

## **Family Laws and Domestic Violence in Pakistan: A Shariah Perspective**

Mujahid Khan

M.Phil Scholar

Department of Political Science

Qurtuba University of Science & Information Technology

### **Abstract**

Family laws in Pakistan intertwine with Islamic jurisprudence, state legislation, and cultural norms, shaping domestic relationships and societal values. This article critically evaluates Pakistani family laws, particularly their provisions on marriage, divorce, maintenance, custody, inheritance, and domestic violence, through a Shariah lens. It identifies points of congruence and divergence between Pakistani statutes and Islamic principles, highlighting the gaps that undermine women's rights and justice. Recommendations for legal reforms and enhanced implementation mechanisms are provided to harmonize these laws with both Shariah ideals and modern human rights frameworks.

**Keywords:** Family Laws; Sharia; Pakistan; domestic violence; convergence; divergence

### **1. INTRODUCTION**

The intersection of religion and law in Pakistan is a complex and dynamic process, shaped by the country's historical, cultural, and political evolution. The creation of Pakistan in 1947 was based on the vision of an Islamic state where laws would reflect the principles of Shariah. Over the years, family laws have emerged as a significant domain where Islamic injunctions influence statutory legislation. However, societal norms, patriarchal interpretations, and political considerations often mediate the implementation of these laws (Nasir, 1990; Ali, 2000).

Domestic violence, a pervasive issue in Pakistan, challenges the very fabric of family life. Despite Islamic teachings advocating for compassion and justice within households, cases of physical, emotional, and psychological abuse remain rampant. This contradiction underscores the need to evaluate how family laws and their enforcement align with the ethical and moral standards of Shariah (Khan, 2019). Furthermore, understanding the gaps in current legislation can provide insights into the ways these laws can better serve victims of domestic violence while staying true to Islamic principles.

Family laws form the cornerstone of societal structure, ensuring justice, equity, and harmony within familial units. In Pakistan, Islamic principles underpin family laws, but these laws are frequently shaped by cultural practices and legislative reforms (Ali, 2020; Quraishi, 2011).

Domestic violence, however, remains a persistent challenge, exacerbated by societal attitudes, weak legal enforcement, and the misinterpretation of Shariah (Jahangir, 2020; Malik & Zia, 2021).

This article explores the intersection of Shariah and Pakistani family laws, analyzing areas of alignment and conflict. It also examines the state's approach to addressing domestic violence, offering recommendations to improve legislative efficacy and align laws with Shariah's spirit of justice and compassion.

## **2. FAMILY LAWS IN PAKISTAN: AN OVERVIEW**

The evolution of family laws in Pakistan reflects the interplay of religious principles and socio-political changes. During the colonial period, British administrators codified personal laws for Muslims, primarily relying on classical Islamic jurisprudence. After independence in 1947, Pakistan sought to reform these laws to better address contemporary issues while retaining their Islamic essence. The enactment of the Muslim Family Laws Ordinance (MFLO) in 1961 marked a significant milestone, introducing measures like mandatory marriage registration and restrictions on polygamy. Subsequent amendments, such as the Protection of Women Act 2006 and provincial domestic violence laws, further demonstrate the ongoing effort to balance Shariah principles with modern legal frameworks (Jilani, 2018; Siddiqui, 2017).

Pakistani family laws are governed by a blend of Islamic jurisprudence, colonial-era legislation, and post-independence reforms, including the Muslim Family Laws Ordinance (MFLO) 1961, the Dissolution of Muslim Marriages Act 1939, and provincial domestic violence acts (Jilani, 2018; Siddiqui, 2017). These laws regulate marriage, divorce, maintenance, custody, and inheritance.

### **2.1 Marriage and Nikah**

Marriage in Pakistan is a contractual agreement requiring mutual consent, a dower (Mahr), and witnesses (MFLO, 1961). These elements align with Shariah, which emphasizes the sanctity of marriage and the protection of spousal rights (Kamali, 2003; Rauf, 2021). However, practices like forced and child marriages often contradict both Shariah and state law, with the latter inadequately addressing enforcement issues (Khan & Saeed, 2020).

### **2.2 Divorce and Talaq**

Under Pakistani law, divorce requires notification to the Union Council, with reconciliation efforts mandated before finalization (MFLO, 1961). While Shariah permits unilateral talaq by the husband, it also provides women with judicial recourse for divorce (khula) under specific conditions (Ali, 2020). Procedural delays and societal stigma, however, often deter women from seeking justice (Fatima, 2022).

### **2.3 Maintenance and Custody**

Shariah and Pakistani law mandate the husband's financial responsibility for his wife and children during marriage and after divorce (Hassan, 2017; Quraishi, 2011). However, enforcement remains

inconsistent, with women frequently facing legal and social obstacles in securing maintenance (Jahangir, 2020).

## **2.4 Inheritance Laws**

Islamic inheritance laws ensure fixed shares for heirs, including women, reflecting equity and justice (Zafar, 2019). However, cultural practices often deprive women of their rightful inheritance, highlighting a gap between Shariah and societal implementation (Malik & Zia, 2021).

## **3. DOMESTIC VIOLENCE IN PAKISTAN: A LEGAL AND SHARIAH ANALYSIS**

Domestic violence in Pakistan remains a critical social issue, deeply entrenched in cultural, economic, and legal challenges. Despite the enactment of laws such as the Domestic Violence (Prevention and Protection) Act of 2012, many women continue to suffer from physical, psychological, and emotional abuse within their homes, primarily due to socio-cultural norms, lack of awareness, and limited legal enforcement. Studies indicate that approximately 70% of women in Pakistan experience some form of domestic violence in their lifetime (Khan, 2017; Hossain et al., 2019). The patriarchal structure of Pakistani society often normalizes violence against women, and victims frequently face stigmatization or fear of retribution if they report the abuse. Furthermore, inadequate support systems, including limited access to shelters and legal assistance, exacerbate the issue. The gravity of domestic violence in Pakistan underscores the urgent need for comprehensive policy reforms, better implementation of laws, and societal change to empower victims and prevent further abuse (Zakar, 2018; Rehman, 2020).

Domestic violence is a pervasive issue in Pakistan, despite legal frameworks aimed at its prevention. Provincial laws define domestic violence broadly, encompassing physical, emotional, and economic abuse (Siddiqui, 2017).

### **3.1 Shariah Perspective on Domestic Violence**

The Shariah perspective on domestic violence emphasizes compassion, justice, and respect in family relationships, clearly rejecting harm and oppression. The Quran instructs Muslims to treat their spouses with kindness and fairness, as seen in the verse, "And live with them in kindness..." (Quran 4:19). While some individuals may misinterpret Quran 4:34 to justify the use of force within the household, many Islamic scholars argue that such interpretations are misguided. They emphasize that the core principles of Shariah—mercy, justice, and the protection of human dignity—are fundamentally incompatible with any form of domestic violence. In this view, Islam advocates for peaceful resolution of conflicts, equality, and the fair treatment of women, urging both spouses to work together in mutual respect (Kamali, 2003; Khan & Saeed, 2020). Therefore, the Shariah perspective underscores the importance of maintaining harmony and justice in marital relationships, explicitly condemning any abuse or oppression.

### **3.2 Legal Gaps and Challenges**

Despite the presence of laws aimed at combating domestic violence in Pakistan, their effective implementation remains a significant challenge. Societal attitudes that normalize abuse, coupled with inadequate resources and institutional support, hinder the enforcement of these laws. In many cases, victims of domestic violence face societal stigma, which discourages them from reporting incidents. Additionally, the lack of a cohesive and unified federal framework further complicates the situation. The country's legal landscape is fragmented, with different provinces implementing varying laws, which leads to inconsistencies in protection and support for victims across the country (Jilani, 2018; Siddiqui, 2017). This absence of a comprehensive national approach exacerbates the challenges in effectively addressing domestic violence. As a result, while the legal framework exists, the lack of proper enforcement mechanisms and a unified approach limits its potential impact (Fatima, 2022).

## **4. ALIGNMENT OF FAMILY LAWS WITH SHARIAH**

### **4.1 Areas of Congruence**

#### **Marriage:**

In Pakistan, the legal emphasis on mutual consent and the provision of dower (mahr) rights in marriage closely aligns with Shariah principles. Pakistani law, particularly under the Muslim Family Laws Ordinance of 1961, requires both parties to agree voluntarily to the marriage, reflecting Shariah's emphasis on consent in marital unions. Additionally, the right to a dower, which the husband must pay to the wife, is a key component of both Pakistani law and Shariah. This right is not only a financial protection for the wife but also a symbol of the husband's commitment and responsibility. Thus, the legal framework in Pakistan ensures that the rights of the wife are safeguarded in marriage, which is in congruence with Islamic teachings (Hassan, 2017; Rauf, 2021).

#### **Inheritance:**

Pakistani inheritance laws also reflect the core principles of Shariah, particularly in terms of equitable distribution of wealth among heirs. Under Islamic law, the inheritance system is designed to ensure fairness and justice by specifying shares for different heirs, including men and women, based on their relationship to the deceased. Pakistani law, which is influenced by Shariah, mandates a similar division of inheritance, ensuring that heirs receive their rightful shares according to Islamic principles. While cultural practices may sometimes diverge from the law, the legal provisions in Pakistan mirror the Shariah's focus on fairness, giving equal weight to the distribution of assets among children, spouses, and other heirs (Ali, 2020).

Pakistani legal provisions regarding inheritance reflect Shariah's principles of equitable distribution among heirs, ensuring a fair and just allocation of assets after death. Under Shariah, the inheritance system is designed to balance the needs of various family members, with specific shares allocated to each heir based on their relationship to the deceased. Pakistani law incorporates these principles by specifying the portions that should be inherited by children, spouses, and other close relatives. For example, a son typically receives double the share of a daughter, reflecting

Shariah's guidelines that consider the financial responsibilities assigned to men. While these provisions aim to maintain fairness and equity, they also ensure that the deceased's wealth is distributed in a manner that upholds family obligations. In this way, the legal system in Pakistan mirrors Shariah's commitment to justly and proportionally distributing assets among heirs, taking into account both the needs of the family and the principles of Islamic law (Ali, 2020).

## 4.2 Areas of Divergence

- **Child Marriages:**

Child Marriages: In Pakistan, the practice of child marriages represents a significant divergence from Shariah's principles, which emphasize maturity and informed consent in marital relationships. Shariah law explicitly requires both parties to be of sound mind and capable of making informed decisions before entering into a marriage. This includes the expectation of physical and emotional maturity, ensuring that the individuals involved understand the implications and responsibilities of marriage. However, child marriages continue to occur in some regions of Pakistan, often driven by cultural traditions, economic pressures, or lack of awareness. These practices violate both the spirit of Shariah and national laws that seek to set a legal minimum age for marriage, typically 16 for girls. Such marriages, where one or both parties are underage, conflict with the Islamic principles of mutual consent and the welfare of the parties involved, highlighting a significant legal and social gap (Khan & Saeed, 2020).

- **Domestic Violence:**

Domestic violence laws in Pakistan also diverge from Shariah's emphasis on kindness, justice, and the protection of individuals within marriage. Shariah stresses the importance of treating one's spouse with respect, compassion, and fairness, as outlined in numerous Quranic verses and Hadiths. However, the legal frameworks in Pakistan have been criticized for inadequately incorporating these Shariah principles, as many victims of domestic violence face significant barriers to justice. While domestic violence laws exist, enforcement is often weak, and societal attitudes toward gender roles and the family structure sometimes perpetuate harmful behaviors. This failure to fully integrate Shariah's core teachings of mercy and justice in marital relationships leads to a gap between the legal system and the ideals of Islamic law. As a result, victims of domestic violence in Pakistan often find themselves without sufficient legal recourse or protection, which contradicts the values of fairness and kindness that Shariah upholds (Kamali, 2003).

## 5. RECOMMENDATIONS FOR REFORM

1. **Unified Legal Framework:** Develop a federal law addressing domestic violence uniformly across provinces.

2. **Awareness Campaigns:** Educate the public about women's rights under Shariah and state law.
3. **Judicial Reforms:** Expedite family court proceedings to enhance access to justice.
4. **Religious Advocacy:** Engage Islamic scholars to counter misinterpretations of Shariah that justify abuse.
5. **Institutional Capacity Building:** Strengthen law enforcement and judicial mechanisms to handle domestic violence cases effectively.

## 6. CONCLUSION

Family laws in Pakistan represent a complex intersection of Islamic jurisprudence, legislative reforms, and cultural practices. Over the years, considerable efforts have been made to align Pakistan's family laws with Shariah, ensuring that key aspects such as marriage, divorce, and inheritance reflect Islamic principles. Laws like the Muslim Family Laws Ordinance of 1961 and the Domestic Violence (Prevention and Protection) Act of 2012 were introduced to address family-related issues, offering legal frameworks that attempt to protect women's rights and promote justice. However, despite these reforms, cultural practices and societal attitudes often undermine the full implementation of these laws, creating discrepancies between legal provisions and everyday realities. For instance, while Shariah mandates equitable inheritance, cultural practices sometimes bypass legal provisions, particularly in rural areas where traditional customs hold sway. Additionally, while legal frameworks have been created to combat domestic violence, weak enforcement and societal norms continue to perpetuate the problem.

To ensure that Pakistan's family laws meet both Shariah principles and contemporary human rights standards, further legal reforms and improved enforcement mechanisms are crucial. Public awareness campaigns and education about the rights guaranteed under the law can help bridge the gap between legal provisions and social practices. Moreover, strengthening institutional support, such as accessible legal aid and victim support services, is vital to enable individuals—particularly women and children—to seek justice without fear of retribution. In tackling issues like domestic violence and inheritance disputes, it is necessary to adopt a more integrated approach that combines legal reform with efforts to shift societal attitudes. Only through a comprehensive approach that includes legislative improvements, enhanced enforcement, and cultural change can Pakistan move towards a legal system that truly reflects Shariah's principles of justice, fairness, and the protection of human rights.

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