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Editorial Foreword

The Federal Judicial Academy (FJA) continues to extend its steadfast and unwavering dedication in promoting research to encourage the transmission and pouring in a new ideas through Federal Law Journal (FLJ) and other research initiatives. In fulfilment of this ongoing commitment, the FJA feels pride to publish FLJ, Volume-4, Issue-1 for first half of this year. FLJ has two segments i.e. peer reviewed and non-peer-reviewed sections.

In the peer-reviewed section, out of meticulous selection of articles, the first article investigates the exploitive strategies applied by the fashion giants in Pakistan with focus on the role of informal contracts and unregulated subcontracting. The second article delves into the legal neglect of Hindu females' inheritance rights under the Mitakshara school of Hindu law. The third article offers a comparative analysis of property rights by examining Marxist and Islamic perspectives on land reforms, with a focus on the context of Pakistan. The fourth article presents a comparative review of rent regulation frameworks across Pakistan's federal and provincial jurisdictions. The fifth article explores the integration of artificial intelligence into Pakistan's legal system, emphasising its potential to enhance access to justice.

The non-peer-reviewed section includes a critical review of existing family laws in Pakistan, offering analytical reflections on the current legislative framework and interpretative practices. I indeed appreciate and extend my heartfelt gratitude to the participants to streamline such ideas which would surely expand the thinking horizon by giving new dimensions to the readers. I also appreciate and acknowledge tireless efforts of the reviewers, Editorial Board members, and the Editorial Team for their participation in maintaining and enhancing the journal's quality.

Hayat Ali Shah
Chief Editor

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Behind the seams: How Fast Fashion Giants Exploit Informal Contracts and Unregulated Subcontracting in Pakistan

Nosheen Zartaj[1]
Dr. Kashif Imran Zaidi[2]

Abstract

No formal job contracts, life risks and unhygienic workplaces without any safety measures are routine matters for workers of local supply chains, supplying garments and other products to the big giants globally, who raise slogans of human rights and workman protection on high notes. This study uncovers the hidden world of Pakistan's textile industry while focusing on the millions of informal and home-based workers who form the backbone of this sector. Despite hard work, these workers face job insecurity, nominal wages, unhygienic and unsafe working conditions, mostly without legal protection and social support. While comparing the situation of Pakistan with neighboring countries like India and Bangladesh, this article highlights the much-needed reforms for recognition of informal workers, enforcement of their rights and a need of modernization in the textile sector. Ultimately, it voices for a fair, inclusive and gender sensitive industry where each worker's contribution is acknowledged, earn them respect and fruitful for their bright future as well as a sustainable, progressive Pakistan.

Keywords: Home-Based Workers, Supply Chains, Wage Theft, Informal Workers, Subcontracts

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1. Introduction

"*Every night, my son would come home at 9:00 PM and immediately asked what I had cooked for him*", Saeeda recalls. "*On the day of the incident, I had made chicken karahi, his favourite dish. But he never came home to eat it."* These heart-wrenching words were shared by the mother of 18 years old worker who was burnt alive along with 263 other workers, including 160 young men and six girls in the deadliest blaze in Baldia factory, where readymade garments for a German company were being produced[3].From suffocating textile mills of Faisalabad to hidden home-based workshops in Karachi and Lahore, millions of workers are trapped in complexed informal contracts, deliberate legal invisibility, multiplying profits of fast fashions through every knot and stitch of their exploited working conditions. With no written contract, no safety training, no hygienic environment and no certainty to even receive the payment for the week, these workers rely merely on a verbal promise from the middleman who recruited them.

This article exposes how big giant multinational or fast fashion brands exploit weak regulatory enforcement and customary reliance on verbal agreements to outsource risk, by capturing most of profits[4]. While analysing subcontracting chains, weak labour protection of Pakistan, this research highlights that this informal structure is not accidental but in fact a corporate strategy, which dims the light of hope in the eyes of labourers holding a needle in one hand and hollow promises in the other.

The global fashion industry is flourishing heavily, relying on effortful labour, demanding production in low-cost economies. Pakistan has emerged as the fourth-largest exporter of textile products globally. It plays a key role in transitional supply chains,

[3] Naeem Sahoutara, "Mother Courage: Eight Years On, Families of the Baldia Factory Fire Victims Say They've Only Received 'Half Justice'," *DAWN*, October 11, 2020, https://www.dawn.com/news/1584293 (last viewed May 10, 2025).
[4] "New Report on Labour Rights in Pakistan Exposes Gross Failings in the Global Fashion Industry," *Labour Behind The Label*, September 28, 2023, https://www.hrw.org/report/2019/01/23/no-room-bargain/unfair-and-abusive-labor-practices-pakistan (last viewed May 10, 2025).

supplying garments to fashion retailers like many international fashion brands. Yet behind this economic contribution hides a painful mystery. While the textile sector of country is formal on paper, a significant portion of its labour force works informally, without contracts, protections, recognition and visibility.

This informality is not by chance or insignificant, rather a structural strategy of global brands to reduce cost and avoid responsibility. This article explores the outsourced production of multinational corporations through subcontracts, dodging labour obligations down to the supply chains until they are legally and logistically invisible. This pyramid is based upon small factories (often referred to as Ghost Factories) operating without registration with home-based workers who are paid per piece, with no formal employment status. This practice enables brands to deny claims of labour rights violations while piling profits and saving the cost and advantages of these subcontracts.

1.1 The Root Cause

The basic cause of this problem is due to legal and regulatory vacuum. Labour laws in Pakistan, including the Factories Act 1934, Minimum Wages Ordinance 1961 and Industrial Relations Act 2012, offer the protection to workers which is often confined only to the extent of statute books but the actual enforcement mechanism is weak, with rare inspections and subcontracted units which do not exist in the record files outside the legal domain of an Employer-Employee relationship. Verbal agreements, absence of documentation and no social security registration, make it next to impossible for workers to get rid of or escape from exploitative work conditions[5]. This is aggravated by global nature of fast fashion industry. The big brands which exercise significant power over pricing, deadlines on bulk orders, rarely take responsibility for violations committed by their suppliers and subcontractors by creating a system of ‘outsourced accountability’ in which the rights

[5]"No Room to Bargain: Unfair and Abusive Labor Practices in Pakistan," *Human Rights Watch*, January 23, 2019, https://www.hrw.org/report/2019/01/23/no-room-bargain/unfair-and-abusive-labor-practices-pakistan (last visited May 5, 2025).

of workers are violated in routine, without holding any accountability.

1.2 Research Objectives

This article particularly aims to critically

- Examine informal labour arrangements, subcontracts and how these are used to avoid legal accountability in the textile industry of Pakistan.
- To explore the limitations and effectiveness of labour law framework to protect informal and subcontracted workers in Pakistan.
- To analyse how global brands formulate supply chains to legally distance themselves from labour right violations.
- To make a comparative analysis with the other South Asian countries exporting garments.
- Proposals for workable reforms as to improvise legal accountability and supply chain transparency.

1.3 Research Questions

- How fashion brands exploited the textile industry in Pakistan through informal subcontracts to avoid labour rights accountability?
- What legal loopholes and enforcement weaknesses in labour law framework enable this invasion?
- How these practices compare with the working environment in India and Bangladesh?
- What are the policies and legal reforms necessary to ensure and calculate accountability in the supply chains?

1.4 Methodology

This research employs a qualitative methodology, while combining doctrinal legal analysis with secondary case study reviews. It explores and investigates how multinational corporations, especially the sector dealing with fast fashion, use informal contracts and multi-tiered supplying contracts for evasion of labour rights accountability in Pakistan. This study relies on the existing legal

framework, international conventions, NGOs and news reports, academic literature review and media investigations for comprehensive understanding of the issues.

This research relies upon doctrinal legal research while analysing labour laws, judicial decisions, including the Factories Act 1934, Industrial Relations Act 2012 and other Social Security laws. Case studies documented and investigated by organisations such as Human Rights Watch, Pakistan Institute of Labour Education and Research (PILER), Clean Clothes Campaign (CCC)[6] and other academic sources are consulted. A comparative analysis from the neighbouring countries such as India and Bangladesh, to highlight regional practices and legal enforcement gaps is also made. At last but not least, guidelines from international frameworks such as UN Guiding Principles on Business and Human Rights (UNGPs), International Labour Organisation Conventions (ILO), and OECD due diligence guidelines for responsible supply chains are also included.

1.5 Literature Review

The worldwide fast fashion business has been under increasing scholarly attention for its systematic dependence on informal labour and intricate subcontracting systems, particularly in emerging economies like Pakistan. A common theme running across much of the research is how these supply networks are designed to shield multinational corporations from direct legal liability. They cleverly blur the lines of accountability and disassociate themselves from labour crimes occurring deep inside their supply networks by outsourcing production to layers of unregulated subcontractors.[7]

[6] Clean Clothes Campaign, "Data Retrieved from https://cleanclothes.org/news" (last viewed May 10, 2025).
[7] A. Mezzadri, *The Sweatshop Regime: Labouring Bodies, Exploitation and Garments Made in India* (Cambridge: Cambridge University Press, 2017).

Numerous studies indicate that this is frequently intentional and not only a result of poor governance or underdevelopment.[8] Informality, according to researchers studying South Asia, notably Pakistan, is purposefully included into the fast fashion industry's structure rather than existing as an afterthought.[9] Workers, many of whom are women and even juveniles, are frequently engaged on verbal pledges with little legal protection in regions like in Faisalabad and the informal workshops of Karachi and Lahore.[10] These workers are particularly susceptible to wage theft and maltreatment since they work in unstable conditions without contracts, health insurance and even without a guarantee of weekly payment.[11]From the Baldia factory fire which burnt over 260 alive people to collapse of Rana Plaza in Bangladesh which took away around 1134 lives exposed, how invaluable and throwaway this labor has become.[12]

1.6 Scope of Study

This research primarily focuses on the textile and garment manufacturing sector in Pakistan while emphasising advanced production hubs such as Karachi, Faisalabad and Lahore which are widely known for hosting informal stitching units and unregistered small factories serving as the backbone of fast fashion exports in Pakistan. The scope includes informal and verbal employment arrangements, home-based production, case studies regarding wage theft, forced overtime, and unsafe working conditions. It includes an analysis of legal and enforcement gaps in Pakistan to capture and cover the indirect employment relations. The primary focus of this

[8] Mark Anner, "Squeezing Workers' Rights in Global Supply Chains: Purchasing Practices in the Bangladesh Garment Export Sector During COVID-19," *International Labour Review* (2020).
[9] Naila Kabeer, Shireen Mahmud, and Shahida Tasneem, "Beyond Supply Chains: Addressing the Root Causes of Precarious Work in the Garment Sector," ILO Working Paper (2006).
[10] Raza Amjad, "Labour Market Regulation and Economic Performance in Pakistan," Pakistan Institute of Development Economics (PIDE, 2012).
[11] Asma Khan, *Stitched for Profit: Informality and Gender in Pakistan's Garment Industry* (Lahore: Vanguard Press, 2021).
[12] Clean Clothes Campaign, "Pakistan: The Baldia Factory Fire," www.cleanclothes.org (2013).

study is on Pakistan, whereas comparative analysis to neighbouring countries such as Bangladesh (post Rana Plaza labour reforms) and India (Tamil Nadu Garment units) is made to understand the background of the situation with depth and significance.

1.7 Limitations

This study acknowledges following limitations:

- No primary interviews or field work were conducted; data is limited to publicly available secondary sources.
- Record of informal factories has been deliberately shadowed by suppliers and middlemen.
- Exact brand-factory connections are often unidentified in investigative reports, due to the non-transparent nature of global supply chains, which limits direct accountability.
- In informal setups, workers may not report the abuses due to fear of revenge.
- However, the credible reports from human rights organisations cross-reference with labour laws of Pakistan and international legal standards, providing sufficient grounds for effective analysis of how informal labour is exploited in fast fashion supply chains globally.

2. Legal Distancing: The False Divide

Multinational Corporations (MNC) have often developed a deliberate legal distance between parent entities and their foreign subsidiaries or subcontractors in order to create an illusion that each of them operates independently. But in fact, this is an artificial separation, as each entity is governed under the laws of its host country. But the strategic and economic decisions are centrally taken by the parent company. Such divided large structure often enables multinational companies to distance themselves from liability of human rights, their abuse, regulatory violations and accountability within their global supply chains, misusing the gaps between jurisdictions and limitations of national laws. These big brands are actually gaining benefit from these double standards, while

apparently advocating high legal and ethical norms in their home countries and successfully escape accountability abroad through contractual outsourcing and complicated corporate structures.[13] This legal gap is a thoughtful arrangement by multinational corporations in order to isolate themselves from liability of human rights violations in their supply chains. Through this contractual detachment, these giant companies evade legal recognition as employer or principals under domestic labour laws.

As a result, all these big fashion brands claim denial of forced overtime, wage theft, child labour practices in the subcontracted and home-based settings. In 2021, an investigation conducted by Clean Clothes Campaign revealed that many garment workers in Karachi's Landhi industrial area are working for 12 to 14-hour shifts in un-registered units and producing for global brands, but no contractual link exists between the brands and these ghost factories.[14]

3. Foundation of Worker Protection: Legal Landscape of Labour Laws

Pakistan has comprehensive legal framework for the regulation of workers employment contracts, wages, working conditions, benefits, and dispute resolution. Secured through the Constitution of Pakistan and strengthened by the Federal and Provincial Statutes. These laws aim to protect rights of workers beside the promotion of fair labour practices in industries. It is essential to understand these laws to ensure compliance of fair workplace treatment by employers, employees and policymakers.

[13] Arslan, Muhammad. "Mechanisms of labour exploitation: the case of Pakistan." *International Journal of Law and Management* 62, no. 1 (2020): 1-21.

[14] Rhys Davies et al., "Workers' Lives at Risk: How Brands Profit from Unsafe Factory Work in Pakistan," *Clean Clothes Campaign*, July 2022, https://respect.international/workers-lives-at-risk-how-brands-profit-from-unsafe-factory-work-in-Pakistan/ (last viewed May 10, 2025).

3.1 Key Legislations Covering Labour Pakistan

Constitution of Pakistan[15]

Articles 11 and 25 of the Constitution of Pakistan deal with the fundamental rights which prohibit slavery and forced labour. Article 18 of the Constitution ensures the protection of the right to work and freedom to choose trade, business and profession. Whereas fundamental rights embodied in the Constitution protect the guarantee relating to the absence of discrimination, in-equality in employment, and just and fair treatment at work.

Factories Act 1934

The Factories Act 1934[16] regulates the working hours, health, safety and welfare of labour in factories. While extending the scope and application of the Act, it applies to "*factories*" where 10 or more workers are employed and a manufacturing process is carried on.

- Sections 34 to 40 limit the working hours to 9 hours/ day and 48 hours /week for adults and 8 hours/day 48 hours/ week for adolescent workers.
- Compensation of exceeding hours at double ordinary rates.
- Spread over work not exceeding 12 hours with rest intervals of half an hour after every 5 hours of work (section 35).
- At least one day a week as holiday.
- Restrictions on night work for women (between 7pm to 6am) except with government approval.
- Health and Safety Provisions (sections 13 -28)
- Changes must be kept clean and free from films and discharge arising from drains, toilets etc (section 13).
- Reasonable ventilation and temperature should be maintained (section 14).
- Effective measures should be taken to avoid dust, fumes and other such particles harmful for health (section 15).

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[15] *The Constitution of Pakistan*, https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2FqaJw1-apaUY2Fvbpw%3D-sg-jjjjjjjjjjj.

[16] *The Factories Act 1934*, https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-b56X-sg-jjjjjjjjjjj9 (last viewed May 10, 2025).

- The workspace should not be overcrowded (section 16).
- The availability of clean drinking water has to be ensured (section 18).
- Proper lighting and facilities of toilets should be provided (section 19,20).
- Machinery hazardous to human life should be safely operated (section 21-26).
- First aid, canteens and restrooms should be provided for workers. (33A-33C).
- Employment of Children and adolescents (sections 50-53)
- Children under the age of 14 years are prohibited from working in factories (section 50).
- Limitations on working hours of adolescents and age-appropriate jobs are necessary (section 52).
- Record of child adults as workers has to be maintained (section 53).
- Annual paid leave of 14 days in a year, along with casual and sick leave, should be given to workers.
- Violations of these provisions are punishable by fine and imprisonment.

Industrial Relations Act 2012

The Industrial Relations Act 2012[17] protects the right of workers to engage in lawful protest, it governs the trade unions, collective bargaining and resolution of disputes. Deals with the relations of employers and workers in order to ensure a safe environment and protection of workers' rights. It recognises rights of workers and employers related to the formation of trade unions. Encourages participation of workers in the management and establishes the settlement of industrial disputes through labour courts, NIRC, and through conciliation, mediation and arbitration.

[17]*The Industrial Relations Act 2012*, https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FqaZk%3D-sg-jjjjjjjjjjjj (last viewed May 10, 2025).

a. Minimum Wages Ordinance 196118

It fixes minimum amount of wage which is updated annually by provinces. Minimum wage announced by the government in year 2025 is 32,000 to 37000 for unskilled workers.[19]

b. Payment of Wages Act 193620

Ensures that wages are paid on time and no unauthorised deductions are made. It applies to commercial setups and factories.

c. Employees Old Age Benefit Institution (EOBI)Act 1976[21]

It mandates that the contributory benefits and pensions are made to ensure that after retirement, the employee or in case of death, family of the deceased worker get aid through these contributions. It applies to the establishment in which five or more employees work.

d. Provincial Employees Social Security Ordinance 1965[22]

Deals with the health and social security benefits like medical care and pensions in case of disability. Contribution by employee are on the basis of wages and is mandatory as per law.

e. Maternity Benefits Ordinance, 1958[23]

It ensures grant of 12 weeks of paid maternity leave to female employees

(Section 3). The Ordinance further gives protection to woman workers from dismissal during maternity leave.

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[18]*The Minimum Wages Ordinance 1961*, https://punjablaws.punjab.gov.pk/uploads/articles/THE_MINIMUM_WAGES_ORDINANCE%2C_1961.doc.pdf (last viewed May 10, 2025).
[19] Ramco, "Payroll Compliance Updates - Pakistan," https://campaigns.ramco.com/ramco-global-payroll-compliance-portal-pakistan (last viewed May 10, 2025).

[20] *The Payment of Wages Act 1936*, http://punjablaws.gov.pk/laws/45a.html (last viewed May 10, 2025).
[21]*The Employees Old Age Benefit Institution (EOBI) Act 1976*, https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpuUY2Rt-sg-jjjjjjjjjjjj (last viewed May 10, 2025).
[22]*The Provincial Employees Social Security Ordinance 1965*, http://punjablaws.gov.pk/laws/187.html (last viewed May 10, 2025).
[23]*The Maternity Benefits Ordinance 1958*, https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5plbA%3D%3D-sg-jjjjjjjjjjjj (last viewed May 10, 2025).

f. Industrial and Commercial Employment (Standing Orders)Ordinance 1968[24]

This Act applies to the establishment of 20 or more employees are employed. It implies that the employer clearly defines the terms of employment, discipline and procedures related to redressal of grievance.

3.2 International Labour Treaties Ratified By Pakistan

Pakistan has signed a number of international treaties especially those ratified being member of international labour organisation which have to be adhered to while formulating labour policies and law reforms in order to meet the international standards for labour rights.

- ILO Convention No 29 (Forced Labor ,1930)[25]
- ILO Convention No 87(Freedom of Association,1948)[26]
- ILO Convention No 98(Right to Organize and Collective Bargaining,1949)[27]
- ILO Convention No 100 (Equal Remuneration,1951)[28]
- ILO Convention No 111(Discrimination in Employment,1958)[29]

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[24]*The Industrial and Commercial Employment (Standing Orders) Ordinance 1968*, https://punjablaws.punjab.gov.pk/uploads/articles/39-industrial-and-commercial-employment-standing-orders-ordinance-1968-vi-of-1968-pdf.pdf (last viewed May 10, 2025).

[25]International Labour Organization (ILO), *Convention No. 29 (Forced Labor, 1930)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (last viewed May 10, 2025).

[26]International Labour Organization (ILO), *Convention No. 87 (Freedom of Association, 1948)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO (last viewed May 10, 2025).

[27]International Labour Organization (ILO), *Convention No. 98 (Right to Organize and Collective Bargaining, 1949)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C098 (last viewed May 10, 2025).

[28]International Labour Organization (ILO), *Convention No. 100 (Equal Remuneration, 1951)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100 (last viewed May 10, 2025).

[29]International Labour Organization (ILO), *Convention No. 111 (Discrimination in Employment, 1958)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111 (last viewed May 10, 2025).

- ILO Convention No 138 (Minimum Age ,1973)[30]
- ILO Convention No182(Worst Forms of Child Labour,1999) [31]

4. Informal Labor and out Sourcing in Pakistan's Garment Sector

Readymade garment industry of Pakistan is the backbone of its economy, which has employed over four million people and contributes as half of the national exports but still, most of its production is informal. International clothing brands outsource the labourers in Pakistan through multi-tiered local supply chains, sub-suppliers and contractors, mostly with little to no visibility beyond the first tier. Garments may be stitched and finished in small local workshops or even in the homes of workers. This shadowed and informal "homework" helps the brands to minimise their costs while leaving the workers insecure and unprotected. Human Rights Watch and the reports of industrial surveys show that most of such workers are employed without a written contract, hired on a verbal contract or on piece-rate basis with wages below the minimum wage rate fixed by the government. Formal records of employment and payroll actually do not exist.[32] The majority of such workers are unaware of the fact that a written employment contract exists, they are informally employed through third parties and paid on a piece-rate basis which excludes Social Security and other protections guaranteed by law.[33]

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[30]International Labour Organization (ILO), *Convention No. 138 (Minimum Age, 1973)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=normlexpub:12100:0::NO::P12100_Ilo_Code:C138 (last viewed May 10, 2025).

[31]International Labour Organization (ILO), *Convention No. 182 (Worst Forms of Child Labour, 1999)*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (last viewed May 10, 2025).

[32] Bushra Umar et al., "Exploring Labor Rights Violations in Pakistan's Textile Industry: The Impact of Hiring Contract Workers," *International Journal of Trends and Innovations in Business & Social Sciences*, Vol. 2 No. 1 (March 2024): 109-121 (last viewed May 10, 2025).

[33]M. Arslan, "Mechanisms of Labour Exploitation: The Case of Pakistan," *International Journal of Law and Management*, Vol. 62 No. 1 (2019): 1-21, https://doi.org/10.1108/IJLMA-07-2018-0145 (last viewed May 10, 2025).

4.1 Supply Chains Manipulative Structure

Global buyers typically place orders with mills or export houses working in Lahore, Faisalabad and Karachi, which further divide the work through subcontracts with smaller factories. These smaller factories then shift/divide work to subcontractors or middlemen in small portions and give small deadlines/ rush orders for swift completion of orders in minimum time. Often, the cutting, sewing or finishing of garments is completed through multiple stages used by these informal tiers. Workers or even the local contractors hardly know the name or identity of the final brand; they receive the orders through a broker to process the raw material and are paid on per piece completion. The audits by supply chains normally cover the primary factories, so the abuse with workers through informal contracts or ghost factories remain undetected. Big brands claim that they fulfil the ethical formalities, but due to lack of transparency in supply chains and inadequate due diligence, the enforcement often becomes a dream.

4.2 Employment Practices: Verbal Contracts and Piece Rates

In most of the Pakistani factories and workshops, the written formal contracts are rare phenomena. Human Rights Watch and clean clothes campaign Saturdays reported that 85 to 90% workers employed in garment factories had no written contracts[34]. Mostly paid on a piece rate, meaning thereby the workers are paid an amount on the basis of each garment or part thereof they finish rather than an hourly or monthly wage. A supervisor might set high production target, and workers are paid on the condition of meeting the target. As there is barely any official contract therefore, the minimum wage set by government is conveniently evaded and eventually the workers end up with minimal to no benefit or protections. Due to the absence of written contracts, no appointment letters or payroll entries, the employers can manage to deliberately

[34]Human Rights Watch, *"No Room to Bargain: Unfair and Abusive Labour Practices in Pakistan,"* January 23, 2019, https://www.hrw.org/report/2019/01/23/no-room-bargain/unfair-and-abusive-labor-practices-pakistan (last viewed May 10, 2025).

avoid overtime pay, sick leave, social security or pension contribution of workers.

Several studies highlight this working instability with observations that in textile and garment factories 85% workers are working without formal contracts therefore, this undocumented employment deprived the workers from the Social Security and paid them a meagre wage on per piece basis, with no idea of the minimum wage provided by law.[35]

4.3 Gender Discrimination

Mostly the workers in the garment industry are women, as soft targets for exploitation, so they are typically given the lowest-skill, lowest-paid tasks like sewing sleeves, folding embellishment and hardly hold any salaried position. Data from the garment industry shows that 93% of female working in garment industry earn below the minimum wage, as compared to 44% of men[36]. In the factories which are supplying to global brands, women face verbal harassment, denial of maternity leave, magnified by their underpaid, insecure status. Pregnant women are either simply fired or they quit rather than receiving their legally accorded maternity leave. In the absence of written contracts, neither these deprived female home workers can protest nor can they claim and enforce their labour rights.

4.4 Home-Based Workers and Outwork

A major chunk of garment work is done at home or in small outwork units. Due to cultural or economic norms, many female workers, especially married women, work from home in order to have a part-time or piece rate basis income[37]. Factories often turn to home-based

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[35]European Center for Constitutional and Human Rights (ECCHR) and FEMNET, *"No Contract, No Rights: How the Fashion Industry Avoids Paying Minimum Wages in Pakistan,"* https://www.ecchr.eu/fileadmin/user_upload/No_Contracts_No_Rights_ECCHR_FEMNET_study_final_EN.pdf#page=17.26 (last viewed May 10, 2025).

[36]UN Women, *National Report on the Status of Women in Pakistan, 2023: A Summary*, https://pakistan.unwomen.org/sites/default/files/2023-07/summary_-nrsw-inl_final.pdf (last viewed May 10, 2025).

[37]*Women's Economic Empowerment in Pakistan: An Evidence-Guided Tool Kit for More Inclusive Policies*, World Bank,

workers for special product lines or rush orders. These home workers are typically engaged in cutting, embroidery or packaging. Contractors or middle men handover raw material to these home-based women workers, and they return finished parts for a tiny payment per piece.

Subcontractors or middle-men only contact those naive women, who have no idea of the brand or final buyer. The middleman often collects finished pieces and pays/doesn't pay as per their rules. Sadly enough, if the set targets are not achieved, the workers are not even paid. These workers are not recognised within the legal frameworks created for the protection of their rights, even if they are aware of their rights, they never find themselves in a position to enforce their rights. Due to their unrecognised status, these women workers are invisible in labour statistics and thus there is no policy in place for this extremely neglected sector and no legal protection exists for home workers. Although provincial labour laws recently begun to recognise home-based work. But practically they are not counted for laws and policies implementation.

4.5 Ghost Factories and Unregistered workshops

Mostly production units in Pakistan are true examples of "ghost factories"**.** These unregistered workshops are established to avoid taxes, inspections and compliance. The term covers two related situations:

- **Paper factories**

Where companies get formally registered as manufacturers, to gain benefits including import tax concessions, but have no real setup or workshop. Tax Authorities have identified "ghost manufacturers" where no actual setup exists on the given addresses. These ghost factories import fabric and material, even have work invoices, but actual garment stitching work may be done by third parties at some

https://thedocs.worldbank.org/en/doc/e02bd4872b983fc0b4a1809489231e35-0310012024/original/Womens-Economic-Empowerment-in-Pakistan.pdf (last viewed May 10, 2025).

other place[38]. Many such firms exist merely on papers for evasion of taxes, but they operate a parallel model in fact: for example, the owners claim that only cutting is part of their contribution whereas the actual assembling of garments is completed by hidden subcontractors.

- **Hidden Workshops**

Factories often operate from unmarked discreet premises. Human Rights Watch identified that "*most garment factories…. Cater to the domestic market, with the work carried out in small unregistered workshops in unmarked buildings that escape labour inspectors scrutiny".*[39] These small units sometimes consist upon a place not more than a single room or garage where the workers produce for either local brands or export buyers. These premises are not registered with any government department and the concerned inspectors hardly find these premises. Working conditions in these small workshops are worst as these are often operated in slum areas, the workers are paid minimum wages, with no or minimum facilities with poor hygiene conditions. Above all no written contracts are in place to ensure the stability of work and enforcement of statutory rights.

These ghost factories are created to facilitate the exploitation of rights of workers to the maximum level, since these factories operate on off-books basis therefore, no activity is documented thus no check and balance is operational which could track the record of employees, social security funds or even safety standards. Such workers with no employment record cannot take their matters related to the exploitation/ misuse of their rights to Labour Courts. Due to absence of trace and track of employment record of such

[38]Mubarak Zeb Khan, "Ghost Manufacturers Haunt FBR," *DAWN*, March 4, 2018, https://www.dawn.com/news/1393107#:~:text=ISLAMABAD:%20Nearly%20200%20ghost%20companies%20have%20been,specifically%20for%20the%20purpose%20of%20tax%20evasion (last viewed May 10, 2025).

[39]Human Rights Watch, *"Pakistan: Garment Workers' Rights at Risk—Enforce Labor Laws, End Poor Working Conditions,"* January 23, 2019, https://www.hrw.org/news/2019/01/23/pakistan-garment-workers-rights-risk (last viewed May 10, 2025).

workers even if the owners/contractors are caught involved in violation of law, they can easily claim "non-existence" of company. In real, these ghost factories are darkest corner of garments supply chains in Pakistan.

4.6 Regulatory Context

Labour laws in Pakistan technically guarantee protection of labour rights with written contracts, fixed minimum wages, social insurance, payment of overtime, maintenance of safety standards, but unfortunately, the enforcement is non-existent for most of the textile workers. Labour inspections are rare, so much so that if such inspection is finally conducted, the owners get the information through his sources beforehand. Millions of workers already remain off-books. On the legal side, there is almost no relief and remedy available for them. The individual complaints go unheard, as firstly there are no written contracts, so no proof of employment, secondly their contracts are temporary, often project based which concludes that leaving one job means, losing next assignments Whereas, on legal grounds to take up any labourer's grievance, appointment letter and formal registration with social security institution is a mandatory thing, which doesn't exist for an informal worker.

5. Rise of Flexible Labour Regime in Global Supply Chains

In the global production of fast fashion, flexible labour regimes have emerged as a strategic corporate response to market instability, economic burden and competitive working environment. These regimes are not incidental, rather purposefully built system in which labour is disposable, invisible and substitutable. In Pakistan, such factors depicts through the vast dependence on verbal contracts, piece-rate remuneration, subcontracts with informal workers, often operating through unregistered workshops or "ghost factories" out of reach and sight of labour inspection. Multinational Corporations or globally recognised fashion/clothing brands normally deal with suppliers at high-end, who further outsource the work to contractors

and subcontractors and eventually shifts the production as well as legal liability to those contractors and sub-contractors. These layered subcontracts do not only protect these high-end brands from accountability but also create a gap to safeguard the latter from legal enforcement relating to minimum wages, workplace safety and social protection which finally gets compromised as a matter of routine. Therefore, this flexibility is a symbol of institutional instability, unjust practice affecting women and children in low-income urban setups.

5.1 Global Retail Shock Absorption by Informal Labour

The informal labour economy in Pakistan acts as a cushion and shock absorber for global supply chains upheaval, while bearing the impact of unpredictable demand patterns, economic recission and other crises such as COVID-19 Pandemic. When international orders are cancelled, curtailed or work reduced, the informal workers become the most vulnerable being the top ones to lose their jobs. In 2020, for instance, due to pandemic; extensive order were cancelled by major fashion brands resultantly countless informal units were closed across Lahore, Karachi, leaving thousands of workers unemployed and unpaid without a remedy. Most of these workers, were women who were stitching garments from their homes or small informal units, being uncounted, unregistered were unable to get compensation or protection. Such workers absorb the cost of instability while allowing fashion brands to maintain flexible supply chains without bearing burden of social or financial burden. Therefore, informal economy is not a defect or flaw but a thoughtful and considered feature of global capitalism, formulated to mitigate the corporate risk upon most vulnerable segment, i.e. labour.

6. Case Studies and Comparative Analysis

6.1 Ali Enterprises (baldia factory) Fire- "Audit Certified Tragedy"

On September 12 2012, Pakistan witnessed one of the most horrifying industrial disasters in history, when fire at the Ali

Enterprises (baldia factory) garment factory in Karachi burnt around 260 workers alive and injured more than 100.A chain of negligent irregularities and complete absence of safety and fire mechanisms. Surviving workers stated that no efforts were made to rescue the workers immediately after the incident, ridiculously, the administration, instead of saving workers lives, tried to save their machinery first. Ali Enterprises (baldia factory) was the primary supplier of garments to a famous German brand.[40]

This sad incident also magnifies serious flaws in the auditing and certification process. Surprisingly, a certificate was issued to the factory by RINA Services S.P.A, an Italian inspection company just 22 days before the deadly fire. It was certified that fire and safety mechanism as well as labour laws have been complied with in the factory. Similar certificates issued by RINA to more than 100 factories by the auditing company are a big question mark to the safety audits of the premises where hundreds of workers earn their livelihood.[41]

In 2015, few survivors and families of victims with the help of some NGOs filed a civil lawsuit in Germany against that famous German brand for its negligence, however the case was dismissed in 2019 on procedural grounds (statute of limitation) showing barriers to corporate accountability in transnational cases. However later-on, under pressure from unions and NGO's KiK Agreed to contribute 6.15 million dollars in compensation fund administered by ILO.

6.2 Wage theft and Exploitation by local brands

In 2017 Protest begin against one of Pakistan's most famous and leading fashion brand, when over 30 workers were illegally terminated for demanding better wages and safe working conditions. These workers were at a subcontracted premises of that fashion

[40] Miriam Saage-Maaß et al., *"Transnational Legal Activism in Global Value Chains: The Ali Enterprises Factory Fire and the Struggle for Justice," Interdisciplinary Studies in Human Rights*, Vol. 6 (Year of Publication).

[41] Abdul Rafay, *"Baldia Factory Fire Tragedy: A Black Spot for Workplace Safety Standards in Pakistan," Workplace Health & Safety*, Vol. 72, No. 2, https://journals.sagepub.com/doi/pdf/10.1177/21650799231218946#page=1.00&gsr=0 (last viewed May 10, 2025).

brand, in Korangi Industrial Area Karachi, hired through third party contractors. They tried to organise and raise voice on long working hours without payment overtime, salary below the minimum wage fixed by the labour laws and unhygienic working conditions. Initially, the allegations were denied by the said brand, while claiming that it had no nexus or contractual relationship with the protesting workers and that no employee was terminated. Protests were organised by the national trade union federation NTUF supported by civil society, human rights activists and students. Demonstrations which started from Karachi spread to Lahore and Islamabad. Social media campaign was run against that brand with hashtag of a warning to boycott added with strong criticism on the treatment of workers trended. NTUF argued that the said brand was directly responsible under joint employer liability, Factories Act 1934 and Standing Orders Ordinance 1968. The protest highlighted the unregulated and informal subcontracting system in textile industry of Pakistan and also exposed the gap between labour law protections on papers versus practical enforcement.

6.3 Informal Loom Workers of Faisalabad Textile Sector

Faisalabad is the major textile hub of Pakistan, thousands of workers are employed in power looms and spinning units. Workers employed for decades have no formal written agreements. As they have no proof of employment therefore, neither their jobs are protected nor any injury during work is covered under any compensation. These informal workers are not registered with EOBI (Employees Old Age Benefits) or social security institutions, making resort to any legal remedy impossible for them.

6.4 Home-based Women Embroiderers- Multan

Multan being hub for handmade embroided apparels, takes the lead in its preparation and export as well. But the working conditions of home-based women workers, involved in embroidery and embellishment for different national and international brands is extremely poor. Such workers are engaged through subcontractors/ middlemen, who deliver material and collects finished products.

There is no minimum wage fixed for such workers, no formal/ written contracts, and no formal labour record is maintained. The home-based nature of work comes with a package of social isolation. As these women workers cannot go out for work due to societal pressure or other norms, therefore, they completely rely upon the middlemen. They cannot negotiate directly with contractors or the brands, the middleman get the work done on meagre wages by taking benefit of their isolation and unawareness. These workers are paid on a piece rate basis without any fixed or minimum wage criteria. As there is no formal written contract therefore, they have no legal identity of a worker, even no maternity leaves and medical assistance is allowed to them. Exploitation is the primary feature of informality. Although these workers are indirectly part of big brands and global supply chains but due to their shadowed legal status, their rights are not enforced under the prevailing and enacted labour laws, which makes it convenient for the suppliers and ultimately brands to evade the accountability.

6.5 Destituted Workers of Bismillah Clothing Factory

When Uk brand Misguided went bankrupt in 2022, thousands of workers in the Bismilah Clothing factory, exclusive supplier for the brand, were dismissed. Muhammad Irfan, one employee said that many workers were suffering from severe depression after not receiving their salaries.

> *"We do not know what to do in this situation. Whether to commit suicide or become a thief. I can't survive without getting our pay each month, but it has been more than four months. Misguided and UK government should help us or the government should force the company to pay for the Bismillah factory."*[42]

[42] *The Guardian*, "Pakistani Garment Workers Left Destitute and Starving After Missguided Collapse," June 12, 2022, https://www.theguardian.com/global-development/2022/jun/12/missguided-collapse-pakistani-garment-workers-left-destitute-and-starving (last viewed May 10, 2025).

Like most of suppliers in poor countries, used by global fashion brands, suppliers don't make prepayment but the invoices are only raised when the goods are completed and ready for shipping. Owners claimed that the said brand have never shared their financial situation therefore, hundreds and thousands of pieces were in the shipping process, stuck in godowns or ports, without payment thereof. This event also suggests the dependence of local factories upon unpredictable fast fashion sourcing, even if there are large units like Bismillah Clothing factory, having around 500 workers, without job security, working on contract basis.

7. Cross-Country Analysis of Labour Practices in Pakistan, India and Bangladesh

Textile industrial South Asia has been regarded as key foundation and contributor to economic growth, hiding deep rooted structure of informal labour, exploitation of workers and corporate protection. Pakistan, India and Bangladesh are considered as pivotal elements in fast fashion industry across the globe due to low-cost labour and flexible production regimes to cope up with the uncertain demands of multinational brands.[43] While this contribution has increased earnings and employment, it has also institutionalised insecure labour practices like informal contracts, wage theft, child labour and successful escape of global brands from regulatory system. Now we will compare and analyse the labour conditions in these countries while highlighting the common patterns of exploitation and legal structures which enable multinational companies to outsource accountability. Bangladesh takes the lead by generating 80 % export revenue coming from ready-made garments sector, comprising 4.5 million workers out of whom 90% are women. India has employed 45 million people in spinning, weaving and apparel manufacturing for domestic as well as export products. Whereas, textile sector of Pakistan has employed around 15 million people.

[43] Maggie Quiroz, *Fast Fashion: A Thorough Examination on Human Rights Violations in Bangladesh and Global Environmental Degradation* (Chapman University, Orange, CA).

7.1 Informal Work and Subcontracts

A connecting feature in all three textile economies is extensive use of informal labour arrangements. In Pakistan around 72% of textile force consist upon informal workers, mostly with verbal contracts without any job security, workplace safety or wage protection. The "ghost factories" and unregistered workshops successfully dodge the official scrutiny even in the big cities like Lahore, Karachi and Faisalabad which are the hubs of textile products.[44]

India's informal textile economy is also vast. The large firms operate in export processing zones, but significant portion of the production depends upon subcontractors and home-based workers in power loom hubs like Surat and Tirrupur, where many workers are paid below the minimum wage fixed by law.

Bangladesh has more refined multi-tier subcontracting. After Rana Plaza incident, reforms brought improvement in Tier -1 factories, but Tier -2 and Tier-3 production units working for the same global brands are still mostly unregulated.[45]

7.2 Home-based Work Gendered Labour

Women workers fall in the lowest tiers of labour chains, especially the ones doing home-based and piece-rate work. In Punjab and Sindh province of Pakistan women worker are engaged in delicate embroidery and finishing work, often paid as low as 2-8 PKR per item. Similar trends exist in spinning wheels of India and informal tailoring units of Bangladesh. Women worker face dual exploitation i.e wage disparity and harassment. Due to invisibility of their employment status, they're not included in the formal labour protection, therefore do not have maternity benefits, access to healthcare or representation in labour unions.

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[44] *Pakistan's Hidden Workers: Wages and Conditions of Home-Based Workers and the Informal Economy*, International Labour Organization (ILO), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_554877.pdf (last viewed May 10, 2025).

[45] Isabel Schmid, *Human Rights Abuses in the Clothing Industry*.

7.3 Legal Framework and Regulatory Gaps

Despite enactment of comprehensive labour laws such as Factories Act 1934 Pakistan, Industrial Disputes Act 1947 India and Bangladesh's labour Act 2006, the enforcement of these laws is either weak or does not exist at all for the informal sectors of these countries. Labour inspectors in Pakistan hardly reach or inspect unregistered factories and home-based units. Similarly different legal landscape of India leads to selective enforcement. Whereas after the Rana Plaza disaster in Bangladesh although notable legal initiatives were taken, still labour violations exist in sub tier suppliers.

7.4 Corporate Social Responsibility and Outsourcing

The data comparison of all three countries, reveals that multinational companies successfully and systematically shift the responsibility across borders and towards the supply chain tiers. These big brands exploit the legal distancing by engaging themselves in commercial contracts with the first-tier suppliers, whereas disclaim liability for the violations of labour rights, happening in the subsequent levels.[46] This practice of indifference aggravates due to existence of multilayered subcontracting. In all three countries, legal remedies available for workers but sadly the accountability of big brands is minimal, as most of these brands operate through third-party source agents. However, global initiatives like UN Guiding Principles on business and human rights UNGPs are still voluntary; governments, especially those of underdeveloped or developing countries are pressured for not making the due diligence binding with fear of losing the foreign investment.

7.5 Comparing Enforcement

After the Rana Plaza collapse in 2013, global brands signed the accord on fire and building safety. In ready-made garment factories, building safety inspections and transparent checking was introduced. The government also amended Labour Act in

[46] Merk, Jeroen. "The rise of tier 1 firms in the global garment industry: Challenges for labour rights advocates." *Oxford Development Studies* 42, no. 2 (2014): 259-277.

2018.Although India has numerous labour laws and recently efforts have been made to consolidate the laws under the Codeon Wages 2019, still there are variant laws across different states which are often inconsistent with each other. Moreover, home-based and subcontracted workers are not covered under the formal protection of law. In Pakistan, the situation is worst despite enactment of the Factories Act 1934, Sindh Home-based Workers Act 2018 and the Minimum Wages Ordinance. The comparison in the legal framework and enforcement shows that Bangladesh has made more visible progress in improving the formal labour compliance, mostly in the export oriented garment factories but the informal and subcontracted units whereas Pakistan lags behind due to institutional weaknesses and political unwillingness.

8. Corporate Social Responsibility Vs on Ground Reality

Global brands often require suppliers to follow code of conduct and get through the factory audits but actual situation reveals the non-compliance. Fancy and appetising corporate social responsibility compels the brands to ensure safe workplace and compliance of all the protocols as per the given international labour standards and local laws. But practically, the workplaces are hazardous and given the fact unable to meet with the pressures of completing order demands, longer shifts, verbal or short-terms contracts, payment far below the fixed legal minimum wages are the actual dark face of ground reality. Most of the work is carried out in the small manufacturing units, unmarked buildings or unregistered shops where the audit or inspection is never carried out.

CSR code of brands required safe workplaces but in fact the factories and units actually working for many international fashion brands, C&A have blocked exits, child labour and fires.[47] Even third-party audits and certificates are ineffective and compromised. Auditors often, while relying on management, carryout cursory

[47] Compa, Lance. "Corporate social responsibility and workers' rights." *Comp. Lab. L. & Pol'y J.* 30 (2008): 1.

checks. For instance, RINA(the Italian auditor) which carried out the inspection of Ali Enterprises (baldia factory), failed to notice the child labour and excessive overtime, falsely reported emergency exits which did not exist at all. This auditing agency had issued SA8000 compliance certificates to over 100 Pakistani factories, where actually the safety systems what inadequate.

As the auditors are paid by suppliers or brands, therefore the audit inspections are mostly formal paperwork and includes chosen workers, factories supplying big brands pass the compliance checks despite having hazardous conditions[48] and gross violations of labour laws. Similarly, beside tier -1 suppliers countless ghost factories subcontract the orders without formal registration. ILO and NGOS report contractors in textile sector outsource sewing and finishing tasks to unregistered home-based workers or small units in routine. Having minimum to no audits these workers barely know their ultimate buyer and are only paid on piece rate basis. While the big brands limit the due diligence to the Tier 1 suppliers, completely ignoring by shutting their eyes from the abuse of these subcontracted, home-based workers.

In this age of awareness, brands are advocating CSR, despite these global rights programmes, workers are paid below the minimum wage and remain unpaid for the overtime. Most of the time the CSR commitments are often lip service. And the abusive conditions of workers go unreported. These glossy CSR reports provide shield to brands from accountability of human right violation as they hide behind the auditing system. The gap between the ghost workshops and home-based segments which remain outside the formal audits. As a result, CSR certifications and audit reports create a blanket to absolve brands in the eyes of public rather than in fact improving the conditions of workers.

[48] Hazardous conditions are environments or situations that pose risks of harm, injury, or damage due to factors like toxic substances, unsafe equipment, extreme weather, or human error.

9. Reform Roadmap and Policy Solution: A Way Forward

Textile, especially the readymade garments sector in Pakistan, is contributing a great deal in the economy through exports to global brands. To address the challenges faced by the informal home-based workers and textile sector in Pakistan, extensive reforms are required. Following are the policy solutions and key strategies which may bring improvement in the situation.

a. Legal Recognition and Registration of Informal Workers

Main root cause behind deprivation of these workers is their non-recognition and no official data to ascertain the actual number of workers. With the collaboration of NADRA and unions of workers already working, a centralised digital database should be developed for registration of informal especially home-based workers. Not only should be documented but ID cards should be issued to workers. This would enable these workers to get benefits ensured by State such as social security, pension, legal aid against unlawful removal.

- **Enactment of comprehensive laws**

All the provinces should enact laws on the pattern of Sindh Home-based Workers Act 2018 and Punjab Home-based Workers Act2023, for recognition of home-based and informal workers to implement their rights such as minimum wages, social security and unionization.

- **Ratification of ILO Convention No177 (Home Work Convention)**

Pakistan has yet not ratified ILO Convention 177 (Home Work Convention). Unless national laws are in line with international labour standards for protection of home-based and informal workers, it is not practically possible to improve their working condition and save them from exploitation.

- **Enforcement Mechanism**

There should be units specified for monitoring and compliance of labour laws in the informal sector, to conduct inspections and to ensure that the working condition is safe, there's no harassment or wage theft.

b. Compulsory Supply Chain Transparency

Most of the multinational and global fast fashion brands have subcontracted their work. Therefore, they deny their legal liability while claiming a lack of control in the deeper tiers of suppliers and subcontractors. CS responsibility is not obligatory upon the multinational brands. It should be made mandatory for all the global brands having their suppliers in Pakistan to disclose all the supply chains or all tiers of suppliers and subcontractors from the exporting firms, to bring them under supervision and for their inclusion in the registration database prepared for the purpose. To publish the supply chain details and conduct due diligence under legal compulsion and not mere moral obligation.

c. Effective Labour Inspection and Penalties for Violation

Most of the time, the inspections conducted by the Labour inspectors are limited to the registered factories and huge setups, while ignoring unlicensed units and home-based workers. The focus of inspection should be the groups of informal workers and small units in order to ascertain the violation of labour laws. There should be a mechanism for anonymous complaints. Penalties should be exemplary for verbal contracts, child labour, payment of less than fixed wages and absence of safety measures at work places in supply chains.

d. Social Protection for Informal Workers

Mostly, due to lack of registration. The informal workers, do not have access to healthcare, maternity leave, pension, injury compensation and other worker benefits.

e. Encouragement of Collective Bargaining and Cooperatives

As the informal workers are scattered, which is a hindrance in raising collective voice. Home-based and informal workers should be encouraged to form associations and unions. Government and NGOs should support such unions through training, funding and legal support.

f. Gender Sensitive Reforms for Women Workers

Although majority in the informal and home-based sectors are women, but due to cultural and social restrictions and harassment issues, they face wage disparity on the basis of gender, mobility restrictions. Women workers should be encouraged through skill trainings, women empowerment through micro financing, easy loans, exclusive grievance redressal cells, to ensure they work in safe, hygienic and secure places receive fruits of their hard work on gender parity while contributing to the prosperity of their families.

g. Binding CSR Improvements

Corporate due diligence has emerged as the integrated strategy in multinational brands with the passage of time. It reflects social, ethical, economic and environmental obligations across the areas where these multinationals are conducting business. Social responsibility and emphasis on fair wages, safe workplace, no engagement of child labour, contribution in local infrastructure like the education system, healthcare and education. Multinational companies are also expected to save the environmental ecosystem from damage by adopting renewable energy, minimising carbon footprints, waste, managing resources of raw material and to abide by international conventions and agreements to save the climate. These brands should also ensure to protect the human rights, contribute in the economy of country where they are operating through profit sharing, by avoiding tax evasion, employment of locals by creating jobs and through technology sharing. There should be effective monitoring and accountability of the supply chains, audits should be honest and independent through independent sources.

h. Collaboration in Stakeholders

Textile giants and big companies should be engaged to ethically source from home-based workers. NGOs and other organisations should be encouraged to play their effective roles through public-private partnerships (PPPs).

By adopting these reforms, Pakistan can strengthen the informal textile workers by uplifting the productivity and enhancement of inclusive economic growth.

i. E-Platforms and Market Access

For the promotion of business opportunities and improving conditions of home-based and informal workers, E platforms can effectively bridge the gap and minimize exploitation of middlemen. Platforms like Daraz, Amazon, Shopifyand such other sites can dedicate space and opportunities for the handcrafted work of informal and home-based workers. Home-based workers should be given awareness regarding establishing their small businesses on online platforms and market access while stepping away from exploitation of subcontractors. With the improvements in internet access, structural support can bring considerable changes not only small entrepreneurs can be promoted but to play effective role in increasing income and improving life standard.

10. Conclusion

The heart of Pakistan's economy beats to its ever-expanding textile mills and countless unheard, unseen hands of home-based and informal workers, which keep its looms running day and night. Behind the colourful fabrics, thriving markets, lies ugly and painful world of informal workers, especially women stitching garments in small units or their homes, whose unrecognised, unsafe and unprotected labour fuels this vibrant industry. These workers face harsh realities, uncertainty in jobs, minimal wages and risky work conditions aggravated while the industry is battling with energy crisis, outdated technology and unmatchable competition from neighbouring countries like India and Bangladesh.

The eye-opening story of Pakistan's textile sector does not just revolve around its contribution in exports or number of employment, rather it is about millions of lives connected with the threads of economic subsistence, hope and strength. For the revival of this backbone of the economy, the challenges regarding empowerment, transformation and adaptation of home-based and informal workers should be addressed to revitalise this industry across the borders, while valuing and protecting every weaving hand. In order to bring the reforms in the informal textile sector, an approach which brings these workers into four corners of visibility, dignity. The structural role of informality in global fast fashion brands can be essentially recognized when brands, governments and civil society make collaborative efforts for improvement and accountability of the exploitation. Only then would these vulnerable, exploited workers would be noticed and empowered to work in safe working conditions, on fixed wages in order to bring improvement in their lives.

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Legal Landscape in Pakistan: Systematic Disregard of Hindu Females' Inheritance Rights under Mitakshara School

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Abstract

The research critically examines the systematic deprivation of Hindu females from their inheritance rights in Pakistan, particularly under the Mitakshara School of thought. The Mitakshara legal structure, rooted in the principle of 'Survivorship', perpetuates gender inequalities by restricting property distribution exclusively to male coparcenars, leaving female descendants marginalized. The research explains the inheritance table under the 'Survivorship' mode. The mode under which "Coparcenary Property" is to be distributed among the coparceners only. Meanwhile, the coparceners consist of male members alone, they acquire an interest in the property by birth.[3] By taking the undue benefit of a particular practice, the female members of the Hindu community in Pakistan are deprived of claiming their right of inheritance. The study emphasizes recognizing the inheritance rights of females belonging to the Hindu Minority community. It underscores legal reforms to rectify this inequality and provide financial support and security to Hindu females in Pakistan.

The research scrutinizes the matter within Pakistan's legal framework. It is observed that the current practice violates fundamental rights provided by the Constitution of Pakistan. It highlights the systematic disregard of fundamental rights under the Constitution of Pakistan particularly Article 9 (Right to life and to

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[3] Satrughan Isser Vs. Subujpari & Others [1967] AIR SC 272

have decent living environment), Article 24 (Property right), Article 25 (Equality of citizens), Article 36 (Protection of minorities), Article 37 (Promotion of social justice and eradication of social evils) and Article 38 (Promotion of social and economic well-being of the people), consequently reinforcing gender-based discrimination and hampering the ability of Hindu females to assert their rightful inheritance.

Furthermore, the paper highlights Pakistan's international obligations under the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW requires state parties to eliminate discrimination against women and foster their economic empowerment. The contemporary gender-biased practice in Pakistan violates Articles 2 and 13 of CEDAW. The research accentuates the pressing need for alignment with international standards.

Drawing a comparative analysis, the legal amendment made in India through "The Hindu Succession Amendment Act, 2005" is considered. The amendment made a profound change, disregarded discriminatory clauses and replaced them with the conferment of equal rights to both sexes. Thus, the Act becomes a vital reference for introducing legal reforms in Pakistan.

The proposed legal reforms for Pakistan are based on multifaceted approaches concerning Article 25(3) of the Constitution, which permits special provisions to protect women in Pakistan. Additionally, recent precedents set by the Hon'ble Supreme Court of Pakistan, particularly the judgments authored by Hon'ble Justice Mansoor Ali Shah, has reaffirmed the need to uphold the rights of minorities in Pakistan, mirroring the protections enjoyed by majorities in other nations. Further, the research aligns with CEDAW's directives on considering the practice of countries with similar religious backgrounds.

This study aims to contribute to a more inclusive society for Hindu females in Pakistan by proposing reforms rooted in equality and justice. This research will be a valuable resource for scholars,

practitioners, policymakers, and lawmakers in nurturing the rights of female Hind minorities in Pakistan.

I. Introduction

Inheritance rights are a critical component of legal systems, ensuring the fair distribution of property upon an individual's death among his/her legal heirs. However, in Pakistan Hindu females are systematically deprived of their *inheritance* rights, particularly under the *Mitakshara* School of thought. The Mitakshara legal structure is rooted in *'Succession'* and *'Survivorship'*. The mode of survivorship perpetuates gender inequalities by restraining property distribution exclusively among *male coparcenars*, leaving female descendants marginalized. This article explores how these traditional practices, prevailing among Hindu communities in Pakistan, thus violating the fundamental human rights of Hindu females, particularly their constitutional right to equality and non-discrimination.

In order to understand the Hindu Inheritance system in Pakistan and how it is in violation of human rights and fundamental rights of Hindu females in Pakistan, the research is divided into four parts. First, it explains the traditional mode of inheritance under the Hindu religion. And why the traditional mode of inheritance is executed in Pakistan? Second, the article highlights the ways in which the contemporary practice violates fundamental rights of Hindu females guaranteed under the Constitution of Pakistan. Third, it focuses on the recent development in the Indian Legal system, aiming to align the mode of inheritance with modern international legal obligations. Lastly, the article proposes legal reforms in Pakistan, drawing references from Indian precedents and international human rights standards, to ensure that Hindu females can enjoy equal protection concerning their property rights.

II. Traditional Mode of Inheritance Under The Hindu Religion

There are two prominent schools under Hindu Religion. Both schools have distinct modes of inheritance, namely;

1. The Dayabhaga system
2. The Mitakshara system

The Dyabhaga system persists in East and West Bengal. While, the Mitakshara subsists in Pakistan.[4] Under the Dyabhaga mode, the property of a deceased Hindu is devolved among the legal heirs by succession and not by survivorship. According to the Dayabhaga law, the right of inheritance commences on the person's death. There is no concept of acquiring interests in ancestral property at the birth of a child.[5] Meanwhile, under the Mitakshara School, property devolution occurs in two modes.

1. Succession and
2. Survivorship.

The rules of *succession* apply to property held in 'severalty ownership' by the last owner. Thus, it is clear that the deceased must be the last full owner of all the properties left by him. Consequently, the said properties shall devolve upon his legal heirs according to the rules of succession.[6]

The rule of *survivorship* applies to joint and undivided family property. If the owner, at the time of his death, were a joint and undivided family member, then his undivided interest in the coparcenary property would be devolved among his coparceners through *survivorship.*[7] The rule meant that only coparceners of the family could inherit property by coparcenery rights because they

[4] Mrs. Ratna Devi, W/o Justice (Retd.) Rana Bhagwandas: In the matter of S.M.A. No.73 of 2015, [2016] PLD Sindh 197 (Paragraph 4) – [Just like Muslims, two primary schools of thought prevail in the Muslim community named the Shia school of thought and the Sunni school of thought]

[5] Prakash Chandra Roy And Others. vs Prabhat Chandra Roy And Others, [1991] (39)BLJR 1114 (Paragraph 13, 14)—"Section 8 of the Hindu Succession Act, 1956 explains the manner of devolution of the property of a male Hindu dying intestate."

[6] Ibid (n2)

[7] Ibid

were considered responsible for the further survival of the family name.

Under the Mitakshara school of thought, three important terminologies are used to devolve the inheritance of the property of the Hindus. Therefore, one must be acquainted with the meanings of those terminologies. The terminologies include Coparcenary Property, Coparcenors by Survivorship and Coparceners.

Coparcenary Property: The property belongs to the undivided and joint Hindu family is termed 'Coparcenary Property'.

Coparcenors by survivorship: The coparcenary property, which is to be divided among the 'Coparceners', is known as 'Coparceners by Survivorship'.

Coparcenars: The term Coparceners under the Hindu religion has been defined under the Mitakshara system. It only consists of male members and those who acquire an interest in the coparcenary property by birth or adoption. Coparcenary property devolves by survivorship amongst the male descendants of the coparcener. These coparceners are up to the four degrees of descendants (i.e. great grandfather, grandfather, father and grandson).[8] Therefore, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary.[9] Thus, coparcenary contains the following ingredients;

(a) Joint property and undivided property
(b) Only male descendants are entitled to claim the interest
(c) Interest in the property is acquired by birth.[10]

III. Prevailing Practice in Pakistan

In Pakistan, the personal laws of minorities are governed under the religious injunctions and teachings of minority groups. For instance, personal laws of Christian, Sikh, Parsi, and Hindu communities deal

[8] Ibid (n1)
[9] CWT Vs. Chander Sen, [1986] 3 SC 567
[10] Ibid [Indian Court declared that; "under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary".]

under their own personal laws. The reference can be made towards the 'Preamble' and 'constitutional Provisions' of the Constitution of Pakistan.

The preamble of the Constitution asserts that "Adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures".[11] Further, minorities have the freedom to profess their religion. Reference can be drawn to Article 20 of the Constitution, which states that "Subject to law, public order and morality, every citizen shall have the right to profess, practice and propagate his religion".[12] Moreover, Article 227 (1) states that "All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah".

However, Clause 3 of the said Article declares that:
"Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens".

Thus, Article 227 (3) of the Constitution emphasizes that the personal laws of minorities should be governed under their own religious laws.

As a result of constitutional obligations, the following laws related to Hindu Inheritance have been enacted and enforced in Pakistan. Most of the laws that Pakistan adopted are pre-partitioned. (It is worth noting that no special legislation has been introduced on this subject.)

A. Succession Act 1925

The Succession Act, 1925, provides a general legal framework for succession and inheritance for all Muslim and non-Muslim communities, including Hindus. However, Hindu inheritance in Pakistan is more commonly governed by customary laws and practices specific to their community.

[11] Preamble of The Constitution of the Islamic Republic of Pakistan, 1973 (Paragraph 6)
[12] Article 20 Clause (a) of The Constitution of the Islamic Republic of Pakistan, 1973

B. Hindu Law of Inheritance (Amendment) Act, 1929

The Act aims to alter the order of succession for Hindu males dying intestate, specifically applying to individuals subject to the "Law of Mitakshara." This law pertains exclusively to the property of males, excluding properties held in *"coparcenary"* and those disposed of by a "*will"*.[13] According to Section 2 of the Act, the order of succession for certain heirs is as follows:

"A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before the father's brothers." This provision redefines the hierarchy of inheritance.

C. Hindu Women's Right to Property Act, 1937

The Hindu Women's Right to Property Act, 1937, applies to Hindus who die intestate, leaving behind one or more widows. Section 3(1) of the Act pertains specifically to Hindus governed by the Dayabhaga School of Thought. In such cases, if a Hindu dies intestate leaving a widow or widows, the widow is entitled to inherit the same share as her deceased husband. This provision also extends to cases involving a predeceased son and the predeceased son of a predeceased son. Section 3(2) addresses situations where the deceased had an interest in Hindu Joint Family Property at the time of death. For Hindus governed by any school of thought except Dayabhaga or by customary law, the widow is entitled to have the same interest in the property as that of her deceased husband.

The terms "*other than Dayabhaga or other customary law" and "joint family property*" and "*having the interest*" in the property, i.e. the use of the term "interest" in the property rather than "share" indicates the *Mitakshara school* of thought where the distribution of interest will take place in Joint Family Property. However, the law is beneficial for widows of sons (or coparcenars), only. Thus, the principal right belongs to the male member of the family. There is no provision for any right to daughters or granddaughters.

[13] Section 1 of Hindu Law of Inheritance (Amendment) Act, 1929.

D. Hindu Inheritance (Removal of Disabilities) Act, 1928

The law aims not to exclude any lunatic or idiot from birth from any inheritance right or share in a joint family by reason only of any disease or physical or mental defect.[14] It does not apply to any person who belongs to the Dayabhaga system.[15]

Hindu Inheritance (Removal of Disabilities) (Amd.) Act, 2012: This Act is particular for Panjab province. The spirit of the law is the same as that of "The Hindu Inheritance (Removal of Disabilities) Act, 1928.

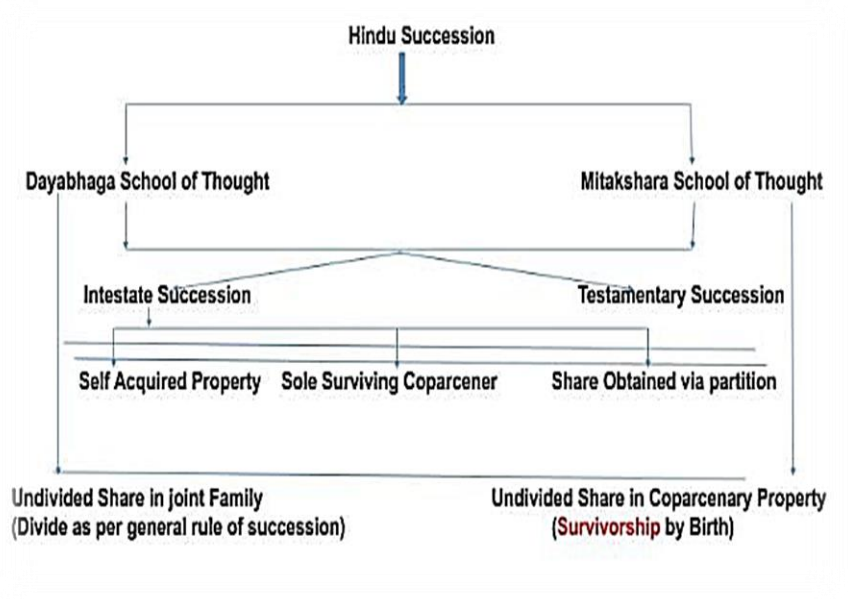
After considering the governing laws and practices for the devolution of inheritance properties among Hindus, the following legal gaps can be identified in the Pakistani Legal system concerning female's inheritance rights;

1. Laws in Pakistan safeguard Hindu rights but lack provisions for the protection of the rights of women belonging to Joint Families under the Mitakshara School of thought.
2. Gender inequality: Despite laws like the Women's Rights to Property Act, Hindu females face unequal inheritance under survivorship principle.
3. The survivorship principle, rooted in the "Customary Laws" of the Mitakshara School. "Maintains Gender Disparities. Where male members often retain "Primary Ownership".
4. Constitutional mandate: Article 8 of Pakistan's Constitution voids such law, usage and customs inconsistent with conferred fundamental rights. It necessitates alignment with constitutional principles.
5. Voiding Mitakshara practices: The contemporary application of Mitakshara should be declared void to ensure constitutional equality and justice.

Legal reform: Re-evaluation and amendments are crucial to ensure Hindu citizens' rights align with constitutional guarantees provided under the Constitution of Pakistan, 1973.

[14] Section 2 of Hindu Inheritance (Removal of Disabilities) Act, 1928
[15] Section 1(3) of Hindu Inheritance (Removal of Disabilities) Act, 1928

Below is the table of Inheritance for a proper understanding of Traditional Inheritance practice under the Hindu religion.



IV. How Existing Inheritance Practices Violate the Human, Fundamental and Constitutional Rights of Hindu Females in Pakistan

The contemporary practice violates the fundamental rights of Hindu females. While, Minorities, being the citizens of Pakistan are entitled to enjoy fundamental rights guaranteed to the citizens of Pakistan.[16] Therefore, among others, the right to life, liberty, dignity and non-discrimination are also available to the minorities of this country. The traditional practice of inheritance distribution violates the following fundamental and constitutional rights of Hindu females.

- **Article 9** 'Right to life and liberty' The traditional practice violates females' right to life and liberty. Right to liberty means "the state of being free within society from oppressive restrictions imposed by authority on one's behaviour".[17] Thus,

[16] Article 8 – 28 of The Constitution of the Islamic Republic of Pakistan, 1973
[17] Ameen Maseeh Vs. Federation of Pakistan, [2017] PLD Lah 610

no changes in traditional practices are an indirect bar imposed by the authorities over the rights of Hindu females.

- **Article 25** 'Equality of citizens': Under the survivorship principle of Mitakshara school, males of Hindu families enjoy their right while females are deprived of their right to inheritance.
- **Article 24** 'Protection of property rights': The right to own property is the fundamental right of every citizen. However, under the survivorship principle, the right to own property belongs to male coparceners, only. No female descendant can claim for their right.
- **Article 36** 'Protection of minorities': The traditional practice, based on gender based discrimination, can be amended in the light of modern norms of gender equality. But, the traditional practice is still pre-dominant in Pakistan under the cloak of religious injunctions.
- **Article 37** 'Promotion of social justice and eradication of social evils'; and
- **Article 38** 'Promotion of social and economic well-being of the people'.

Furthermore, the practice violates International legal obligations imposed upon Pakistan. Pakistan is a signatory to the 'Convention against the Elimination of Discrimination against Women' (**CEDAW**).[18] Therefore, each signatory to the convention is bound to fulfil its obligation toward the implementation of CEDAW in letter and spirit.

Article 2 of CEDAW binds State parties to take measures against discrimination based on sex. The measures may include; embodying the principle based on equality of men and women in national Constitution of state parties; adoption of appropriate legislative

[18] Pakistan's Obligations Under International Law, Human Rights Watch. [Pakistan ratified CEDAW on December 3, 1996.]

measures to prohibit discrimination and provision of legal protection of the rights of women.[19]

Further, **Article 13** of CEDAW obliges state parties to eliminate discrimination against women in economic and social life, including the same rights in the family benefits.[20]

V. Comparative Analysis of The Hindu Succession Law Reforms in India

According to the World Population Review 2020, the highest number of Hindus are in India. It has ratified the CEDAW convention on 09.07.1993.[21] Hence, it consequentially amended its Succession Act, 1956 and introduced the amended 'Hindu Succession Amendment Act, 2005'.

Section 6 of the Act, 1956, was related to the 'devolution of interest of coparcenary property'. The section contained a clear violation of equality before the law and was discriminatory based on sex.[22] In

[19] Article 2 of CEDAW states the following obligations: " a) Embodying the principle of equality of men and women in their national Constitution
b) Adopting appropriate legislative measures to prohibit discrimination
c) Establish legal protection of their (women) rights
d) To refrain from any practices of discrimination against women."

[20] Article 13 of CEDAW

[21] India- CEDAW South Asia (https://cedawsouthasia.org/country-status/india/)

[22] Section 6 of the Succession Act, 1956.
"Devolution of interest of coparcenary property:
When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
Explanation I: For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
Explanation 2: Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

the amended Act of 2005, the discriminatory clause was replaced with conferring equal rights to both sexes.

India substituted a new section for section 6 in the Act 1956. Hindu Succession (Amendment) Act, 2005 substituted the following directives for devolution of interest in coparcenary property under section 6 of the principal Act:

1. **Daughter's Right in Coparcenary Property**
   The daughter of a coparcenar in a joint Hindu Family governed under the rule of Mitakshara shall by birth become a coparcenar in the same manner as the son. The daughter has the same rights in the coparcenary property as that of a son. The daughter is subject to the same liabilities regarding the coparcenary property as a son. Any reference to a Hindu Mitakshara coparcener shall include both daughter and son of a coparcener.[23]
2. **Disposition of Property by Hindu Females**
   Any property that a Hindu female acquired under the amended Act shall be capable of being disposed of through a testamentary disposition (i.e., via will).[24]
3. **Succession and Partition**
   The interest of the deceased, who belongs to a Hindu joint family governed under the Mitakshara School shall devolve by testamentary or intestate succession, not under the rule of survivorship. The coparcenary property is to be divided in a manner as if a **partition** had occurred. By following the '*Per stripe'* doctrine, the share of a predeceased son or daughter will be allotted to the surviving children of such predeceased coparcener. The share of a Hindu Mitakshara coparcener in the

[23] Hindu Succession (Amendment) Act, 2005, Section 6 (1). "(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,
(a) by birth become a coparcener in her own right in the same manner as the son;
(b) have the same rights in the coparcenary property as she would have had if she had been a son;
(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener"

[24] Ibid Section 6 (2), "Any property to which a female Hindu becomes entitled under sub-section (1) shall be capable of being disposed of by testamentary disposition."

property is to be granted that would have been allotted if a partition had occurred before their death, regardless of whether they had the right to claim partition or not.[25]

4. **Recovery of Debt**

   After the commencement of the Act, the son, grandson or great-grandson is not liable to pay the debts of their ancestors solely based on the pious obligation under the Hindu law. Except; in the case when such debts were contracted before the commencement of the Act.[26]

5. **No Retrospective Application of the Law**

   The Act do not apply to any partition that was effected before December 20, 2004.[27]

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[25] Ibid Section 6(3) "Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law shall devolve by testamentary or intestate succession, not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and
(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the predeceased son or a predeceased daughter shall be allotted to the surviving child of such predeceased son or of such predeceased daughter (Per stripe doctrine).
(c) the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not."

[26] Ibid Section 6 (4) "After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:
Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect
the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
(b) any alienation made in respect of or in satisfaction of any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.
Explanation.-For the purposes of clause (a), the expression "son", "grandson", or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005."

[27] Section 5 of Hindu Succession (Amendment) Act, 2005.

VI. Conclusion and Suggestions

To curtail the current practice of discrimination, inequality and unfairness, the following recommendations can be considered;

1. The Committee on Elimination of Discrimination against Women, in its General Comment No. 29 (2013), provided a general recommendation on Article 16 of the CEDAW. In its Paragraph 54, the Committee specifically stated,

> "Neither religious, traditional nor cultural practices nor incompatible domestic laws and policies can justify the violation of the convention."

Also, in paragraph 55 of GC 29 (2013), CEDAW emphasizes that "State parties should consider the experiences of the countries with similar religious background and legal system that has successfully accommodated domestic legislation to commitments emanating from internationally legally binding instrument".

2. Hon'ble Lahore High Court, his Lordship Justice Mansoor Ali Shah held as under:

> "There is no better way to protect and strengthen the Christians in our country than to extend the same rights to them, those are available to Christians in all the majority Christian countries of the world".[28]

According to the World Population Review 2020, the highest number of Hindus is in India. Therefore, in order to protect and strengthen the minority rights of Hindus, we need to extend the same rights of inheritance, which are available in the Hindu Majority country (i.e. India) in our country (Pakistan).

3. Article 25 (3) of the Constitution of Pakistan:

Article 25(3) of the Constitution of the Islamic Republic of Pakistan, 1973, permits the state to make special provisions for protecting women and children.

[28] Ibid (n10) Paragraph 42

Therefore, legislative measures should be taken to protect and promote the economic and social interests of women in the Hindu community.

Furthermore, the Objectives Resolution, which is considered as a substantive part of the Constitution under Article 2A of the Constitution, provides that adequate provision shall be made to safeguard the legitimate interests of the minorities, backward and depressed classes.[29]

In conclusion, by considering the above mentioned recommendations, we have three available options to redress the issue;

1. To *enact* special legislation in this regard.
2. To *adopt* the Hindu Succession (Amendment) Act, 2005, passed by the Indian legislature, to our legal framework.
3. To *challenge* the contemporary practices in court via Public Interest litigation and prove that the practice violates fundamental rights guaranteed under the Constitution. Therefore, it should be declared as void under Article 8 of the Constitution.

[29] Paragraph 9 of Objective Resolution

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RETHINKING PROPERTY RIGHTS: A COMPARATIVE ANALYSIS OF MARXIST AND ISLAMIC PERSPECTIVES ON LAND REFORMS IN PAKISTAN

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Abstract:

This paper breaks down the landmark judgement of *Qazalbash Waqf v the Chief Land Commissioner, Lahore*[3], based on a comparative analysis of Marxist and Islamic perspectives, examining how distributive justice through state policy can allow to eliminate class disparities reinforced by institutions of law and religion in Pakistan. First, it outlines the Marxist principles of *base and superstructure* and class structures, taking into account specific historical instances which led to the concentration of land in a few hands. Second, using the principle of distributive justice and examples from the times of Prophet Muhammad (PBUH) and first two Calpihs, who implemented different polices of resource distribution based on socio-economic circumstances that existed during their respective eras.[4] This paper proposes an alternative approach reinforcing importance of land reforms.

Introduction

In *Qazalbash* case, the Shariat Appellate Bench of the Supreme Court of Pakistan gave the final verdict declaring the land reforms

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[3] PLD 1990 SC 99.
[4] Khaliq Ahmad and Arif Hassan, 'Distributive Justice: The Islamic Perspective' (2000) 8(2) Intellectual 163.

against the injunctions of Islam. The state now had no power to put a ceiling on the landholdings as per Court's verdict and consequently allowed landed class to keep vast amount of lands concentrated in their hands only.

The first segment of the paper will constitute three drafts; the first part will discuss the historical context of feudalism in the Indian Sub-continent, outlining the land allocation system in pre-colonial and colonial India and how this system allowed for the concentration of land in a few landowning classes; the second part will examine why the post-independence land reforms were not successful considering the structural and administrative issues in implementing those land reforms; and the third part will analyze the first two parts through a Marxist lens and delineate how all this fits within the context of the *Qazalbash case*.

The second segment of the paper will constitute two parts considering the concept of distributive justice in Islam and analyzing how the same allows for an alternative approach that supports land reforms. The first part will discuss property rights and how the same is conditional and not absolute in nature in view of Quran and historical incidents. Whereas the second part, will discuss the potential role an Islamic state may play through policy interventions to ensure a just and fair society. This part will contain an analysis of the Islamic scholarship and Quranic revelation to argue how it is justifiable for an Islamic state like Pakistan to introduce policies like land reforms.

PART-1

FEUDALISM AND LAND REFORM: A HISTORICAL AND MARXIST ANALYSIS

I. The Evolution of Feudalism in the Sub-Continent

Before analyzing the interpretation of the Court in the *Qazalbash* case, it is imperative to analyze the historical background of land reforms considering the division of lands in the Mughal and colonial era that had subsequent impact on the post-independence era.

A. Land Allocation under the Mughal Empire

The roots of feudalism in the Sub-continent can be traced back to the Mughal era, especially the reign of Akbar, who introduced the *Mansabdari System*[5] as an organizational strategy to govern the region better and make his subjects subservient to him.[6] While this system proved beneficial for Akbar, it was marred with critical flaws such as *Jagirdari System*[7] which was inherent to it and allowed for the concentration of vast amounts of land in the hands of Mansabdars.[8] From historical evidence, it is evident that the Mughals introduced the feudal system in the sub-continent. The term *"Zamindar"*[9] emerged to significance during the Mughal era and represented a distinct class of holders of hereditary interest ranging from tribal chiefs to small intermediaries at the village level. The Mughal era manifested three classes of Zamindars, i.e., the autonomous tribal chiefs, the petty intermediaries, and the primary

[5] The Mansabdars were the regional heads who were allotted different regions to govern; they were allotted multiple properties, and the revenue generated from those properties was proportionately divided among them and most of that revenue went to the imperial treasury. Their primary responsibility was to provide the emperor with soldiers, horses and other things used in war.

[6] Abdul Aziz, *The Mughal court and its institutions.* (Lahore, Al-Faisal 2002) 2.

[7] The mansabdars were allotted numerous jagirs (lands) and they used to collect revenues from those lands by employing tenants to work on those lands. This was the *Jagirdari System.*

[8] Mazhar Abbas and Abdul Majeed Nadeem, 'A Study on Historical Development of Landownership and Landed Aristocracy in Pakistan' (2016) 22 Pacific Rim Property Research Journal 217, 222.

[9] Zamindar, a holder or occupier (dār) of land (zamīn).

Zamindars.[10] The tribal chiefs held sovereign powers in their respective territories. Regarding intermediary and primary Zamindars, the former used to collect revenues from the latter and paid them to the imperial treasury as such the former were the holders of the proprietary interests over the latter's lands. This relationship between the intermediary and primary Zamindars, where the former was considered superior over the latter, formed the basis of the class structure that manifested itself in the context of Mansabdari System.

B. Consolidation of Landownership during British Rule

As a way to consolidate their rule in the Indian Sub-continent, the British colonizing forces sought political patronage of the local landowners.[11] Although they borrowed many administrative policies, for instance, the appointment of administrators, from the Mughal era[12] to rule the region effectively; however, the new policies implemented by them proved to be more efficient in contrast to the Mughal administrators. The British introduced the concept of private property in colonial India[13], which strengthened the landed classes by guaranteeing their ownership rights. Driven by self-interest, the landlords willingly collaborated with the British. The introduction of the idea of private property created a hegemony of the landed classes in the region which was used by the colonizers merely to suppress the locals via tactical reforms in administration structures.[14] This further consolidated the region's class structure, making it onerous for the lower classes to raise their voices against these landlords and, subsequently, the British. The concentration of the lands in the hands of the landlords granted them power and legitimacy to exploit the working classes; therefore, the landlords

[10] Satish Chandra, *Medieval India: society, the jagirdari crisis, and the village* (Delhi, Macmillan 1982) 53.
[11] Muhammad Naeem Ullah, *Pakistan Jagirdari Zamindari Nizam Kay Shikanjay Mein* (Lahore: Book Edge 2003) 109.
[12] H.C.L. Merillat, *Land and the constitution in India* (Columbia, SC: Columbia University Press 1970) 10
[13] Abbas and Nadeem, supra note 7 at 222.
[14] Ibid 223.

were being used as a tool by the colonizers to suppress the natives in the region.

II. Land Reform and its Challenges in Post-Independence Pakistan

A. Rise of the Landed Elite

Muslim League, the principal party when Pakistan came into existence, was dominated by the landlords which led to a lack of leadership and immobility of ideas in the party.[15] Following the deaths of Quaid-e-Azam and Liaqat Ali Khan, the landowners were allowed to seize control of the Muslim League, which eventually proved to impede democratic growth.[16] According to Aziz, post-independence, the authority of the landed aristocracy grew as bureaucrats, army officers, politicians, and industrialists supported and served the landowners' interests.[17] The crucial posts in the government were held by landlords, either by hook or crook. The army, bureaucracy, and political parties were all infiltrated by members of the landed elite. These landowners employed personal connections, favors, and the caste system to increase their support.[18] Due to this reason, no legislative measures could have be taken against the landed class; likewise, the governmental policies also always favored and complemented their interests. Nevertheless, even if any steps were taken against them, their entrenchment in the administrative and structural institutions aided them in evading the effects of those steps.

B. Past Land Reforms: Challenges and Failures

Three programs of land reforms were introduced in Pakistan to abolish the feudal system in the country. These include the *West Pakistan Land Reforms Regulations, 1959* by Ayub Khan, Land Reforms Regulations, 1972, and Land Reforms Act, 1977 by

[15] Ibid 224.
[16] Khurshid Kamal Aziz, *Pakistan's political culture: Essays in historical and social origins* (Lahore: Vanguard Books Ltd. 2001) 33.
[17] Ibid 30.
[18] Ibid 37.

Zulfikar Ali Bhutto. The said land reforms could not meet their objectives due to multiple structural and administrative errors. The primary reason for the failure of the land reforms can be assigned to the resistance of the landed aristocracy, as it was the landed aristocracy that penetrated itself into the political and legal sphere of the country. The potential failure for the former reforms was the grant of countless powers to the landlords on the pretext of land reforms, which prompted the landlords to take only those steps that serve their ends.[19] Therefore, the allies of the Ayub Era mainly secured their interests, and the local peasants never reaped the benefits of the said policies that were introduced for them. Considering Bhutto's land reforms, there were discrepancies regarding the implementation of the laws in different areas of the country. For instance, Sindh, being the native province of Bhutto, was granted more leverage in terms of land reforms than Punjab and the other provinces.[20]

Unjust actions of the local administration and the implementing agencies also played their part in the land reforms' failure. The *Bhuttos*, who were chief landholders in Sindh, were alleged to have continued to hold 2200 *acres* of land.[21] Moreover, the landlords were able to evade the effects of these land reforms by transferring their lands to their family members, even unborn sons, due to legal loopholes.[22] Therefore, the laws were there in place only for those who were not related to the ruling class; however, those related to the ruling class were granted several leverages concerning the land reforms.

III. A Marxist Analysis of Land Ownership and Power

A. Law as a Tool of the Ruling Class

To understand the dynamics of power and ownership, this analysis draws upon concepts articulated by Karl Marx, such as the

[19] Ibid 43.
[20] S.V.R. Nasr, 'Pakistan: State, Agrarian Reform and Islamization' (1996) 10 International Journal of Politics, Culture and Society 249, 260.
[21] Ibid 260.
[22] Ibid.

relationship between the economy (base) and social institutions like law, government, culture, and religion (superstructure).[23] Marx argued that in a capitalist society, the law, especially concerning private property, serves to maintain the power of the ruling class.[24] It is a tool of the ruling class to maintain its powers over the ruled.[25] This can be seen in the context of colonial India, where large landholdings were granted to landlords who supported the colonizers, creating a system that allowed for the exploitation of tenant farmers and laborers.

Following independence, the landed aristocracy, and the ruling class, continued to benefit from this system. No legislation could have gone against them because of their entrenchment in the country's bureaucracy and administrative machinery. Since they occupied administrative positions, they protected the right to property in erstwhile land reforms to secure their interests. The persistence of this system suggests that the institution of 'law' supported the interests of the ruling class and served mostly as a tool to mystify inequalities between the landed classes and the workers, the *proletariats*.[26]

B. The Clash Between Socialism and Islamization

The Land Reforms Regulations 1972, which aimed to redistribute land by setting limits on land ownership, were met with resistance from the landed elite who saw it as a threat to their power. These reforms reduced the ceiling to merely 150 *acres* of irrigated land and 250 *acres* of unirrigated land.[27] Bhutto's idea of a socialist regime appeared as a threat to the landed aristocracy. Then Prime Minister, Zulfikar Ali Bhutto, who championed these reforms, justified them as being in the public interest, aligning them with Article 23 of the

[23] Muhammad Munir, "Marxism, Marxian Theories of Law and Pakistan's Experience with Socialism" (2018) Kardan Journal of Social Sciences and Humanities 22, 23.
[24] Ibid 31.
[25] Ibid.
[26] Ibid.
[27] Nasr, supra note 19 at 259.

1972 Constitution,[28] *which allowed for reasonable restrictions on property rights for this purpose.*

There has been a constant tussle between the socialists and the right wing of the country.[29] The former used the religion to introduce the "socialist Islam", i.e., allowed land reforms to distribute land among the poor. However, the latter attempted to portray a feudalistic and exploitative image of Islam that endorsed their landholdings and powers. Considering this tussle, Bhutto's socialist regime was soon over when General Zia seized power and took on the project of Islamization of the law. He established *Federal Shariat Courts* that declared any law against the injunctions of Islam as *void*. Nasr argued that Islamization is a product of the attempts by the state, which is kept alive by the landed class to bolster its power and autonomy of action.[30] Nasr's argument finds support in the Islamization policies introduced by Zia after land reforms, and it was the result of these Islamization policies that the land reforms were declared unconstitutional, i.e., against the injunctions of Islam by the Shariat Appellate Bench in the *Qazalbash* case.

C. The Qazalbash Case: A Case Study in Land Ownership and Religious Exemption

The Qazalbash case serves as a key example of the interplay between land ownership, legal exemptions, and religious interpretations. The case involved a dispute over land granted to the Qazalbash family by the British for their loyalty during the 1857 uprising.[31] This landholding had been designated as *waqf* property,[32] a form of Islamic trust.

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[28] Constitution of Islamic Republic of Pakistan 1973, art 23.
[29] Fazlur Rehman, 'Islam and Social Justice' (1970) 1 Middle East Research and Information Project 4 <https://doi.org/10.2307/2568964.> accessed 14 December 2021.
[30] Ibid 265.
[31] Muhammad Zubair Abbasi, 'Judicial Islamisation of Land Reforms Laws in Pakistan' (2018) 57 Islamic Research Institute, International Islamic University, Islamabad 211, 215.
[32] A *waqf* property cannot be transferred and therefore is inalienable; however, the founder and his legal heirs maintain a limited proprietary interest in the property.

Neither the change in the tenancy laws nor Ayub Khan's distributive land reforms affected these landholdings due to legal loopholes in the reforms legislation that exempted waqf properties from the effects of these reforms. *Bazzi et al.*, in their case study on the 1960 Indonesian land reforms, observed that landowners transferred their holdings to *waqf* endowments to prevent state confiscation.[33] In Indonesia, this strategic transfer placed land under the control of religious leaders, thereby ensuring that it remained unreclaimable even after the reversal of the land reforms. However, in Bhutto's Land Reforms Regulations 1972, 250 *acres* of land belonging to *Qazalbash Waqf* were distributed among tenants.[34]

D. Religion as a Tool for Maintaining the *Status Quo*

While Islamic teachings emphasize social justice and discourage the hoarding of wealth,[35] the concentration of land ownership in Pakistan raises questions about the application of these principles. Following the Qazalbash judgment, the disparity in land ownership became increasingly pronounced, with a small percentage of the population controlling a vast majority of the land. In the late 90s, 70 percent of the country's lands were in the hands of the 5 percent of the landed elite, who enjoyed all the political and economic perks.[36] This wealth disparity accounts for most of the income inequality and low-income growth. Poverty in Pakistan, is even more widespread in rural regions. Vincent opines that rural poverty is the consequence of the categorization of land as "private property."[37] However, the Court's decision in the Qazalbash case declared that private property is sacrosanct, and the state cannot breach its citizens' property rights on land without compensation. This raises concerns about how

[33] Samuel Bazzi, Gabriel Koehler-Derrick, and Benjamin Marx, 'The Institutional Foundations of Religious Politics: Evidence from Indonesia' (2018) National Bureau of Economic Research 1, 2.
[34] Abbasi, supra note 29 at 215.
[35] Abbas and Nadeem, supra note 7 at 226.
[36] Syed Tahir H, *Institutional dynamics in industrial paradigm: The 50 years of Pakistan* (Islamabad: Dost Publications 1996).
[37] Andrew Vincent, 'Marx and Law' (1993) 20 Journal of Law and Society 371, 378.

religious interpretations and legal frameworks are used to reinforce existing power structures and economic inequalities, even when they appear to contradict Islamic principles of social justice.

The landed classes evidently used religion to protect their land holdings and maintain their status and power. As mentioned earlier, the status and power of the Qazalbash family was the product of the policies of the colonial administrators. These administrators promoted feudalism in India to maintain their rule by creating class structures, i.e., by suppressing people from lower economic strata. In Pakistan, the foregoing political structural relationship permitted the landed classes to exert authority over the masses. The main authority in Pakistan is vested either in landlords or religious authorities. The former is considered powerful because of the vast amounts of landholdings that they possess, and the latter are considered influential due to the religious dominance they enjoy. They both use their authorities in their own ways to further consolidate class structures by using religion and obtaining positions in the controlling institutions, i.-e., superstructures of the country. Where the legal structure could not do enough to protect them, they used religion to overcome the laws of the state, ensuring no one questions their authority or attempts to challenge it in any way. The judgment in the *Qazalbash* case is the prime example of the aforementioned protection of the status-quo using religion (Islam) as part of the superstructure and maintaining traditional authority patterns.

PART- 2

ISLAMIC PERSPECTIVE ON SOCIAL JUSTICE: DISTRIBUTIVE JUSTICE

This segment delineates how the perspective of distributive justice favors state policies like land reforms while rooting arguments in the similar Islamic sources that the Court used in the *Qazalbash case*

to declare the very reforms unIslamic. The following analysis argues that an owner deserves the right of ownership only when he utilizes the gift[38] bestowed on him properly without any monopolization that breeds poverty.[39] Therefore, an Islamic state, acting as a guardian of divine laws of Allah (SWT) and individual rights of its citizens, has an obligation to remedy such wrongs by diverting that wealth from where it stagnates to where it fructifies into social well-being by introducing interventions like land reforms.[40]

I. Right of Ownership in Islam: A Conditional Mandate

According to the Quran, the absolute authority over land and its ownership rests with Allah (SWT) whereas He has delegated this authority to mankind to hold as His trustees.[41] The role of trusteeship is pivotal in understanding the right to the private property in an Islamic state since here the right is a delegated one and thus not absolute but conditional.[42] Ownership is not absolute because all the resources (especially land for the purposes of this paper) are bestowed upon mankind in common by Allah (SWT.) as a gift for the benefit of all.[43] In Quran, Allah (SWT) has guaranteed the fulfillment of basic needs of all; and the Islamic state acting as a guardian of Islamic laws and principles must ensure that the needs of its citizens are met. [44]

[38] The resources Allah (S.W.T.) bestowed in common like land.
[39] Shafinah Rahim, 'Distributive Justice: A Perspective from Islamic Economics Literature' (2003) Journal of Emerging Economies and Islamic Research 77 <https://www.researchgate.net/publication/342148160_Distributive_Justice_A_Perspective_from_Islamic_Economics_Literature> accessed 10 May 2022.
[40] Ibid 96.
[41] "It is He who made you the vicegerents of the earth and raised some of you in ranks over others, so that He may test you in what He has given you..." (6:165).
[42] Muhammad Mohsin Khan, The Translation of the Meanings of Sahih ul Bukhari (Volume 3 Book 39 Darussalam Publishers and Distributors 1997) Hadith 533 and 528.
[43] "To Him belongs what is in the heavens and what is on the earth and what is between them and what is under the soil" (20: 6).
[44] Khaliq Ahmad and Arif Hassan, supra note 3 at 164.

A. Historical Precedents of Resource Allocation

Given the examples from the time of Caliphs especially Hazarat Umar (RA)[45] it can be argued that in the process of fulfilling these needs of the people i.-e., ensuring public interest, the state may establish certain laws controlling the flow of wealth and ownership of resources. However, there are multiple policies that have been adopted by different rules to regulate resources ownership.

B. Diverse Approaches to Distributive Justice

The Quran does not lay out specific instructions on how to distribute the resources (land), but it clearly maps out important considerations for operating a just and fair society since justice is one of the overarching themes in the Quran.[46] Justice has always been fundamental in resource distribution[47] but what is 'just' depends on several intervening factors. Reference may be made to the times of Prophet Muhmmad (PBUH.) and the first two caliphs who applied different distributional policies in their respective eras, considering the existing socio-economic situation at that time.[48]

Considering the social realities of the time, Prophet Muhmmad (PBUH.) prioritized the 'need' of the recipient in the distribution of material resources.[49] Whereas the first caliph, Hazrat Abu Bakr (RA), based the distribution of resources on the principle of 'equality' and, the second caliph, Hazrat Umar (RA), relied most on 'equity or merit' and made special allocations.[50] Undoubtedly the distribution was moderated by several factors, like "the availability or scarcity of the resources, the intensity of recipients' needs, merit or contribution of the recipients, and the purpose of allocation

[45] Abdullah bin Ahmad Ibn Muhammad lbnu Qudamah, Al-Mughni (Chapter 5, 8th Edition, 1968) 579.
[46] Nikhat Sattar, 'Land Rights in Islam' (2015) DAWN News <https://www.dawn.com/news/1154522> accessed 04 May 2022.
[47] Khaliq Ahmad and Arif Hassan, supra note 3 at 163.
[48] Ibid.
[49] Ibid.
[50] Ibid.

decision."[51] The foregoing discussion suggests, no one principle is set in stone that needs to be followed by an Islamic state in distributing resources. However, the state must take into account prevailing social and economic circumstances, basing its policies on such factors.

II. The State's Responsibility in Contemporary Pakistan

A. Land Reforms as a Tool for Distributive Justice

Pakistan is an Islamic state where the leadership exercises sovereignty in the name of Allah (SWT) as its delegates.[52] Under the Objective Resolution,[53] this authority is a sacred trust,[54] and the government of Pakistan, as the trustee of the principles and laws of Allah (SWT), must protect the rights of its subjects. Thus, the government is responsible for the overall well-being of the people and society, yet Pakistan is a country breeding classes with stark wealth differences such that the big landowners,[55] who make up only 0.23 percent of the total landowners, own 91.32 million *acres*, which is almost equal to the share of the 67 percent poorest[56] landowners.[57] As discussed earlier, in a situation as one at hand, i.-e. alarming class differences, the state has both the right and the duty to impose laws that help curb these disparities. One such possible remedy to address huge socio-economic differences between landed elites and a low-class farmer can be land reforms that ensure a more equitable distribution. Now, the principles that should guide this

[51] Ibid.
[52] Constitution of the Islamic Republic of Pakistan 1973, art 2(A).
[53] Constitution of Islamic Republic of Pakistan, 1973.
[54] Ibid.
[55] Landowners owning land of 150 acres or more; Nikhat Sattar supra note 44.
[56] Landowners owning land of 7.5 acres or less; Nikhat Sattar supra note 44.
[57] '80pc of farmers own 28pcc of land' (2012) DAWN News < https://www.dawn.com/news/722480/80pc-of-farmers-own-28pc-of-land> accessed on 04 May 2022.

distribution or these reforms must be evaluated based on the socio-economic circumstances of the country.

B. Reconciling Land Reforms with Islamic Principles

As mentioned earlier, in the past the land reforms have been declared unIslamic, yet the above discussion gives room for justification to the contrary. In order to ensure that Pakistan is a just and fair society as per Islamic principles of Quran and Sunnah it undoubtedly becomes a responsibility of the government to intervene and introduce more equitable policies. If one such policy is land reforms, they may not be deemed unIslamic on the premise of the state's responsibility as delegates of Allah (S.W.T). However, this responsibility should rationally be balanced with the rights of the landed class who own resources that are to be distributed. Therefore, the land reforms that would allow for reasonable distribution of surplus owned by the landed class do not principally go against the Islamic principles rather they protect the true spirit of a just and fair Islamic society.

Further, in Islam, the responsibility of eliminating disparities does not only fall on the state but also on the wealthy segment of society.[58] It appeals to individual responsibility and personal goodwill of a person for social welfare.[59] Islam relies on one's morality and urges them not to hoard wealth by sharing it with those who do not have the same.[60] In the Quran, the word *'dûlah*' means 'circulation of wealth' and is also an antonym for concentration or blockage of wealth or income in certain hands.[61] Thus, a case can be made against hoarding wealth that breeds inequalities.

[58] Shafinah Rahim, supra note 37 at 77.
[59] Ibid.
[60] "So that wealth is not circulated among the rich of you only it should go to the whole segment of society" (Quran 59: 7).
[61] Shafinah Rahim and Mustafa O Mohammed, 'Operationalizing Distributive Justice from The Perspective of Islamic Economics' (2018) 26(2) International Journal of Economics, Management and Accounting 415-416.

C. Contemporary Perspectives on Distributive Justice

In addressing income inequalities, contemporary scholars like Umar Chapra and Nejatullah Siddiqi prompted conversations about the distribution of resources.[62] To ensure justice in distributive function, they shifted the focus of Islamic scholarship from production and consumption to the issue of the distribution of resources.[63] Therefore, the idea of incorporating distributive justice in resources allocation is not as novel as one might deem it to be. Clearly, both Islamic scholarship and Quranic references are present in support of distributive policies that a state may adopt to curb disparities and cure social injustice.

Conclusion

While the Qazalbash case highlights the challenges of land reform in Pakistan, the foregoing discussion suggests that reinterpreting Islamic principles through the lens of distributive justice offers a viable path toward a more equitable society. The contemporary power structure in Pakistan is a colonial legacy where landlords exert authority due to vast amount of land they possess. This landed aristocracy, holding influence within the state apparatus, strives to uphold the status quo they inherited from the Colonial era. They have successfully evaded the effects of multiple efforts to introduce land reforms by holding key positions in the superstructure and using religion as a shield to justify inequality.

Despite the potential for reinterpreting Islamic principles to support distributive justice, land reforms in Pakistan face significant hurdles. The interpretation of Islam by some, along with the laws of the state, has at times been used to justify existing power structures. In this context, it appears that the feudalistic facet of Islam overcame its socialist side, denying the masses long overdue economic justice. Therefore, the decree in the said judgment warrants review in the

[62] Ibid 416.
[63] Ibid 417.

light of an alternative approach, like distributive justice, under which the state as trustee of the Islamic Principles, and the delegated authority by Allah (S.W.T.), is correct in imposing policies like land reforms. An Islamic state has a duty to ensure functioning of a just and fair society where stark class disparities and unreasonable monopolization of resources no longer exists. Achieving a more equitable distribution of land and resources is crucial for promoting economic growth and social well-being in Pakistan.

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Navigating Rent Laws in Pakistan: A comparative study of federal and provincial laws in the light of landmark judgements

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Abstract

This research paper aims to analyze the rent laws across various territories in Pakistan, focusing on parallels and differences in rent legislations_as well as discussing the major issues hampering the effective and expeditious adjudication of rent cases. The paper will also examine landmark judgments that have shaped the legal landscape of rent matters in the country. By exploring these aspects, the paper seeks to provide a comprehensive understanding of the complexities involved in rent laws and their implications for the landlords and tenants.

Introduction

The regulation of landlord-tenant relationship is a critical component of urban governance, particularly in developing jurisdictions such as Pakistan, where escalating housing demands necessitate structured legal frameworks. Rent control statutes not only delineate the contractual parameters governing the respective rights and obligations of the parties but also function as mechanisms for socio-economic equity. These laws safeguard tenants against capricious dispossession while simultaneously ensuring that landlords are justly compensated for the lawful use of their property. Rent laws in Pakistan are governed by a mix of federal and provincial legislation, which leads to variations in the legal framework across different regions. Legislation pertaining to rent has evolved over the years to address the complexities of urbanization and housing demands. The legal frameworks

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governing rental agreements are crucial for maintaining a balance between the rights of landlords and tenants. The complexities of these laws often result in disputes between landlords and tenants, necessitating effective adjudication mechanisms. This paper will explore the key features of rent laws in various provinces, identify the challenges faced in adjudicating rent cases, and analyze landmark judgments that have influenced the interpretation and application of these laws. This paper delves into the aforementioned ordinances and acts, providing a comprehensive overview of their provisions and practical implications.

This research focuses on the examination of legal frameworks, landmark judgments, and the implications of rent laws across various territories in Pakistan. The research further analyzes landmark judgments from various courts, particularly the Supreme Court and High Courts, to identify how judicial interpretations have shaped rent laws. This includes examining specific cases that highlight key legal principles. This research also compares rent laws across different territories, identifying the similarities and differences in legislations. This comparative approach allows for a comprehensive understanding of how various legal frameworks address similar issues and the implications for landlords and tenants.

Overview of Rent Laws in Pakistan

Federal Legislation
Islamabad Rent Restriction Ordinance, 2001

Islamabad Rent Restriction Ordinance, 2001 (hereinafter referred to as IRRO), was enacted to regulate the relationship between the landlord and tenant of rented premises in the Islamabad Capital Territory. This ordinance provides that it shall extend to such Urban area of Islamabad Capital territory as specified by the federal government by notification in official gazette which includes the commercial as well as residential properties. The Hon'ble Islamabad High Court, Islamabad in a recent judgement[2] held that provisions of Islamabad Rent Restriction Ordinance, 2001 shall extend to the

[2] Muhammad Shahbaz Vs District & session judge (East) Islamabad (2024 CLC 274)

whole of Islamabad. IRRO 2001, provides protection to the tenants against arbitrary evictions and ensures that landlords may not terminate the leases without just cause. Likewise, this ordinance ensures that landlord may not suffer at the hands of tenant and both the landlord and tenant may exercise their right as provided in the ordinance. In the following paragraphs, key sections of the IRRO shall be discussed which include, agreement attestation, eviction grounds and appeal etc.

As per section 5 of the ordinance[3] a tenancy agreement shall be in writing, which shall be presented by the landlord before the Rent Controller within thirty days of signing the agreement, who shall affix his official seal upon it. The original agreement shall be returned to the landlord and its copy shall be retained by the Controller. Whereas, section 6[4] provides the tenure of tenancy stating therein that no tenancy shall be valid beyond such period as agreed by the landlord and tenant. In section 8[5] it has been provided that that landlord and tenant shall fix initial rent through mutual agreement and payment of rent shall be made through cross cheque or with proper receipt or against acknowledgement by the landlord. Next, section 10 of the ordinance provides that rent of residential as well as commercial premises shall automatically increase by 10% at the end of every one year, if not otherwise fixed by the landlord and tenant in rent agreement. Whereas, section 14 provides a mechanism to seek direction of the Rent Controller, in a case where landlord interferes in the amenities enjoyed by tenant in rented premises to prejudice his rights under the agreement.

There are few provisions where certain grounds for eviction of tenant from the rented premises have been mentioned, which are as under:

- Default in payment of rent by tenant (Within fifteen days after expiry of time fixed in agreement or sixty days from the period for which rent is payable in absence of agreement)

[3] Section 5 of Islamabad Rent Restriction ordinance 2001
[4] Section 6, ibid
[5] Section 8, ibid

- Subletting of rented premises, or using the same for any other purpose than agreed.
- Impairing value of rented premises.
- Causing nuisance.
- Requirement of landlord for reconstruction of rented premises, but this requirement must be accompanied with sanction of concerned authority and landlord shall be bound to demolish the rented premises within 4 months of taking possession of the same otherwise landlord shall face six months' imprisonment or fine.
- Personal bona fide need of landlord in case of residential and commercial building.

Section 17 of the IRRO, provides instances[6] where landlord cannot seek eviction of tenant on the ground of personal bona fide need when tenancy period of commercial building has not expired. Likewise, this ordinance[7] provides that in case a building has been vacated by the tenant on the plea of personal bona fide need and said landlord fails to occupy the premises within one month or relets to other tenant within a period of six months, said tenant has right to move court of Rent Controller to put him into possession of the rented premises vacated by him.

The IRRO 2001 also provides a mechanism for striking out right of the tenant[8] in case any tenant fails to deposit the rent in compliance of the rent deposit order passed by the court under section 17(8) of the ordinance. Under section 17(9) of IRRO 2001, the right of the tenant on account of default in payment of rent shall be struck off without providing any further opportunity and eviction petition shall be decided forthwith. Section 21 of the IRRO provides that appeal may be filed before the district judge within 30 days of the final order of the Rent Controller and appeal can also be filed against interlocutory order of the Rent Controller as amended[9] in the year 2021. Section 26 of the Ordinance provides compensation for frivolous application; in case any party indulges in abusing the

[6] 17(4) (b), ibid
[7] 17(6) of Islamabad Rent Restriction Ordinance 2001.
[8] 17(9), ibid
[9] Islamabad Rent Restriction (Amendment) Act, 2021 (XLVII of 2021).

process of law by filing Misc. Application etc. While section 28 of the Ordinance provides power of Rent Controller to impose penalty not exceeding Rs.5000/- in case any provision of the ordinance is not complied with.

Amendments in Islamabad Rent Restriction Ordinance, 2001

In the year 2021, major amendments were introduced in the Islamabad Rent Restriction Ordinance (IRRO) 2001 with the spirit of resolving longstanding issues of rent control in Islamabad Capital Territory. Said amendments were made in different sections of IRRO 2001, which included presentation of the rent agreement before the Rent Controller for attestation, rent payment by the tenant through cross cheque or receipt of acknowledgement by the landlord. The major Amendment was introduced by insertion of Section related to Mediation Council[10] in IRRO 2001. Section 16-A of the ordinance provided that there shall be a mediation council consisting of three members and every dispute between landlord and tenant including *Pagri* shall be referred to Council by Rent Controller. After receipt of the dispute by the Council, the parties shall nominate their representatives and the Council shall hear the dispute on day-to-day basis for a maximum period of up to 30 days, thereafter Mediation Council shall intimate the Rent Controller of the assessment.

Provincial Legislations

Punjab Rented Premises Act 2009

Punjab Rented Premises Act 2009, repealed and replaced the earlier legislation i.e. Punjab Rented Premises Ordinance 2007.[11] The new Act was introduced to regulate the relationship between landlord and tenant with the aim to settle their disputes in expeditious and cost-effective manner. This act provides definition of word "*pagri*", however no such definition is available in other rent legislations. Chapter-II of the Act provides that tenancy between the landlord and tenant shall be in writing and said rent agreement shall be presented

[10] Ins. by the Islamabad Rent Restriction (Amendment) Act, 2021 (XLVII of 2021)
[11] Punjab Rented Premises ordinance 2007

before the Rent Controller for endorsement. The Act also provides that in case of non-compliance with provisions of this Act, no petition for eviction of tenant shall be entertained unless tenant and landlord deposit the fine.[12]

Section 15 of the Act provides grounds for eviction of tenant from rented premises which include rent default, expiry of term of lease, breach of terms of tenancy agreement, violation of any obligation enumerated in agreement by tenant, misuse of premises by tenant and subletting of rented premises. Notably, this Act doesn't provide any ground for eviction of tenant on the basis of personal bona fide need as against other legislations on rent.

The Act also provides mechanism to file application before Rent Controller for deposit of rent by the tenant in case landlord refuses to receive the rent.[13] This very mechanism of filing application by tenant for deposit of rent has not been provided in any other rent legislation. Another important section of this Act is pertaining to concept of leave to contest by the tenant.[14] Under section 22 of the Act, leave to contest is required to be obtained by the tenant for defending the eviction petition, in case no such leave is granted then eviction shall be decided forthwith or in case leave is granted, application seeking leave to contest shall be considered as written reply of the eviction petition. Section 28 of the Act provides that no appeal shall be filed against the interlocutory order.

Sindh Rented Premises Ordinance 1979

Sindh Rented Premises Ordinance, 1979 was promulgated in the year 1979 and amendments in the same were introduced in years 1980 and 1984. This specific legislation provides concept of fair rent[15] as against other rent legislations, which do not provide any such concept. Grounds for eviction[16] of tenant have been provided in the ordinance which are same as enumerated in Islamabad Rent Restriction Ordinance 2001.

[12] Section 21 of Punjab Rented Premises Act 2009
[13] Section 22 of Punjab Rented Premises Act 2009
[14] Section 23 of Punjab Rented Premises Act 2009.
[15] Section 08 of Sindh rented Premises ordinance 1979.
[16] Section 15 of Sindh rented Premises ordinance 1979.

Section 21 of the Ordinance provides that no appeal shall be filed against interlocutory order of Rent Controller and appeal shall be filed before the High Court as against other legislations, wherein appeal against final order can be filed before the District Judge.

Baluchistan Urban Rent Restriction Ordinance, 1959 Khyber-Pakhtunkhwa Urban Rent Restriction Ordinance, 1959

Urban Rent Restriction Ordinance, 1959 provide regulations regarding rent control, eviction procedures and tenant rights. The ordinances outline the concepts of fair rent, no claim of premium by landlord etc. Section 11 of the Ordinance provides that no residential building shall be converted into commercial building unless permission in this regard is given by the Rent Controller, however, no such provision exists in other rent legislations.

Grounds for eviction of tenant have been provided in section 13 of Urban Rent Restriction Ordinance 1959 which include default in payment of rent, subletting, damage to property by tenant, personal bona fide need and if any nuisance is created by tenant in rented premises. Section 15 of both the Ordinances provide that there shall be no appeal against interim order, however under the Khyber-Pakhtunkhwa Urban Rent Restriction Ordinance, 1959, appeal against final order of the Rent Controller may be filed before the District Judge while under the Baluchistan Urban Rent Restriction Ordinance, 1959 appeal may be filed before the High Court[17]

Similarities and Differences in Rent Laws

Rent legislations across Pakistan share significant parallels, largely influenced by the West Pakistan Urban Rent Restriction Ordinance 1959. The Rent Controller's jurisdiction is invoked when the relationship of landlord and tenant is admitted between the parties and thereafter an order is issued by the court for deposit of tentative rent order pertaining to due and future rent. Non-compliance with this order results in the tenant's right being struck off and the ejectment petition being accepted against him. Codified rent

[17] Section 15 subs. first by Baln. Ord. XXI of 1978; and, then, by Baln. Ord. III of 1980.

legislations across the country provide that Rent Controller shall exercise all the powers of a Civil Court in execution of final order passed by the Rent Controller considering the same as a decree of Civil Court. Furthermore, it explicitly states that provisions of Q.SO.1984 and C.P.C are not applicable in rent proceedings before the Rent Controller.

The grounds for eviction of tenants are largely consistent across the various rent legislations, with only minor variations in provincial legislations. Common grounds include expiry of lease agreement, default in payment of rent, personal bona fide need of the landlord, and sublet of rented premises by the tenant. It is provided in all rent legislations that in case any landlord disconnects the amenities enjoyed by the tenant in rented premises, said tenant may approach the court of Rent Controller for restoration of said amenities. It is also provided in all the legislations except Punjab Rented Premises Act 2009 that in case rented premises stand vacated on the basis of personal bona fide need but same is not occupied by landlord within the specified time or relets it, tenant shall have the right to repossess the vacated premises.

Despite these commonalities, notable differences exist across Pakistan's rent legislations, reflecting diverse legal landscapes. Each law has its unique provisions, scope, and enforcement mechanisms, which can significantly impact the rights and obligations of both landlords and tenants. Understanding these differences is crucial for highlighting the core sections of specific legislation. Punjab Rented Premises Act 2009 provides fewer grounds for eviction of tenant as no ground for personal bona fide need is provided in this rent legislation unlike other legislations. Concept of “fair rent” is not provided in all rent legislations as Punjab Rented Premises Act 2009 doesn’t provide any provision as to fair rent in comparison to Islamabad Rent restriction ordinance 2001 and Urban Rent Restriction Ordinance 1959. All the rent legislations provide that appeal against final order of the Rent Controller shall lie to District Judge but forum of appeal in Sindh Rented Premises Ordinance, 1979 and Baluchistan Urban Rent Restriction Ordinance, 1959 is High Court.

There are different penalties provided in respective legislations of rent as Punjab Rented Premises Act 2009 provides that in case of non-compliance of provision of the Act, no eviction petition shall be entertained unless tenant pays 5% and landlord pays 10% of the annual rent, whereas no other legislation has provided this type of penalty. Legislation of rent in Punjab is exhaustive than other provincial legislations as the Punjab Rented Premises Act 2009 provided concept of leave to contest, procedure for recording evidence. It also provided the concept of *pagri* as well, however no other rent legislation contained any such provision. There is also a different rate of increase of rent in rent legislations, as in Sindh and Islamabad it is 10% yearly, whereas in West Pakistan Urban Rent Restriction Ordinance no such yearly increase has been provided.

Case Law Analysis on the Rent Laws

The following case laws depict the jurisprudential discourse on the various questions of laws involved in the relationship between landlord and tenant and how the courts have responded to those questions are worth-mentioning:

Expiry of Fixed Term

Either of Islamabad, Sindh or West Pakistan Urban Rent Restriction ordinance 1959 does not provide any ground for eviction of the tenant on the basis of the expiry of the term/tenure of lease agreement. Prior to judicial clarification in the judgement cited below, eviction petitions in the relevant stated jurisdictions were frequently instituted based on the expiration of lease term. The absence of an explicit statutory ground for eviction of tenant on expiry of term of lease in the aforementioned ordinances resulted in protracted and contentious litigation. It was required from the apex courts to interpret the grounds of eviction provided in the above rent jurisdictions with reference to expiry of term of lease.

The August Supreme Court of Pakistan addressed this issue in a celebrated case of Waqar Zafar Bakhtawari[18], wherein it was held by the August Supreme Court of Pakistan that tenancy shall become

[18] *Waqar Zafar Bakhtawari & others Versus Haji Mazhar Hussain Shah and others* (2018) SCMR 81.

invalid after expiry of the term of tenancy agreed between the landlord and tenant; then the tenant shall lose his right to occupy the rented premises after expiry of the term of lease; that it was reiterated that in case there was no express consent of landlord to extend the tenancy period, the tenant shall be guilty of having infringed the conditions of tenancy, rendering him liable to be evicted. This interpretation by the August Supreme Court of Pakistan established that expiry of tenure/term of tenancy agreement constituted a valid ground for eviction in above referred rent jurisdictions. Needless to mention here that the provincial legislation in Punjab specifically provided that expiry of tenancy period was a valid ground for eviction of a tenant.

Applicability of the Rent Law

Islamabad Rent Restriction Ordinance, 2001 provides that Rent restriction ordinance shall be applicable upon Urban area of Islamabad as notified by the federal Government. However, Hon'ble Islamabad High Court in a recent judgement in case titled as '*Mohammad Shahbaz Vs District and sessions judge east* etc[19]' have held that Islamabad Rent Restriction Ordinance shall extend to entire Islamabad Capital Territory notwithstanding registered, approved or unapproved society or area under CDA or any other Area acquired or non-acquired or even constructed in any part of ICT beyond the Zoning limit. Prior to this judgement, there used to be a confusion as to applicability of rent restriction ordinance in various areas of Islamabad in consequence whereof the suits for possession for eviction of tenants were usually filed by the landlords in certain areas of Islamabad which resulted into delay in adjudication of rent cases.

Role of Mediation Council

Through major amendment of year 2021 in IRRO 2001, section 16-A was added and Mediation Council was established. The primary aim of the Mediation Council was kept to facilitate the resolution of disputes between the landlords and tenants through mediation in a more amicable and efficient manner. By inserting this section; focus was shifted from purely adversarial legal process to more

[19] Mohammad Shahbaz Vs District and sessions judge east etc. (2024) CLC 274.

collaborative system and this was aimed to quickly resolve the matter between the parties resulting in reduced burden on the courts of law. However, in order to effectively achieve the goal of said amendment and to curb the un-necessary delays in the rent proceedings; the Hon'ble Islamabad High Court, Islamabad in a judgement titled '*Miss Memoona Zainab Kazmi versus Additional district judge (mcac) Islamabad west,'* reported as *(2023) CLC 207*, has explained the role of Mediation Council and also provided guidelines for the rent tribunals.

In the referred judgement, it was directed by The Hon'ble High Court that before referring the matter to the Mediation Council, rent tribunal shall pass order directing the tenant to deposit all due rent. It was also directed that before referring the matter, Rent Tribunal shall determine that default of rent is not apparent or lease term has not expired, otherwise such matter/eviction petition shall not be referred to the Mediation Council. The guidelines and directions passed by the Hon'ble High Court in above referred judgement have resulted into effective adjudication of mandate provided to Mediation Council and it also curbed the un-necessary delays in eviction proceedings by tenants. Needless to mention that it is need of the hour to effectively enforce and implement the spirit of section 16-A in order to monitor and evaluate the Council's performance.

Non-Applicability of Q.S.O 1984 & Civil Procedure

In the case of Muhammad Azhar [20] The Hon'ble Islamabad High Court held that provisions of Q.S.O 1984 and Civil Procedure Code 1908 are not applicable in rent proceedings and Rent Controller has to adopt the procedure as enumerated in section 17 of the IRRO 2001. It was further held in the referred judgement that Rent Controller before passing order under sections 9,14,15,17,18 shall conduct an inquiry after affording opportunity of hearing to the tenant. It has further been held that the Rent Controller possesses the authority to summon and enforce the attendance of individuals, examine witnesses under oath, compel the discovery and production of documents and material evidence, and issue commissions for the examination of witnesses. These powers are exercised to ensure the

[20] Muhammad Azhar through Attorney and 6 others versus additional district judge-vii, west, Islamabad and 2 others *(2020) YLR 932.*

proper adjudication of disputes arising under tenancy laws and facilitate the administration of justice within the scope of rent-related proceedings.

Guidelines for Early Disposal of Rent Cases

In case titled as Muhammad Akbar Chohan[21], The Hon'ble Islamabad High Court provided guidelines to the Rent Controllers for swift and early disposal of rent cases. This judgment has significantly improved the efficiency of the courts by streamlining processes and encouraging the courts to decide the cases within statutory time period. Directions issued in the judgement facilitated quicker resolutions in rent-related disputes, thereby reducing the backlog of cases and expediting the judicial process. The protracted and intricate nature of rent litigation in Islamabad, characterized by years-long decision periods for rent petitions, was significantly addressed by this judgment of the Islamabad High Court. This judicial intervention empowered Rent Tribunals to adjudicate such matters within the statutorily prescribed timeframe. The High Court's ruling provided clearer legal interpretations, mandated stricter procedural timelines, and potentially standardized processes, thereby enabling more efficient resolution of rent disputes and mitigating the chronic delays previously experienced. This has resulted in a more expeditious dispensation of justice in rent matters within the Islamabad jurisdiction

Summary Disposal of Rent Matters without Evidence

In the case of Shuja Ahmed[22], The Islamabad High Court provided a complete analysis of the scope and meaning of "inquiry" under Section 24 of the Islamabad Rent Restriction Ordinance, 2001 (IRRO), and clarified the manner in which eviction proceedings should be conducted under this law. This judgment serves as a precedent for interpreting the legislative intent of IRRO, ensuring an efficient balance between landlord-tenant relationships while expediting rent dispute resolutions. The referred judgment emphasized that Rent Controllers must consider all documents on record and afford parties a hearing. If the matter falls squarely under

[21]Muhammad Akbar Chohan versus Rent Controller, Islamabad and others *(2017) MLD 53*
[22] Shuja Ahmed v. Additional District Judge (West), Islamabad, and others (2019) MLD 590

Section 17 (e.g., violation of lease terms apparent from admitted documents), a summary judgment akin to cases of default or lease expiry is permissible. This interpretation streamlined proceedings by obviating the need for protracted trials in cases where the core issues are evident from the documents and admitted facts. It empowered the Rent Tribunals to decide cases more expeditiously by focusing on the essential aspects of the "inquiry" – investigation and hearing – rather than adhering to the exhaustive procedures of a regular civil suit, thus aligning with the legislative intent of timely resolution of rent disputes under the IRRO.

The Term 'Landlord' Defined Extensively

In numerous tenancy disputes, upon the demise of the property owner/landlord, the tenant frequently contests the legal succession of the landlord-tenant relationship, asserting that no such privity of contract existed between the tenant and the legal heirs of the deceased owner. This assertion often results in the tenant's refusal to remit due rent and/or to vacate the subject property. Such circumstances commonly led to protracted litigation, effectively achieving the tenant's objective of delaying the resolution of the tenancy dispute. In the referred judgement, the High Court has expounded upon the legal definitions of "landlord" and "property owner" in this context. In case of Nasir Khan[23], The August supreme Court of Pakistan has defined the word landlord in words that landlord may not be owner of property. It was held by the Court that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties.

However, in the normal, circumstances, in the absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law. The Court held that the "respondent was the 'landlady' under Section 2(g) of the Islamabad Rent Restriction Ordinance, 2001, as she was legally recognized as the heir of the deceased owner. The petitioner's/tenants claim of ownership did not negate the landlord-

[23] Nasir Khan Vs Nadia Ali Butt etc. (2024) SCMR 452

tenant relationship; he could not remain in possession of the property merely by asserting ownership without a court ruling in his favour".

Denial of Landlord Tenant Relationship

It is a well-established practice within various rent jurisdictions that respondents in eviction petitions frequently contest the proceedings by denying the existence of a landlord-tenant relationship. This denial is often predicated on the assertion that the respondent entered into an agreement to sell the subject property with the petitioner, be it the landlord, landowner, or a co-owner. Consequently, Rent Tribunals are compelled to frame a preliminary issue concerning the establishment of a landlord-tenant relationship, as the absence of such a relationship would divest the tribunal of its jurisdiction to adjudicate the eviction petition.[24] The Honourable Supreme Court of Pakistan has, in a consistent line of jurisprudence concerning such matters, articulated the principle of "*once a tenant, always a tenant*." This principle dictates that a party who initially entered into possession of the premises as a tenant is first obligated to vacate the said premises. Subsequently, the former tenant retains the right to pursue the establishment of his asserted ownership rights through the appropriate competent court of jurisdiction.[25]

In the above referred judgements, it has been held by the court that mere assertion of ownership over rented premises, coupled with the institution of a declaratory suit to that effect, does not entitle the occupant to remain in possession of the said premises. This interpretation by the August supreme court has helped to prevent abuse of process by tenants from using baseless ownership claims and delay the proceedings of pending eviction petition.[26] Established jurisprudence of the apex court on the above subject safeguards the integrity of the landlord-tenant relationship, upholding the primacy of the initial contractual agreement. Furthermore, it ensures the efficient resolution of disputes by channeling ownership claims to the competent civil courts, thereby preserving the summary nature of eviction proceedings within rent

[24] *Muhammad Nisar v. Izhar Ahmed Shaikh*, PLD 2014 SC 347.
[25] *Mst. Mussarrat Shaheen v. Mst. Verbeena Khan Afroz*, (2024) SCMR 1796.
[26] *Nasir Khan v. Nadia Ali Butt*, (2024) SCMR 452.

tribunals.[27] Ultimately, this legal stance protects the rights of landlords against indefinite deprivation of their property based on unsubstantiated assertions, allowing eviction processes to proceed based on the established tenancy while ownership claims are adjudicated separately before the appropriate forum.

Execution in Rent Cases

A significant challenge arises in execution of ejectment order due to dilatory tactics employed by tenants, such as the filing of unwarranted objection petitions. In addressing such scenarios, the Honourable Supreme Court has held that execution proceedings are strictly limited to the enforcement of adjudicated judicial decisions and do not encompass a re-examination of the substantive legal questions previously determined.[28] Consequently, a Rent Controller in execution proceedings is legally obligated to act solely to implement the eviction order, devoid of any authority to scrutinize, question, or revisit the merits of the original judgment.

The fundamental idea conveyed is that once a Rent Controller has passed eviction order of tenant, the Court must confine its actions strictly to putting that order into effect. The execution stage is not an opportunity for the tenant to re-argue the case or raise new objections that challenge the validity or correctness of the eviction order itself. The Supreme Court emphasizes[29] that the executing court's role is purely ministerial to enforce the decision already made on the substantive issues. Attempts by tenants to introduce new factual or legal arguments through objection petitions in execution proceedings, aimed at delaying the implementation of the eviction order, are impermissible as they fall outside the scope of the executing court's jurisdiction. The Rent Controller is bound by the law to enforce the order as it stands, without the discretion to review its merits. This principle aims to ensure the finality and efficacy of judicial decisions and prevent the indefinite protraction of litigation through obstructive tactics in the execution phase.

[27] *Rehmatullah v. Ali Muhammad*, (1983) SCMR 1064.
[28] *Muhammad Ain-ul-Haq v. Abdul Ali*, (2024) SCMR 1767.
[29] *Muhammad Ain-Ul-Haq Versus Abdul Ali* (2024) SCMR 1767

Service of Notice/ Tactics of Delay

In numerous eviction petitions, tenants deliberately avoid to appear before the Court until an ex-parte eviction order is issued, their subsequent appearance at the execution stage being primarily aimed at delaying the execution and seeking the restoration of the original eviction petition. The Honourable Supreme Court held that where the court has duly adopted all prescribed modes to ensure service of summons upon the tenant, the ex parte eviction order shall remain valid and the tenant's non-appearance shall be deemed a wilful absence[30]. This principle underscores that a tenant cannot strategically absent himself from the initial stages of an eviction proceeding and then appear solely to obstruct the execution of a lawfully issued ex parte order. If the court has diligently followed the legal procedures to serve the tenant with notice of the lawsuit, the tenant's failure to appear constitutes a deliberate choice. In such instances, the ex parte eviction order, passed in their absence, retains its legal force and validity. The executing court is not obligated to set aside the eviction order or restore the original petition simply because the tenant belatedly appears at the execution stage with the primary intention of delaying the inevitable outcome of their wilful non-participation in the substantive proceedings. This stance reinforces the importance of timely engagement in legal proceedings and prevents the abuse of the execution process to circumvent the consequences of deliberate absence during the initial adjudication.

Payment of Rent to Previous Landlord

In the case titled as *Alay Javed Zaidi*[31] *and Ghulam Samdani versus Abdul Hameed* reported as (1992) SCMR 1170**,** The Supreme Court of Pakistan dismissed a Civil Petition challenging an order of the High Court of Sindh, which had upheld the decisions of the Rent Controller and the appellate court regarding willful default by a tenant and the fixation of fair rent. The apex court affirmed that the tenant's continued deposit of rent in the name of the previous landlady, despite having knowledge of the change in ownership, constituted willful default under Section 15 of the Sindh Rented Premises Ordinance, 1979. The Court reasoned that the previous

[30]Sadaqat Ali Versus Mst. Nasreen Akhtar (2025) SCMR 358

[31] Alay Javed Zaidi vs Habibullah and others (2024) SCMR 781.

landlady's explicit communication to the tenant regarding the sale and the new owner's demand for rent served as sufficient intimation of the change in ownership, satisfying the requirements of Section 18 of the SRPO, 1979. Furthermore, the Court held that the institution of an application for the determination of fair rent by the new landlord under Section 8 of the Sindh Rented premises ordinance, 1979, in itself constituted substantial compliance with the intimation requirements.

Judicial Challenges in Adjudication of Rent Cases

The effective adjudication of rent cases by Rent Controllers in Pakistan is impeded by several judicial challenges. The judicial challenges faced by Rent Controllers in Pakistan include jurisdictional ambiguities, compliance issues with rent orders, protracted, contentious litigation, contested grounds for eviction, limited applicability of procedural laws, and difficulties in restoring amenities. Addressing these challenges is essential for improving the efficiency and effectiveness of rent adjudication in the country.

There are different rent legislations which have been enacted across the country, having different grounds for eviction and related matters. This enactment of different rent legislations has resulted in different interpretations of law by the superior courts leading to complexity. The jurisdiction of Rent Controllers is often clouded by ambiguities regarding their authority to hear specific cases. This is particularly evident in instances where the relationship between landlord and tenant is in dispute. Such ambiguities lead to delays and complications in the adjudication process. The lengthy nature of rent litigation is a persistent issue. The courts expressed concern over the protracted trials that can extend for several years, causing significant distress to both landlords and tenants. The need for expeditious processes is critical to ensure timely resolutions of disputes. On the contrary, the exclusion of the provisions of the Code of Civil Procedure (C.P.C) in rent proceedings can also create challenges in terms of procedural fairness. Lack of uniformity in rent legislations across Pakistan complicates the legal landscape, as decisions rendered by federal and provincial courts connote different tendencies.

However, there is a need for a cohesive legal framework to address these discrepancies. Khyber Pakhtunkhwa and Baluchistan have retained the original Urban Rent Restriction ordinance 1959 which despite being foundational, now shows signs of procedural rigidity and outdated rent control mechanism. So much so, some jurisdictions i.e. Islamabad and Punjab have modernized their rent laws with procedural efficiency and alternative dispute resolution mechanisms, while other remain tethered to outdated mechanisms. Although reforms such as Mediation Councils (Section 16-A IRRO 2001) marked a progressive step, their implementation has been uneven and largely ceremonial. There is often no real incentive or penalty structure for non-cooperation in mediation. Furthermore, rent tribunals frequently bypass these Councils, or refer matters unsuited for amicable resolution, especially where default or lease expiry is clear-cut. Thus, the transformative potential of ADR mechanisms remains unrealized., Despite the *Shuja Ahmed*[32] judgment's clear guidance and the availability of summary procedures under various statutes (such as "leave to contest" in Punjab), Rent Controllers often exhibit a reluctance to robustly employ these tools. This hesitation largely stems from a fear of appellate reversal, a conservative judicial approach that inadvertently promotes full-scale trials even in clear-cut default cases. This judicial timidity contributes significantly to case backlogs, directly undermining the intended summary nature of rent adjudication and the legislative goal of efficient dispute resolution highlighted in the *Shuja Ahmed* ruling. Moreso, tenants usually evade service of summons to delay proceedings until an ex-parte eviction order is passed, after which they appear during execution and move for restoration. Courts have, at times, entertained such restorations generously, even where service was duly effected, undermining the finality of proceedings. The jurisprudence developed by the Supreme Court of Pakistan on willful absence in recent case laws needs to be more strictly implemented by subordinate courts to prevent this manipulation.

[32] Shuja Ahmed v. Additional District Judge (West), Islamabad, and others (2019) MLD 590

Conclusion

Based on the analysis of the current rent laws and the challenges faced in their implementation, it is recommended to establish a cohesive legal framework for rent laws across Pakistan to address the discrepancies and variations in provincial legislations. This would help in creating consistency in the interpretation and application of rent laws, thereby reducing confusion and litigation. There is a need to implement measures to expedite the adjudication process for rent cases. This could include setting specific timelines for hearings and decisions through judgements to minimize protracted litigation as held by the Islamabad High Court Islamabad. It has also helped to adjudicate the rent cases effectively by rent tribunals in Islamabad.

To truly alleviate the burden on Rent Controllers and courts, and to realize the transformative potential of Alternative Dispute Resolution (ADR) mechanisms, it's crucial to empower Mediation Councils. This requires not only strengthening their role and ensuring consistent utilization but also establishing clear guidelines for appropriate case referral and creating tangible incentives for good-faith participation. There is also need to reassess the grounds for eviction provided in various rent legislations to ensure they are fair and just, particularly concerning personal bona fide needs of landlords, which are inconsistently addressed across different laws. More so, landmark judgments can be utilized as guiding principles for future cases to ensure that the legal landscape remains consistent and predictable for both landlords and tenants. These recommendations aim to enhance the effectiveness of rent laws in Pakistan, ensuring a balanced approach that protects the rights of both landlords and tenants while facilitating efficient dispute resolution. Further research should address the impact of rapid urbanization on the effectiveness of existing rent laws in major cities of Pakistan, and how can these laws be adapted to meet the real time challenges posed by urban growth?

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Artificial Intelligence Integration in Pakistan's Legal System: Enhancing Access to Justice, Judicial Transparency, and Legal Efficiency

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Abstract:

This research examines the potential integration of Artificial Intelligence (AI) within legal and judicial framework of Pakistan. It evaluates how AI-supported technologies can modernize legal procedures. It ensures judicial transparency and improves access to justice. It particularly focuses the reach of justice in underprivileged and remote regions. The legal system of the country is beset with structural delays, case backlogs, and insufficient digital infrastructure. Against this backdrop, the paper explores transformative potential of AI to support legal professionals and modernize court operations. In fact, AI cannot replace the nuanced judgment of legal practitioners. However, it can significantly enhance decision-making, contract analysis, and administrative efficiency of the legal framework. There are certain hindrances in implementing AI like ethical, infrastructural, and institutional challenges. In short, the aim of study is to ensure a balanced, ethically grounded adoption of AI, underpinned by policy reforms and legislative safeguards. Conclusively, it presents a framework for

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responsible AI integration while offering practical recommendations for policy and implementation.

Keywords: Artificial Intelligence (AI), Legal Technology, Judicial Reforms, Legal Automation, Access to Justice

1. Introduction

The integration of Artificial Intelligence (AI) into the legal and judicial landscape of Pakistan makes a transformative shift towards a more efficient and equitable justice delivery system. AI has demonstrated its disruptive potential across global sectors such as healthcare, education, and finance. Yet, the utility of AI within the legal profession remains untapped in many developing countries, including Pakistan. The Pakistani legal system is plagued with systemic inefficiencies like case backlog exceeding 2.3 million (Ali et al., 2024), limited access to legal aid in rural communities, outdated manual recordkeeping, and a judicial infrastructure governed by procedural codes from the colonial era.

In this regard, AI technologies offer promising avenues to restructure legal workflows. It expedites case processing and supports judicial decision-making. AI-supported tools such as predictive analytics, intelligent legal databases, and virtual assistants have demonstrated strength to automate routine legal tasks, assist in legal research, and enhance courtroom efficiency. Many countries like the United States, the United Kingdom, and Singapore have already not only undertaken successful journey but also operationalized these technologies in their court systems through tools supporting e-discovery, online dispute resolution, and automated risk assessments (Gul & Rahman, 2024).

Despite some initial efforts such as limited e-court models and digital case management in a few jurisdictions, Pakistan lacks a cohesive strategy for integrating AI into its judiciary. The challenges are multifaceted. Most courts still operate with paper-based systems,

suffer from a lack of digital infrastructure, and have limited trained staff. Institutional resistance is exacerbated by fears of job displacement, ethical ambiguity, and concerns about the transparency and objectivity of algorithmic systems. Although there is a AI-specific national policy and the apex court judgement enumerating guidelines for the use of artificial intelligence yet there is vital need for more robust legislation. (Farooq & Hussain, 2022). This research is situated within four interrelated domains of legal scholarship: judicial reform, legal technology adaptation, access to justice, and contemporary legal challenges. The paper evaluates how AI can help address procedural inefficiencies, explores pathways for integrating emerging technologies in a manner compatible with current legal frameworks, investigates AI's role in democratizing access to justice, and highlights ethical and institutional risks associated with its adoption.

The central premise of this study is that while AI cannot supplant the interpretive and empathetic capabilities of legal professionals, it can serve as a powerful adjunct that improves the overall quality and accessibility of legal services. AI implementation in Pakistan must be anchored in strong ethical guidelines, privacy safeguards, and continuous professional development to ensure inclusivity and long-term sustainability.

This study makes the following contributions: -

- Introduces a comprehensive sector-specific implementation model for phased and contextual AI integration in Pakistan’s legal system.
- Bridges the gap in literature by comparing international AI legal practices through a legal transplant lens and adapting these models to Pakistan's socio-legal landscape.
- Presents a detailed visualization of the research framework and comparative analysis matrix.
- Critically discusses ethical, institutional, and infrastructural challenges, providing targeted reform proposals.

- Analyzes the transformation of roles and responsibilities of legal professionals in light of AI.
- Integrates empirical review, comparative mapping, and policy implications in a unified framework.

2. Literature Review

The integration of Artificial Intelligence into judicial systems has emerged as a pivotal innovation in legal technology. Global research indicates that AI enhances legal reasoning, court efficiency, and case resolution speed through predictive analytics and automation (Susskind, 2021). In advanced jurisdictions like Singapore and the UK, AI has facilitated digital case filing, smart assistants, and AI-enabled courtrooms, thereby improving legal access and transparency (McGinnis & Pearce, 2022).

In Pakistan, however, the academic literature remains nascent. Ahmed and Raza (2021) underscore the absence of a comprehensive AI policy or institutional readiness for technological transformation. Khan et al. (2022) highlight how AI tools could assist Pakistani courts in overcoming endemic inefficiencies, particularly in rural access and backlog reduction. Farooq and Hussain (2022) stress ethical concerns including data privacy and algorithmic opacity. Siddique and Iqbal (2023) note that while some AI tools are employed in legal research and contracts, their use is confined to elite law firms in urban areas. Javed and Imran (2023) advocate for the development of AI-specific legislative frameworks to regulate and guide adoption.

Contemporary international works reinforce the findings. John et al (2025). It emphasizes the need for ethical and transparent AI deployment in judicial decision-making. It suggests independent oversight bodies for algorithmic accountability. Khalil (2024). It stresses the importance of foundational digitization before AI deployment, particularly in evidence handling and sentencing analysis.

This paper is consisting upon these scholarly insights while proposing a localized sector-specific implementation model. It offers a framework for phased AI integration aligned with Pakistan's socio-legal landscape.

3. Methodology

This study adopts a qualitative doctrinal research methodology. It is supplemented with comparative legal analysis and stakeholder-oriented assessment tools. The primary goal of this methodological framework is to develop a holistic understanding of the current legal infrastructure of Pakistan. It evaluates the feasibility and impact of integrating AI technologies into its judicial system.

The doctrinal research component involves an in-depth analysis of statutory frameworks. It examines constitutional provisions. It evaluates case laws and judicial practices being operating currently in Pakistan. This segment identifies structural inefficiencies, outdated procedural norms, and areas where automation and AI-assisted decision-making tools could offer meaningful interventions.

The comparative legal analysis draws sharp difference between Pakistan and the countries that have made significant strides in judicial AI deployment. The jurisdiction may include India, the United Kingdom, and the United States. With studying their implementation models, regulatory safeguards, and AI application domains (e.g., e-discovery, sentencing algorithms, and virtual dispute resolution), this research evaluates adaptable practices. It can be legally and culturally transplanted into legal system of Pakistan.

The study also incorporates a stakeholder readiness assessment in order to ensure the proposed AI reforms. This involves evaluating the institutional capacity, digital literacy levels, infrastructural preparedness, and the attitudes of legal professionals towards AI-based reforms for viable plan.

Being consisting upon three pillars, the research formulates a phased AI implementation strategy. This strategic roadmap proposes a gradual introduction of AI tools into judicial workflows. Starting from low-risk administrative areas to core adjudicative functions under ethical supervision should be followed.

Finally, the methodology concludes with policy and legislative reform proposals. These may include the drafting of AI governance frameworks, data protection regulations tailored for the judiciary, and institutional reforms. In turn, it prioritizes accountability, fairness, and transparency in algorithm-assisted legal reasoning.

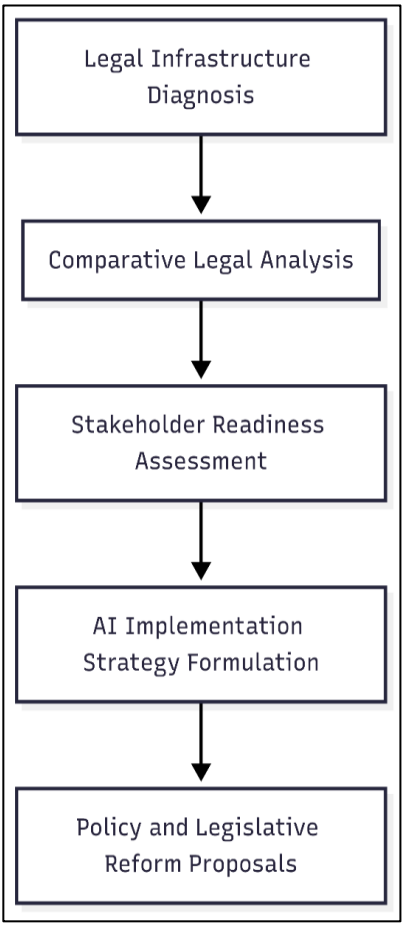


Fig. 1: Conceptual Flowchart of the AI Legal Integration Research Methodology

4. Analysis of the Exiting Legal System in Pakistan

The legal system of Pakistan draws its roots from British common law, Islamic jurisprudence, and post-independence statutory enactments. However, the judiciary is beset with certain prominent inefficiencies such as archaic procedural laws, limited digital infrastructure, and poor human resource capacity. The country has been suffering from a backlog exceeding 2.3 million cases and a judge-to-population ratio of approximately 5 per million. Significantly, it is below to global standards. The courts are

dominated by the manual documentation systems which in turn pave way for frequent case delays, misplacement of files, and administrative bottlenecks.

The Civil Procedure Code (1908) and Criminal Procedure Code (1898), both are the colonial remnants. They continues to govern court proceedings with minimal revision. Undoubtedly, judiciary of Pakistan will continue to lag behind in delivering timely and equitable justice without systemic policy reforms and technological integration,

5. Comparative Analysis of AI Legal Integration

This section compares AI use in India, the UK, and the US. India's SUVAS assists in language translation and judgment tagging. The UK employs online courts and dispute resolution platforms. The US uses AI for risk assessments and predictive outcomes. Pakistan can adapt lessons from each based on legal and cultural similarities.

Table 1: Comparative AI Adoption Framework

Country	AI Use Case	Implementation Model	Lessons for Pakistan
India	SUVAS, Judgment tagging	Language-inclusive, gradual	Focus on regional adaptation
UK	Online courts, ODR	Legislative-backed, virtual model	E-hearings for remote access
US	Risk assessment tools	Predictive analytics, ML	Ensure transparency, algorithm audits
Pakistan	Limited e-filing pilots	Fragmented, pilot-level	Develop cohesive AI policy framework

6. Ethical, Technical, and Institutional Challenges

Despite its potential, AI integration in Pakistan's judiciary raises complex ethical and operational concerns. Foremost among these is algorithmic bias—where AI systems may reflect and amplify societal prejudices present in their training data. In the UK, the Durham Constabulary's HART tool received criticism for reinforcing socioeconomic biases based on postcode data,

demonstrating the risks of poorly trained algorithms (Wired UK, 2023).

Transparency and explainability are additional issues. Most AI tools are black-box systems, where the logic behind outputs is inaccessible to end-users. This poses risks for both fairness and due process. Judges must understand the rationale behind AI-suggested decisions to ensure legal defensibility.

Institutional resistance remains a major barrier. Legal professionals may resist AI due to fears of job loss or perceived devaluation of their skills. Courts also face financial and capacity constraints in adopting AI. Without dedicated funding and digital infrastructure, implementation will remain fragmented.

Legal accountability is another unresolved domain. If an AI tool makes a faulty recommendation, it is unclear whether the responsibility lies with the judge, the software provider, or the institution. This legal ambiguity must be addressed through policy.

Finally, data privacy concerns are profound. Legal cases involve sensitive information. Without robust data governance, there is risk of breaches or misuse of personal data.

7. Impact of AI on Legal Professionals

AI will not replace legal professionals, but it will significantly transform their roles. Judges will use AI for legal research and procedural analysis, relying on tools like GPT-based legal assistants to summarize case law or detect inconsistencies.

Lawyers will experience changes in client interaction, document review, and research. AI will automate basic tasks, allowing professionals to focus on strategy and litigation. Contract review platforms like Kira Systems are already demonstrating this in global law firms.

Court clerks and administrative staff will benefit from AI-enabled case filing and docketing systems. This will reduce manual errors and increase efficiency. However, training will be essential to adapt to new digital workflows.

Legal education will need to adapt. Judges and lawyers must understand not only how to use AI, but also its limitations, biases, and ethical implications. Continuous judicial capacity-building programs will be vital.

8. Smart Court and Judicial Practice Reform

AI can radically modernize Pakistan's courts. Smart court models already operational in China, UAE, and Estonia have AI supported case tracking, e-filing systems, and automated scheduling. Pakistan can replicate this by beginning with district-level pilot projects.

Virtual legal assistants and chatbots can help litigants understand their rights, prepare documents, and navigate procedures. This is especially helpful in rural areas where legal literacy is low.

Predictive justice tools can identify trial bottlenecks and flag inconsistent sentencing, helping to streamline legal outcomes. AI-powered dashboards can support case distribution and judge performance assessment.

Digital documentation, including audio and video transcriptions, will ensure transparency and ease of access for all stakeholders.

9. Strategic Reform Roadmap and Timeline

Reform Area	Short-Term (1–2 yr)	Mid-Term (3–5 yr)	Long-Term (5+ yr)
AI-Enhanced Training	AI modules via PIAIC pilot	CPD certifications in AI literacy	Integration of AI tools in judicial education
Policy & Regulation	Interim guidelines (Supreme Court, 2025)	AI Regulation Bill, ethics oversight bodies	AI embedded in legislation, GDPR-like governance
Tech Infrastructure	E-filing expansion, CMS digital records	Integrated AI triage and research tools	Nationwide 'smart courts' implementation
Pilot Projects	Phalia, Mandi Bahauddin model courts	Expand to district & high courts	Full rollout across all courts

10. Findings, Policy Recommendations, and Conclusion

Findings:

This study finds that Pakistan's legal system lags significantly behind international standards when it comes to the adoption of AI-powered technologies. Persistent structural issues including but not limited to outdated procedural laws, manual recordkeeping, insufficient human resources, and fragmented digital frameworks have exacerbated case backlogs and reduced public confidence in the judiciary. These challenges, unless systematically addressed, will continue to impair access to justice and judicial transparency.

The integration of AI is not a panacea that replaces human legal judgment. However, it is a transformative enabler that can optimize routine processes. It minimizes delays, democratizes legal access, and provides empirical consistency in court decisions. There is no doubt about the fact that jurisdictions that have successfully embraced AI such as India (SUVAS), the UK (online courts), and the US (predictive analytics) have demonstrated measurable improvements in court efficiency and transparency.

However, successful implementation in Pakistan necessitates more than technical deployment. It requires ethical governance, legal reform, cross-sector capacity-building, digital infrastructure development, and institutional alignment. AI solutions must be tailored to the local legal culture, languages, and administrative realities of the country.

Policy Recommendations:

1. **Develops National AI Legal Strategy**: Establishment of a unified and consultative policy framework to guide the ethical and phased integration of AI in Pakistan's judicial system must be the first step.
2. **Implements Routine Judicial Processes**: Initiation of AI use in low-risk administrative tasks such as case triage, research

automation, form drafting, and court calendar scheduling should be the next step.

3. **Creates AI-Ready Infrastructure**: Modernization of courtrooms through digital records management, secure cloud-based databases, and robust connectivity, especially in district and remote areas is also the area of importance.
4. **Builds Judicial and Legal Capacity**: Launching of mandatory training modules, continuous professional development programs, and AI literacy workshops for judges, lawyers, and court clerks is also panacea to all ills.
5. **Establishes AI Oversight and Ethics Committees**: Formation of independent regulatory bodies responsible for monitoring algorithmic transparency, fairness, and accountability across AI applications in justice delivery.
6. **Promotes of Public-Private Partnerships**: Collaboration with technology startups, academic researchers, and NGOs to design indigenous legal AI tools in Urdu and regional languages for broader accessibility is also the area of not less importance.
7. **Reforms Legal Education**: Incorporation of AI ethics, algorithmic decision-making, and legal technology subjects into law school curricula to prepare future legal professionals.
8. **Forms Data Protection and AI Governance Laws**: Enactment of AI-specific data regulations for the legal system, ensuring privacy, consent, audit trails, and protection of sensitive legal information.

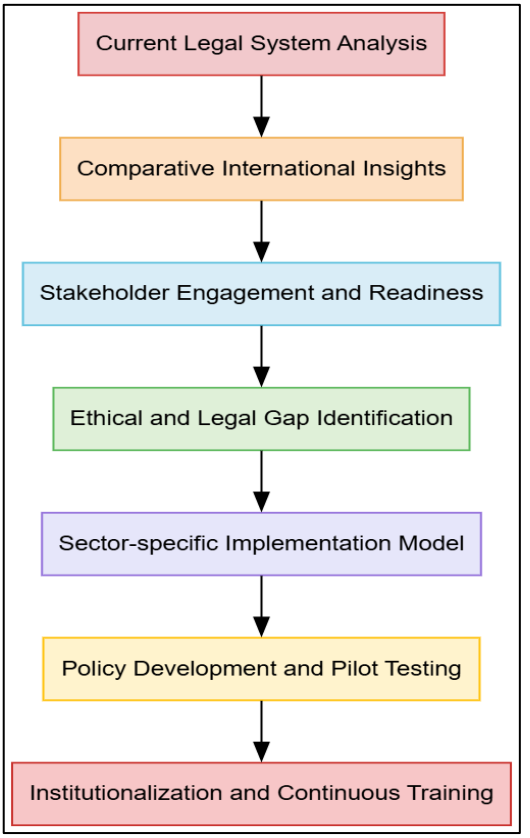


Figure 2: Framework for AI Integration in Pakistan's Legal System

Conclusion:

The crux of the matter is that Artificial Intelligence offers a pivotal opportunity to reimagine the judicial processes of Pakistan by embedding data-driven transparency, equitable access, and operational efficiency. Contrarily, the realization of this potential depends on visionary leadership, rigorous ethical standards, and sustained institutional commitment.

This study underscores that AI should be regarded as a complementary force. It is amplifying, not replacing human legal reasoning, empathy, and discretion. With an inclusive roadmap and systemic reforms, AI can help restore public trust and accelerate justice in Pakistan. The Future studies should also include

interviews with legal professionals, AI developers, and pilot evaluations of AI tools within the courts of Pakistan.

Recommendations:

In order to effectively embrace the integration of artificial intelligence within the legal and judicial landscape of Pakistan, it is imperative to constitute a national task force under the auspices of the August Supreme Court of Pakistan. This body should be entrusted with the establishment of **AI-enabled pilot courts**, particularly in urban and semi-urban regions of the country. Simultaneously, AI literacy must be incorporated as a core component of legal education curricula, ensuring that future legal professionals are adequately equipped to navigate emerging technologies. Furthermore, relevant legislation should embed principles of ethics, transparency, and accountability as foundational attributes of AI governance. Most significantly, there is a pressing need to develop a hybrid implementation framework for artificial intelligence, drawing upon international best practices, while remaining sensitive to the unique socio-legal and judicial context of Pakistan. Such a framework would not only enhance institutional efficacy but also promote responsible and equitable adoption of AI in the justice sector.

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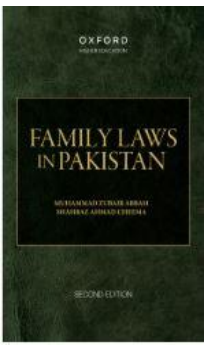
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NON-PEER REVIEWED SECTION

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BOOK REVIEW

Bushra Kokeb[1]



Book: *Family Laws in Pakistan*
Author: Muhammad Zubair Abbasi,
Shahbaz Ahmad Cheema
Publisher: The Oxford University Press, Karachi
Year of Publication: 2024
Edition: 2nd
Pages: 530
ISBN: 978-9697347568

Family Laws in Pakistan is an extensive work on the topic that explores the evolution, structure, and application of family laws in Pakistan over the years. Islam has defined in clear language the rights and duties of both men and women in a marriage tie.

In Surah An-Nisa: (4:21) Allah SWT says "Your wives have taken a firm covenant from you".

A marriage contract confers the rights and obligations upon the married couple;

Allah SWT in the Holy Quran has defined and explained all the essential principles and set the rules for a valid marriage, maintenance, guardianship, gift, inheritance and Wills.

The authors have successfully managed to discuss each topic in depth; the supporting case laws quoted by authors have bridged a coalition between traditional Islamic principles and modern legal frameworks. With a thematic structure, and thorough understanding, to unpack complex legal issues with clarity, this book stands out as

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an indispensable resource for legal professionals, academics, and students alike.

Family Laws in Pakistan gives a thorough insight of family laws and the governing legal principles relating to family matters. It explains the evolution of family laws over the years; predominantly describes a noticeable shift from orthodox customary law to Injunctions of Islam as shaped further through modern statutory framework with precise emphasis on the rights of vulnerable groups of society i.e. women and children to ensure their protection and welfare. The authors have crafted the book thematically and have successfully drawn readers attention on those matters which have hardly ever been discussed. The book ideally is a quintessence on discussion over all possible complexities involved in family matters and in this regard the authors have efficaciously and analytically sketched the evolution of family laws through Islamic principles as well as precedents set by the Superior Courts. The book has successfully captured the attention of a reader on the relevant case laws and the development therein throughout, even pre-legislation of the Family Act 1964.

The book is divided fairly into separate parts, and each part discusses the separate segments of the family laws in depth with supported case laws.

After the historical background, in the first part the authors of the book have discussed the most important segment of the family law i.e. *Nikah* (marriage). The book gives a brief detail on valid, invalid, and void marriage and have discussed all three of these in the light of Islamic principles by detailing the permitted and prohibited degrees of relations to enter the marriage contract.

The book includes the research of authors on the maintenance rights of a wife from her husband within the Injunctions of Islamic Law. It explains in a fair manner, the eligibility of a wife for maintenance with certain exceptions besides the right of maintenance to the

children of certain ages. It also highlights the circumstances wherein the wife is entitled for the maintenance, irrespective of the fact that she lives separately from her husband. The authors have also referred the judgments of the Superior Courts wherein it is developed that a '*presumption of marriage*' can be assumed based on continuous and longevity of cohabitation between husband and wife. At the same point, the book comprehends on the notion of a liability attached with husband/father to maintain his wife and children. In Islam, marriage is a contract, however, the author has drawn a comparison between a marriage and a civil contract through case laws. In reference to this context, it is explained that as long as the terms of the marriage contract are not against the law and public policy, it becomes a proper civil contract; however, the parties cannot claim damages as a result of its breach under contract law.

In the second part, there is a detailed discussion on dower and dowry. The authors have classified dower as *Mahr Musammat* and *Mahr Mithal* as specified and unspecified dower respectively. Adding to that; the book showcases that a specified dower is further classified as prompt dower *(Mahar Muajjal)* payable at the time of marriage, and deferred dower *(Mahar Muwajjal)* payable after a specified time or upon the dissolution of marriage by divorce or death. In this regard Section 10 of the Muslim Law Family Law Ordinance 1961 is referred by the authors, which mentions that if no details regarding mode of payment of dower is specified, it is presumed to be payable on demand. The authors further deliberate on a progressive usage of third category of dower as *indal-talab (payable on demand to wife)*. Whilst demonstrating the importance of dower the authors have also explained that the pivotal purpose of dower is to keep a check on the husband's right of divorce, as well as security and financial welfare for a wife. The book further discusses that the unpaid dower is given the preference over bequests and is treated as a debt over the estate of the husband. The explanation given by the authors on the importance of dower, undeniably adds weightiness to the fact that the dower plays a

fundamental role in a marriage contract, moreover the authors stresses upon the importance of dower and explained through judgments that dower ensures and safeguards the financial and social rights of a wife. In short, a detailed explanation and categoric debate on the different types of dowers in terms of its payment to wife, especially in the event of consummation and non-consummation of marriage, as well as in the events of divorce, khula, and on the death of a husband is thoroughly analyzed and well-defined by the authors in the book.

The key aspect that the maintenance of wife and children is obligatory upon the husband and father is also dissected and the significance of maintenance is discussed in depth and underpinned through jurisprudential development. Whilst discussing the maintenance, the authors have also deliberated over on less discussed topic, and envisioned with the help of jurisprudential development that the maintenance of an adopted child, is well recognized in the Family Law. In this regard, the authors have referred to 'Maryam Bibi through Abida Parveen vs. Naseer Ahmed' reported as PLD 2015 Lahore 336 in which the doctrine of constructive guardianship has also been discussed in detail. The principle laid down in this judgment obligates the adopting parents to maintain the adopted child. The book also discusses that adoption is allowed in Islam and narrated about the adoption of Zayd Bin Haritha by our beloved Prophet PBUH.

While shifting from the maintenance, the book moves to the next topic i.e. dissolution of marriage. In this segment the authors discuss the modes of dissolution of marriage by way of Talaq or Khula and further draw a parallel contrast between both kinds of dissolution and the related legal implications. An introduction is also given about the kinds of talaq, i.e., Ahsan, Hasan, and Bidat with brief insight regarding aforementioned modes under the Islamic rules and guidance from the Holy Quran. The book elaborates on the legal consequences of three talaqs, considered as one talaq, and highlights

the right of a woman for khula as an exclusive right. Moreover, a sequential pattern is set by the authors detailing the comparative analysis through case laws given the circumstances in which a woman should forego the dower. The book discusses a chronology of precedents established by Superior Courts and discussed the phase of development in law, which eventually lead to the Imran Anwar case in which Sec 10 (5) of Family Court Amendment Act 2015 is held repugnant to injunctions of Islam.

Going forward, next topic is about the custody of minors. It is settled principle of law that whilst granting custody the paramount factor to observe is the welfare of minor. The book further outlines the structure of kinship while deciding the custody of minor.

Upon sifting through the chapter of parentage and legitimacy, the authors; in view of settled principles extracted from the legal principles set by the Superior Court, emphasize on the fact that the legitimacy of a child cannot be challenged. There is a valuable discussion regarding the question of legitimacy of child and requirement of DNA analysis. The discussion leads to filter the general question on paternity and squeeze down the instances wherein the legitimacy of a child through DNA becomes imperative, the authors mention one key example of such instances and discuss that whilst dealing with rape cases it sometimes becomes inevitable to determine the paternity of a child for deciding the matter.

The authors have also briefly touched upon the emerging topic of surrogacy, the legal constraints of surrogacy and the rights of surrogate mother.

There is also a comparative analysis of Hiba and its kinds. The authors have logically concluded that a donor has unfettered powers of Hiba provided that he gifts the property with free consent and without any duress. The book explains the Hiba Rules in Pakistan; its development and progression made under the principles of Islamic law. The authors have elaborated the social impact of the

latter by dilating upon the fact that a *pardanashin lady* must receive independent advice to understand the nature of the transaction before executing the Hiba.

Next segment is related to Waqf. Under Islamic Law, Waqf is a permanent donation of property for purely a charitable purpose. Brief introduction at the start of the chapter is designed to describe the main ingredients of Waqf and its types. The authors have progressively explained throughout the chapter about the formation of Waqf and the legal effects for its establishment. It is discussed further that Waqf shall have perpetuity and must be established for some charitable purpose.

In ongoing discussion, the authors explain the topic of Wills. The discussion revolves around general concept of Wills, together with the complexities involved in making a will. It is discussed that a testator's intention must be clear, and the document shall show the intention. The authors have explained how Islamic Inheritance law has been adopted and applied over the passage of years and successfully prevailed over the customary law. The book has also highlighted the Wills in respect of the Sunni and Shia sects, as well as different Islamic schools of thought. The authors have briefly touched the S.4 of the Muslim Family Law Ordinance 1961, which gives the right of inheritance to grandchild (ren) of the deceased child.

There is a separate chapter dedicated to deathbed gifts applicable laws related to that. The book also explains about the Family Court procedures, this detail is undoubtedly handy for the newcomers as well as for professionals.

In short, the book is a must-read for the Judges, Lawyers, and law students to have a thorough glimpse of family laws. Not only that the authors have made effective effort in detailing the application of Islamic Laws along with the evolution of Statutory Law as well as development of jurisprudence wherein the prime focus is on the

protection of the rights of a vulnerable sector of society. The book is an exhaustive research work and has included all the relevant material which is not only helpful but also gives understanding into many technical issues with clarity based on latest developments in this field.

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