*, vol. 6 (Jeddah: Dār Al-Fikr, 1991), 767.

⁶¹⁹ Ibn Mājah, *Sunan Ibn Mājah*, 2735.,al-Tirmidhī, *Al-Jāmi' al-Tirmidhī*, 2109.

⁶²⁰ Al-Sarkhasī, *Al-Mabsūt*, 5:138.

⁶²¹ *Ibid.*

⁶²² Ibn Qūdāmah Abū Muḥammad 'Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:494.

impediment includes differences in religion, where a non-Muslim cannot inherit from a Muslim relative, this principle ensures that inheritance within Islamic law remains consistent with religious affiliations.

لَا يَرثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمُ

“A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.”⁶²³

Ibn Qudama discusses the eligibility of heirs and the effects of conversion to Islam before the division of the estate, allowing inheritance under certain Hanbalī rulings. He also elaborates on situations where an heir dies before the deceased and how such shares are not automatically passed on unless specified by *waṣiyyah* or covered under ‘asabah (agnatic relatives), with redistribution governed by standard succession rules.⁶²⁴ Noel J. Coulson also appreciate that these impediments reflect the comprehensive nature of Islamic inheritance law, which seeks to address a wide range of potential scenarios to ensure fairness and justice.⁶²⁵

5.1.4 Global Appreciation of the Islamic Inheritance System

Islamic inheritance law represents a distinct legal system that balances the principles of socialism and capitalism. It mandates inheritance distribution among heirs and descendants within the family unit, contrasting with Western inheritance systems that allow bequests to any individual.⁶²⁶ Unlike pre-Islamic Arab customs, which restricted inheritance to those capable of bearing arms, Islamic law ensures that inheritance is distributed equally among all heirs, regardless of age. Notably, Islamic inheritance law grants women the right to

⁶²³ Al-Bukhārī, *Sahih Al-Bukhari*, 6764.

⁶²⁴ Ibn Qūdāmah Abū Muḥammad ‘Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:175–78.

⁶²⁵ Noel J. Coulson, *Succession in the Muslim Family Law* (United Kingdom: Cambridge University Press, 1971), 53.

⁶²⁶ Jum‘ah Muhammad Barrāj, *Aḥkām Al-Mirāth Fi al-Sharī‘ah al-Islāmiyyah* (Jordan: Dār al-Fikr lil-Nashr wa-al-Tawzī‘, 1981), 743.

inherit, a significant departure from historical practices in other legal systems, such as French law, which historically denied women this right.⁶²⁷

The Islamic inheritance system also establishes a differentiation between male and female heirs, with males receiving twice the share of females. This distinction reflects the broader societal roles and responsibilities prescribed within Islamic law, where financial obligations are primarily placed on men. This structure is underpinned by the recognition of different life requirements and responsibilities, where men bear the financial burden of supporting the family.⁶²⁸ Islamic law also emphasizes the sanctity of individual property rights. Upon a person's death, their assets are to be retained within the family, adhering to the principle that wealth should remain with the deceased's kin. The system assigns specific portions to each heir, effectively minimizing the potential for disputes and the resulting erosion of familial harmony. The allocation of a female's share as half of a male's is justified within the legal framework, reflecting the male's legal obligation to provide for the family.

Additionally, the marital bond is deeply intertwined with kinship, symbolizing sanctity and loyalty between spouses. This aspect of the Islamic inheritance system underscores the importance of familial relationships and the ethical obligations that govern them. Muhammad M. Abdul Fattah highlights these elements, noting that Islamic inheritance law's structured and equitable approach has garnered appreciation, even among non-Muslims, for its clear and just principles:

Islam respects right to own property of an individual, as seen by its ruling that the belongings of deceased should be retained by his family after his death. Islam has established a specific portion for each inheritor, preventing any avenue for disagreement

⁶²⁷ Fathī bin Abdur Rahman, *Nizām Al-'Iirth Bayn al-Yahūdiyyah Wal 'Islām* (Karachi: Al Manhal, 2014), 43, 64.

⁶²⁸ Hilary Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed Books, 2006), chapter 5.

that may lead to family conflicts and the erosion of charity. The female share is half of the share of male due to his legal responsibility for the family. The marital relationship is attached to the kinship relationship, symbolizing sanctification and fidelity between spouses.⁶²⁹

Islamic law upholds justice by restricting the scope of wills and establishing a comprehensive system of succession. It prohibits the arbitrary distribution of wealth through wills that could potentially disinherit blood relatives, thereby prioritizing the rights of kin over individual testamentary discretion. The inheritance system is rooted in principles of equity and morality, ensuring a fair distribution of assets among all heirs. Globally, the Islamic law of inheritance is recognized for its precision in determining the rights of beneficiaries and is esteemed by both Muslim and non-Muslim scholars as a model of divine justice and fairness. Notably, Professor Almaric Rumsey, a respected author, has lauded the law for its embodiment of divine justice and truth.

The Islamic law of inheritance is the most sophisticated and comprehensive system of rules for the division of property in the civilized world. Faiz Badruddin Tyabji also describes the attributes of the Islamic law of inheritance,⁶³⁰ noting that it is distinguished for its comprehensiveness and its success in achieving the ambitious goal of selecting a single individual or group of individuals for universal succession while balancing the competing claims of all close relatives.⁶³¹ Tyabji further asserts his confidence in the system, stating, "I firmly believe that no dispute might arise under the Muhammadan law

⁶²⁹ 'Abdul-Fattah, *Simplified Islamic Jurisprudence (Based on The Quran and The Sunnah)*, 2:1120–21.

⁶³⁰ Faiz Badruddin Tyabji, *Muslim Law: The Personal Law of Muslims in India and Pakistan* (India: Tripathi Pvt. Ltd. Bombay, 1968), 800., Faiz Badruddin Tyabji was a senior Indian Civil Service officer, who served as Vice-Chancellor of the Aligarh Muslim University, from 1962 to 1965.

⁶³¹ Rumsey Almaric, *Moohummudan Law of Inheritance* (London: W. H. Allen & Co, 1880), iii.

of succession that could not be promptly and accurately resolved.⁶³² Anderson echoes this sentiment, highlighting that the law of inheritance is the area of Islamic law where its rational and technical superiority is most evident.⁶³³ Similarly, Fitzgerald praises the Islamic law of inheritance, describing it as at the height of perfection."

He emphasizes that it is grounded in the unshakable foundation of divine revelation and is meticulously crafted using the intellectual capacity granted by God to humanity to comprehend such revelation, leaving no doubt about the system's logical power.⁶³⁴

William Hay McNaughten offers high praise for the principles and rules governing the distribution of shares in Islamic inheritance law, particularly emphasizing the alignment of these rules with the natural bonds of affection and kinship.

He notes that the system demonstrates careful consideration of the interests of all those whom nature places at the forefront of our emotional priorities. McNaughten highlights that the principle of favoring closer relatives over those with a more distant connection to the deceased serves as a rational and equitable standard for determining shares of inheritance. He further underscores that the principles of succession and the hierarchy of preference among various categories of heirs are deeply rooted in the fundamental nature of humanity.⁶³⁵

Justice Syed Mahmood⁶³⁶ resonances this sentiment, observing that: The Prophet ﷺ established the law of inheritance on republican principles at a time when the modern

⁶³² Tyabji, *Muslim Law: The Personal Law of Muslims in India and Pakistan*, 801.

⁶³³ James Norman Dalrymple Anderson, *Islamic Law in the Modern World* (United Kingdom: Greenwood Press, 1975), 60.

⁶³⁴ Seymour Vesey-FitzGerald, *Seymour Vesey-FitzGerald, Muhammadan Law: An Abridgement According to Its Various Schools* (Germany: Scientia Verlag, 1979), 120.

⁶³⁵ William Hay McNaughten, *Principles and Precedents of Moohummudan Law* (USA: Harvard University Press, 1860), Xii.

⁶³⁶ Justice Syed Mahmood, born on 24 May 1850, he remains first Muslim jurist and Judge of the High Court in the North-Western Provinces of British India from 1887 to 1893 in British Raj. He significantly contributed to the Indian Law Reports Allahabad Series and actively participated in law formation by writing notes to legislative councils.

democratic principles of equality and property division were unknown, even in the most advanced European nations.⁶³⁷ Western scholar Noel J. Coulson praises the Islamic law of succession for its remarkable juristic sophistication, highlighting the Muslim jurists' take in the mathematical precision with which shares are allocated among heirs an achievement that reflects both the system's practical applicability and theoretical rigor.⁶³⁸

5.2 Historical Context and Reforms Introduced by Islam

Before the advent of Islam, the inheritance system in the Arabian Peninsula was deeply rooted in tribal customs and patriarchal values. Women's legal status was minimal, and they were often treated as property rather than individuals with rights. Fathers had the authority to sell their daughters into marriage, and husbands could terminate marriages at will, further emphasizing the subordinate position of women in society. Women were deprived of property rights and were excluded from the succession process entirely.⁶³⁹

The pre-Islamic inheritance system was primarily based on tribal affiliation and kinship ties, with an emphasis on maintaining the strength and continuity of the tribe. Inheritance was limited to male relatives who could contribute to the tribe's defense and economic stability. The shares of inheritance were unequal, with priority given to the closest male relatives of the deceased, often those who were strongest or most capable of providing military support.⁶⁴⁰ This system reflected the tribal society's focus on survival and strength, where the ability to fight and protect the tribe was paramount.⁶⁴¹

⁶³⁷ Govind Dayal v. Inaytullah, ILR 775 (Allahabad. High Court 1885).

⁶³⁸ Coulson, *Succession in the Muslim Family Law*, 3..

⁶³⁹ Manjur Hossain Patoori, "The Rights of Women in Islam and Some Misconceptions: An Analysis from Bangladesh Perspective," *Beijing Law Review* 10, no. 5 (2019): 1212–14.

⁶⁴⁰ Ismā‘il ibn ‘Umar Ibn Kathīr, *Tafsir Ibn Kathir*.

⁶⁴¹ Kazi Arshadul Hoque, Muhammad Jalal Uddin, and Mohammad Saidul Islam, "Inheritance Rights of Women in Islamic Law: An Assessment," *International Journal of Islamic Thoughts* 422, no. 1 (2025): 49.

Adoption was another practice in pre-Islamic Arabia that influenced inheritance. Adopted sons were treated as biological sons, inheriting property and status from their adoptive fathers. This practice was prevalent until the adoption of Zaid bin Harisa by the Prophet ﷺ which led to the Islamic reform that replaced adoption with the concept of *Kafālah*. The Qur'ān explicitly addressed this issue, stating that adopted sons should not be considered the same as biological sons, thereby abolishing the inheritance rights of adopted children in favor of maintaining the integrity of blood relations as relationship of adopted sons with adoptive parents was denied in a verse.

وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۖ ذَلِكُمْ قُرْبَكُمْ بِأَفْوَاهِكُمْ ۖ وَاللَّهُ يَعْلَمُ الْحَقَّ ۖ وَهُوَ يَهْدِي السَّبِيلَ ۖ اذْعُوْهُمْ
لَا يَأْتُهُمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ⁶⁴²

“Nor has He Made your adopted sons Your sons. Such is (only) Your (manner of) speech by your mouths. But God Tells (you) the Truth, and He Shows the (right) Way. Call them by [the names of] their fathers: that is juster in the sight of Allah.”⁶⁴³

The pre-Islamic inheritance system also included complex practices such as treaties and oaths between tribes, which could influence inheritance rights. These agreements often extended inheritance rights to individuals outside of the immediate family, such as slaves or allies, based on the terms of the oath or treaty. This practice was later addressed by Islamic law, which emphasized the sanctity of blood relations and the equitable distribution of inheritance among family members, but this practice was eventually terminated.

إِنَّ الْمُهَاجِرُونَ حِينَ قَدِمُوا الْمَدِينَةَ يَرِثُ الْأَنْصَارِيُّ الْمُهَاجِرِيُّ دُونَ ذُوِّي رَحْمَةٍ لِلأَخْوَةِ الَّتِي أَخَى
الَّتِي صَلَى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمْ فَلَمَّا نَرَأَتْ {جَعَلْنَا مَوْالِيَ} قَالَ نَسْخَهَا {وَالَّذِينَ عَدَدْتَ أَيْمَانَكُمْ}

“When the emigrants arrived in Medina, the Ansar inherited from the emigrants and vice versa instead of their biological relatives, due to the brotherhood bond established by the Prophet ﷺ between the two groups.

⁶⁴² *Al-Qur'ān*, 33:4-5.

⁶⁴³ Yusuf Ali, *The Holy Quran: English Translation*, 207.

However, this practice changed after the revelation of the verse appointing heirs for everyone, which abrogated the earlier verse concerning those to whom your right hands are pledged.”⁶⁴⁴

The verse, “We have appointed shares and heirs to property left by parents and relatives”⁶⁴⁵ abolished the bond of brotherhood in inheritance between Muhājrīn and Ansar, emphasizing cooperation. However, it became permissible to assign property through testament to the person who had the right of inheriting before. In the pre-Islamic era, inheritance was based on blood relations, with brothers inheriting based on strength, bravery, financial resources, land, and fighting skills. Females were denied inheritance. The Islamic State established its social, cultural, and legal system, disapproving of unfair divides and presenting a new conception of inheritance based on justice, compassion, and intelligence. Successors were identified as relatives and legal heirs.

The arrival of Islam brought significant reforms to the existing inheritance practices in Arabia, introducing a system based on justice, equity, and compassion. The Qur’ān provided a detailed framework for inheritance, ensuring that all legitimate heirs, including women, received their due shares.⁶⁴⁶ This was a revolutionary change in a society where women had previously been excluded from inheritance. One of the key reforms introduced by Islamic law was the recognition of women's right to inherit. The Qur’ān explicitly allocated specific shares of inheritance to women, including daughters, wives, and mothers. This was a significant departure from pre-Islamic customs, where women were denied inheritance rights. Islamic law also introduced the concept of fixed shares (farā'id), ensuring that each heir received a predetermined portion of the estate, thereby eliminating the arbitrary distribution of wealth.

⁶⁴⁴ Al-Bukhārī, *Sahih Al-Bukhari*, 6747.

⁶⁴⁵ *Al-Qur’ān*, 4:33., Yusuf Ali, *The Holy Quran: English Translation*, 37.

⁶⁴⁶ *Al-Qur’ān*, 4:7,11.

Islamic law places a strong emphasis on the right to inheritance as an integral component of social justice. The Qur'ān explicitly describes inheritance shares for both men and women, directly challenging pre-Islamic Arab customs that excluded women from inheriting.⁶⁴⁷ Islam revolutionized societal norms by granting women a defined share of inheritance, promoting equity and financial entitlement. While these Qur'ānic provisions influence modern laws in many Muslim countries, their enforcement remains weak. In Pakistan and elsewhere, patriarchal customs often override Islamic principles, leading to widespread denial of women's inheritance rights.⁶⁴⁸

Islamic law also addressed the issue of adoption, which was prevalent in pre-Islamic Arabia. The Qur'ān made it clear that adopted children should not be considered the same as biological children, and therefore, they were not entitled to inherit from their adoptive parents. Instead, the practice of *Kafālah* (fostering) was introduced, allowing individuals to care for and support children in need without altering the legal lineage or inheritance rights.

Another significant reform was the regulation of testamentary disposition. Under Islamic law, a person's ability to make a will was limited to one-third of their estate, with the remaining two-thirds being distributed according to the fixed shares prescribed by the Qur'ān and sunnah.⁶⁴⁹ This reform was intended to prevent individuals from disinheriting their legal heirs in favour of others, ensuring that the rights of blood relatives were protected. Islamic law also abolished the pre-Islamic practice of inheritance through treaties and oaths, which often extended inheritance rights to non-relatives. Instead, the Qur'ān emphasized the importance of maintaining inheritance within the family, while still

⁶⁴⁷ Abu Abdullah Muhammad bin Abdullh, *Tafsir Al-Qur'ān al-Azīz*, vol. 1 (Cairo: Al-faruq al-Haditha, 2002), 349.

⁶⁴⁸ Iram Rubab and Ahmed Usman, "Women's Right of Inheritance: Choices and Challenges in Punjab," *Journal of Islamic Thought and Civilization* 08, no. 02 (2018): 100–105.

⁶⁴⁹ Muslim ibn al-Hajjāj al-Qushayrī, *Ṣaḥīḥ Muslim*, 1628.

allowing for the possibility of bequeathing a portion of one's estate to close friends or individuals who had previously been entitled to inherit under pre-Islamic customs.

Islamic law introduced the concept of 'asabah (agnates) and dhwyil 'arḥām (cognates), broadening the scope of potential heirs to include paternal and maternal relatives. This ensured a more equitable distribution of wealth, preventing concentration in the hands of a few individuals and promoting social cohesion. These reforms marked a radical departure from pre-Islamic Arabia's customs and practices. They established a comprehensive and equitable system of inheritance, granting all legitimate heirs, including women, their rightful shares. These reforms elevated women's status, promoted social justice, and the fair distribution of wealth. The transformation of inheritance practices under Islamic law reflects the religion's emphasis on justice, compassion, and individual rights, which remain central to Islamic law .

5.3 Inheritance Share of Women in Islamic Law

Inheritance in Islam is firmly anchored in the Qur'ān, the Sunnah, and the interpretive elaborations of the classical jurists (*fuqahā*). The Qur'ān establishes fixed, divinely mandated shares (*farā'id*), designed to secure justice, balance, and stability in the distribution of wealth within families. A frequently cited verse is:

يُوصِّيُكُمُ اللَّهُ فِي أُولَئِكُمْ لِذِكْرٍ مِّثْلٍ حَظِّ الْأُنْثَيَيْنِ⁶⁵⁰

“Allah directs you as regards your children's (inheritance): to the male a portion equal to that of two females.”⁶⁵¹

This verse, however, is often misunderstood as a universal rule implying that men invariably inherit more than women. In reality the Qur'ānic inheritance system is highly nuanced, assigning shares that vary according to kinship positions and surrounding heirs.

⁶⁵⁰ *Al-Qur'ān*, 4:11.

⁶⁵¹ Yusuf Ali, *The Holy Quran: English Translation*, 35.

Women, depending on the situation, may receive equal shares, greater shares, or even exclusive entitlement, while in certain cases their portion is comparatively smaller due to the complementary financial duties placed on men, such as maintenance. Importantly, women are exempt from all economic responsibilities, meaning their inheritance remains entirely in their exclusive ownership. Generally, these rules create a comprehensive framework that ensures fairness and long-term financial security, particularly for women, while harmonizing with the broader structure of familial and societal obligations.

Islamic inheritance law presents a carefully structured system that does not follow a single uniform pattern but rather acknowledges four primary scenarios concerning the shares of women, each reflecting different familial dynamics and financial responsibilities. These scenarios include: (1) cases where a male inherits twice the share of a female, in line with Qur'ānic prescription; (2) cases where male and female heirs inherit equally; (3) cases where a female inherits more than a male; and (4) cases where a female inherits while a corresponding male relative receives nothing.⁶⁵² Together, these variations highlight the flexibility and balance of the Qur'ānic scheme, countering the common misconception that women's inheritance is always lesser.

5.3.1 Equal Shares for Men and Women

In certain cases, women inherit the same share as men. The most notable examples include the uterine siblings, where gender distinction is irrelevant:

1. One uterine sibling (male or female): each receives one-sixth.
2. Two or more siblings: In cases where the deceased's siblings are entitled to inheritance, if there are more than two siblings, they share one-third of the estate equally irrespective of gender.⁶⁵³

⁶⁵² Amir Elshamy, "The Law of Inheritance Regarding Women and Principles Concerning the Genders in Islam," *The Penn State Law Review*, 2021, 1.

⁶⁵³ *Al-Qur'ān*, 4:12.

3. Parents in the presence of children: when a decease leaves behind both parents and children, both the father and mother each receive one-sixth.⁶⁵⁴ though the father may subsequently inherit residue This equality is explicitly affirmed in the Qur'ān:

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلٍّ وَاحِدٍ مِنْهُمَا السُّدُسُ^{٦٥٥} فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءٌ فِي الْأُثْرِ^{٦٥٥}

“If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, one-third of the estate.”⁶⁵⁶

Similarly, the Qur'ān states:

وَلَا يَأْبُو يَهُ لِكُلٍّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ^{٦٥٧}

“Each parent is entitled to one-sixth if you leave offspring.”⁶⁵⁸

This reveals the wisdom of divine legislation in specific contexts, both male and female heirs receive identical entitlement.⁶⁵⁹ This shows that inheritance law is based on fairness, not rigid preference. The Qur'ān clearly gives parents equal entitlement in inheritance, highlighting the value of both the father's and the mother's role in the family.

Heirs	Women's Share	Men's Share	Basis in Islamic Law
Uterine brother & sister	1/6 each if alone	1/6 each if alone	Qur'ān 4:12 No distinction of gender for uterine siblings.

⁶⁵⁴ Dar al-Iftaa al-Missriyyah, “Do Women Take Unequal Shares of Inheritance in Islam?,” supra note 2, accessed May 15, 2024, <https://www.dar-alifta.org/en/article/details/120/do-women-take-unequal-shares-of-inheritance-in-islam>.

⁶⁵⁵ *Al-Qur'ān*, 4:12.

⁶⁵⁶ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁶⁵⁷ *Al-Qur'ān*, 4:11.

⁶⁵⁸ Yusuf Ali, *The Holy Quran: English Translation*, 35.

⁶⁵⁹ Dar al-Iftaa al-Missriyyah, “Do Women Take Unequal Shares of Inheritance in Islam?,” supra note 2.

Two or more uterine siblings	1/3 collectively (shared equally)	1/3 collectively (shared equally)	Qur'ān 4:12- Equal division for male and female uterine siblings.
Parents with descendants	Mother: 1/6 Whole estate	Father: 1/6	Qur'ān 4:11- both parents get equal fixed shares when children are present.
Sole heir (son or daughter, father or mother)		Whole estate	<i>Radd</i> (return of residue) applies in absence of other heirs.
Husband + full sister ⁶⁶⁰	½ if alone Sister takes remainder as residuary after husband's ½	½	Qur'ān 4:12 and 4:176; husband gets ½, sister takes residue (not always equal).
Dhawul-Arhām ⁶⁶¹	Equal to counterparts	Equal to counterparts ⁶⁶²	Qur'ān 33:6 and juristic consensus; applied in the absence of sharers/Residuaries
Husband + full brother/sister (no descendants/parents)	Sister(s) inherit remainder with brother(s) as 'aşabah (2:1 ratio if both present)	Brother(s) inherit remainder with sister(s) as 'aşabah	Husband gets ½, if wife dies childless. siblings take residue per Qur'ān 4:176.

Table 1. Equal Shares of Inheritance for Men and Women in Islamic Law

5.3.2 Greater Shares for Women

Contrary to the widespread misconception that men always receive a greater share in Islamic inheritance, the Qur'ānic system provides several situations where women inherit

⁶⁶⁰ Husband gets ½, full sister takes remainder as residuary

⁶⁶¹ "Blood relatives are more entitled 'to inheritance' than 'other' believers and immigrants" see also Sahih al-Bukhari 673.

⁶⁶² Hadith: Give the prescribed shares to those who are entitled to them, and what remains is for the nearest male relative." This directly establishes the rule of 'aşabah, but indirectly, when no 'aşabah exists, jurists extended this logic to *dhawū al-arhām*, based on the principle of closeness in kinship.

more than men. This occurs, for instance, when daughters, sisters, or granddaughters inherit in the absence of direct male descendants. The most notable examples include:

1. A single daughter, in the absence of a son and father, receives one-half; two or more daughters share two-thirds collectively. This principle, extended by juristic consensus (*ijmā*), also applies to granddaughters.
2. A full sister, in the absence of a brother, father, or son, inherits one-half; two or more full sisters together receive two-thirds.
3. Granddaughters and sisters can also exclude male collaterals, such as uncles, from inheritance. The Qur'ān makes this explicit:

يَسْتَفْتُوكُمْ قُلْ أَلَّهُ يُفْتِنُكُمْ فِي الْكَلَّةِ إِنْ أَمْرُوا هَلَّكَ لَيْسَ لَهُ وَلَدٌ وَلَمْ يَأْخُذْ فَلَهَا نِصْفٌ مَا تَرَكَ وَهُوَ يَرُثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اُنْثَيْنِ فَلَهُمَا الْثُلُثَانِ مَمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رَجَالًا وَنِسَاءً فَلِلَّذِكْرِ مِثْلُ حَظِّ الْأُنْثَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَحْصِلُوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ⁶⁶³

“They ask you ‘for a ruling, O Prophet’. Say, ‘Allah gives you a ruling regarding those who die without children or parents.’” If a man dies childless and leaves behind a sister, she will inherit one-half of his estate, whereas her brother will inherit all of her estate if she dies childless. If this person leaves behind two sisters, they together will inherit two-thirds of the estate. But if the deceased leaves male and female siblings, a male’s share will be equal to that of two females. Allah makes ‘this’ clear to you so you do not go astray. And Allah has ‘perfect’ knowledge of all things.”

An illustrative example of divine wisdom appears when a man leaves behind a daughter and a full sister. The daughter receives her fixed one-half, and the full sister takes the remainder as a residuary heir under the principle of *ta'sib ma 'al-ghayr*. In such cases, both heirs are female, and they collectively inherit the entire estate, while more distant male

⁶⁶³ *Al-Qur'ān*, 176.

relatives, such as uncles, are excluded. This underscores the Qur'ānic design of prioritizing financial protection of women over males.

Heirs	Women's Share	Men's Share	Basis in Islamic Law
Husband + 1 daughter	Daughters: 1/2	Husband: 1/4	Qur'ān 4:11–12
Husband + 2 daughters	Daughters: $\frac{2}{3}$ collectively	Husband: 1/4	Qur'ān 4:11
One daughter	1/2	—	Qur'ān 4:11
Two or more daughters (no son, no father)	2/3 collectively	Excludes paternal uncles/cousins and	Qur'ān 4:11
One full sister (without ascendant and descendant)	$\frac{1}{2}$	Brother excluded in this case	Qur'ān 4:176
Two or more full sisters (without ascendant and descendant)	2/3 Collectively	Brothers excluded	Qur'ān 4:176
Daughter + full sister as residuary (no father/son)	Daughter: $\frac{1}{2}$; Sister: remainder as residuary	—	Principle of <i>ta'sīb ma' al-ghayr</i> .
Grand daughter (no son)	$\frac{1}{2}$ (one); $\frac{2}{3}$ (two+)	—	Qur'ān 4:11 by analogy; <i>ijmā'</i> extends shares of daughters to granddaughters.
Daughters + maternal uncles	Daughters inherit	Maternal uncles excluded	Principle of <i>hajb</i> (exclusion of Residuaries by sharers).
Full sister's vs full brothers	Sisters may receive more when sharers	Brothers as Residuaries may receive less	Juristic principle: sisters as sharers can outrank brothers as Residuaries.

Paternal sister's vs paternal brothers	Sisters may inherit more	Brothers get less	Same principle as above.
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Table 2. Greater Shares of Inheritance for Women in Islamic Law

5.3.3 Lesser Shares for Women

In certain cases, women receive a smaller share of inheritance than men in the same category. This does not mean women are considered less valuable; rather, it is based on the principle of complementary responsibilities within the family. Under Islamic law, men carry the obligation of financial maintenance for their wives, children, and dependents, whereas a woman's share remains entirely hers, free from such liabilities. Examples include:

1. Sons and daughters together: The most well-known scenario under Islamic inheritance law is where a male inherits twice the share of a female. This principle, rooted in the Qur'ān, is often cited as a basis for criticism; however, it is essential to understand the socio-economic context within which this rule operates. The Qur'ān states:

يُوصِّيُكُمُ اللَّهُ فِي أُولَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ⁶⁶⁴

“Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females.”⁶⁶⁵

This 2/1 ratio is grounded in the broader framework of Islamic law, where financial responsibilities, including the maintenance of the family, are primarily placed upon men. Women, under Islamic law, are not obligated to contribute financially to the household, thus their inheritance serves as personal wealth. Considering these responsibilities, the apparent disparity in inheritance shares is balanced by the broader financial obligations

⁶⁶⁴ Ibid., 4:11.

⁶⁶⁵ Yusuf Ali, *The Holy Quran: English Translation*, 35.

men bear, such as providing for the family, paying dowries (dower), and covering other expenses.

2. Spouses: a husband inherits 1/2 if childless (or 1/4 with children), while a wife receives 1/4 if childless (or 1/8 with children) based on Qur'anic injunctions:

وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدًا-فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبْعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُؤْصِلُنَّ إِلَيْهَا أَوْ دَيْنٍ-وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدًا-فَإِنْ كَانَ لَكُمْ وَلَدٌ فَأَلْهَنُنَّ الثُّمُنَ مِمَّا تَرَكْتُمْ⁶⁶⁶

“You will inherit half of what your wives leave if they are childless. But if they have children, then ‘your share is’ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate.”

3. Parents with children both inherit one-sixth, though the father may also receive the residue.

4. Brothers and sisters Residuaries (‘asabah) a brother take twice the share of a sister according to Qur'anic Injunction:

وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدًا-فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبْعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُؤْصِلُنَّ إِلَيْهَا أَوْ دَيْنٍ-وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدًا-فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنَ مِمَّا تَرَكْتُمْ⁶⁶⁷

“You will inherit half of what your wives leave if they are childless. But if they have children, then ‘your share is’ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate.”

Differences in shares emphasize responsibility, not privilege. Men's larger shares are balanced by their enduring duty to support the family, while women's shares, even if

⁶⁶⁶ *Al-Qur'an*, 4:12.

⁶⁶⁷ *Ibid.*

smaller, is exclusively their own entire property, safeguarded by divine decree. These cases reflect the integration of financial responsibilities with inheritance rights in Islamic law.

Heirs	Women's Share	Men's Share	Basis in Islamic Law
son + one daughter	Daughter: 1/3	Son: 2/3	Qur'ān 4:11 – “male gets share of two females.”
Husband vs wife (no descendants)	Wife: $\frac{1}{4}$	Husband: $\frac{1}{2}$	Qur'ān 4:12
Husband vs wife (with descendants)	Wife: 1/8	Husband: $\frac{1}{4}$	Qur'ān 4:12
Parents with descendants	Mother: 1/6	Father: $\frac{1}{6}$ + residue	Qur'ān 4:11 – father takes both fixed and residuary portions.
Parents without descendants	Mother: $\frac{1}{3}$	Father: $\frac{2}{3}$ (includes residue) ⁶⁶⁸	4:11
Full brother + full sister	Sister: $\frac{1}{2}$ of brother's share	Brother: double sister's	Qur'ān 4:176 – 2:1 ratio among siblings as 'asabah.
Paternal brother + sister	Sister: $\frac{1}{2}$ of brother's share	Brother: double sister's	Qur'ān 4:176 and ijmā' on agnatic siblings.

Table 3. Lesser Shares of Inheritance for Men and Women in Islamic Law

5.3.4 Exclusive Shares for Women

Islamic law also grants women exclusive shares, where they inherit independently without male counterparts.

1. A daughter alone: 1/2 of the estate.
2. Two or more daughters: 2/3 collectively.
3. Son's daughters (in the absence of sons): 1/3 or 2/3 depending on number.

⁶⁶⁸ The father's larger share (2/3) is derived by residuary principle ('asabah).

4. A mother: 1/3 when there are no children or multiple siblings.
5. A wife: 1/4 if childless, 1/8 if there are children.
6. Full sisters: 1/3 if single, 2/3 collectively if more than one, in the absence of male ascendants or descendants.

In such cases, women may exclude distant male agnates, ensuring that their entitlement is both protected and prioritized.⁶⁶⁹ These cases reflect the Islamic legal principle of prioritizing certain familial ties over others based on both the degree of kinship and the societal roles played by the heirs.⁶⁷⁰

To illustrate these principles in practice, the following data categorizes inheritance scenarios according to whether women inherit equal, lesser, greater, or exclusive shares compared to men. This evidence demonstrates that the ‘half-share’ claim represents only a small fraction of the overall Qur’ānic inheritance framework id elaborated in tables below.

Heirs	Women’s Share	Men’s Share	Basis in Islamic Law
Daughter+ Grand daughter + Grand son	Daughter: $\frac{1}{2}$; Granddaughter : $\frac{1}{6}$	Grandson excluded	Qur’ān 4:11; juristic analogy on exclusion.
One daughter (no son)	1/2	—	Qur’ān 4:11
Two or more daughters (no son)	2/3 collectively	Excludes Uncles	Qur’ān 4:11
Full sister alone (no father/son)	$\frac{1}{2}$	—	Qur’ān 4:176
Paternal sister vs paternal brother (no father/son)	1/2	—	Qur’ān 4:176
Daughter + full sister (residuary)	Daughter: $\frac{1}{2}$; Sister:	—	<i>Ta’sīb ma’ alghayr</i>

⁶⁶⁹ Ibid., 176.

⁶⁷⁰ Dar al-Iftaa al-Missriyyah, “Do Women Take Unequal Shares of Inheritance in Islam?,” supra note 2.

	remainder as residuary		
Son's daughter (no son)	1/2 or 2/3 if 2+	—	Juristic consensus extending Qur'ān 4:11 to granddaughters.
Mother (no parents, no descendants, no siblings)	½; may take full estate by <i>radd</i>	—	Qur'ān 4:11
Wife as sole heir	1/4 childless 1/8 with Child	Remainder to her due Radd,	Qur'ān 4:12; juristic consensus.
Grandmother (no mother)	1/6 ⁶⁷¹	grandfather may take as residuary, not fixed	.Abū Dāwūd, 2895
Maternal Grandmother v Grandfather	1/6	Maternal grandfather excluded	Qur'ān 4:11 (extension to grandmothers).

Table 4. Exclusive Shares of Inheritance for Women in Islamic Law

The above tables are included in Chapter 4 to illustrate the diversity of inheritance allocations in Islamic law and to dispel the common misconception that women always receive half the share of men. As the tables demonstrate, Islamic inheritance principles are context-specific and rooted in Qur'ānic injunctions, Prophetic traditions, and juristic consensus. In several cases, women inherit equal or even greater shares than men, and in certain circumstances they receive exclusive entitlements. While in some situations men receive larger portions, the distribution reflects a broader system of financial responsibilities and reciprocal rights within the family. These tables therefore clarify that

⁶⁷¹ The Prophet (ﷺ) appointed a sixth to a grandmother if no mother is left to inherit before her

the Qur'ānic scheme of inheritance is not a rigid gender hierarchy, but a balanced framework aimed at ensuring fairness, equity, and social justice.

5.3.5 Analysis of Inheritance Rights for Women in Islamic Law

The above stated distribution makes clear that the Qur'ānic system is not built on gender discrimination but on a just balance of kinship, generational needs, and financial responsibilities. Women are not consistently disadvantaged; rather, they sometimes inherit equally, at times more than men, and in certain cases exclusively. The often-highlighted misconception about the formula of ‘women receive half of men’s share’ is based on a partial understanding and overlooking the diversity and equity embedded within Islamic inheritance law.

In Islamic inheritance, women occupy a distinctive position by being entitled to shares from multiple kinship lines as a wife from her husband, as a daughter from her father, and as a mother from her son. Taken collectively, these entitlements frequently result in women receiving a greater aggregate share of wealth than male heirs, even if in certain isolated instances their fractional portion is smaller. The Qur'ānic scheme further underscores that while men are legally obliged to undertake the financial maintenance of their families, women are entirely exempt from such economic responsibilities. Whatever a woman inherits remains her exclusive property, beyond the reach of any duty to support others. This arrangement combines fairness with protection, ensuring that women’s wealth is both secure and independent, reflecting the Qur'ānic concern for their long-term economic stability.

Such a classification demonstrates that the Qur'ānic inheritance system cannot be reduced to the simplistic maxim that “men receive double the share of women.” The reality is far more nuanced in some situations, women inherit equally, in others more, occasionally less, and in many cases exclusively. The underlying wisdom lies in the Qur'ānic balance

of rights with responsibilities men's larger shares are directly linked to their legal obligation of family support, whereas women's shares remain free from liability and fully within their exclusive control. This reflects the Quran's affirmation of divine justice "*These are settled shares ordained by Allah.*" Islamic inheritance law elevates their financial empowerment and affirms their independent economic rights within the family structure. This system reflects a balance of fairness and care, ensuring women's dignity and financial support.

5.3.6 Contextual Analysis and Clarification of Misconceptions

The Islamic inheritance system is designed to be fair and practical within the broader social framework of Islam. In some cases, men receive twice the share of women, but this must be understood in light of the financial responsibilities placed on men. Unlike men, women are not required to provide for the family or spend their wealth on others. Instead, Islamic law ensures financial protection of women by granting them a share of inheritance without attaching financial obligations. This way, women retain independence and protection while continuing their roles within the family.

Critics often focus on the apparent inequality in share distribution without considering the full spectrum of Islamic legal and social obligations. When viewed in isolation, the 2/1 inheritance ratio may seem inequitable however, within the Islamic legal framework this ratio complements the economic responsibilities assigned to men.⁶⁷² Thus, the Islamic inheritance system must be understood as a part of a collective legal and social structure designed to balance rights with responsibilities, ensuring that everyone's needs are met within the family and societal context.

Islamic inheritance law is a balanced system that considers the needs and rights of all heirs, including women. In some cases, women inherit less, while in others they inherit

⁶⁷² *Al-Qur'an*, 4:34.

equal, greater, or even exclusive shares. This variation shows that inheritance in Islam is not about fixed gender equality but about ensuring fairness within broader family and social responsibilities. Rooted in justice and compassion, the system reflects the Qur'ānic vision of protecting both individual rights and collective welfare.

In Pakistan, the practice of *hibah* (gifting property during one's lifetime) is often misused to transfer assets mainly to male heirs, depriving women of their Qur'ānic share of inheritance. While Islamic law permits *hibah* as a voluntary gift, its use to sideline daughters reflects cultural biases that privilege sons. Courts in Pakistan have sometimes declared such transfers invalid when proven to be made under pressure or with the intention of denying female heirs their rights such as In Aksar Jan v. Shamim Akhtar, Chief Justice Qazi Faez Isa condemned fraudulent gifts and fabricated Razi Namas used to deprive widows of inheritance, declaring that:

“The practice of depriving females of their inheritance must be put a stop to, and those who do so must be made to pay substantial costs and not be permitted to benefit from procedural technicalities.”⁶⁷³

The Court restored the widow's share after decades of litigation and imposed exemplary costs, reflecting a firm stance against such practices. Yet, women still face a heavy burden of proof when challenging fraudulent gifts, which restricts effective enforcement. In the absence of stronger statutory safeguards and administrative oversight, customary norms and legal loopholes continue to undermine Qur'ānic principles of justice, leaving judicial protection of women's inheritance rights inconsistent and uncertain.

⁶⁷³ Aksar Jan v. Shamim Akhtar, SCMR.

5.4 Statutory Framework on Inheritance in Pakistan

The legal framework for inheritance in Pakistan is primarily governed by Islamic law, as codified in the country's statutory laws and further interpreted by the judiciary.

5.4.1 Constitutional Framework for Inheritance Right of Women

In Pakistan the Constitution of Pakistan established in 1973 provides comprehensive protection and equality of rights for women. It grants equal rights to every citizen regardless of gender, caste, creed, or ethnicity, including life, liberty, security and fundamental freedoms. Article 23 grants equal rights to acquire, hold, own and dispose of property, whether self-made or inherited.⁶⁷⁴ Article 24 prohibits forceful deprivation of property.⁶⁷⁵

The constitution enshrines all protections for women, safeguarding their rights based on equality and justice. This includes numerous legal protections to enhance their status and to eradicate discriminatory actions against them. the Constitution of Pakistan guarantees equality before the law and equal protection of the law under Article 25, which states that there shall be no discrimination based on sex alone.⁶⁷⁶ This provision ensures that women have equal rights to inheritance, reflecting the principles of Islamic law. The legal safeguards provided by different laws including criminal, family and civil laws are among these legal protections. However, the position granted to women by the Constitution sharply contrasts with the ground realities and implementations. The following key elements form the backbone of inheritance laws in Pakistan:

The Constitution of Pakistan recognizes Islamic law as the foundation for personal laws, including inheritance. It declares that all laws shall be brought into conformity with the Qur'ān and Sunnah.⁶⁷⁷ The Islamic law of inheritance is primarily derived from the

⁶⁷⁴ Constitution of Pakistan, 1973, art. 23.

⁶⁷⁵ Ibid., art. 24.

⁶⁷⁶ Ibid., art. 25.

⁶⁷⁷ Ibid., 227.

Qur'ān and Sunnah, ensuring that the distribution of a deceased person's estate adheres to Islamic principles. The Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court play pivotal roles in interpreting these laws to align with Islamic teachings. Islamic law, as practiced in Pakistan, stipulates specific shares for male and female heirs. Generally, male heirs receive a larger portion of the estate than female heirs. For instance, a daughter typically receives half the share of a son. However, the law ensures that all legal heirs, regardless of gender, receive a defined share.

5.4.2 Muslim Family Laws Ordinance, 1961 and Succession Act, 1925

Muslim Family Laws Ordinance, 1961 provide the procedures for the distribution of a deceased's estate among the heirs, incorporating both Shia and Sunni jurisprudence based on the sect of the deceased.⁶⁷⁸

The Succession Act, 1925 provides guidelines for the administration and distribution of estates for non-Muslim citizens of Pakistan. It also outlines the probate process and the role of the court in overseeing the distribution of assets according to the deceased's will. The Family Courts Act, 1964: Establishes family courts to resolve inheritance disputes.

Pakistani courts, including the Supreme Court, have interpreted and clarified various aspects of inheritance law, particularly in cases involving disputes over wills, shares, and the rights of wife . The judiciary has also played a role in addressing issues such as the rights of stepchildren, adopted children, and other non-traditional family members.

5.4.3 Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011

The Prevention of Anti-Women Practices Act, also known as the Criminal Law Amendment Act 2011, was a landmark piece of legislation in Pakistan that resulted from

⁶⁷⁸ The Muslim Family Laws Ordinance 1961.

efforts by women parliamentarians and civil society organizations. This act criminalized the forced deprivation of women from their inherited shares, prohibited discriminatory customary practices and marked a significant advancement in addressing gender inequality. It imposes a penalty on giving female in marriage as badl –e- Sulh, Wanni, Sawara, marriage with the Qur’ān and forced marriage. To bring the penalties into force immediately, the Criminal Law Amendment Act, 2011 created a new chapter to the Pakistan Penal Code and revised the PPC and Cr PC. The following provisions were modified in this regard:

1. Section 310-A of PPC 1860 states punishments:

Punishment for giving a female in marriage or otherwise in badl-e-sulh, Wanni or Sawara.- Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badl-e-sulh, Wanni, or sawara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability shall be punished with imprisonment of description for a term which may be no less than three years and shall also be liable to fine of 500,000 Rupees.⁶⁷⁹
2. 498-A prohibit depriving woman from inheritance and imposes punishment stating:

Whoever by deceitfully or by illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for a term which may not be less than seven years and a fine in amount of 1,000,000 Rupees.⁶⁸⁰
3. 498-B. Prohibits Forced Marriages in the following word:

Whoever coerces or in any manner whatsoever compels a woman to enter marriage shall be punished with imprisonment of description for a term, which may not be less than three years and shall also be liable to fine of 500,000 Rupees.⁶⁸¹
4. 498-C Prohibit the marriage with the Holy Qur’ān in following provision:

⁶⁷⁹ Pakistan Penal Code 1860, secs. 310-A.

⁶⁸⁰ Ibid., secs. 498-A.

⁶⁸¹ Ibid., 498-B.

Whoever compels or arranges or facilitates the marriage of a woman with the Holy Qur'ān shall be punished with imprisonment of description which may not be less than three years and shall also be liable to fine of 500,000 Rupees. (2) Notwithstanding anything contained in sub-section (1), oath by a woman on Holy Qur'ān to remain un-married for the rest of her life or, not to claim her share of inheritance shall be deemed marriage with the Holy Qur'ān.⁶⁸²

Under the current system, it is a criminal offence not to transfer the rightful share of inheritance to women. However, sanctions are rarely, if at all, implemented. This legislation must be supported by the necessary implementation infrastructures. The Pakistan Penal Code (1860) and the Criminal Procedure Code (1898) need to be updated to reflect the demands of contemporary society. In Pakistan, Sharī'ah law serves as the foundational framework for inheritance legislation. A key element of Sharī'ah, Ijtihād, should be actively employed to address modern challenges. While other countries have utilized Ijtihād to enhance the fairness of inheritance distribution, Pakistan should similarly embrace this approach.

5.4.4 International Obligations of Pakistan

Pakistan has ratified several international treaties and covenants as a member of the international community. Pakistan is obliged to make sure that its national and provincial legislation abides by the international agreements and its commitment. Pakistan has international obligations to protect and promote women's inheritance rights, stemming from various human rights treaties and conventions, equal property rights of wife to access land are specifically emphasized in all international agreements, covenants and declarations including Convention on the Elimination of All Forms of Discrimination Against Women

⁶⁸² Ibid., 498–C.

(CEDAW): Pakistan ratified CEDAW in 1996, committing to eliminate gender-based discrimination, including in inheritance matters.

Article 15(1) of CEDAW “grants women equal rights to conclude contracts and to administer property and treat them equally in all stages of procedure in courts and tribunals.”⁶⁸³ Article 16(h) of CEDAW “grants same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for valuable consideration.”⁶⁸⁴ Article 16 of the Universal Declaration of Human Rights “ensures equal rights for men and women in marriage, family, and inheritance.”⁶⁸⁵ it grants property rights to every person irrespective of creed, as stated in Article 17

“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”⁶⁸⁶

Article 3, 14 and 23 of International Covenant on Civil and Political Rights (ICCPR) guarantees equal right and protection under the law including in inheritance.⁶⁸⁷ Article 2(1), 24(1), 26 grants Property rights were in both covenants without any discrimination.⁶⁸⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to an adequate standard of living⁶⁸⁹ including access to inheritance. ICESCR, Article 2(2) deal with and ensures the nondiscriminatory right to ownership of property.⁶⁹⁰

⁶⁸³ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, art. 15(1).

⁶⁸⁴ Ibid., art. 16(h).

⁶⁸⁵ United Nations General Assembly, *UDHR*, art. 16.

⁶⁸⁶ Ibid., art. 17.

⁶⁸⁷ United Nations General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, Treaty Series, 999, 171, December 16, 1966, arts. 3, 14 ,23.

⁶⁸⁸ United Nations, “International Convention on the Elimination of All Forms of Racial Discrimination” (UN General Assembly, December 21, 1965), art. Article 2(1), 24(1), 26.

⁶⁸⁹ General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights (ICESCR)* (New York: United Nations, December 16, 1966), art. 3,7.

⁶⁹⁰ Ibid., art. 2(2).

To fulfill these international obligations, Pakistan has enacted laws and taken steps to protect women's inheritance right. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is often referred to as the Universal Declaration of Rights of women. CEDAW is a strong proponent of gender equality in all spheres of life and is particularly concerned with advancing economic status of women by granting them equal access to credit, property and other resources. Article 5 and 15 (2)⁶⁹¹ of CEDAW and article 2(1) the Convention on the Rights of the Child all these articles of conventions emphasize the importance of non-discriminatory property rights for women and individuals.⁶⁹² Maternal health specifically addressed in MDGs 5.⁶⁹³

SDGs 5 are related to gender equality and economic empowerment of women respectively.⁶⁹⁴ These publications offer comprehensive rules for defending rights of wife, as was previously addressed. All the covenants and conventions listed above are ratified by Pakistan. As a result, Pakistan must improve the position of women by protecting their economic rights and ending the discriminatory behaviors that are still pervasive there. Even though these treaties have been ratified, and land rights have been modified accordingly, the current situation in Pakistan is terrible.

In Pakistan *Shari‘ah* law primarily deals with matters related to inheritance. numerous laws have been amended to effectively implement these laws and distribute land of inheritance, such as the land revenue and Registration Act. A detailed appraisal of inheritance-related laws is provided.

⁶⁹¹ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, art. 15(2).

⁶⁹² United Nations General Assembly, *Convention on the Rights of the Child*, Convention, General Assembly Resolution 44/25, (November 20, 1989), art. 2(1).

⁶⁹³ United Nations, “Goal 5: Improve Maternal Health” (Sustainable Development Goals), accessed August 17, 2024, https://www.un.org/millenniumgoals/pdf/Goal_5_fs.pdf.

⁶⁹⁴ Ibid.

5.5 Judicial Interpretation and Case Law Analysis

The right of inheritance for women particularly wives is a core component of Islamic law, grounded in the unequivocal directives of the Qur’ān and further reinforced by the Sunnah of the Prophet (ﷺ). Islam revolutionized pre-Islamic Arabian customs by granting women fixed and identifiable shares in the estate of a deceased relative, including as wives, mothers, daughters, and sisters. These entitlements are not discretionary but divinely mandated, forming a non-negotiable aspect of Islamic distributive justice. Surah al-Nisā’ establishes the specific shares for female heirs, making it clear that no cultural or personal preference may override these injunctions.⁶⁹⁵

In Pakistan, women’s inheritance rights, though clear in Islamic law, are often undermined by patriarchal norms, customary practices, and weak legal enforcement.⁶⁹⁶ Widows and daughters are particularly vulnerable, as property is frequently diverted through coerced waivers, fabricated gift deeds, or oral transfers.⁶⁹⁷ Procedural obstacles such as delays in succession certificates, costly litigation, and collusion among local officials further discourage women from pursuing their rightful shares,³ leaving many trapped in protracted struggles or silent deprivation.

5.5.1 Superior Courts on Women’s Inheritance Rights

The Pakistan’s judiciary has played an increasingly important role in safeguarding women’s inheritance rights. Since the 1950s, judicial practice has shifted from a rigid reliance on cultural norms to a more rights-based approach, one that draws on both Islamic principles and constitutional protections to ensure women’s entitlements are recognized and enforced. Early decisions such as *Ghulam Ali v. Ghulam Sarwar Naqvi* and *Amtul*

⁶⁹⁵ *Al-Qur’ān*, 4:7,11.

⁶⁹⁶ Rubya Mehdi, *The Islamization of the Law in Pakistan*, 189.

⁶⁹⁷ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

Habib v. Mussarrat Parveen laid down the foundation by affirming the supremacy of Qur'ānic mandates over local customs and invalidating instruments that attempted to circumvent them.

In recent years, Pakistani courts have taken a stronger stance on women's inheritance rights, addressing issues like fraudulent mutations, misuse of oral gifts, and coerced waivers. The Federal Shariat Court and Supreme Court, under progressive leadership such as Justice Qazi Faez Isa, have moved beyond recognition to active enforcement, even imposing penalties. These judgments affirm that denying women their inheritance is not only illegal but also contrary to Islamic principles.

This chapter reviews key judicial decisions on wives' inheritance rights in Pakistan, tracing both progress and persistent challenges. It highlights how courts have affirmed women's Qur'ānic entitlements, struck down discriminatory customs, and begun penalizing denial of inheritance. However procedural hurdles and weak enforcement remain. While judicial activism has advanced women's rights, the absence of parallel legislative and administrative reforms means courts alone cannot dismantle the structural barriers that sustain gender-based financial exclusion.

In the early decades following Pakistan's independence, courts began laying the groundwork for women's inheritance rights by recognizing Islamic law's supremacy over customary practices. In *Ghulam Fatima v. Muhammad Ishaq*⁶⁹⁸ Lahore High Court invalidated oral denials of inheritance and clarified that women's shares under Islamic law cannot be bypassed through informal or undocumented claims by male relatives. These early rulings demonstrated partial adherence to Islamic law but lacked clarity on enforcement mechanisms. Courts emphasized doctrinal correctness but rarely penalized

⁶⁹⁸ *Ghulam Fatima v. Muhammad Ishaq*, PLD 45 (Lahore-High-Court 1962).

violators or provided timely relief. The decisions were limited to recognizing formal rights without establishing systemic remedies.

In *Khurshid Bibi v. Baboo Muhammad Amin*, the Supreme Court emphasized a Muslim woman's autonomy and right to seek dissolution of marriage, indirectly reinforcing that her broader financial and legal rights including inheritance are protected under Sharī'ah principles.⁶⁹⁹ Similarly, in *Amtul Habib v. Mussarrat Parveen*, the Court declared that nominations in financial instruments, such as bank deposits or provident funds, do not override Islamic inheritance rules, affirming that such assets are held in trust for the rightful legal heirs, including wives.⁷⁰⁰ A landmark ruling in *Ghulam Ali v. Ghulam Sarwar Naqvi* rejected a male heir's claim of adverse possession over ancestral property and upheld a sister's rightful share.⁷⁰¹ The Supreme Court asserted that customary practices, however longstanding, cannot displace explicit Qur'ānic mandates. This judicial stance marked a significant affirmation that inheritance laws grounded in Islamic principles must prevail over patriarchal customs.

This doctrinal position was reaffirmed in more recent rulings. In *Sakina Bibi v. Province of Punjab*, the Supreme Court held that any attempt to disinherit women under unconstitutional and against Islamic law.⁷⁰² Most notably, in *Syeda Fouzia Jalaal Shah v. Federation of Pakistan* the justice Dr. Syed Muhammad Anwer of Federal Shariat Court unequivocally declared that practices like chaddar and parchi, which are used to symbolically waive women's rights, are un-Islamic and legally void.⁷⁰³ These judgments

⁶⁹⁹ *Khurshid Bibi v. Muhammad Amin*, PLD.

⁷⁰⁰ *Amtul Habib v. Mussarrat Parveen*, SCMR.

⁷⁰¹ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

⁷⁰² *Sakina Bibi v. Province of Punjab*, SCMR 1621 (Supreme Court 2020).

⁷⁰³ *Syeda Fouzia Jalaal Shah V. Federation of Pakistan* (Federal Shariat Court 2025).

underscore the judiciary's consistent and evolving effort to align domestic legal practice with Islamic directives affirming women's right to inheritance.

Despite progressive rulings affirming women's inheritance rights, courts have repeatedly encountered procedural obstacles that hinder actual enforcement. These include fraudulent gift deeds, concealment of mutations, and manipulation of limitation laws. The Supreme Court in *Sakina Bibi v. Fazal Karim*⁷⁰⁴ acknowledged that women often lose their inheritance due to procedural lapses, such as delayed claims and lack of documentation. The court emphasized the need for timely litigation and established that procedural rules should not override substantive Islamic rights.

The decision in *Noor Bibi v. Member Board of Revenue* exposed the failure of revenue authorities to protect women's inheritance rights. The court rebuked government officials for colluding with male heirs to transfer property without informing the widow. It ordered restoration of the widow's share and called for reforms in land revenue practices.⁷⁰⁵ These cases marked the beginning of a shift in judicial approach, acknowledging institutional barriers that hinder women's access to inheritance. However, courts continued to rely on victims initiating lengthy litigation without proactively penalizing wrongdoers or streamlining procedural protections.

In *Zarina Bibi v. Muhammad Yaqoob*, the Supreme Court invalidated a suspicious gift deed and reiterated that procedural mechanisms should not be exploited to deprive women of their rightful inheritance.⁷⁰⁶ Similarly, in *Sakina Bibi v. Amina Bibi*, the Lahore High Court emphasized the vulnerability of elderly widows to coercion and manipulation, placing a higher burden of proof on male heirs attempting to contest a widow's claim.⁷⁰⁷ In

⁷⁰⁴ *Sakina Bibi v. Fazal Karim* (1983 SCMR 534), SCMR 534 (Supreme Court 1983).

⁷⁰⁵ *Noor Bibi v. Member Board of Revenue*, SCMR 1113 (Supreme Court 1991).

⁷⁰⁶ *Zarina Bibi v. Muhammad Yaqoob*, SCMR 211 (Supreme Court 2009).

⁷⁰⁷ *Sakina Bibi v. Mst. Amina Bibi*, YLR 2247 (Lahore High Court 2018).

a notable recent development, the Supreme Court in *Murad Khan v. Humaira Qayyum* held that the law of limitation cannot be used as a shield against women's inheritance rights where those rights were actively concealed⁷⁰⁸ The Court reasoned that fraudulent mutations and deliberate obfuscation of legal entitlements cannot override the substantive Shari'ah guarantees provided to female heirs. This trend reflects a growing judicial awareness of how legal procedures, though facially neutral, are often weaponized against women particularly wives and widows. The Islamabad High Court in *Tayyaba Khanum v. Federation of Pakistan* further solidified this approach by holding that divine inheritance rights cannot be forfeited due to procedural technicalities.⁷⁰⁹ These rulings indicate a doctrinal shift from a rigid proceduralist approach to one that foregrounds substantive justice and gender equity in line with Islamic injunctions.

One of the most significant developments in recent jurisprudence is the judiciary's explicit condemnation of customary practices and its willingness to enforce inheritance rights through punitive measures. The Lahore High Court ruled in *Raj Bibi v. Province of Punjab* against depriving widows under the guise of customary practices. It held that customs that contradict Islamic law are invalid and unenforceable, declaring that the widow's share could not be reduced by jirga rulings or community pressure.⁷¹⁰ The Supreme Court in *Allah Rakhi v. Federation of Pakistan* struck down the application of customary practices in inheritance matters. The court ruled that customs such as depriving women of property through Hiba (gifts) or forged consent were contrary to both Islamic principles and constitutional protections.⁷¹¹

⁷⁰⁸ *Murad Khan v. Humaira Qayyum*, SCP 93 (Supreme Court 2025).

⁷⁰⁹ *Tayyaba Khanum v. Federation of Pakistan*, CLC 775 (Islamabad High Court 2022).

⁷¹⁰ *Raj Bibi v. Province of Punjab*, YLR 1500 (Lahore High Court 2015).

⁷¹¹ *Allah Rakhi v. Federation of Pakistan*, SCMR 1655 (Supreme Court 2013).

These cases explicitly rejected customary deviations from Islamic inheritance law, aligning closely with the Qur'ānic mandates. However, while the court's reasoning was sound, implementation remained weak due to lack of executive enforcement and local resistance to judicial directives. In this case, the Supreme Court ruled in favour of a woman denied her rightful share in her father's property by her brothers. The court lamented the inordinate delays and emphasized the suffering endured by women forced into prolonged litigation. It called for greater institutional responsiveness to inheritance claims.⁷¹²

In Ghulam Qasim v. Razia Begum⁷¹³ Razia Begum was denied her inheritance by male relatives. The Supreme Court bench, led by Justice Qazi Faez Isa, ruled in her favour and condemned the systemic injustices women face. The Court called for state intervention to ensure enforcement of women's inheritance rights without subjecting them to protracted litigation, echoing both Islamic justice and constitution. This judgment explicitly invoked Qur'ānic mandates, calling the denial of inheritance an act of un-Islamic oppression and structural violence against women. The decision aligns fully with Islamic legal ethics and equity. Despite the judgment, the lack of administrative machinery and legal aid for female heirs perpetuates inequality. In Syeda Fouzia Jalaal Shah, the Federal Shariat Court declared traditional waivers of women's inheritance right unenforceable and un-Islamic, further calling for institutional mechanisms to initiate criminal proceedings against violators.⁷¹⁴ Customary misuse of Hiba (lifetime gifts) is often employed in Pakistan to deprive women of their Qur'ānic inheritance shares. While Hiba is permissible in Sharī'ah, its distortion favouring sons over daughters undermines the Qur'ānic command of "justice and excellence."⁷¹⁵ Courts have occasionally intervened, but enforcement remains weak as

⁷¹² Islam Uddin v. Noor Jahan, SCMR 986 (Supreme Court 2016).

⁷¹³ Ghulam Qasim v. Razia Begum, PLD 812 (Supreme Court 2021).

⁷¹⁴ Syeda Fouzia Jalaal Shah V. Federation of Pakistan.

⁷¹⁵ *Al-Qur'ān*, 16:90.

the burden of proof falls heavily on female heirs. In *Aksar Jan v. Shamim Akhtar*, Chief Justice Qazi Faez Isa condemned fraudulent gifts and fabricated Razi Namas used to deprive widows of inheritance, declaring that: “The practice of depriving females of their inheritance must be put a stop to, and those who do so must be made to pay substantial costs and not be permitted to benefit from procedural technicalities.”⁷¹⁶

The Court restored the widow’s share after decades of litigation and imposed exemplary costs, marking a strong judicial stance against such practices. Nevertheless, without stronger statutory safeguards and administrative accountability, women’s Qur’ānic rights remain vulnerable to exploitation through customary norms and collusive documentation. These rulings represent a robust shift toward penalizing violators and proactively enforcing women’s rights. Courts have moved beyond declaratory judgments to actual enforcement, aligning more closely with the Islamic ethos of justice and accountability. However, the reliance on lengthy litigation remains a significant burden for female claimants. In *Ghulam Fatima v. Muhammad Yousaf*, the Court imposed a monetary fine on a man who deprived his sisters of their lawful inheritance, sending a strong message that such violations are not merely civil wrongs but actionable misconduct.⁷¹⁷ These rulings mark a transition in judicial philosophy from declaratory recognition of rights to active enforcement and penalization. The acknowledgment of inheritance denial as a violation of both Islamic and constitutional obligations has ushered in a new phase of judicial activism, where courts do not hesitate to impose penalties, mandate transfers, and demand institutional accountability

⁷¹⁶ *Aksar Jan v. Shamim Akhtar*, SCMR.

⁷¹⁷ *Ghulam Fatima v. Muhammad Yousaf*, SCMR (Supreme Court 2023).

The Supreme Court condemned the denial of women's inheritance as a grave violation of divine law, urging criminal prosecution and public awareness campaigns. By combining individual rights with systemic reforms, the Court echoed Islamic law, which obliges the state to protect the vulnerable and ensure distributive justice. The court in Inam Elahi v. Saeeda Begum underscored the Islamic legal tenet that inheritance rights are perpetual. The Lahore High Court upheld lower court rulings that sale and exchange deeds were fraudulently executed to exclude legal heirs.⁷¹⁸ The Court emphasized that such rights cannot lapse with time, aligning with the Sharī'ah view that there is no statute of limitation against inheritance claims. While judicial acknowledgment of the no-limitation doctrine aligns with Islamic law, inconsistent application across lower courts and administrative forums weakens enforcement.

The Supreme Court in Parveen v. Muhammad Pervaiz⁷¹⁹ nullified a gift mutation excluding daughters from inheritance. The alleged oral gift executed by the father to his sons lacked legal credibility and documentary substantiation. Justice Qazi Faez Isa denounced the mutation, emphasizing that the exclusion of female heirs through fraudulent instruments violates both Islamic principles and constitutional right of equality. The Court reinforced the Qur'ānic mandate that daughters must receive their share, and such exclusion through deception cannot be condoned.

In Shah Jehan Begum v. Zafar Ahmad and Others⁷²⁰ dispute involve the distribution of a deceased's estate among sisters and paternal cousins, the Lahore High Court upheld the trial court's application of the doctrine of *Radd*, awarding the residue to the full sisters. The court reasoned that in the absence of closer male heirs, full sisters, being nearer in kinship, were entitled to inherit under Islamic law. The principle of exclusion was correctly

⁷¹⁸ Inam Elahi v. Saeeda Begum, CLC 1215 (Lahore High Court 2021).

⁷¹⁹ Parveen v. Muhammad Pervaiz, SCMR 64 (Supreme Court 2022).

⁷²⁰ Shah Jehan Begum v. Zafar Ahmad, PLD 426 (Lahore High Court 2018).

applied to prioritize them over more distant paternal cousins. The judgment reflects proper application of Sunni Islamic inheritance jurisprudence, particularly Hanafi principles regarding residuary shares and the concept of kinship proximity. There remains inconsistency in lower courts' understanding and application of *Radd* and residuary doctrines, often influenced by cultural patriarchal biases.

5.5.2 Islamic Law and Statutory Frameworks for Inheritance Right of Women

Islamic inheritance law, firmly grounded in the Qur'ān and Sunnah, establishes a fixed-share distribution system that ensures all legal heirs including wives, mothers, and daughters receive their designated portions. These principles are rooted in justice, equity, and the protection of familial rights. A wife is entitled to one-eighth of her deceased husband's estate if children are present, and one-fourth in their absence, while testamentary bequests are restricted to one-third of the estate, thereby safeguarding the mandatory shares of heirs.⁷²¹

In Pakistan, statutory instruments such as the Muslim Family Laws Ordinance 1961 and the Succession Act 1925 attempt to translate these Shariah-based norms into codified law.⁷²² Scholarly studies note that the legal framework is influenced by broader socio-political dynamics, including the Islamization of law and gendered contestations over property rights.⁷²³ However, the enforcement of wives' inheritance rights frequently diverges from Islamic principles due to cultural, procedural, and institutional barriers. Patriarchal norms and social pressures often compel women to relinquish their shares,⁷²⁴ while

⁷²¹ *Al-Qur'ān*, 4:12.

⁷²² Al-Shāfi'i, *Al- Um*, 5:4:178.

⁷²³ Ibid., Rubya Mehdi, *The Islamization of the Law in Pakistan*, 152–53.

⁷²⁴ Shahla Zia and Farzana Bari, "Women's Access to Land and Property Rights in Pakistan," *Islamabad: Aurat Foundation*, 1999, 36–38.

tokenistic transfers where property is in the wife's name but controlled by male relatives undermine the equity envisaged in the Qur'ān.⁷²⁵

Judicial intervention has at times reinforced women's inheritance rights. In Aksar Jan v. Shamim Akhtar⁷²⁶ and Muhammad Rafiq v. Ghulam Zoharan Mai⁷²⁷ the courts highlighted the fragility of women's entitlements when challenged through fraudulent documents or collusive family arrangements. Similarly, in Hussain Bakhsh Khan v. Deputy Commissioner⁷²⁸ and Zarina Begum v. Aziz-Ul-Haq⁷²⁹ courts affirmed that fictitious or revocable divorces cannot nullify a wife's legal share. These decisions underscore the judiciary's critical role in aligning statutory practice with Shariah mandates, although gaps remain in evidence assessment and procedural enforcement. Persistent obstacles include lengthy litigation, procedural complexity, lack of specialized tribunals, and weak revenue and land record system.⁷³⁰ Women from rural and marginalized communities are particularly affected, often lacking access to legal aid and facing evidentiary challenges. Contemporary family structures, including polygamous and blended households, further complicate inheritance claims, and courts have still to develop comprehensive jurisprudence addressing these realities. The gap between Shariah's equitable provisions and practical enforcement highlights the need for systemic reforms that integrate statutory law, judicial practice, and socio-cultural awareness to ensure that women's inheritance rights are both recognized and realized.

⁷²⁵ Farida Shaheed, "Contested Identities: Gendered Politics, Gendered Religion in Pakistan," *Third World Quarterly* 31, no. 6 (September 2010): 851.

⁷²⁶ Aksar Jan v. Shamim Akhtar, SCMR.

⁷²⁷ Muhammad Rafiq v. Ghulam Zoharan Mai, SCMR 988 (Supreme Court 2023).

⁷²⁸ Hussain Bakhsh Khan v. Deputy Commissioner, SCMR 132 (Supreme Court 2001).

⁷²⁹ Zarina Begum V. Aziz-Ul-Haq, MLD 1368 (Lahore High Court 2011).

⁷³⁰ Zia and Bari, "Women's Access to Land and Property Rights in Pakistan," 36–38.

5.6 Barriers of Enforcement and Role of Judiciary

The enforcement of women's inheritance rights in Pakistan is hindered by a combination of entrenched cultural and social norms and procedural and institutional deficiencies. Traditional practices, patriarchal pressures, and lack of awareness often compel women to relinquish their rightful shares, while cumbersome legal processes, weak land record systems, and limited judicial resources further obstruct effective implementation. In this context, the judiciary plays a pivotal role in interpreting the law, safeguarding Qur'ānic entitlements, and addressing systemic gaps to ensure women can access their inheritance rights in practice.

5.6.1 Cultural and Social Barriers to Women's Inheritance

In Pakistan, both Islamic law and state law give women the right to inherit, but in practice many women are still denied their share. Cultural practices such as pressuring women to give up their inheritance or arranging symbolic marriages to the Qur'ān undermine these rights. Research shows that patriarchy, local traditions, and weak enforcement of the law are the main reasons women cannot fully claim their inheritance.⁷³¹ Similarly, other research highlights how limited awareness, familial pressures, and cultural norms discourage women from asserting their legal rights, despite statutory and shari'ah provisions guaranteeing them.⁷³²

Courts may pronounce decisions in favour of female heirs, However these judgments often remain ineffectual due to the deep-rooted socio-cultural environment in which they are implemented. Illiteracy among women, especially in rural and tribal regions,

⁷³¹ Beata Polok, "Influence of Islamic Law, Social Customs and Practices on the Women's Inheritance Rights in Pakistan," *Manchester Journal of Transnational Islamic Law & Practice* 18, no. 2 (2022): 113–14.

⁷³² Amina Nisar and Rafidah Binti Mohamad Cusairi, "Islamic Inheritance Rights for Women in Pakistan: Exploring Legal Safeguards and Social Challenges," *Journal of Islamic Thought and Civilization* 15, no. 1 (2025): 152–53.

remains one of the most fundamental challenges. It limits not only their awareness of legal entitlements but also their ability to navigate procedural requirements within revenue departments and courts. In *Zarina Bibi v. Land Acquisition Collector*, the Supreme Court acknowledged that illiteracy and lack of access to records contributed significantly to the petitioner's delayed and difficult pursuit of her claim.⁷³³ This case illustrates how legal remedies alone are insufficient when procedural systems remain inaccessible to marginalized women.

Another major barrier is limited mobility, often rooted in patriarchal customs that discourage women from appearing in public spaces without male guardians. This restriction directly affects their ability to attend court hearings, submit documentation, or follow up with revenue officials. In *Ghulam Ali v. Ghulam Sarwar*, the Supreme Court observed that cultural norms act as covert tools of exclusion, noting that women "are often discouraged from asserting their legal rights due to societal and familial pressures."⁷³⁴ The judgment emphasized that judicial protection must account for the realities that deter women from utilizing legal forums. Similarly, institutional barriers like male-dominated bureaucracies obstruct access to justice. The Lahore High Court, in *Ameena v. Federation of Pakistan* directed revenue offices for the inclusion of trained female officers to reduce intimidation and facilitate equitable access.⁷³⁵ This administrative failure further weakens judicial effectiveness even favourable decision are difficult to enforce without institutional support. Moreover, cultural stigma surrounding women's inheritance claims exacerbates their social marginalization. Women who assert their property rights are often labelled greedy or disloyal, especially in extended family structures where silence is equated with honour.

⁷³³ *Zarina Bibi v. Land Acquisition Collector*, SCMR 201 (Supreme Court 2022).

⁷³⁴ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

⁷³⁵ *Ameena v. Federation of Pakistan*, CLC 534 (Lahore High Court 2021).

In *Noor Bibi v. Muhammad Ramzan*, the court acknowledged that societal disapproval and the use of informal patriarchal mechanisms delayed the petitioner's access to justice for years.⁷³⁶ Even where the law upholds women's rights, such cultural resistance undermines the spirit of the judgment. These cases collectively affirm the need for a holistic approach to enforcement, combining legal reform with cultural transformation. As affirmed in *Ghulam Ali*, judicial declarations must be supported by administrative facilitation and community-level change to render women's inheritance rights practically effective.⁷³⁷

5.6.2 Procedural and Institutional Challenges in Enforcement

Despite the existence of clear statutory and Qur'ānic provisions for women's inheritance, enforcement in Pakistan remains fraught with procedural and institutional challenges. Litigation is often lengthy, costly, and complex, creating significant barriers for women, particularly those with limited financial resources. Courts require extensive documentation, including land records, succession certificates, and proof of kinship, which are frequently incomplete or difficult to obtain in rural and feudal settings. Even when favorable judgments are obtained, execution is slow, and women often face delays in actual possession of property. In *Sakina Bibi v. Muhammad Ikhlaq*, the Supreme Court highlighted the need for timely enforcement, noting that delays in execution undermine the protective purpose of inheritance laws for women.⁷³⁸ Institutional deficiencies within the revenue and land record system further undermine women's inheritance rights. Poorly maintained records, fraudulent mutations, and inadequate verification procedures allow male relatives or intermediaries to dispossess women of their shares. Corruption and administrative mismanagement, particularly at the local level, often leave female heirs without recourse, while the lack of specialized inheritance tribunals or enforcement cells

⁷³⁶ *Noor Bibi v. Muhammad Ramzan*, MLD 456 (Lahore High Court 2023).

⁷³⁷ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

⁷³⁸ *Sakina Bibi v. Muhammad Ikhlaq*, PLD 830 (Supreme Court 2014).

within family courts limits institutional capacity to secure timely and effective remedies.

In Zahida Parveen v. Government of Khyber Pakhtunkhwa, the Supreme Court emphasized the need for procedural safeguards and institutional accountability to prevent fraudulent dispossession of women's inheritance.⁷³⁹ Similarly, in Syeda Fouzia Jalaal Shah v. Federation of Pakistan Justice Dr. Syed Muhammad Anwar instructed that offenders violating women's inheritance rights should be prosecuted under Section 498-A PPC, demonstrating the courts' role in addressing institutional gaps.⁷⁴⁰ These procedural and institutional challenges must be understood within the broader context of gender inequity in Pakistan, which ranks 145 out of 146 countries in the Global Gender Gap Report 2022.⁷⁴¹ Many women, especially in traditional and rural communities, remain unaware of their Qur'ānic inheritance rights, limiting their economic empowerment. Cultural pressures, social norms, and the absence of a social safety net often compel women to relinquish their property voluntarily to male relatives, fearing violence, loss of support, or social ostracism. In Subhan Begum v. Allah Ditta the Supreme Court highlighted how entrenched customs can result in de facto deprivation of women's inheritance, stressing the need for judicial vigilance and proactive enforcement.⁷⁴² Addressing these challenges requires a multi-pronged approach. Strengthening procedural safeguards, reforming revenue and land record systems, and ensuring consistent judicial practices as demonstrated in the above cases are essential to enforce women's rights effectively. Simultaneously, public awareness campaigns and education initiatives can empower women to claim their lawful shares, while the integration of statutory law with Sharī'ah principles can ensure greater

⁷³⁹ Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary E & SE, Civil Secretariat, Peshawar & others, C.P.L.A. No. 566-P of 2024, Supreme Court of Pakistan available at: Supreme Court of Pakistan Judgments

⁷⁴⁰ Syeda Fouzia Jalal Shah v. Federation of Pakistan, PLD.

⁷⁴¹ World Economic Forum, *Global Gender Gap Report 2022*, World Economic Forum (Geneva: World Economic Forum, 2022), 10.

⁷⁴² Subhan Begum v. Allah Ditta, SCMR 635 (Supreme Court 2007).

acceptance. These measures can be more effectively used to enforce inheritance rights for women to contribute their financial independence.

5.6.3 Role of the Judiciary in Protection of Women Right to Inheritance

The judiciary has emerged as a crucial institution in aligning statutory enforcement with Qur'ānic commands, progressively dismantling discriminatory practices and reinforcing women's inheritance rights. Pakistani courts have consistently underscored that deprivation of inheritance is not merely unlawful but un-Islamic. Similarly, the Supreme Court in *Ghulam Ali v. Ghulam Sarwar Naqvi* rejected coerced relinquishments of female heirs, declaring them void against public policy and contrary to Shari'ah.⁷⁴³ The judgment emphasized that enforcement of Qur'ānic shares is not a private matter alone but a "public duty" of the courts and state institutions.

The judiciary has consistently condemned fraudulent and coercive practices employed to deprive women of their rightful inheritance and emphasized the need for robust enforcement mechanisms. In *Abid Baig v. Zahid Sabir*, the Supreme Court observed that "social pressure and coercive family settlements cannot be allowed to extinguish the God-given rights of women."⁷⁴⁴ More recently, in *Muhammad Boota (deceased) through L.Rs. v. Fatima*, the Supreme Court settled a long dispute over female inheritance rights in agricultural tenancy. Fatima Bibi and her sister challenged a mutation that excluded them from their father Din Muhammad's tenancy. While the trial court favored them, later decisions relying on the Colonization of Government Lands (Punjab) Act, 1912 dismissed their claim, preferring male heirs. The Lahore High Court reversed, holding that Qur'ānic law applied, and the Supreme Court upheld this, declaring the exclusion of female heirs' void. The Court emphasized that colonial statutory provisions cannot override women's

⁷⁴³ *Ghulam Ali v. Ghulam Sarwar Naqvi*, PLD.

⁷⁴⁴ *Abid Baig v. Zahid Sabir*, SCMR 601 (Supreme Court 2020).

Qur'ānic inheritance shares, reaffirming Islamic law and constitution.⁷⁴⁵ A persistent theme in recent judgments is the demand for effective enforcement rather than declaratory relief. Justice Qazi Faez Isa in *Atta Mohammad v. Munir Sultan* condemned habitual disregard for court orders and emphasized that appeals do not suspend the execution of inheritance decrees. He observed, “It has become too common to keep legal heirs deprived and to disobey judgments on the pretext that a higher forum has been approached even when the operation of the impugned order/judgment has not been suspended.”⁷⁴⁶

This is another instructive Supreme Court order that invalidated suspicious gift mutations executed shortly before the donor’s death, found the mutations inadequately documented, and criticized the revenue authorities for lack of vigilance and poor record-keeping. Justice Qazi Faez Isa invoked Qur'ānic warnings against eating up orphans’ property and imposed costs on the petitioners for keeping female heirs deprived for a decade.⁷⁴⁷ Similarly in *Muhammad Sajid Tareen v. Government of Balochistan*, the Balochistan High Court, Justice Muhammad Kamran Khan Mulakhail, held that any inheritance mutation excluding female heirs is void ab initio. The Court directed revenue authorities to register criminal cases against officials who facilitated such practices, mandated appeals in inheritance cases be decided within one month and ordered NADRA and the Board of Revenue to establish grievance cells to protect women’s rights.⁷⁴⁸ The judgment underscored that customary practices cannot override Qur'ānic injunctions safeguarding women’s inheritance rights. He also stressed the need for strict enforcement of Section 498-A PPC to deter families from coercing women into surrendering their rights.

⁷⁴⁵ Muhammad Boota v. Fatima, SCMR.

⁷⁴⁶ *Atta Mohammad v. Munir Sultan*, SCMR.

⁷⁴⁷ *Al-Qur'ān*, 4:9-10, 6:152.

⁷⁴⁸ *Muhammad Sajid Tareen v. Government of Balochistan*, PLD 172 (Quetta High Court Balochistan 2021).

5.6.4 The Federal Shariat Court's Expanding Role

The Federal Shariat Court has expanded its judicial oversight to curtail entrenched customs that deny women their lawful inheritance. In *Syeda Fouzia Jalal Shah v. Federation of Pakistan*, justice Dr. Syed Muhammad Anwer of the Federal Shariat Court declared customary practices such as chaddar and parchi symbolic devices used to deprive women of inheritance is repugnant to the Qur'ān and Sunnah and that customs cannot override divine command.⁷⁴⁹ Federal Shariat Court held that the denial of inheritance to women is violation of both Qur'ānic injunctions and constitution. The Court specifically invoked directions.

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أَوْ كُلُّهُ نَصِيبًا مَّفْرُوضًا⁷⁵⁰

For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave whether it is little or much these are obligatory shares.⁷⁵¹

The court directed provincial departments to initiate criminal proceedings under Section 498-A of the Pakistan Penal Code against those coercing women to relinquish their shares. The Court stressed that under the *Enforcement of Sharī'ah Act, 1991*, the state is duty-bound to “eradicate social evils and to promote *Al-Amr Bi-al-mar 'rūf Wa-al-nahy 'an Al-munkar* (commanding the good and forbidding the evil).”⁷⁵² This ruling represents a jurisprudential shift: inheritance deprivation is no longer treated as a civil wrong alone but also as a criminal violation against Sharī'ah.

⁷⁴⁹ *Syeda Fouzia Jalal Shah v. Federation of Pakistan*, PLD.

⁷⁵⁰ *Al-Qur'ān*, 4:7.

⁷⁵¹ Yusuf Ali, *The Holy Quran: English Translation*, 34.

⁷⁵² “Enforcement of Sharī'ah Act, 1991,” Pub. L. No. Act X of 1991, § Preamble and Section 13 (1991), sec. Preamble and Section 13.

Conclusion

This chapter has examined the inheritance rights of wives and other female heirs under Islamic law and the Pakistani legal system, highlighting the Qur'ānic guarantees and the persistent obstacles to their enforcement. Islamic law provides a clear and equitable framework, granting women fixed, divinely mandated shares that cannot be altered or reduced. These allocations are based on justice and balance, ensuring fairness within the family unit. Importantly, the Qur'ān does not prescribe a uniform principle of "half for women," but rather assigns shares in proportion to financial responsibilities.

In Pakistan, however, these principles are often undermined by statutory gaps and customs. The Succession Act, 1925, a colonial statute, regulates procedure but fails to incorporate substantive Sharī'ah rules. The Muslim Personal Law Shariat Application Act, 1962 requires inheritance among Muslims to follow Islamic principles but patriarchal practices such as coerced waivers, verbal gifts and family pressure frequently deprive women of their shares. Weak land record systems, corruption, and costly litigation compound these challenges, leaving many women particularly in rural areas unable to secure their Qur'ānic entitlements.

Judicial interpretation has played a central role in addressing these gaps. In *Ghulam Ali v. Ghulam Sarwar Naqvi*, the Supreme Court firmly rejected customs or settlements that deprived women of inheritance. In *Subhan Begum v. Allah Ditta* the Court reiterated that female heirs cannot be excluded by family arrangements. In *Zahida Parveen v. Government of Khyber Pakhtunkhwa*, the Court held that depriving women of inheritance violates their constitutional fundamental rights. More recently, the Federal Shariat Court in *Syeda Fouzia Jalaal Shah v. Federation of Pakistan* declared practices such as Chaddar and Parchi un-Islamic and illegal, directing that violators be prosecuted under Section 498-A of the Pakistan Penal Code. These judgments demonstrate that the superior judiciary has

emerged as a strong defender of women's Qur'ānic inheritance rights, aligning statutory law with Sharī'ah and the Constitution.

A common misconception is that Islam invariably grants women only "half" the share of men in inheritance. This is a distortion of Qur'ānic principles. As this chapter has shown through Qur'ān, juristic consensus, and judicial precedent, women's inheritance rights follow a diverse pattern:

1. Equal Shares for example, both parents inherit equally from a deceased child without descendants
2. Greater Shares in certain cases, a mother receives one-third while the father takes one-sixth; a wife inherits half the estate when her husband dies childless.
3. Exclusive Shares like daughters may exclude distant male relatives, and wives always inherit even when some male relatives do not.

Importantly, unlike men, women are not legally obliged to provide maintenance meaning their shares remain their independent property.

The superior judiciary especially the Federal Shariat Court and Supreme Court has been central in bridging Sharī'ah injunctions and lived realities through landmark rulings rejecting customs contrary to Sharī'ah and upholding women's constitutional and Qur'ānic entitlements. The superior judiciary has confirmed this Qur'ānic framework. Such as in Ghulam Ali v. Ghulam Sarwar Naqvi the Supreme Court struck down customs reducing women's shares. In Zahida Parveen v. Government of Khyber Pakhtunkhwa held that depriving women of inheritance violates their constitutional rights. Likewise, in Syeda Fouzia Jalaal Shah v. Federation of Pakistan the Federal Shariat Court declared patriarchal practices such as Chaddar and Parchi un-Islamic and criminal.

Collectively these rulings affirm that the "half-share" claim is unfounded. Women's inheritance in Islam is not uniform but context-specific sometimes equal, sometimes

greater, and sometimes exclusive reflecting a divinely ordained balance of justice, protection, and dignity. Overall, the Qur'anic framework is clear and just, but its application in Pakistan remains obstructed by fragmented laws, weak enforcement, and cultural resistance. The superior judiciary has adopted a progressive role in defending women's inheritance rights, but systemic reforms are still needed to make these entitlements a lived reality. Bridging the gap between Shari'ah guarantees, statutory law, and actual practice requires institutional vigilance and cultural change, ensuring that women's inheritance rights are protected not only in principle but also in practice.

CHAPTER 6: CONCLUSION & RECOMMENDATIONS

Introduction

This chapter concludes the dissertation by synthesizing its key findings and situating them within the broader debate on protecting the financial rights of wives in Pakistan. It recalls the major contributions of the preceding chapters to contextualize the conclusions and recommendations. Chapter one introduced the research problem, objectives, and methodology, establishing the need to examine the financial rights of wives' dower, maintenance, and inheritance through a comparative lens of Sharī'ah and the Pakistani legal system. Chapter two provided the theoretical and historical framework, showing how Sharī'ah has long recognized women's financial entitlements, while also highlighting the gaps in Pakistan's statutory adaptation of these rights.

Chapter three analyzed dower, underlining its Qur'ānic foundation as a binding obligation symbolizing dignity and security for women. It showed how the lack of statutory definition, registration, and enforcement weakens its effectiveness, while judicial practice has remained inconsistent. Chapter four focused on maintenance, emphasizing its role as a continuing safeguard for women during marriage, 'iddah, and in some cases beyond. It identified the weaknesses of the MFLO 1961 and Family Courts Act 1964, alongside the judiciary's progressive role in expanding entitlements, including pension rights and mut'at al-ṭalāq.

Chapter five examined inheritance, reaffirming the Qur'ānic system of fixed and equitable shares while dispelling the misconception that women always receive less than men. It highlighted how entrenched patriarchal practices, coerced refurbishments, and weak institutional enforcement undermine these rights, despite judicial efforts to uphold them.

Collectively these findings show that ambiguities in legislation, weak enforcement, inconsistencies in judicial decision and biased social customs remain major impediment in achievement of the financial rights of wives in Pakistan. This chapter, based on a study offers conclusions and recommendations. It recommend that protection of financial rights of women should not be considered as a matter of choice. It is legal and moral obligation in Islam that ensure justice and dignity consistent with both Sharī‘ah and the Constitution of Pakistan.

6.1 Implications for Advancing Financial rights of women in Pakistan

The result of this research has significant implications for improvement in legislation, judicial practice, reforms for policy development, and change in social structure in Pakistan. The research spotlight about the protection and enforcement of the financial rights of women, particularly *mahr*, *nafaqah*, and inheritance.

It focuses on a flexible interpretation of Islamic law (fiqh) that can meet modern-day challenges and provide a framework for justice, avoiding rigid interpretations that have undermined the restricted rights of women. Research highlights that the role of courts is not consistent in the application and enforcement of statutory and Islamic laws in Pakistan. While some judgments enforce women's rights, others are undermined due to weak procedures and cultural norms. So there is a need for clear, structured guidelines grounded in Islamic law and constitution to guarantee justice and fairness.

The study recommends a rights-based approach that treats women's rights as legal obligations and enforceable in courts instead of matters of judicial discretion.

. On the policy front, the

This research explores reform on the policy level, by advocating documentation and registration of dower agreements properly, timely enforcement of maintenance orders, and stronger protection of inheritance rights, particularly in rural and feudal areas.

Rationalization of family law, removal of confusion, and introducing statutory penalties to curb practices of involuntary relinquishment or misuse of inheritance shares are essential steps. Transformation of family courts, revenue policy is necessary for effective enforcement. There is need of social transformation as biased customary practices frequently preclude women from getting their financial rights. To address this legal literacy campaigns, public awareness initiatives, and active engagement of religious and community leaders to promote authentic Islamic teachings on justice and equity is required. A shift in culture that recognizes rights of women as a component of social justice is critical for women empowerment to claim their rights confidently. Finally, this research opens avenues for further interdisciplinary and comparative studies on Islamic law, statutory reforms, and judicial practice across Muslim majority societies. Learning from other jurisdictions can enrich Pakistan's approach to protecting financial rights of women and contribute to building a reform oriented legal model that empowers women within Islamic legal frameworks.

Lastly, this research spotlight avenues for more comprehensive, comparative and knowledge base research on Islamic law, statutory-law, and judicial practice in Muslim majority countries study of other legal systems can change Pakistan's plan of action for protection of financial rights of women and can help in reforming legal framework within Islamic law.

6.2 Conclusion

The rights of dower, maintenance, and inheritance are important in Islam and current legal system. This research present that Islamic law acknowledges these rights as obligatory duties rather than optional custom, so far Pakistan's statutory laws and court practices have frequently failed in protecting them. Interestingly, the superior judiciary has come out as an important role player to protect women's financial rights, even in domain where legislation

is silent. However, everlasting security needs more than judicial intervention; it demands clear codification, stronger institutions, and meaningful cultural change so that these rights are not only recognized in principle but also fully achieved in practice.

6.3 Dower Right of Women

Islamic law recognizes dower as a fundamental right, considered as a symbol of respect and protection. So far the Muslim Family Laws Ordinance, 1961 does not provide its definition and method of its determination and require registration. All these ambiguities have enabled random practices that undermine their purpose. As the Supreme Court affirmed in Kaneez Fatima v. Wali Muhammad binding nature of dower that dower is a debt owed, not a social custom. The Supreme Court also upheld in Iqbal Bibi v. Habib Ahmad that the dower is a legally enforceable debt, and failure to pay can lead to execution proceeding, including attachment of property. Despite such rulings, inconsistency prevail at lower court and cultural biases continue to sabotage enforcement.

6.4 Maintenance Right of Women

Maintenance rooted in Sharī‘ah and the Qur’ān maintenance is an obligation rather than a discretionary act. Islamic law provides a coherent framework for the maintenance rights women including wife during marriage and daughters, irrespective of their marital status, by linking patrimonial entitlements with enforceable obligations of support. Ḥanafī jurists affirmed that a father is bound to maintain his dependent daughter whether unmarried, divorced, or widowed so long as she lacks independent means. Upon his death or incapacity, this responsibility transfers to other ‘aṣabah relatives in order of proximity, contingent upon their financial capacity. There is not comprehensive and effective law available in Pakistan, but Superior Court of Pakistan authoritatively recognized these rights.

6.4.1 Role of Supreme Court in Protection of Women Right to Maintenance

Pakistan's law lacks clarity on entitlements and enforcement. In this vacuum, the superior judiciary has assumed a pivotal role, guided by Articles 2-A and 227–229 of the Constitution, which mandate interpretation of laws in conformity with Islam. Both the Federal Shariat Court and the Supreme Court have progressively expanded the scope of women's maintenance rights. Their case related to evolving scope and adequacy of maintenance such as Supreme Court in *Iffat Kazmi v. Shuja Akbar Shah*, declared that maintenance should reflect a reasonable standard of living consistent with the husband's capacity, underscoring that it is not a token entitlement rather than merely covering necessities. Supreme court in *Abdul Majid vs. Shams Un Nisa* confirmed maintenance decrees are enforceable debts.

The Supreme Court's landmark judgment in *Zahida Parveen v. Government of Khyber Pakhtunkhwa* illustrates the judiciary's progressive role and held that Rule 10(4) was gender-neutral and did not impose marital status as a disqualification. The executive clarification, by excluding married daughters, amounted to an impermissible amendment of a statutory rule. As Justice Syed Mansoor Ali Shah observed:

“Executive instructions or clarifications cannot amend, alter, or override statutory rules. Rule 10(4) grants compassionate appointment rights to the children and spouse of a deceased civil servant without any restriction on gender or marital status. To deny married daughters this benefit is not only ultra vires the parent rule but also violative of Article 25 of the Constitution, which guarantees equality before the law.”

The Court held that the executive clarification unlawfully discriminated between married sons and daughters, lacking any rational basis for compassionate appointments. It noted that the clarification, issued by section officer, was without lawful authority. Consequently, Supreme Court struck down it as ultra vires and unconstitutional, set aside the Tribunal's order, reinstated Zahida Parveen with full benefits, and affirmed that married daughters fall

within the scope of Rule 10(4). Justice Ayesha A. Malik, in Province of Sindh v. Sorath Fatima, reaffirmed:

That pension is not a discretionary privilege but a statutory entitlement under the West Pakistan Civil Services Pension Rules, 1963. The Supreme Court clarified that the definition of “family” within these Rules explicitly encompasses an unmarried, divorced, or widowed daughter, thereby safeguarding their right to receive a family pension. Stressing that pensions constitute “deferred wages” and inheritable property, the Court held that no administrative circular or departmental practice can override statutory guarantees. By grounding its reasoning in the constitutional protection of dignity and livelihood under Article 9 and the guarantee of equality under Article 25, the Court ensured that widowed and divorced daughters are not deprived of what is both a legal entitlement and a Qur’ānic mandate of financial security.⁷⁵³

Similarly, Justice Wiqar Ahmad of Peshawar High Court in Musarat v. The Govt of KP observed:

The fact that the petitioner a divorced daughter has been residing with her children in the house of her deceased husband cannot be considered a disqualification for the grant of family pension from her father when the law does not impose any restriction on availing the pension in such circumstances, no restriction can be introduced without the backing of any legal provision, as no one is above the law.

These judgments show that the Supreme Court is taking a stronger role in protecting financial rights of women and rejecting practices that discriminate against them. By relying on both the Qur’ān and the Constitution, the Court has affirmed that women’s entitlements must be treated as enforceable rights, not optional privileges. However, to make these protections effective beyond individual cases, there is a need for statutory reform, efficient

⁷⁵³ Province of Sindh v. Sorath Fatima, SCP 278 (Supreme Court 2025).

institutions, and greater public awareness so that the principles upheld in the courtroom are also realized in society.

6.5 Inheritance Right of Women

Inheritance represents one of the most explicit and safeguarded aspects of financial rights of women under Shari‘ah. The Qur’ān prescribes fixed, divinely ordained shares for women that cannot be reduced, altered, or denied, thereby marking a radical departure from pre-Islamic practices that excluded women entirely from succession. Far from confining women to half of what men receive, the Qur’ānic scheme is far more nuanced and context specific.

6.5.1 Women’s Inheritance Shares in Islam: A Misunderstood Principle

A common claim today is that Islam discriminates against women by giving the women half the share of men in inheritance. As Muslims, our belief in God’s absolute justice assures us that His law contains no injustice: “And your Lord does injustice to no one”⁷⁵⁴ an objective reading of Qur’ānic inheritance rules shows that the difference in shares is not based on gender alone, but on three principles:

1. Degree of kinship: Closer relatives inherit more regardless of gender. For example, a daughter inherits half, while a husband receives only one-fourth, because she is a direct blood heir.⁷⁵⁵
2. Generational position: Younger heirs such as children inherit more than older heirs like parents, as they face greater financial responsibilities. Thus, a daughter often inherits more than her mother or even her father.⁷⁵⁶

⁷⁵⁴ *Al-Qur’ān*, 18:49.

⁷⁵⁵ *Ibid.*, 4:11–12.

⁷⁵⁶ Abū ‘Abdullah Muḥammad ibn Aḥmad Al-Qurtubī, *Al-Jāmi‘ Li Aḥkām al-Qur’ān*, 5:58.

3. Financial responsibility: Only in this category does gender create a difference. When heirs are equal in kinship and generation, sons receive double the share of daughters. The rationale is that men bear financial obligations (dower, maintenance of wife and children, and in some cases extended family), while a woman's wealth remains exclusively hers, protected from household expenses.⁷⁵⁷ Thus, the Qur'ānic rule that a son receives twice the share of a daughter is not a general principle but applies in limited situations. In many cases, men and women inherit equally, such as uterine siblings.⁷⁵⁸

This system, therefore, does not disadvantage women; rather, it protects their wealth. While men are given a larger share, it comes with the burden of spending on others, whereas women's shares remain solely theirs. Hence, far from being unjust, Islamic inheritance laws balance equity with financial responsibility, ensuring women's economic security within the family system.⁷⁵⁹

A widespread misconception is that Islam reduces women's inheritance to "half of men's share." However, a careful review of Qur'ānic injunctions and juristic cases shows that this happens only in limited situations. In fact:

1. Equal shares: there are many cases where women and men receive equal shares.
2. Less share: There are only four cases where a woman receives half the share of a man.
3. Greater shares: There are more than ten cases where women receive more than men.
4. Exclusive shares: There are several cases where women inherit, but men inherit nothing at all.

To illustrate these principles in practice, the following data categorizes inheritance scenarios according to whether women inherit equal, lesser, greater, or exclusive shares compared to men. This evidence demonstrates that the 'half-share' claim represents only a small fraction of the overall Qur'ānic inheritance framework.

⁷⁵⁷ Ibn Qūddāmah Abū Muḥammad ‘Abdullāh ibn Aḥmad ibn Muḥammad, *Al-Mughnī*, 6:184.

⁷⁵⁸ *Al-Qur'ān*, 4:12.

⁷⁵⁹ Ghulam Ali v. Ghulam Sarwar Naqvi, PLD.

As demonstrated in the detailed tables included in Chapter 4, the Qur'ānic framework of inheritance is considerably more nuanced than the common perception that women invariably receive half the share of men. The classification of heirs clearly shows that women in many situations inherit equally with men, in others they receive greater portions, and in some cases, they are the sole beneficiaries to the exclusion of male relatives. Men, by contrast, inherit more only in limited circumstances, and even then, within a system that assigns them corresponding financial duties and responsibilities. These patterns highlight that the so-called 2:1 rule is not a universal principle, but a context specific rule. By setting out these shares systematically with reference to Qur'ānic verses, Prophetic traditions, and juristic consensus, the tables dispel prevalent misconceptions and demonstrate that Islamic inheritance law is neither rigidly patriarchal nor inequitable. Instead, it reflects a calibrated structure of entitlements aimed at safeguarding fairness, dignity, and social responsibility. This finding underscores the need for greater public legal literacy and judicial attentiveness to the ethical objectives of Sharī'ah, ensuring that cultural narratives of male privilege do not overshadow the Qur'ānic commitment to justice in matters of succession.

This distribution makes clear that the Qur'ānic system is not built on gender discrimination but on a just balance of kinship, generational needs, and financial responsibilities. Women are not consistently disadvantaged; rather, they sometimes inherit equally, at times more than men, and in certain cases exclusively. The often-highlighted misconception about the formula of 'women receive half of men's share' is based on a partial understanding and overlooking the diversity and equity embedded within Islamic inheritance law.

A close reading of the Qur'ānic framework of inheritance reveals that the commonly repeated agenda that "men always receive double the share of women" is

misleading. The Qur'an prescribes different results sometimes, women get inheritance share equal to men, as in cases share of parents of a deceased in the presence of children or uterine siblings of deceased both parents get same share regardless of gender. In other cases, women may receive larger share, such as when a sole daughter inherits half of the property, exceeding the entitlement of distant male relatives. There are some cases in which women get exclusive share of inheritance ,in cases where only daughter or a sole sister becomes the principal heir. These variations establish that inheritance in Islam is not administered by rigid principles but contemplate a significance system organized to balance rights and responsibilities. Larger shares of men are affiliated with their obligation of financial responsibilities whereas women's shares remain entirely their own, they are exempted from any such obligations. Thus, the Islamic approach prioritizes substantial justice, safeguarding financial protection of women and preserving their wealth.

6.5.2 Role of Supreme Court and Federal Shariat Court in Protection of Right

Courts in Pakistan have systematically underscored that depriving women from inheritance rights is not only illegal but also against the Islamic law. In Ghulam Ali v. Ghulam Sarwar Naqvi, the Supreme Court disapproved coerced relinquishment of female heirs, declaring them void against law, public policy and against to Sharī'ah. The judgment emphasized that the implementation of Qur'ānic shares is mandated duty of the courts and state.

Judicial declaration have consistently condemned deceitful and coercive practices to decline women from their rightful share of inheritance, emphasized the need of robust enforcement mechanisms. The Supreme Court discovered in Abid Baig v. Zahid Sabir that social custom, pressure and forceful family settlements cannot be allowed to eliminate the rights of women granted by Quran. Similarly, in Muhammad Boota (deceased) through L.Rs. v. Fatima, the Court solved a conflict concerning female inheritance rights in agricultural tenancy, declared the exclusion of female heirs void. The Court stressed that

complex statutory provisions cannot restrict women's Qur'ānic shares, thereby affirming both the Islamic law and constitutional protection of women's inheritance rights. All these judgments' persistent themes take a firm stand on effective enforcement of financial rights, move beyond mere declaratory relief towards ensuring practical realization of Qur'ānic entitlements.

The Federal Shariat Court and Supreme Court has played fundamental role in integrating Sharī'ah injunctions to response lived realities through landmark judgment on rejecting customs contradictory to Sharī'ah and preserving women's constitutional and Qur'ānic share. The superior judiciary has confirmed this Qur'ānic framework. Such as in *Ghulam Ali v. Ghulam Sarwar Naqvi* the Supreme Court invalidated customs of reduction in share of women. In *Zahida Parveen v. Government of Khyber Pakhtunkhwa* held that depriving women of inheritance violates their constitutional rights.

The Federal Shariat Court has expanded its judicial oversight to curtail entrenched customs that deny women their lawful inheritance. In *Syeda Fouzia Jalal Shah v. Federation of Pakistan*, justice Dr. Syed Muhammad Anwer of the Federal Shariat Court declared customary practices such as *chaddar* and *parchi* symbolic devices used to deprive women of inheritance is repugnant to the Qur'ān and Sunnah and that customs cannot override divine command. Federal Shariat Court held that "the denial of inheritance to women is violation of both Qur'ānic injunctions and constitution. The Court specifically invoked Qur'ānic directions:

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For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave whether it is little or much. 'These are' obligatory shares.

The court directed provincial departments to initiate criminal proceedings under Section 498-A of the Pakistan Penal Code against those coercing women to relinquish their shares. The Court stressed that under the Enforcement of Sharī‘ah Act, 1991, the state is duty-bound to “eradicate social evils and to promote *amr bil ma ‘rūf wa-nahy ‘anil munkar* (commanding the good and forbidding the evil).” This ruling represents a jurisprudential shift: inheritance deprivation is no longer treated as a civil wrong alone but also as a criminal violation against Sharī‘ah.

Justice Qazi Faez Isa in *Atta Mohammad v. Munir Sultan* condemned habitual disregard for court orders and emphasized that appeals do not suspend the execution of inheritance decrees. He observed:

“It has become too common to keep legal heirs deprived and to disobey judgments on the pretext that a higher forum has been approached even when the operation of the impugned order/judgment has not been suspended.”

This is instructive Supreme Court order that invalidated suspicious gift mutations executed shortly before the donor’s death, found the mutations inadequately documented, and criticized the revenue authorities for lack of vigilance and poor record-keeping.

Justice Qazi Faez Isa invoked Qur’ānic warnings against eating up orphans’ property and imposed costs on the petitioners for keeping female heirs deprived for decade. Similarly in *Muhammad Sajid Tareen v. Government of Balochistan*, the Balochistan High Court, Justice Muhammad Kamran Khan Mula Khail, held that any inheritance mutation excluding female heirs is void ab initio. The Court directed revenue authorities to register criminal cases against officials who facilitated such practices, mandated appeals in inheritance cases be decided within one month and ordered NADRA and the Board of Revenue to establish grievance cells to protect women’s rights.

The judgment underscored that customary practices cannot override Qur’ānic injunctions safeguarding women’s inheritance rights. He also stressed the need for strict

enforcement of Section 498-A of PPC to deter families from coercing women into surrendering their right. Federal Shariat Court ruled held in Allah Rakha v. Federation of Pakistan that Section 4 of the Muslim Family Laws Ordinance, 1961, was valid and orphaned grandchildren have rights to inherit from their grandparents.

Collectively all these decisions established that claim regarding the “half-share” is baseless and misconception. There is not uniformity in inheritance in Islam but context specific. Overall, the Qur’ānic framework of inheritance is clear, but its practical application in Pakistan is inconstant due to fragmented laws, weak enforcement, and cultural barriers. The judiciary has played an innovative role in securing inheritance rights of women, but systemic reforms are still required to make these entitlements protected not only in principle but also in practice by bridging the gap between Sharī‘ah and statutory law, institutional reforms and cultural change that ensure that women’s inheritance rights.

The judiciary focused to align Pakistan’s legal practice with Qur’ānic injunctions and constitution is seen in decision of Justice Qazi Faez Isa definitely stated that the denial of inheritance rights is against Islamic teachings Likewise, Justice Ayesha Malik declared entitlement of divorced daughters from their father’s pension and marital status can not be used to withhold this right. These declaration indicate a broader judicial trend that consider financial rights of women as an obligations firmly rooted in Islamic law and constitution. So far, court judgments though important remain inadequate. In the absence of comprehensive legal framework, effective enforcement mechanisms, and widespread public awareness, relief granted by judiciary tends to be case-specific limiting its potential to secure women’s rights in society.

Constitutional frameworks authorize the court to decide in conformity with Sharī‘ah under Article 2-A, incorporating the Objectives Resolution. Article 227 further forbid the enactment of any law in contradiction with injunctions of Islam, while Chapter)

Federal Shariat Court was established under Articles 203A–203J with the jurisdiction to declare repugnant laws null and void. Articles 228-230 mandates the power to Council of Islamic Ideology to advise Parliament regarding conformity of legislation with Islam. In collaboration, these provisions impose binding obligation upon the judiciary and legislature to uphold financial rights of women such as inheritance, dower, and maintenance under shariah. In the light, judgments protecting financial rights are not discretionary interpretations, but constitutional mandate grounded in Sharī‘ah.

6.6 Recommendations

in Pakistan judiciary stands at the intersection of constitutional supremacy and Sharī‘ah conformity, entrusted with the responsibility of ensuring that financial rights of Women particularly wives are not only recognized but effectively realized. Articles 2-A, 227, 228, and 229 of the Constitution explicitly require that laws be interpreted and enforced in accordance with Islamic injunctions, thereby obliging courts to serve as custodians of Qur’ānic justice. However judicial practice has often fallen short, with progressive rulings rendered ineffective due to inconsistent enforcement, lack of systemic follow-through, and continued reliance on narrow statutory provisions. In this context, the judiciary must assume a more proactive role, ensuring that dower, maintenance, inheritance, and post-divorce support are safeguarded as enforceable entitlements rather than discretionary privileges.

The financial rights of wives are clearly protected in the Qur’ān and Sunnah, but in Pakistan these rights are not always fully enforced. The legal system still has gaps, and court decisions are often not supported by strong implementation. To make these rights practical and effective, both the courts and the legislature need to take stronger action. The recommendations below are divided into two parts: one focusing on the role of the judiciary and the other on the role of legislation.

6.6.1 Judicial Recommendations

The superior judiciary in Pakistan occupies a dual role: it is both the guardian of constitutional supremacy and an interpreter of Sharī‘ah injunctions under Articles 2-A, 227, 228, and 229 of the Constitution. In this capacity, the courts bear a heightened responsibility to ensure that financial rights of women are realized not only in theory but also in practice.

1. Strengthening Qur’ānic Interpretation in Judicial Reasoning

Pakistani courts must consistently align their reasoning with the explicit Qur’ānic injunctions on dower, maintenance and inheritance. While landmark rulings such as *Khalid Pervaiz v. State* and *Khurshid Bibi v. Baboo Muhammad Amin* have invoked Sharī‘ah principles, such reliance has been inconsistent and fragmented. Integration of Qur’ānic injunctions and juristic consensus into case law would intensify the authenticity of judicial decision and affirm women’s rights as Quranic mandated rights.

2. Developing Binding Precedents for Uniform Enforcement

Judicial pronouncements on financial rights of women often remain confined to individual disputes. For instance, while Justice Ayesha Malik’s recognition of divorced daughters’ entitlement to pension benefits represents progress, such rulings need to be consolidated into binding precedents to ensure uniform application across all courts.

3. Judicial Oversight of Procedural Manipulations in Inheritance

Stronger supervisory mechanism should be developed by courts to curb abuses in inheritance cases, such as involuntary waivers of shares or fraudulent transfers. such as *Ghulam Fatima v. Khuda Bakhsh* has abolished that deprivation of inheritance is against Sharī‘ah and constitution both. However, more effective measures such intervention of courts and directives to revenue officials are necessary to eradicate established practices that contradict with women Quranic rights.

4. Promoting Gender-Sensitive Adjudication

Training programs for Judicial officers, especially for judges of family court should include modules on Qur'ānic injunctions and ruling of classical fiqh on financial rights of women. This would minimize inconsistencies in lower-court judgments and promote a jurisprudential ethos rooted in Islamic justice, ensuring that courts interpret statutes in a manner consonant with the mandate of Article 227.

5. Enforcing Constitutional Mandates of Islamic Conformity

The judiciary must-enforce its constitutional mandate under articles 227–229 by judicial review of legislation contrary to Sharī'ah, empowering the Federal Shariat Court and the Council of Islamic Ideology. This responsibility extends beyond abstract review to the practical enforcement of rights of women.

6.6.2 Legislative Recommendations

Legislative reform is equally important to incorporate Qur'ānic injunctions statutory law for effective and systemic development of law. Existing Pakistani statutory law recognizes dower, maintenance, and inheritance but fails to codify other Qur'ānic measure, such as mut'at al-ṭalāq (consolatory post-divorce support). Moreover, the fragmentation of provisions across the Muslim Family Laws Ordinance 1961 (MFLO), Family Courts Act 1964, and Succession Act 1925 undermines convenience and consistency.

1. Codification of a Consolidated Financial Rights Framework

A comprehensive law on financial rights of women, consolidating rules on dower, maintenance, inheritance right should be codified and also post divorce-related entitlements should be included to eliminate ambiguities and prevent conflicting judgments by courts.

2. Inclusion of Qur'ānic Mandated Rights

Provisions should recognize mut'at al-ṭalāq, as guaranteed by verse 2:241, thereby ensuring that women are compensated for the financial and emotional disruption due to

divorce. Comparative examples from Egypt, Jordan, and Malaysia prove that codification of this right is not only Shariah-compliant but also practically enforceable.

3. Clear Standards for Dower and Maintenance

Legislation should specify criteria for fixation of dower or maintenance minimum thresholds for dower, linked to inflation or earning capacity, and establish objective standards for maintenance, reflecting both the husband's financial ability and the wife's standard of living.

4. Mandatory Registration and Procedural Safeguards

Legislative reform should include mandatory registration of dower agreements, simplified succession procedures for women, and time-bound execution of maintenance decrees, with penalties for fraudulent deprivation of women's entitlements. Procedural safeguards, such as verification by family courts, would ensure that waivers are genuinely voluntary.

5. Strengthening Enforcement Mechanisms

Parliament should enhance the powers of Family Courts to impose penalties on defaulters, enforce maintenance arrears, and refer fraudulent inheritance cases to criminal prosecution. Such measures would transform judicial recognition into enforceable reality, ensuring that women's Qur'ānic rights are not undermined by procedural inactivity.

6. Public Awareness and Access to Justice

Legislative reform should be accompanied by state-led awareness and conscious raising campaigns highlighting women's Qur'ānic rights to dower, maintenance, and inheritance. In addition, provision for legal aid services for women in family and inheritance disputes should be institutionalized, reducing barriers created by litigation costs and social pressure.

The Qur'ān and Sunnah establish financial rights of women as mandated religious obligation upon men and society. But the Pakistani legal system continues to show statutory silence, judicial inconsistency, and enforcement failures. A dual approach where the

judiciary fulfil its constitutional mandate of Sharī‘ah conformity and the legislature codifies a comprehensive financial rights framework is necessary to bridge these gaps. Only then can Pakistan harmonize its legal practice with the principles of both Sharī‘ah and constitution, ensuring that financial rights of women are realized in their fullest and most practical sense.

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APPENDIX I: LIST OF QUR'ĀNIC VERSES

S. No.	Qur'ānic Verses	Verse No.	P. No.
1.	وَعَلَى الْمُؤْلُودِ لَهُ رِزْقُهُنَّ وَكَسْوَتُهُنَّ بِالْمَعْرُوفِ ۝	2:233	110
2.	لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوْهُنَّ أَوْ تَفْرُضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمُوسِعِ فَرْزَهُ وَعَلَى الْمُفْتَرِ قَدَرُهُ مَتَّاعًا بِالْمَعْرُوفِ ۝ حَقًا عَلَى الْمُحْسِنِينَ -	2:236	129
3.	وَلِلْمُطَّلَّقَاتِ مَتَّاعٌ بِالْمَعْرُوفِ ۝ حَقًا عَلَى الْمُتَّقِينَ -	2:241	112
4.	فَإِنْتَجَابَ لَهُمْ رَبُّهُمْ أَتَيْ لَا أَصِيغُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَى ۝ بَعْضُكُمْ مِنْ بَعْضٍ ۝	3:195	50
5.	وَأَنْوَا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً ۝ فَإِنْ طَبِنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِينًا مَرِينًا -	4:4	59
6.	لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۝ نَصِيبًا مَفْرُوضًا -	4:7	230
7.	وَلْيَحْشُدَ الَّذِينَ لَوْ تَرَكُوا مِنْ خَلْفِهِمْ ذُرَيْهُ صُعَافَاءَ حَافُوا عَلَيْهِمْ فَلَيَتَّقُوا اللَّهُ وَلْيَقُولُوا قَوْلًا سَدِيدًا -	4:9	230
8.	إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۝ وَسَيَصْلُوْنَ سَعِيرًا -	4:10	228
9.	يُوصِيْكُمُ اللَّهُ فِي أَوْلَادِكُمْ ۝ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيْنِ -	4:11	194

10.	وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُهُمْ إِن لَمْ يَكُن لَهُنَّ وَلَدٌ فَأُكُلُّ الرُّبُعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصَيَنَّ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَمْ يَكُن لَكُمْ وَلَدٌ فَأَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ	4:12	201
11.	يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحْلُّ لَكُمْ أَن تُرْثُوا النِّسَاءَ كُرْهًا	4:19	175
12.	فَاتُوهُنَّ أُجُورَهُنَّ فِرِيضَةٌ وَلَا جَنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفِرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا	4:24	67
13.	فَانِكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَاتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ	4:25	65
14.	لِلرَّجَالِ نَصِيبٌ مِمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا اكْتَسَبْنَ ^٢ وَاسْأَلُوا اللَّهَ مِنْ فَضْلِهِ ^٣ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا	4:32	45
15.	الرَّجَالُ قَوَامُونَ عَلَى النِّسَاءِ بِمَا فَضَلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ^٤	4:34	109
16.	يَسْتَفْتِنُوكُنَّ قُلِ اللَّهُ يُقْتِيمُ فِي الْكَلَالَةِ ^٥ إِنْ أَمْرُؤُ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أَخْتٌ فَلَهَا نِصْفٌ مَا تَرَكَ وَهُوَ يَرْثُهَا إِن لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْتَنَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رَجَالًا وَنِسَاءً فَلِلَّدُكَرِ مِثْلُ حَظِّ الْأُثْثَيْنِ ^٦ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضَلُّوا ^٧ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ -	4:176	198
17.	قَدْ خَسِرَ الَّذِينَ قَتَلُوا أُولَادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ وَحَرَمُوا مَا رَزَقَهُمُ اللَّهُ أَفْتِرَاءً عَلَى اللَّهِ ^٨ قَدْ ضَلُّوا وَمَا كَانُوا مُهْتَدِينَ -	6:140	36
18.	إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَى وَيَنْهَا عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ ^٩ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ -	16:90	220

19.	وَلَا تَقْتُلُوا أُولَادَكُمْ خَشْيَةً إِمْلَاقٍ تَحْنُّ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْبًا كَبِيرًا -	17:31	37
20.	وَلَقَدْ كَرَّمْنَا بْنَيْ آدَمَ وَحَمَّلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيَّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا -	17:70	50
21.	وَقُلْ لِلْمُؤْمِنَاتِ يَعْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَخْفَظْنَ فُرُوجَهِنَّ وَلَا يُبَدِّلْنَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا ۚ وَلَيَصْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُبُوبِهِنَّ ۖ وَلَا يُبَدِّلْنَ زِينَتَهُنَّ -	24:31	33
22.	وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۖ دُلُكْ قَوْنُكْ بِأَفْوَاهِكُمْ ۖ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ - ادْعُوهُمْ لِأَبَانِهِمْ هُوَ أَفْسَطُ عِنْدَ اللَّهِ -	33:4	191
23.	يَا أَيُّهَا النَّبِيُّ إِنَّا أَحْلَلْنَا لَكَ أَرْوَاجَكَ الْلَّاتِي آتَيْتَ أُجُورَهُنَّ -	33:50	60
24.	وَوَصَّيْنَا إِلِيَّا إِنْسَانَ بِوَالِدِيهِ إِحْسَانًا ۖ حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا ۖ وَحَمَلْهُ وَفَصَالْهُ ثَلَاثُونَ شَهْرًا ۖ حَتَّىٰ إِذَا بَلَغَ أَشْدَهُ وَبَلَغَ أَرْبَعِينَ سَنَةً قَالَ رَبِّ أُوزْعَنِي أَنْ أَشْكُرَ نِعْمَتَكَ الَّتِي أَنْعَمْتَ عَلَيَّ وَعَلَىٰ وَالِدِيهِ وَأَنْ أَعْمَلَ صَالِحًا تَرْضَاهُ وَأَصْلِحْ لِي فِي دُرَيْتِي ۖ إِنِّي ثُبُثٌ إِلَيْكَ وَإِنِّي مِنَ الْمُسْلِمِينَ -	46:15	50
25.	فَدَسَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا ۖ إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ -	58:1	52
26.	لِيُنْفِقُ ذُو سَعْةٍ مِنْ سَعْتِهِ ۖ وَمَنْ قُدْرَ عَلَيْهِ رِزْقُهُ فَلَيُنْفِقْ مِمَّا عَانَهُ اللَّهُ -	65:7	3

APPENDIX II: LIST OF AHADĪTH

S. No.	Ahādīth	P. No.
1.	مَنْ كَانَ لَهُ ثَلَاثٌ بَنَاتٌ فَصَبَرَ عَلَيْهِنَّ وَأَطْعَمَهُنَّ وَسَقَاهُنَّ وَكَسَاهُنَّ مِنْ جِدَّتِهِ - كُنَّ لَهُ حِجَابًا مِنَ النَّارِ يَوْمَ الْقِيَامَ -	38
2.	إِنَّ اللَّهَ حَرَمَ عَلَيْكُمْ عُقُوقَ الْأُمَّهَاتِ، وَمَنْعُ وَهَاتِ، وَوَادِ الْبَنَاتِ، وَكَرْهَ لَكُمْ قِيلَ وَقَالَ، وَكَثْرَةُ السُّؤَالِ، وَإِضَاعَةُ الْمَالِ -	38
3.	أَنَّ امْرَأَةً، ثَابَتْ بْنِ قَيْسٍ أَتَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ ثَابَتْ بْنُ قَيْسٍ أَمَّا إِنِّي مَا أَعِيبُ عَنِيهِ فِي خُلُقٍ وَلَا دِينٍ، وَلَكِنِي أَكْرَهُ الْكُفُرَ فِي الْإِسْلَامِ. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " أَتَرِدِينَ عَلَيْهِ حَدِيقَتَهُ ". قَالَتْ نَعَمْ. قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " اقْبِلْ الْحَدِيقَةَ وَطَلِفْهَا تَطْلِيقَةً -	51
4.	الثَّبِيبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيَّهَا وَالْكُفُرُ شُتَّامُ وَإِذْهَا سُكُونُهَا -	54
5.	أَنَّ رَوْحَ بَرِيرَةَ كَانَ عَبْدًا يُقَالُ لَهُ مُغِيْثٌ كَائِنِي أَنْظَرَ إِلَيْهِ يَطْوُفُ خَلْفَهَا يَبْكِي، وَدُمُوعُهُ تَسِيلُ عَلَى لَحْيَتِهِ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِعَبَّاسٍ " يَا عَبَّاسُ أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيْثٍ بَرِيرَةَ، وَمِنْ بُعْضِ بَرِيرَةِ مُغِيْثًا " . فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " لَوْ رَاجَعْتِهِ " . قَالَتْ يَا رَسُولَ اللَّهِ تَأْمُرُنِي قَالَ " إِنَّمَا أَنَا أَشْفَعُ " . قَالَتْ لَا حَاجَةَ لِي فِيهِ	54
6.	لَا يَرِثُ الْمُسْلِمُ الْكُفَّارَ، وَلَا الْكُفَّارُ الْمُسْلِمَ -	186
7.	إِنَّكَ أَنْ تَذَرْ وَرَتَّكَ أَغْيَاءَ حَيْرٌ مِنْ أَنْ تَذَرْهُمْ عَالَمٌ يَنْكَفُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ إِلَّا أَجْرَتْ بِهَا، حَتَّىٰ مَا تَجْعَلُ فِي امْرَأَتِكَ -	133
8.	أَفْضَلُ دِينَارٍ يُنْفِقُهُ الرَّجُلُ دِينَارٌ يُنْفِقُهُ عَلَى عِيَالِهِ وَدِينَارٌ يُنْفِقُهُ الرَّجُلُ عَلَى دَابِّتِهِ فِي سَبِيلِ اللَّهِ وَدِينَارٌ يُنْفِقُهُ عَلَى أَصْنَابِهِ فِي سَبِيلِ اللَّهِ -	134

9.	جاءت هند إلى النبي - صلى الله عليه وسلم - فقالت يا رسول الله إن أبا سفيان رجل شحيح ولا يعطيني ما يكفيه وولدي إلا ما أخذت من ماله وهو لا يعلم. فقال "خذ ما يكفيك وولدي بالمعروف".	131
10.	ان المهاجرُون حين قدمو المدينة يرثُ الأنصارُ المهاجري دون ذوي رحمة للأحواء التي آخى النبي صلى الله عليه وسلم بينهم فلما نزلت {جعلنا موالى} قال نسختها {والذين عقدت أيمانكم} -	192
11.	خير الصدقة ما كان عن ظهر غنى، وابداً بمن تعلق.	132
12.	إنك لن تتفق نفقة تتبغي بها وجه الله إلا أجرت عليها حتى ما تجعل في فم أمراتك.	132
13.	أن جاهمة، جاء إلى النبي صلى الله عليه وسلم فقال يا رسول الله أردت أن أغزو وقد جئت أستشيرك. فقال "هل لك من أم". قال نعم. قال "فالزمها فإن الجنة تحت رجلها".	32
14.	أن النبي صلى الله عليه وسلم قال لرجل "أترضى أن أزوجك فلانة". قال نعم. وقال للمرأة أترضين أن أزوجك فلانا. قالت نعم. فزوج أحد هما صاحبه فدخل بها الرجل ولم يفرض لها صداقاً ولم يعطيها شيئاً وكان ممن شهد الحديبية وكان من شهد الحديبية له سهم بخيبر فلما حضرته الوفاة قال إن رسول الله صلى الله عليه وسلم زوجني فلانة ولم أفرض لها صداقاً ولم أعطيها شيئاً وإنما أشهدكم أنني أعطيتها من صداقها سهمي بخيبر فأخذت سهماً قباعته بمائة ألف.	73
15.	عن عبد الله، في رجل تزوج امرأة فمات عنها ولم يدخل بها ولم يفرض لها الصداق فقال لها الصداق كاملاً وعليها العدة ولها الميراث. فقال معقل بن سنان سمعت رسول الله صلى الله عليه وسلم قضى به في بزوع بنت واسق.	72