



STUDENT LAW JOURNAL

AIOL STUDENT LAW JOURNAL

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Official Students' Journal of AIOL

**IN COLLABORATION WITH
CENTRE FOR PROFESSIONAL & LEGAL
DEVELOPMENT (CPLD)**



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Acknowledgement

The Editorial Board of the **AIOL Student Law Journal, Volume 01 (2026)** expresses its sincere gratitude to the **Asian Institute of Law, Lahore**, for its continued support, guidance, and encouragement in fostering legal education, research, and academic excellence.

We extend our appreciation to all **authors, faculty members, reviewers, editorial team members, students, and contributors** whose dedication, scholarly efforts, and valuable contributions have made this inaugural volume possible. We hope this Journal serves as a meaningful platform for legal scholarship, critical thought, and intellectual engagement.

Disclaimer

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The Journal does not constitute legal advice, and readers should independently verify legal authorities, legislation, and case law before relying upon any material published herein. The respective authors remain responsible for the accuracy, originality, and proper citation of their contributions.

Message/ Foreword

MESSAGE FROM THE CEO

It gives me great pleasure to present the first Book of Abstracts of the AIOL Student Law Journal (Volume 01 | 2026).

The establishment of this journal reflects the vision of the Asian Institute of Law to promote a strong research culture among law students. I appreciate the efforts of the Centre for Professional & Legal Development (CPLD), the editorial team, and all the student contributors who made this academic initiative possible.

I hope this publication will inspire more students to engage in quality legal research and contribute meaningfully to the field of law.

Warm Regards

Rana Ali Akbar

CEO

MESSAGE FROM THE PATRON-IN-CHIEF

It is a matter of great pride to present the first Book of Abstracts of the AIOL Student Law Journal (Volume 01 | 2026). This initiative reflects our commitment to promoting a strong research culture among law students. I congratulate all the selected contributors and the editorial team for their dedicated efforts.

I hope this publication will inspire more students to engage in quality legal research and academic writing.

Warm Regards

Prof. Dr. Aatir Rizvi

Patron-in-Chief, CPLD,

Principal, Asian Institute of Law (AIOL)

MESSAGE FROM THE EDITOR-IN-CHIEF

The Centre for Professional & Legal Development (CPLD), in collaboration with the Asian Institute of Law (AIOL), is pleased to present this Book of Abstracts. The selected abstracts represent promising research contributions from law students across various institutions.

We thank all the authors for their valuable submissions and the reviewers for their careful evaluation. We look forward to continuing this academic journey and encouraging more students to contribute to legal scholarship.

Warm Regards

Faisal Awais

Director, CPLD

Editor-in-Chief, AIOL Student Law Journal

About The AIOL Student Law Journal

The AIOL Student Law Journal is the official students' research journal of the Asian Institute of Law (AIOL). It has been established to provide a dedicated academic platform for law students to publish their original research, critical analysis, and scholarly writings in the field of law.

The journal aims to encourage a strong research culture among undergraduate and postgraduate law students by offering them an opportunity to contribute to legal scholarship at an early stage of their academic and professional journey.

Collaboration with CPLD

The AIOL Student Law Journal is published in collaboration with the Centre for Professional & Legal Development (CPLD).

CPLD, an initiative of the Asian Institute of Law (AIOL), works to bridge the gap between legal education and professional practice through research promotion, academic training, capacity building, and scholarly publications. This collaboration strengthens the journal's academic standards and supports the professional development of student researchers.

Aim of the Journal

The primary aims of the AIOL Student Law Journal are:

1. To promote high-quality legal research and academic writing among law students.
2. To provide a peer-reviewed platform for the publication of original and unpublished research work.
3. To encourage critical thinking, analytical skills, and scholarly engagement with contemporary legal issues.
4. To foster a culture of academic excellence, ethical research practices, and knowledge sharing.
5. To contribute to the development of future legal professionals through research-oriented learning.

Publication & Peer Review Policy

The **AIOL Student Law Journal** follows a structured editorial and peer review process to maintain academic quality, originality, and scholarly integrity. All submissions are initially reviewed by the Editorial Board for relevance, originality, academic standards, and compliance with the Journal's submission guidelines. Suitable manuscripts are then evaluated by qualified reviewers on the basis of academic quality, legal analysis, originality, clarity, and contribution to legal scholarship.

The final decision regarding acceptance, revision, or rejection rests with the Editorial Board. Authors may be required to revise their manuscripts in light of editorial or reviewer comments before publication. The Journal is committed to maintaining fairness, confidentiality, academic integrity, and ethical standards throughout the publication process.

Discrimination against Women: Challenges to Equality and Justice

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ABSTRACT

Justice and Equality are essential principles for a balanced society, yet women across the world continue to face serious obstacles in enjoying their equal rights. Discrimination against women remains a major human right, challenges and appears in various forms, including Gender-based, Socioeconomic, ethnic and institutional discrimination. In many societies, women are still perceived as inferior to men, which restricts their access to education, employment, decision-making and justice. Although numerous laws, Constitutional guarantees and international commitments exist to protect women's rights, the practical situation shows a significant gap between Law and Reality.

This Article examines the reasons behind the ineffective implementation of Laws aimed at eliminating discrimination against women. It highlights key challenges such as weak enforcement mechanisms, corruption, and misuse of power, selective application of Laws, gender bias within institutions and lack of legal awareness among women. These factors collectively undermine access to justice and prevent women from fully benefiting from existing legal protection.

The study further emphasizes that addressing discrimination requires more than the mere existence of laws. Effective recommendations include strengthening enforcement systems, ensuring accountability within institutions, controlling corruption, introducing gender-sensitive reforms, and promoting legal awareness. Only through strong implementation and societal change can real equality and justice for women be achieved.

Keywords: Discrimination against women, Gender Equality, , Legal Implementation, Weak Enforcement, , Rule of Law, Women's Rights.

INTRODUCTION

In every field of life, women are often considered inferior to man which causes them to face discrimination. As a result, they lag in various tasks, which negatively affects their profession and prevents them from forming the way they wish for it. Discrimination against women remains one of the most persistent human rights challenges across the world. Despite significant legal reforms, constitutional guarantees, and international commitments to gender equality, women continue to face unequal treatment in social, economic, political and legal spheres.

Such discrimination is rooted in deeply entrenched cultural norms, patriarchal structures and systemic inequalities that limit women's access to education, employment, healthcare, and justice. In the legal context, discrimination against women not only violates the principle of equality before the law but also undermines the effective realization of fundamental rights. Laws may exist to protect women, yet weak implementation, gender biased within institutions, and lack of awareness often prevent these protections from translating into real equality. Addressing discrimination against women therefore requires not only strong legal frameworks but also societal transformation, effective enforcement mechanisms and a commitment to substantive equality.

LITERATURE REVIEW

Existing literature widely recognizes discrimination against women as a global and systemic issue affecting social, economic and legal institutions. Early feminist theorists argue that gender inequality is not natural but socially constructed through patriarchal norms and power relations.

Simone DE Beauvoir (1949) explains that women are historically positioned as the "other", leading to systemic exclusion from decision-making and equal opportunities. This theoretical foundation has influenced later legal and sociological research on women's rights.

Legal literature emphasizes the importance of human rights instruments in addressing discrimination against women. The convention on the elimination of all forms of discrimination against women (CEDAW) is widely regarded as the most comprehensive treaty promoting gender equality (United Nations, 1979). However, scholars argue that ratification alone is insufficient, as many states fail to effectively

implement its provision due to weak enforcement mechanisms and cultural resistance (Fredman, 2011).

Research on employment and education highlights persistent gender disparities. Studies show that women face wage gaps, occupational segregation, and limited career advancement despite equal qualification (World Bank, 2020). Legal scholars note that inadequate labor protections and weak institutional accountability contribute to continued discrimination, particularly in informal employment sectors where women are overrepresented (ILO, 2018).

In the context of Pakistan, researchers point out that although the constitution guarantees equality before the law, women continue to experience discrimination due to customary practices, lack of legal awareness, and gender bias within institutions (Shaheed, 2010). The literature concludes that eliminating discrimination against women requires not only strong legal frameworks but also effective implementation, legal education and societal changes.

DISCRIMINATION IN A SOCIAL AS WELL AS LEGAL CONTEXT

Discrimination in a Social Context

In a social context, discrimination refers to the unfair or unequal treatment of individuals or groups based on characteristics. Such as gender, race, religion, caste, ethnicity or social status. According to the United Nations, discrimination occurs when people are treated less favorably because of who they are rather than their abilities or actions. (UDHR, 1948, Art 2).

Social discrimination is deeply rooted in cultural norms, traditions, stereotypes, and social power structures. Scholars argue that such discrimination often operates informally through attitudes and behaviors rather than written rules. (Fredman, 2011). It can be observed in limited access to education, employment, healthcare and participation in social life, particularly for women and minority groups. For Example, denying women leadership roles based on gender stereotypes reflects social discrimination, even when no law explicitly supports such behavior. (OHCHR, n.d.).

Discrimination in a Legal Context

In a legal context, discrimination refers to any distinction, exclusion, or restriction that has the purpose or effect of impairing the enjoyment of fundamental rights and

freedoms on an equal basis. This definition is recognized in international human rights instruments such as the ICCPR (1966) and CEDAW (1979).

The principle of equality before the law requires that all individuals receive equal legal protection without discrimination. (UDHR, 1948, Art 7). Legal discrimination may arise when laws are discriminatory on their face or when neutral laws are applied in a biased manner by state authorities (Fredman, 2011). For instance, failure to enforce laws protecting women from workplace harassment constitutes legal discrimination, even if protective legislation exists (CEDAW, 1979).

Link between Social and Legal Discrimination

Social and Legal discrimination are interconnected. Social prejudices often influence legal institutions, resulting in weak enforcement of anti-discrimination laws (OHCHR, n.d.). Similarly, ineffective legal remedies allow discriminatory social practices to continue unchallenged. International human rights law emphasizes that the state must not only enact laws but also ensure their effective implementation to eliminate both social and legal discrimination (ICCPR, 1966).

DISCRIMINATION AGAINST WOMEN CONTINUES DESPITE EQUALITY LAWS

Despite having laws that guarantee equality, discrimination against women persists due to combination of social, cultural, economic, and institutional reasons:

Patriarchal Mindset

One of the main reason discriminations against women continues is the persistence of a patriarchal mindset. In many societies, men are traditionally viewed as decision-makers, while women are expected to remain dependent or confined to domestic roles. These gender stereotypes shape social behavior and institutional practices, often undermining the spirit of equality laws. Even when laws guarantee equal rights, social attitudes discourage women from exercising those rights, particularly in education, employment, and leadership position (Fredman, 2011).

Limited Awareness of Rights

Another major factor is the lack of awareness among women about their legal rights. Many women do not know that anti-discrimination laws exist or how to seek legal remedies. Illiteracy, limited access to legal information, and social isolation further restricts women's ability to challenge unfair treatment. As a result, discrimination

remains unreported and unaddressed, allowing it to continue unchecked. (OHCHR, n.d.).

Weak Enforcement

Although equality laws exist on paper, their implementation is often weak. Law enforcement agencies may lack training, resources, or willingness to handle gender-based discrimination cases effectively. Delays in the justice system and biased attitudes of officials discourage women from pursuing legal action. According to international human rights standards, ineffective enforcement itself amounts to legal discrimination (CEDAW, 1979).

Economic Dependence

Financial reliance on male family members often forces women to tolerate unfair treatment. Economic dependence plays a crucial role in sustaining discrimination. Without economic independence women find it difficult to challenge discrimination legally or socially. This dependence limits their bargaining power and access to justice. (Fred- man, 2011).

Social Pressure and Fear

Social pressure and fear of stigma often silence women. Reporting discrimination can lead to social exclusion, damage to reputation, or family conflict. In conservative societies, women are frequently discouraged from asserting their rights to preserve social harmony, which allows discriminatory practices to persist (OHCHR, n.d.).

Inter-Sectional Challenges

Women are minority groups, lower castes, or marginalized communities face multiple layers of discrimination, making the enforcement of laws even more challenging. These intersecting disadvantages make existing laws insufficient to address their unique challenges. Legal frameworks often fail to consider these layered inequalities, limiting their effectiveness (CEDAW, 1979).

FACTORS CONTRIBUTING TO GENDER- BIASED DISCRIMINATION

Social Factors

Gender-based discrimination continues to persist globally despite legal frameworks and policies promoting equality. While multiple factors are at play, social factors

remain among the most influential in shaping and reinforcing discriminatory practices.

Patrarchal Social Culture

Patriarchy, a system in which men hold primary authority over family, community, and political institutions, play a major role in perpetuating gender inequality. In patriarchal societies, men are typically seen as leaders and decision-makers, while women are expected to fulfill domestic roles. This unequal distribution of power limits women's autonomy and reinforces discriminatory norms across generations. As Bano et al. (2022) explain, patriarchal norms in South Asian societies often prevent women from accessing education and employment opportunities, maintaining their subordinate status.

Gender Stereotypes and Social Norms

Society commonly imposes fixed roles for men and women. Men are expected to be assertive breadwinners, while women are encouraged to focus on care giving and household responsibilities. Such stereotypes shape expectations from early childhood and influence career choices, leadership roles, and social behavior. Research by Penn State University highlights that children internalize these roles from an early age, which later manifests as limited opportunities and unequal treatment in adulthood (Penn State, 2021).

Son Preference

In many societies, sons are valued more highly than daughters, which affects resource allocation, education, and healthcare. This preference results in unequal investment in girls, reducing their access to opportunities, and reinforcing societal discrimination. For instance, in several South Asian countries, boys receive priority in schooling and family support, while girls are expected to assume domestic roles (Shah et al., 2021).

Socialization Patterns

From a young age, individuals are socialized to conform to expected gender roles. Families, schools, and peer groups reinforce these roles by rewarding behavior aligned with societal expectations and discouraging deviation. This socialization process embeds discriminatory attitudes that persist into adulthood, making structural change difficult (Penn State, 2021).

Cultural Norms and Practices

Cultural traditions often reinforce gender roles and justify discrimination. Practices such as restricting women's mobility, expecting them to prioritize family duties over personal ambitions, and controlling their decision-making power are deeply rooted in cultural beliefs. Such norms are transmitted across generations, making them resistant to change (Bano et al., 2022)

Lack of Awareness and Education

Limited awareness about gender equality and legal rights allows discriminatory attitudes to continue unchallenged. Populations with lower education levels are more likely to accept inequality as normal, perpetuating gender discrimination in households, workplaces, and communities (Khan et al., 2020).

Cultural Factors

Cultural factors play a significant role in shaping societal attitudes and behaviors, often reinforcing gender-based discrimination despite legal frameworks and awareness programs. These factors are deeply rooted in traditions, customs, and social beliefs that are transmitted across generations.

Patriarchal Traditions

Many cultures follow patriarchal norms, where men hold authority over family and community decisions. These traditions assign men as the primary decision-makers and women to subordinate roles, often limiting their access to education, employment, and public participation. As Bano et al. (2020) note, patriarchal cultural practices in South Asia significantly constrain women's autonomy and opportunities.

Gender Norms Embedded in Traditions

Cultural norms often define what "appropriate" behavior is for men and women. For example, women may be expected to prioritize household responsibilities, while men are encouraged to be breadwinners. These norms are reinforced through rituals, celebrations, and social practices, making deviations socially unacceptable. These leads to limited freedom and opportunities for women in professional and personal spheres (OECD, 2021).

Misinterpretation of Religion and Custom

In many societies, cultural practices are justified under the guise of religion or tradition. Misinterpretation of religious texts often restricts women's mobility, decision-making, and participation in public life. This cultural- religious

justification reinforces gender hierarchies and discourages questioning discriminatory practices (Bano et al., 2020).

Honour and Family Reputation

Cultural emphasis on family honor often places the responsibility of maintaining reputation on women, limiting their independence. Actions such as controlling their education, mobility, marriage choices, and interactions are justified as family honors. This cultural expectation contributes to social control and discrimination against women (Shah et al., 2021).

Cultural Resistance to Change

Traditional beliefs and customs are deeply embedded and often resistant to change. Even when laws promote gender equality, cultural practices continue to influence behavior and attitudes, making legal reforms less effective without parallel cultural transformation. Education, awareness campaigns, and community engagement are essential to address these cultural barriers (Khan et al., 2021)

Institutional Factors

While social and cultural factors shape attitudes, institutions- such as the legal system, government bodies, workplaces, and educational institutions- play a critical role in either mitigating or perpetuating gender-based discrimination. Institutional factors refer to formal structures and policies, as well as their implementation and enforcement, which influence gender equality.

Weak Law Enforcement

Even when gender equality laws exist, poor enforcement often allows discrimination to continue unchecked. Laws protecting women from workplace discrimination, harassment, and unequal pay maybe ignored due to lack of accountability, bureaucratic inefficiency, or corruption. According to Bano et al. (2022), weak enforcement mechanism significantly reduces the effectiveness of legal frameworks designed to promote equality.

Biased Legal and Administrative Systems

Institutions themselves may reflect societal biases. Courts, police and administrative bodies may hold discriminatory attitudes, making it difficult to women to seek justice. For example, victims of harassment or domestic abuse may face insensitivity or skepticism when reporting their cases, deterring them from pursuing legal action (Khan et al., 2020).

Limited Political Representation

Women are often underrepresented in politics and decision-making institutions. This lack of representation results in policies that do not fully address women's needs or challenges, reinforcing systemic discrimination. Studies show that countries with higher female political participation tend to implement more gender-sensitive policies (OECD, 2021).

Gender Bias in Education and Employment Institutions

Institutions such as schools, colleges, universities, and the workplace may perpetuate discrimination through gender biased curricula, unequal access to resources, or discriminatory hiring and promotion practices. For instance, girls may face restrictions in pursuing certain fields of study, and women may encounter barriers in career advancement due to institutionalized sexism (Bano et al., 2022).

Lack of Institutional Support Services

Many institutions lack mechanisms like grievance redressal, maternity support, or anti-harassment policies, which makes it harder for women to participate fully in education, work, and public life. The absence of such support reinforces gender inequality by creating structural barriers that disproportionately affect women (Shah et al., 2021).

MEASURES TO CONTROL DISCRIMINATION AGAINST WOMEN

Discrimination against women persists globally despite the existence of equality and anti-discrimination laws. This persistence is due to deep-rooted social norms, weak law enforcement, and lack of awareness. Therefore, reducing discrimination requires a combination of legal, institutional, and societal measures.

Strengthening Anti-Discrimination Laws

Effective reduction of discrimination begins with strong legal frameworks. Countries must ensure that laws explicitly prohibit discrimination in employment, education, healthcare, inheritance, and political participation.

- For instance, laws like the **Protection against Harassment of Women at the Workplace Act (Pakistan, 2010)** create legal avenues workplace discrimination.
- International standards such as **CEDAW (1979)** require states to eliminate all forms of discrimination against women.

- Regular review and amendments are essential to close legal loopholes, such as insufficient coverage of informal employment or domestic work.
- **Impact:** Clear laws create a legal foundation for justice and signal state commitment to gender equality.

Effective Implementation and Enforcement Mechanisms

Weak enforcement is a major reason for discrimination to continue. Legal provisions must be backed by institutional mechanisms:

- **Independent women's commissions or gender-focused tribunals** can monitor violations.
- Law enforcement officials, judges, and prosecutors should receive **gender-sensitivity training** to handle cases without bias.
- Government should establish **specialized cells** for investigating crimes like sexual harassment, domestic violence, and discriminatory practices.
- **Example:** In countries like India, the establishment of **fast-track courts for women's cases** has reduced delays in legal proceedings, increasing women access to justice.

Access to Justice and Legal Aid

Many women face barriers such as poverty, illiteracy, social stigma, or fear of retaliation. Therefore, **providing free legal aid and support service** is critical:

- **Legal awareness programs** can educate women about their rights.
- **Confidential complaint mechanisms** in workplaces and communicate encourage women to report violation.
- **Fast-track courts** or alternative dispute resolution mechanisms can reduce delays and ensure timely justice.
- According to the **World Bank (2012)**, access to legal aid significantly improves women's ability to challenge discrimination and harassment.

Awareness and Education Programs

Social and cultural norms often reinforce gender discrimination. To combat these:

- **Education systems** should integrate gender equality principles from an early age.
- **Media campaigns** can challenge stereotypes and promote women's achievements.
- **Community engagement**, including religious and community leaders, can influence societal attitudes positively.

- **Example: UNESCO** (2019) emphasizes that girls' education not only improves literacy but also reduces societal tolerance for discriminatory practices.

Institutional Reforms in Workplaces and Education

Institutions must adopt gender- responsive policies to prevent discrimination:

Equal pay for equal work.

- Anti- harassment and grievance redressal mechanism.
- Maternity leaves, childcare support, and flexible work assignments.
- Regular audits to ensure compliance with gender policies.
- **Impact:** Such reforms empower women to participate fully in economic and social life without fear of discrimination.

Economic Empowerment of Women

Economic independent reduces vulnerability to discrimination. Governments and organizations can support by:

- Providing **skill development programs** and entrepreneurship opportunities.
- Ensuring **equal access to credit and property rights**.
- Promoting women's participation in leadership roles in both public and private sectors.
- UNDP (2021) notes that women with independent income are more likely to challenge discriminatory practices and participate actively in decision- making process.

Data Collection and Policy Evaluation

Reliable data is essential for monitoring progress and designing effective interventions:

- Gender-dis aggregated data should be collected in areas such as employment, health, education, and political representation.
- Policies must be continuously evaluated to measure impact, identify gaps, and make evidence-based adjustments.
- UN Women (2020) emphasizes that countries with strong data systems are better able to implement targeted policies against gender discrimination.

CONCLUSION

Despite the existence of constitutional guarantees and comprehensive anti-discrimination laws, discrimination against women continues to persist in many

societies. This study has demonstrated that the mere enactment of legal provision is not sufficient to ensure substantive equality. Deep-rooted social norms, patriarchal cultural practices, institutional weaknesses, and inactive enforcement mechanisms continue to undermine the practical implementation of gender equality laws. As highlighted in the literature, discrimination today often operates in subtle and indirect forms, making it more difficult to identify and address through traditional legal remedies alone.

The analysis further reveals that weak institutional accountability, lack of awareness among their legal rights, and limited access to justice significantly contribute to the continuation of discriminatory practices. Laws may exist on paper, but without strong implementation, monitoring, and societal support, their impact remains limited. Therefore, addressing discrimination against women requires a multidimensional approach that goes beyond formal legislation.

To effectively combat gender-based discrimination, legal reforms must be accompanied by social change, educational initiatives, and institutional strengthening. Awareness campaigns, gender-sensitive training for law enforcement and judicial officers, and strict accountability mechanisms are essential to bridge the gap between law and practice. Ultimately, achieving true equality demands collective responsibility, where legal systems, institutions, and society work together to ensure that women's rights are not only recognized but genuinely protected and enforced.

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Combating Cybercrime in Pakistan: An Analysis of the Legal Framework, Institutional Response, and Emerging Challenges

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ABSTRACT

Pakistan's exposure to cybercrime has grown alongside its rapid digitalization of finance, communication, and public discourse. The Prevention of Electronic Crimes Act 2016 ("PECA") remains the country's principal criminal law instrument for addressing unauthorized access, data theft, cyber harassment, financial fraud, and cyberterrorism committed through information systems. The Prevention of Electronic Crimes (Amendment) Act 2025 substantially reconfigured this framework, creating the National Cyber Crime Investigation Agency and the Social Media Protection and Regulatory Authority, while introducing a controversial new offence targeting the dissemination of false information. This article examines the evolution of Pakistan's cybercrime legislation, maps the principal categories and trends of cyber-offending recorded in the country, and evaluates the institutional capacity of enforcement agencies to investigate and prosecute such offences. It further considers the tension between security-oriented cybercrime regulation and constitutionally protected freedom of expression, the absence of a comprehensive data protection statute, and the cross-border evidentiary obstacles that complicate prosecution. Drawing on a brief comparison with the legislative approaches of India and the United Kingdom, the article argues that Pakistan's cybercrime regime, while procedurally expansive, requires clearer statutory definitions, independent oversight of content-regulation powers, and sustained investment in digital forensic capacity if it is to deter cybercrime effectively without compromising fundamental rights.

Keywords: Cybercrime; Pakistan; PECA 2016; NCCIA; Digital Rights; Cybersecurity

INTRODUCTION

Pakistan has one of the fastest-growing internet and mobile-broadband user bases in South Asia, a trend accelerated by the expansion of digital banking, e-commerce, and social media use over the past decade. This digitalization has been accompanied by a corresponding rise in cyber-enabled and cyber-dependent offending, ranging from financial fraud and identity theft to online harassment, blackmail, and offences implicating national security. The State's principal response has been legislative: the Prevention of Electronic Crimes Act 2016 was enacted to consolidate offences relating to information systems and electronic communication into a single statute, supplemented by provisions of the Pakistan Penal Code 1860 and the Electronic Transactions Ordinance 2002.

Nearly a decade after its enactment, PECA was substantially amended in January 2025, restructuring the institutional architecture for cybercrime enforcement and introducing new offences addressing online disinformation.¹ This article surveys that legal framework, the trends of cybercrime it seeks to address, and the institutional and rights-based challenges that continue to attend its implementation in practice.

LEGAL FRAMEWORK GOVERNING CYBERCRIME IN PAKISTAN

The Prevention of Electronic Crimes Act 2016

PECA 2016 was Pakistan's first dedicated cybercrime statute, enacted to close gaps left by the general criminal law in addressing offences unique to digital environments.² The Act criminalizes a broad range of conduct, including unauthorized access to information systems and data, unauthorized copying or transmission of data, interference with critical infrastructure, electronic forgery and fraud, offences against the dignity and modesty of natural persons, cyberstalking, and the production or distribution of child sexual abuse material.

Section 3 of the Act penalizes unauthorized access to an information system or data, an offence punishable with imprisonment of up to three months, a fine, or both, with enhanced penalties where the access is directed at critical infrastructure or is

¹Prevention of Electronic Crimes (Amendment) Act 2025 (Pakistan), assented to by the President on 30 January 2025.

²Prevention of Electronic Crimes Act 2016 (Pakistan).

accompanied by intent to cause harm.³ Sections 20 and 21 address defamatory and sexually explicit content, including the non-consensual distribution of intimate images, while section 24 criminalises cyberstalking and section 10A creates the offence of cyberterrorism, applicable where an act under the Act is committed with intent to threaten Pakistan's security or create a sense of fear and insecurity in the public.

Investigative powers, including the authority to preserve, seize, and analyse electronic evidence, were originally vested in the Cyber Crime Wing of the Federal Investigation Agency, which was designated the sole agency competent to investigate offences under the Act.⁴

The Prevention of Electronic Crimes (Amendment) Act 2025

The Amendment Act, passed by both houses of Parliament and signed into law by President Asif Ali Zardari on 30 January 2025, followed a period of sustained criticism of PECA's use against journalists and government critics.⁵ Reports indicate that in December 2024 alone, well over a hundred journalists were formally charged under the pre-amendment version of the Act on grounds including the glorification of terrorism and the propagation of hate speech, a pattern that fed directly into the legislative debate preceding the 2025 reforms.⁶

The most consequential substantive change is the insertion of section 26-A, which criminalises the intentional dissemination, display, or transmission of information known or believed to be false and likely to cause fear, panic, alarm, or public unrest.⁷ The offence carries a maximum sentence of three years' imprisonment and a fine of up to two million rupees, a considerable escalation compared with the penalties attached to most other PECA offences.

³Prevention of Electronic Crimes Act 2016 (Pakistan), s 3 (unauthorised access to information systems, punishable with imprisonment of up to three months, a fine of up to PKR 50,000, or both).

⁴Federal Investigation Agency, Cyber Crime Wing, case-load statistics as reported in national press, 2020-2025.

⁵Deccan Herald, 'Pakistan President Asif Ali Zardari Signs Controversial Cybercrime Bill into Law' (30 January 2025).

⁶International Press Institute, 'Pakistan: Amended Cybercrime Law Poses New Threats to Press Freedom' (IPI, March 2025).

⁷Prevention of Electronic Crimes (Amendment) Act 2025 (Pakistan), inserting s 26-A into PECA 2016, criminalising the intentional dissemination of false information likely to cause fear, panic, alarm or unrest, punishable with imprisonment of up to three years, a fine of up to PKR 2,000,000, or both.

Commentators have observed that the phrase 'likely to cause fear, panic, alarm or unrest' is not accompanied by a statutory definition, leaving its scope to be settled through prosecutorial practice and judicial interpretation, a concern that echoes earlier criticism of PECA's vaguely drafted defamation and decency provisions.⁸

Ancillary and Overlapping Legislation

Cybercrime prosecutions in Pakistan rarely rely on PECA alone. Financial cybercrime is frequently prosecuted under a combination of PECA's fraud and forgery provisions and the general offences of cheating and impersonation under the Pakistan Penal Code 1860, while the Electronic Transactions Ordinance 2002 supplies the evidentiary foundation for the admissibility of electronic records and digital signatures in judicial proceedings.⁹ This layered approach allows prosecutors flexibility but also creates scope for overlapping or inconsistent charging practices across cases with similar fact patterns.

INSTITUTIONAL MECHANISMS FOR ENFORCEMENT

From the FIA Cyber Crime Wing to the NCCIA

For nearly nine years, the Cyber Crime Wing of the Federal Investigation Agency held exclusive statutory authority to investigate offences under PECA. Persistent complaints regarding delayed response times, limited forensic capacity, and inconsistent application of the law across provincial FIA offices formed part of the impetus for institutional reform. The 2025 Amendment Act replaced this arrangement with the National Cyber Crime Investigation Agency (NCCIA), a dedicated body vested with exclusive investigative jurisdiction over cybercrime offences and intended to consolidate specialised forensic, technical, and prosecutorial expertise that had previously been dispersed across FIA circles.¹⁰

The Social Media Protection and Regulatory Authority

The Amendment Act also established the Social Media Protection and Regulatory Authority (SMPRA), empowered to direct the removal or blocking of content

⁸Research Society of International Law, '2025 Amendments to the Prevention of Electronic Crimes Act (PECA), 2016: An Introduction' (RSIL, February 2025).

⁹Pakistan Penal Code 1860, ss 419-420 (cheating and impersonation), applied cumulatively with PECA offences in financial cybercrime prosecutions.

¹⁰Prevention of Electronic Crimes (Amendment) Act 2025 (Pakistan), s 2Q (establishing the National Cyber Crime Investigation Agency and transferring cybercrime investigation functions from the Federal Investigation Agency's Cyber Crime Wing).

characterised as unlawful or offensive and to require social media platforms operating in Pakistan to establish complaint-handling mechanisms responsive to government directives.¹¹ Non-compliance by a platform can result in legal action or the blocking of the platform altogether, a sanction with significant practical consequences given the jurisdictional difficulty of compelling compliance from platforms headquartered outside Pakistan.

Human rights organisations have characterised the content-removal powers vested in SMPRA as susceptible to use against legitimate political criticism, particularly given that sections of the Amendment Act extend protection against 'offensive' content to representatives of the executive, judiciary, legislature, and armed forces.¹² The absence of a fully independent appellate mechanism for content-removal orders, as opposed to internal administrative review, has been identified as a structural gap that limits meaningful oversight of the Authority's exercise of these powers.

CATEGORIES AND TRENDS OF CYBERCRIME IN PAKISTAN

Financial Cybercrime

The rapid expansion of branchless banking, mobile wallets, and online commerce has been accompanied by a corresponding rise in phishing, SIM-swap fraud, business email compromise, and unauthorised funds transfers.¹³ Financial institutions and regulators have responded with mandatory fraud-reporting frameworks and customer-awareness campaigns, but prosecutions remain constrained by the difficulty of tracing funds moved through mule accounts and informal value-transfer channels before formal complaints are filed. Financial cybercrime remains one of the most prevalent forms of digital offending in Pakistan. Criminals employ phishing emails, fake banking websites, fraudulent SMS messages, SIM-swap attacks, ATM skimming devices, and social engineering

¹¹Prevention of Electronic Crimes (Amendment) Act 2025 (Pakistan), ss 2S-2U (establishing the Social Media Protection and Regulatory Authority and imposing content-removal obligations on social media platforms).

¹²SAHSOL Law Journal, 'the PECA Amendment 2025: A Critical Analysis' (Lahore University of Management Sciences, November 2025).

¹³State Bank of Pakistan, Annual Payment Systems Review (various years), on the growth of digital financial transactions and associated fraud typologies.

techniques to obtain confidential financial information from unsuspecting victims. Once banking credentials are compromised, offenders transfer funds through mule accounts, cryptocurrency exchanges, or informal value transfer systems, making recovery extremely difficult. The State Bank of Pakistan has repeatedly warned financial institutions regarding the growing sophistication of cyber-enabled financial fraud and has introduced mandatory cybersecurity standards to mitigate these risks.

Cyber Harassment and Online Gender-Based Violence

Non-consensual distribution of intimate images, blackmail, and online stalking constitute a substantial share of complaints received by both law enforcement and civil society helplines, with women and younger users disproportionately represented among complainants.¹⁴ Section 21 of PECA, which addresses offences against the modesty and dignity of a person, and section 24, which criminalises cyberstalking, remain the primary statutory tools for addressing this category of offending, though survivors frequently report delays in the registration of complaints and inconsistent investigative responses across jurisdictions. Cyber harassment and online gender-based violence have become major social concerns in Pakistan. Women, journalists, students, and public figures are frequently subjected to cyberstalking, revenge pornography, online blackmail, fake social media profiles, defamatory campaigns, and non-consensual dissemination of intimate images. Such offences not only violate personal dignity but also inflict severe psychological trauma upon victims. Sections 20, 21, and 24 of PECA provide the principal statutory mechanisms for addressing these forms of digital abuse

Cyberterrorism and National-Security-Related Offences

Section 10A's cyberterrorism offence, together with provisions addressing the glorification of terrorism and hate speech, has been the basis for a significant proportion of PECA prosecutions involving journalists and political commentators, a pattern that has drawn sustained criticism from press-freedom organisations.¹⁵ This overlap between national-security-oriented offences and ordinary political

¹⁴Digital Rights Foundation, Cyber Harassment Helpline Annual Report (various years).

expression is a recurring source of tension in the application of the Act. Intellectual property offences constitute another important category of cybercrime. These offences include software piracy, copyright infringement, unauthorised distribution of digital content, trademark infringement, and illegal downloading of copyrighted material. Such activities undermine innovation, discourage technological investment, and cause significant financial losses to software developers, publishers, entertainment industries, and content creators. As Pakistan's digital economy continues to expand, effective enforcement of intellectual property rights within cyberspace has become increasingly important.

Corporate cybercrime and industrial espionage have emerged as significant threats to commercial organisations. Cybercriminals increasingly target confidential business information, trade secrets, customer databases, financial records, intellectual property, and proprietary software through hacking, insider attacks, and sophisticated phishing campaigns. These offences often result in substantial economic losses, reputational damage, and disruption of commercial operations. Consequently, businesses operating in Pakistan are investing heavily in cybersecurity infrastructure, employee awareness programmes, and digital risk management strategies to strengthen organisational resilience against cyber threats.

Disinformation Offences under Section 26-A

Since its introduction, section 26-A has been invoked in a limited but growing number of cases, several of which involve social media commentary on matters of public interest rather than the deliberately falsified content the provision was ostensibly designed to address.¹⁶ This pattern has reinforced concerns that a criminal disinformation offence lacking precise statutory boundaries risks being applied to legitimate expressions of opinion or unverified but good-faith reporting, rather than being confined to deliberate, malicious falsehoods.

CHALLENGES IN INVESTIGATION, PROSECUTION, AND ADJUDICATION

Capacity and Technical Constraints

¹⁶National Commission for Human Rights, 'NCHR Report on PECA and the 2025 Amendments Act' (NCHR, 2026).

The transition from the FIA's Cyber Crime Wing to the NCCIA has not, by itself, resolved longstanding capacity constraints. Effective cybercrime investigation depends on digital forensic laboratories, trained examiners, and standardised chain-of-custody procedures for electronic evidence, resources that remain unevenly distributed outside major urban centres. Judicial familiarity with digital evidence also varies considerably, which can affect the consistency with which electronic material is admitted and weighed at trial.

Overbreadth and Freedom of Expression

Both the pre- and post-amendment versions of PECA have been criticised for provisions whose breadth invites selective or politically motivated enforcement, a concern reinforced by documented use of the Act against journalists, opposition commentators, and civil society actors.¹⁷ Constitutional guarantees of freedom of expression under Article 19 of the Constitution of the Islamic Republic of Pakistan require that restrictions be reasonable and narrowly tailored, a standard that critics argue the disinformation and content-removal provisions of the 2025 Amendment Act do not clearly satisfy.

Jurisdictional and Cross-Border Evidentiary Obstacles

A significant proportion of cybercrime affecting Pakistani victims originates from, or is routed through, infrastructure located outside the country's borders, including offshore hosting services and foreign-registered social media platforms. Pakistan is not a signatory to the Council of Europe's Convention on Cybercrime, which limits the availability of streamlined mutual legal assistance mechanisms for the expedited preservation and disclosure of foreign-held electronic evidence, and requests routed through conventional mutual legal assistance treaties are frequently subject to lengthy delay.

The Absence of a Comprehensive Data Protection Law

Unlike PECA, which addresses data-related offences through the lens of criminal liability, Pakistan has yet to enact a dedicated data protection statute. The Personal Data Protection Bill, first introduced in 2023 and revised in a subsequent 2025 draft,

remains before Parliament without having secured passage in either house.¹⁸ This gap leaves the regulation of lawful data processing, breach notification, and individual data-subject rights largely unaddressed outside the narrower, offence-based framework of PECA, complicating both preventive regulation and civil redress for data misuse.

JUDICIAL INTERPRETATION AND CASE LAW

The interpretation and application of cybercrime laws in Pakistan have been significantly influenced by judicial decisions that seek to balance the objectives of national security, public order, and crime prevention with the constitutional guarantees of freedom of expression, privacy, and due process of law. Although the Prevention of Electronic Crimes Act, 2016 (PECA) provides a comprehensive statutory framework for combating cyber offences, its broad wording has frequently been challenged before the superior courts. Pakistani courts have consistently emphasized that criminal statutes regulating online activities must be interpreted strictly and in accordance with the Constitution of the Islamic Republic of Pakistan, 1973. Judicial oversight has therefore become an essential safeguard against arbitrary investigations, unlawful arrests, and disproportionate restrictions on digital rights.

Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416)

Although this landmark constitutional case predates the enactment of PECA, it remains highly relevant to the regulation of online speech and cybercrime. The Supreme Court held that freedom of speech and political participation constitute fundamental constitutional rights that may only be restricted through reasonable and proportionate legislation enacted in the public interest. The Court emphasized that restrictions upon speech should not be arbitrary or excessive and must satisfy constitutional standards of legality and necessity. These principles continue to guide judicial interpretation of PECA, particularly in cases involving online criticism of government institutions, journalists, political activists, and civil society

¹⁸Recording Law, 'Pakistan Data Privacy Laws: PECA and Personal Data Protection Bill Guide' (2026).

organizations. Courts frequently rely upon the constitutional reasoning developed in *Benazir Bhutto* to determine whether cybercrime legislation has been applied consistently with Article 19 of the Constitution.

***Justice Qazi Faez Isa v. President of Pakistan* (PLD 2021 SC 1)**

Although primarily a constitutional reference concerning judicial independence, the Supreme Court made important observations regarding the protection of individual privacy, procedural fairness, and the unlawful collection and use of personal information. The Court stressed that investigative agencies must operate strictly within the limits prescribed by law and that unauthorized surveillance or collection of personal data violates constitutional guarantees contained in Articles 4 and 14 of the Constitution. These observations have significant implications for cybercrime investigations because digital evidence frequently involves mobile phones, electronic communications, cloud storage, and personal data. The judgment reinforces the principle that cybercrime investigations must comply with due process and constitutional safeguards against arbitrary state interference.

***Asad Ali Toor v. Federation of Pakistan* (Islamabad High Court Proceedings)**

The proceedings involving journalist Asad Ali Toor attracted widespread national and international attention after criminal proceedings were initiated under provisions of PECA relating to online expression. The case generated significant debate concerning the extent to which cybercrime legislation may legitimately regulate criticism of public institutions. Human rights organizations, journalists' associations, and legal scholars argued that PECA should not be employed to suppress legitimate journalistic activity or political dissent. Although the litigation involved several procedural developments, the case highlighted growing judicial concern regarding the potential misuse of cybercrime legislation against media professionals. The proceedings emphasized that criminal liability should only arise where the prosecution establishes all statutory elements beyond reasonable doubt and that freedom of expression remains a constitutionally protected right.

Ammar Ali Jan and Other PECA Proceedings

Several proceedings initiated against political activists, academics, and journalists under PECA have raised constitutional questions regarding the scope of online expression and criminal liability. These cases have highlighted concerns that broadly drafted statutory provisions relating to online content may be susceptible to selective enforcement. Courts have repeatedly emphasized that criticism of governmental institutions, public officials, or state policies does not automatically constitute criminal conduct unless it clearly falls within the specific offences created by PECA. These proceedings have strengthened judicial insistence upon strict statutory interpretation, procedural fairness, and protection against arbitrary criminal prosecution.

Islamabad High Court Decision Declaring Section 20 of PECA Unconstitutional (*Waheed Ahmed v. Federation of Pakistan*, PLD 2022 Islamabad 144)

One of the most significant judicial decisions concerning PECA was delivered by the Islamabad High Court in *Waheed Ahmed v. Federation of Pakistan*. The Court declared **Section 20 of PECA**, which criminalized offences against the dignity of a natural person, unconstitutional to the extent that it was inconsistent with the constitutional guarantee of freedom of expression. The Court observed that the provision was vague, overly broad, and capable of arbitrary application against journalists, political opponents, and ordinary citizens expressing opinions on matters of public importance. It further held that criminal defamation already existed under the Pakistan Penal Code and that the duplication of offences under PECA created uncertainty and facilitated abuse. This judgment represents one of the most important judicial limitations upon the scope of cybercrime legislation in Pakistan and reaffirmed the constitutional requirement that restrictions upon speech must be narrowly tailored and proportionate.

International Comparative Jurisprudence

Comparative judicial decisions have also influenced scholarly discussion regarding cybercrime regulation in Pakistan. In **Google Spain SL v. Agencia Española de Protección de Datos (C-131/12)**, the Court of Justice of the European Union recognized the "Right to be Forgotten," holding that individuals may, under certain circumstances, require search engines to remove links containing outdated or irrelevant personal information. This decision demonstrates the increasing recognition of digital privacy as a fundamental legal right.

Similarly, in **Carpenter v. United States (138 S.Ct. 2206, 2018)**, the United States Supreme Court held that law enforcement authorities generally require a judicial warrant before obtaining historical mobile phone location data. The judgment significantly strengthened constitutional protection of digital privacy and established important principles governing governmental access to electronic information.

The English decision in **R v. Gold & Schifreen [1988] AC 1063** exposed deficiencies within traditional criminal law concerning unauthorized access to computer systems. The House of Lords held that existing forgery legislation did not adequately criminalize computer hacking, prompting the enactment of the **Computer Misuse Act 1990**, which subsequently became a model for cybercrime legislation in numerous jurisdictions, including Pakistan.

Significance of Judicial Interpretation

Judicial interpretation has become indispensable in ensuring that cybercrime legislation remains consistent with constitutional principles, human rights obligations, and the rule of law. Pakistani courts have consistently emphasized that while cybercrime poses serious threats to national security, financial stability, and individual privacy, legislative responses must not undermine democratic freedoms or constitutional liberties. The evolving body of judicial precedent demonstrates that effective cybercrime regulation requires a careful balance between robust law enforcement powers and adequate safeguards protecting freedom of expression, privacy, fair trial, and due process. As digital technologies continue to evolve,

judicial oversight will remain essential in shaping the future development of cybercrime jurisprudence in Pakistan.

COMPARATIVE PERSPECTIVE

India's Information Technology Act 2000, as amended in 2008, addresses a broadly similar range of offences but operates alongside a more developed sectoral framework for data protection and includes graduated intermediary-liability provisions that condition platform immunity on compliance with defined takedown procedures.¹⁹ The United Kingdom's Computer Misuse Act 1990, by contrast, is narrower in scope, focused principally on unauthorized access and impairment of computer systems, with offences relating to harassment, fraud, and harmful online content addressed through separate legislation and subject to oversight by an independent communications regulator.

Neither comparator jurisdiction vests as broad a content-removal nor platform-sanctioning power in a single executive-appointed regulatory authority as does Pakistan's SMPRA, suggesting that Pakistan's model places comparatively heavier reliance on administrative rather than judicial oversight of online content.²⁰

RECOMMENDATIONS

First, the statutory language of section 26-A should be amended to define with precision the categories of harm the offence is intended to prevent, coupled with a requirement of demonstrable, not merely alleged, intent to deceive. Second, content-removal and platform-blocking decisions issued by SMPRA should be subject to timely, independent judicial review rather than internal administrative appeal alone, to guard against the disproportionate use of these powers against legitimate expression. Third, sustained investment in the NCCIA's forensic infrastructure and personnel training, extended beyond major cities, is necessary if the agency's expanded investigative mandate is to translate into improved case outcomes. Fourth, Parliament should prioritise the passage of a comprehensive data protection statute, aligned where appropriate with the Personal Data Protection Bill, to complement PECA's offence-based approach with proactive obligations on data

¹⁹Information Technology Act 2000 (India), as amended by the Information Technology (Amendment) Act 2008.

²⁰Computer Misuse Act 1990 (UK), as amended by the Police and Justice Act 2006 and the Serious Crime Act 2015.

controllers and clearer remedies for affected individuals. Fifth, Pakistan should evaluate the benefits of formal accession to international cybercrime cooperation instruments to facilitate faster preservation and exchange of cross-border digital evidence.

CONCLUSION

Pakistan's cybercrime framework has evolved considerably since the enactment of PECA in 2016, culminating in the significant institutional and substantive changes introduced by the 2025 Amendment Act. The creation of the NCCIA reflects a genuine attempt to build specialised investigative capacity, and the expanding statutory catalogue of offences responds to real and growing categories of harm, from financial fraud to online gender-based violence. At the same time, the Amendment Act's disinformation offence and the content-regulation powers vested in SMPRA illustrate the recurring difficulty of calibrating cybercrime law so that it deters genuine harm without unduly constraining protected expression. The durability and legitimacy of Pakistan's cybercrime regime will depend substantially on whether subsequent reform addresses these definitional and oversight gaps, while continuing to build the technical and institutional capacity needed to make enforcement effective in practice.

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Professional Criminals and Habitual Criminals: A Criminological Study of Organized Criminal Behavior

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ABSTRACT

Criminal behavior has been a major issue among societies all around the globe especially when it comes to individuals committing repeat offenses and organized criminal acts. In this research, the nature, motives, and behavior of professional criminals and habitual criminals have been studied in the field of criminology. Professional criminals indulge themselves into crime like it is their professional responsibility and plan their activities meticulously for the purpose of monetary gain without any risk of being caught by law enforcement agencies. However, habitual criminals keep on committing crimes because of their criminal propensities, peer influence, psychological reasons, or economical compulsions. Relationship of these offenders with organized criminal behavior has also been studied in this research where criminal networks, social learning theory, economic disparities, and weak law enforcement have been given due consideration. Qualitative doctrinal research approach has been used in this research through the analysis of criminological theories, academic sources, laws, and prior researches. It has been found out through the results of the research that despite different motives and modes, both professional and habitual criminals play a great role in organized criminal behavior.

Keywords: Professional Criminals, Habitual Criminals, Organized Crime, Criminology, Criminal Behavior, Criminal Justice.

INTRODUCTION

Crime has been one of the most pressing social and legal issues throughout history. It is a threat to stability, economic growth, political systems, and the rule of law. Professional and habitual criminals are a category of offenders that pose a significant challenge to authorities due to their persistent commitment to crime and the associated negative consequences. This begs the question of what separates professional and habitual criminals from one another. It is important to distinguish between the two categories in order to fully understand their social impact and implications for criminal justice policy.

A professional criminal is someone whose primary source of income is crime. This category of offenders takes crime seriously as a systematic activity, employing carefully selected methods. This type of criminal is characterized by a high level of skill, often working in organized networks. Their objective is to obtain monetary gain at all costs while avoiding detection and punishment by law enforcement. Typical crimes include drug trafficking, organized fraud, money laundering, and contract killings.

A habitual criminal is an offender who commits crimes frequently and consistently over a period of time. It is important to note that crimes committed by such persons can be of varying severity. In other words, the key characteristic of habitual criminals is not the seriousness of the crime, but the frequency. Habitual offenders include individuals whose criminal behavior stems from social influences, as well as those whose criminal activity begins in early adolescence and gradually evolves into a pattern of persistent criminal conduct.

The concepts of professional and habitual criminals are of great interest to criminology, and many scholars have sought to identify the key characteristics that differentiate them. The various criminological theories, such as Differential Association Theory, Social Learning Theory, Strain Theory, Routine-Activity Theory, and Rational Choice Theory, attempt to explain the causes of crime and why some people continue to commit it despite the consequences. At the same time, the differences between these concepts are discussed in detail in the writings of criminalists, including Marvin Wolfgang, James Q. Wilson, and Neil Hogan.

In the modern world, organized crime has entered a new stage in its development. Professional criminals often operate in highly structured associations while

interacting with each other on the international level. In addition, habitual criminals often become involved in organized crime networks, which complicates their apprehension and prosecution by law enforcement agencies. Therefore, understanding the differences between professional and habitual offenders is crucial to the criminal justice system.

In particular, in Pakistan, the issue of organized crime has become extremely acute at the moment. Crimes such as kidnapping for ransom, drug trafficking, organized fraud, cybercrime, arms dealing, and human trafficking significantly undermine Pakistan's social and political stability. Thus, the current state of affairs underscores the need to research the characteristics, criminal impact, and sociological causes of professional and habitual criminals. Furthermore, the purpose of this study is to explore the differences between these types of offenders while considering their implications for the control and prevention of persistent criminality.

Problem Statement

Despite the efforts of law enforcement agencies, professional criminals and habitual offenders continue to threaten organized criminal behavior. The growing complexity of organized crimes and the recidivism of career criminals hinder efforts by police and judicial authorities to control and prosecute criminal activity and protect the population. Current legal practice is limited in its ability to combat and prevent such crimes, focusing only on the punishment of the perpetrators. Nevertheless, it is critical to prevent and reduce organized crimes committed by professional criminals and those who have recidivated several times. Therefore, it is necessary to conduct extensive criminological research and analyze the role of professional criminals and habitual offenders in the context of organized crime to prevent and rehabilitate them.

RESEARCH OBJECTIVES

The general objective of this research is to identify the nature, features, and criminological aspects of professional criminals and habitual criminals to explore the relationship between these categories of offenders and organized criminal behavior.

The specific objectives of the study are as follows:

- a. To delimit professional criminals and habitual criminals;
- b. To identify the distinctive features of professional and habitual criminals;

- c. To determine the criminological theories that best explain the persistence of crime;
- d. To examine the relationship between professional criminals, habitual criminals, and organized criminal collectives;
- e. To reveal the social, psychological and economic factors of professional and habitual criminality;
- f. To assess the impact of professional and habitual criminals on society and the criminal justice system;
- g. To develop response measures to combat organized crime, recidivism, and the influence of professional and habitual criminals.

Research Questions

During the research, the following questions will be addressed:

- a. Who are professional criminals and habitual criminals?
- b. What are the main differences between professional criminals and habitual criminals?
- c. Which criminological theories best explain the criminal behavior of professional criminals and habitual criminals?
- d. How are professional criminals and habitual criminals related to organized crime?
- e. What are the social, psychological, and economic factors of professional and habitual criminality?
- f. What threats do professional and habitual criminals pose to the criminal justice system?
- g. What strategies can be implemented to prevent and control organized crime, recidivism, and the negative influence of professional and habitual criminals?
- h. How these criminals connected with white collar crimes?

Significance of the Study

The significance of this study is determined by the fact that professional criminals and habitual criminals are some of the most dangerous offenders who threaten societal security. The criminal behavior of these categories of offenders is characterized by persistence and criminal specialization, which makes the work of law enforcement agencies difficult. The current state of organized crime in Pakistan, which is associated to a large extent with the activities of professional criminals and

habitual offenders, is also a threat to society. The study of the peculiarities of professional criminals and habitual criminals and their impact on organized crime and the criminal justice system will allow criminologists, lawyers, law enforcement agencies, policymakers, and students to obtain useful information.

The research will also help in determining which criminological theories best explain the criminal behavior of professional criminals and habitual criminals and assess the effectiveness of crime prevention measures. In addition, the findings of the study will help policymakers develop policies that take into account the prevention of organized crime and recidivism and strengthen the foundations of the rule of law. The study will also contribute to further research on organized crime, recidivism, and the criminal justice system, in particular in Pakistan.

Scope of the Study

The study will cover the main aspects of professional criminals and habitual criminals, in particular the application of criminological theories to examine the persistence of criminal behavior, characteristics of professional criminals and habitual criminals, factors that contribute to their criminality, and the impact of this criminality on society and the criminal justice system. Particular attention will be paid to organized crime and how professional criminals and habitual criminals affect its development.

The research will be conducted using a qualitative doctrinal methodology. The study will examine and analyze both books and scientific articles on professional criminals, habitual criminals, and organized crime. In addition, legal, official, and international publications and materials will be used as research tools. Although the study will provide examples from other countries, it will focus on the criminal justice system in Pakistan.

Limitations of the Study

This study has certain limitations, one of which is the absence of primary data. The available data and information will be obtained from published materials on professional criminals, habitual criminals, and organized crime. Due to the lack of time and resources, the study will not conduct interviews with criminals, law enforcement officers, investigators, judges, and offenders. Another limitation of the study is the variability of the features of organized crime, which is a local category. The current study does not claim to cover all aspects of organized crime, since it is

a dynamic and diverse concept. Finally, in the future, it will be necessary to study new forms of organized crime, such as cybercrime.

LITERATURE REVIEW

The difference between professional criminals and habitual criminals has been a matter of debate among criminologists. Researchers have tried to establish why the former engages in criminal activities as a profession whereas the latter resorts to criminal behavior repeatedly. It is documented that both of these categories of criminals play a critical role in perpetrating crime, with each having its objectives, motives, and patterns of operation. This section reviews existing literature on professional and habitual criminals.

Concept of Professional Criminals

According to Sutherland (1937), professional criminals are those individuals who adopt crime as a profession and pursue it persistently for monetary gains. These criminals usually operate with a level of skill and dexterity that is only gained through experience. They execute carefully planned criminal activities and sometimes function in structured gangs. Unlike casual or situational criminals, professional criminals engage in criminal activities as a profession and consequently have the skills associated with their profession.

Sutherland (1937) observes that professional criminals acquire criminal skills and expertise through close association with other professional criminals. In their associations, they learn new skills that enable them to evade the law successfully. According to Sutherland, crime is learned through social interactions, and such interactions play a critical role in influencing an individual's decision to engage in criminal activities.

Professional criminals are usually associated with serious crimes such as drug trafficking, selling human organs, money laundering, organized fraud, cybercrimes, trafficking firearms and explosives, and contract killings. These are highly organized crimes that require skill, experience, and good working knowledge to perpetrate. Consequently, such crimes are usually associated with professional criminals.

Concept of Habitual Offenders

According to Lombroso (1876), habitual criminals originate from biological factors, and the theory laid the foundation for modern criminal anthropology.

Contemporary criminology research however reveals that several biological factors usually contribute to persistent criminal behavior among habitual offenders. For instance, the absence of parental care and a conducive family environment often triggers delinquent behavior among habitual offenders. Similarly, the inability of habitual offenders to advance economically usually leads to crime.

Lombroso's theory also suggests that exposure to certain environments encourages habitual offenses. Some biological factors that may lead to criminal behavior include low levels of emotional intelligence and poor socialization skills. Researchers also associate the high persistence among habitual offenders with adverse environmental factors such as poverty, unemployment, and lack of parental care.

Organized Criminal Behavior

According to the literature, organized criminal behavior emanates from organized crime, where groups of criminals initiate, manage, and coordinate criminal activities to maximize profits or value. Organized crime is usually characterized by the presence of a hierarchical structure that is operated by members who share similar criminal objectives. These criminals often operate in secrecy, use violence and coercion to accomplish criminal activities, and create elaborate organizational structures to conceal their activities.

Most professional criminals usually operate in organized crime syndicates due to their high-level skills and specialized knowledge of criminal activities. Professional criminals occupy top-level managerial positions in these organizations due to their experience and skills. On the other hand, habitual criminals often serve as sponsors, recruiters, couriers, and distributors of illicit goods in organized crime enterprises. According to the literature, global developments such as international trade, new technologies, and financial innovations have led to the proliferation of organized crime around the world.

Previous Research

A search of previous research reveals that professional and habitual criminals usually differ from each other based on their motivations in committing crimes as well as their levels of organization. According to previous literature, professional criminals usually perpetrate crimes for financial gains and do so deliberately.

On the other hand, the literature reveals that habitual offenders usually repeat crimes due to social and psychological factors associated with their behaviors. According to previous research, organized crime organizations usually comprise individuals who offer skills and expertise needed in the criminal activities. The literature reveals that effective rehabilitation programs reduce the likelihood of offenders committing crimes again. Such programs offer educational and psychological support to offenders.

Moreover, the literature shows that organized crime can be controlled through effective law enforcement practices. Increased surveillance and patrol by law enforcement personnel usually act as a deterrent to potential offenders. Additionally, community policing facilitates effective gathering of information concerning criminal activities and offenders in a given geographical area.

According to various previous studies, the likelihood of recidivism decreases significantly when offenders receive financial support following their release from prison.

Research Gap

A scan of previous literature reveals that research on professional criminals, habitual offenders, and organized crime has been carried out extensively. However, little research has compared professional criminals and habitual offenders based on their characteristics, objectives, motives, patterns of operation, and roles they play in perpetrating crimes. Additionally, existing literature on organized crime focuses on general aspects of organized crime rather than focusing on specific aspects such as the impact of organized crime on society.

This study attempts to fill the research gap by comparing professional criminals and habitual offenders based on their characteristics and criminal behavior while highlighting their similarities and differences in the context of organized crime using selected criminological theories.

Transition

Based on the literature reviewed, it is evident that both professional criminals and habitual offenders play significant roles in perpetrating organized crime. However, these categories of criminals differ from each other based on a variety of factors. The following section will review the criminological theories that can be used in

this study to examine the differences between professional criminals and habitual offenders and their roles in organized crime.

THEORETICAL FRAMEWORK

A theoretical framework is a set of assumptions that help understand why people commit crimes and why they continue doing this despite the consequences. The current research aims to apply the most common theories of crime to explain professional criminals' and habitual criminals' behavior. Each of the discussed concepts provides a unique perspective on criminal activities, their development, and methods of prevention.

Differential Association Theory

Developed by: Edwin H. Sutherland (1939)

The main idea: Criminal behavior is learned from others through communication. Professional criminals learn the methods of crime from their colleagues. In addition, habitual criminals also adopt this type of behavior when they spend more time with delinquent people or gangs. In general, the theory explains how criminal activity is learned depending on the duration, frequency, and context of interaction with like-minded people.

Application to the current research:

Explaining how professional criminals learn to commit crimes.

Demonstrating why habitual offenders continue being criminals.

Social Learning Theory

Developed by: Albert Bandura (1977)

The main idea: People learn behaviors through observation and reinforcement.

In other words, people tend to imitate those who have received rewards for a particular type of activity. In criminal activities, such rewards can be money, status, and praise from other criminals. In addition, the theory also explains how criminal behavior is reinforced, for example, in a gang.

Application to the current research:

Providing an explanation for the imitation of criminal behavior.

Demonstrating how criminal activity can be reinforced.

Strain Theory

Developed by: Robert K. Merton (1938)

The main idea: Crime is caused by the inability to achieve socially acceptable goals by legal means.

According to the theory, poverty, unemployment, and the lack of access to education are examples of social strains that lead to crime. In other words, people who cannot reach success by legal means have a motivation to do this by illegal methods. In the case of habitual offenders, this theory partially explains their criminality, as they may have faced social strains that led to their crime. In turn, for professional criminals, the motivation to commit crimes may be a lack of financial resources.

Application to the current research:

Explaining the influence of poverty and social inequality on the development of criminality.

Rational Choice Theory

Developed by: Cornish and Clarke (1986)

The main idea: Criminal activity results from the offender's rational choice and their cost-benefit analysis of the situation.

Professional criminals rationally choose how and when to commit a crime and which victim to choose. This theory is especially relevant to them since they often think about potential profits and risks. In addition, the theory also explains how such criminals choose the target, the time, and the place of the crime.

Application to the current research:

Explaining the organized and methodical character of professional criminals' behavior.

Providing an explanation of the crime prevention measures that can be used to stop professional criminals.

Routine Activity Theory

Developed by: Lawrence Cohen and Marcus Felson (1979)

The main idea: Crime is the result of the interaction of three key elements: offender, victim, and guardian.

Professional criminals choose the victims based on their vulnerability and the potential reward. In addition, these offenders also take into account the response of guardians, that is, law enforcement, since the interaction of these three elements is necessary for a crime to occur. In turn, habitual criminals also look for a vulnerable

target, however, for them, the choice of a victim is not so important, as they continue to commit crimes even if they are caught.

Application to the current research:

Demonstrating how professional criminals choose their victims.

Providing an explanation of the preventive measures in the context of the current research.

Labeling Theory

Developed by: Howard Becker (1963)

The main idea: People who are labeled as criminals are often unable to return to conventional society as they face social stigma.

This theory partially explains the behavior of habitual criminals since they continue to engage in criminal activities despite the consequences. In addition, habitual offenders are often caught and sent to prison, which makes it difficult for them to find a job after they are released. In turn, professional criminals may also find it challenging to return to conventional society due to a lack of work experience during incarceration. However, for them, the main motivation to commit crimes is not the desire to be part of the criminal subculture but the desire to achieve financial gain.

Relevance of the Theoretical Framework

There is no single criminological theory that can fully explain the behavior of professional criminals and habitual offenders. This study will use several theories to provide a more complete explanation of their behavior. Each of these theories considers different aspects of the criminal activity of professional criminals and habitual offenders. The concepts of differential association and social learning theories help understand how criminals learn criminal behavior. Strain theory helps analyze the impact of social pressures on the criminal activity of professional criminals and habitual offenders. Rational choice theory is useful for analyzing the actions of professional criminals who rationally choose to commit crimes for financial gain. Routine activity theory helps understand how crime is committed by both professional criminals and habitual offenders. Labeling theory helps analyze the behavior of criminals after they are released from prison.

RESEARCH METHODOLOGY

Research methodology refers to the approach taken by the researcher during his/her study to address research questions and achieve the objectives of the proposed research. The type of methodology used depends on the research problem and the nature of data. Since this study focuses on criminological analysis of professional criminals and habitual criminals, a qualitative doctrinal research methodology is appropriate for this study.

Research Design

The descriptive research design is undertaken for this study. The study has a qualitative design because of the nature of the objectives which require undertaking a doctrinal inquiry to elucidate the characteristics, origins, and behavioural patterns of professional and habitual criminals.

A descriptive research design also allows the researcher to examine various aspects of professional criminals such as those of habitual offenders and assess their similarities and differences with organized crime forms.

Research Approach

The study will adopt a qualitative research approach because it will involve examining legal doctrines, theories, views of other researchers, and existing data. A qualitative approach is appropriate for this study because it aims to identify the nature of professional criminals, the characteristics of habitual criminals, how repeat offender relates to organized crime, and the responses of the criminal justice system towards professional and habitual criminals.

Sources of Data

This study will use secondary data sources because the research will rely on the analysis of existing data about professional and habitual criminals. The main sources of data include books, journals, and research reports on criminology, crime, and criminal justice. Other sources of information include published material and documents from appropriate government agencies and courts in jurisdiction. In addition, this study will use secondary data sources such as national and international legal documents, reports by recognized international organizations such as UNODC and World Bank, and Google Scholar to identify relevant literature on the research topic.

Data Collection Method

The paper will adopt a documentary review method to collect data for the study. Published materials on professional and habitual criminals will be reviewed and analyzed to identify the key issues and research questions. The data collected will relate to criminal law, organized crime, and criminology. Therefore, books, journals, publications, statutes, and reports relevant to criminology and criminal justice will be studied to reveal the core aspects that this research will address.

The collected data will be grouped according to the objectives and research questions. Published materials on professional and habitual criminals will be analyzed to identify the characteristics, causes, and criminological theories used to analyze the criminal behavior of the delinquents.

Data Analysis Plan

The data collected will be analyzed thematically using the doctrinal legal research analysis method. The analysis will focus on comparing the views of various researchers on the features of professional criminals and habitual criminals and the criminological theories that apply to them. In addition, the comparison of the criminal activities of professional and habitual criminals will be carried out to reveal their relationship with organized crime. The analysis will also highlight the criminal justice responses to professional and habitual criminals based on the views of other researchers and the existing legal frameworks.

The thematic analysis of the research data will help the researcher to organize and present the information logically while addressing the research objectives and questions. In addition, the method will enable the researcher to interpret the data objectively to reveal the key themes related to the research problem.

Ethical Considerations

Since this study will involve reviewing and analyzing information from other researchers, plagiarism must be avoided. Proper citations and references in APA 7th format will be used to acknowledge the work of other authors and researchers whose findings will be used in the study. Moreover, the research will uphold integrity by presenting the findings objectively without exaggerating the results and misrepresenting the views and findings of existing research.

Reliability and Validity

To ensure the reliability and validity of this study, the researcher will rely on information from credible secondary sources such as books, academic journals,

internet resources, and reports by recognized international agencies. The inclusion of multiple sources of information will make the findings more credible and reliable because the researcher can cross-verify unpublished information and facts from other sources. In addition, the researcher will use the findings of other researchers as a reference point to reveal additional facts and issues that were overlooked.

The discussion above highlights the qualitative doctrinal methodology that will be used in this study. The paper will involve examining the views and findings of other researchers on organized crime to reveal the nature of professional criminals and habitual criminals. The research will be conducted using secondary data sources like books, journals, and internet resources. The findings of published research on organized crime will be used to generate the conclusion about professional criminals and habitual criminals. In addition, the analysis will highlight the criminological theories that are applicable in analyzing the criminal behavior of professional and habitual criminals.

PROFESSIONAL CRIMINALS AND HABITUAL CRIMINALS: A COMPARE AND CONTRAST

It is important to recognize the difference between professional criminals and habitual criminals. Although both categories of offenders have repeatedly committed crimes, their underlying motives, methods, and relationships with the criminal justice system differ. This chapter discusses the differences between professional criminals and habitual criminals.

Professional Criminals

A professional criminal is an individual who treats committing crimes as a profession or a means of livelihood. Typically, professional criminals possess extensive knowledge and skills that allow them to carry out offenses without being detected and arrested. In most cases, professional criminals engage in criminal activities to gain financial profit, and they may work in organized crime.

Professional criminals rarely commit impulsive crimes. Prior to committing offenses, professional criminals carefully plan criminal activities, collect and analyze relevant information, and assign tasks to other criminals. In addition, professional criminals use sophisticated methods to hide their true identities and avoid getting caught by police.

Professional criminals engage in various types of crimes, including drug trafficking, human trafficking, money laundering, computer fraud, organized theft and burglary, arms trafficking, contract murder, and smuggling. Most professional criminals spend the majority of their time engaging in criminal activities, and they depend on illegal earnings.

Characteristics of Professional Criminals

Professional criminals can be characterized by the following features:

- a. They treat criminal activity as a profession.
- b. They have profound knowledge and expertise in criminal activities.
- c. They plan offenses meticulously.
- d. They may operate in organized crime.
- e. They engage in crimes to gain financial profit.
- f. They take measures to avoid detection and arrest.
- g. They may utilize advanced technology and forged documents.
- h. They may have complex hierarchical structures within criminal organizations.
- i. They share responsibilities and assign specific tasks to individual criminals.

Habitual Criminals

A habitual criminal is an individual who has repeatedly committed crimes. In most cases, such offenders have a significant number of arrests and convictions. Typically, habitual criminals do not treat criminal activity as a profession because they commit offenses due to various social, economic, and psychological factors, such as poverty, social deprivation, lack of parental supervision, and individual attitudes. Thus, these criminals are not motivated by economic gain.

Habitual criminals engage in a variety of crimes, including assault, burglary, theft, drug trafficking, robbery, and street violence. In addition, they may re-offend after being released from prison because the conditions that contributed to criminal behavior still exist. In many cases, habitual criminals suffer from social deprivation, substance abuse, and family issues.

Characteristics of Habitual Criminals

Habitual criminals can be characterized by the following features:

- a. They repeatedly commit crimes.
- b. Criminal activity may not be their profession.
- c. Their offenses can be caused by social and economic factors.

- d. They may have extensive criminal records.
- e. Their offenses may be motivated by individual attitudes.
- f. They may suffer from substance abuse and family problems.
- g. They may be arrested and imprisoned for a relatively short period of time.
- h. They can engage in impulsive offenses.
- i. They can be socially disadvantaged.
- j. They have difficulty adapting to prison life.

DIFFERENCE BETWEEN PROFESSIONAL CRIMINALS AND HABITUAL CRIMINALS

Headings	Professional criminals	Habitual criminals
Profession	Crimes is treated as a profession.	Crime is conducted repeatedly but not as a profession.
Motive	Financial gain is the primary motive.	Motives vary, including poverty, addiction, peer pressure, or personal circumstances.
Planning of criminals	Crimes are carefully planned.	Crimes are often spontaneous or opportunistic.
Skills	Possess specialized criminal skills.	Usually possess limited criminal expertise.
Group of criminals	Frequently work within organized criminal groups.	May act alone or with small groups.
Methods	Use sophisticated techniques and technology.	Use relatively simple methods
Risks	Usually avoid unnecessary risks.	Often engage in high-risk behaviour.
Regional	Operate nationally or internationally.	Usually operate locally or regionally.

Relationship with Organized Criminal Behavior

Professional criminals are active members of organized criminal behavior due to their managerial skills, criminal expertise, financial resources, and network of contacts. They are also responsible for managing illegal activities, recruiting new criminals, money laundering, and interacting with other international criminal groups.

Habitual criminals can become a significant part of organized crime because they are willing to rely on financial investment, protection, and opportunities offered by professional criminals. In addition, some criminals can change from being habitual

offenders to professional criminals with time, gaining knowledge and experience. The interplay between these two criminal categories can make criminal activity more organized and difficult to detect and prosecute. Therefore, it is essential for law enforcement agencies to develop appropriate investigative methods, intelligence analysis, and interagency coordination to combat organized crime. Despite the apparent differences between professional and habitual criminals, both types can contribute to the development of organized crime. It is essential to recognize these distinctions and understand how these criminal categories interact to design efficient criminal justice policy. Although professional criminals are usually goal-oriented and have higher skills and resources, both professional and habitual offenders increase the complexity of organized criminal activity.

CAUSES OF PROFESSIONAL AND HABITUAL CRIMINAL BEHAVIOUR AND THE ROLE OF WHITE-COLLAR CRIME

It is hard to think of a single reason for criminal activity. Most criminologists attribute human violence and unlawful behavior to socio-economic, psychological, environmental, and legal causes. The differences between professional and habitual criminals are also evident in the range and mix of precipitating factors. At the same time, this chapter also focuses on white-collar crime, as many professional criminals are involved in complex financial and corporate crimes.

Social Factors

Poverty, parental neglect, domestic violence, broken homes, lack of good schools, delinquent peers, and other social problems contribute to criminal activity.

Habitual offenders are known to come from socially disadvantaged communities where there is often a lack of parental control, education, job opportunities, and social acceptance.

Economic Factors

Poverty is one of the leading causes of crime. Lack of money, unemployment, and inadequate economic opportunities are vital criminal predictors. It is especially true for professional criminals, as they are often motivated by personal gain. On the other hand, habitual criminals are more likely to turn to crime to satisfy their material desires or impulses. In addition, economic inequality is a critical factor in criminal activity, as it can lead to the emergence of organized crime groups that can recruit desperate individuals.

Psychological Factors

Criminals often have abnormal psychological traits that prompt them to commit unlawful acts. Impulsiveness, aggression, low self-esteem, substance abuse, and other personality flaws are often present in unlawful individuals. While these factors may be evident in both professional and habitual criminals, the latter group is more likely to have emotional problems and resort to crime as a means of satisfying their desires.

Family Background

The family is the core of social life and the first agent of socialization. Criminals often come from dysfunctional families that fail to provide an adequate role model for their children. On the other hand, protective family environments can prevent delinquency and unlawful patterns of behavior. Dysfunctional families can include addicted parents, families lacking parental control, and other types of delinquent households.

Peer Association

Criminals are more likely to associate with delinquent peers rather than law-abiding individuals. According to the differential association theory, unlawful patterns of behavior can be learned from friends and family members. It is especially true for professional criminals, as they often seek out delinquent peers who can help them in their criminal career. In addition, peer group influence plays a significant role in determining whether an individual will resort to crime.

Substance Abuse and Addiction

Substance abuse is strongly linked to the development of criminal behavior. Criminals often use drugs to feel euphoria, aggression, or hallucination, as many narcotics have specific psychological effects. In addition, drug addicts frequently resort to crime to support their habits. Organized crime often takes advantage of compulsive drug abusers, as they are easily recruited and can serve as drug couriers or dealers.

Unemployment and Lack of Education

Limited access to good education is a significant predictor of crime. Low levels of economic development and the absence of job opportunities often lead to an increase in delinquency and unlawful behavior. Unemployed individuals are more likely to engage in criminal activities, as they have little motivation to work

illegally. In addition, professional criminals are often recruited from among the unemployed, as they have the time and energy to participate in organized crime.

Technology and Globalization

Technological progress has made it easier for criminals to engage in unlawful activities. Criminal groups are increasingly using modern technologies, such as the Internet, to engage in cybercrimes, online banking fraud, identity theft, and other digital offenses. At the same time, globalization allowed for the development of organized international crime, which is often hard to detect and prosecute due to jurisdiction issues.

Lack of Law Enforcement and Corruption

A crucial factor influencing criminal behavior is the level of criminal justice system effectiveness. When law enforcement agencies are corrupt or ineffective, many individuals are not deterred from committing crimes. In addition, the presence of corruption allows criminal groups to operate with relative safety and freedom. Several factors contribute to the inability of law enforcement agencies to combat organized crime, including corruption, slow processing of criminal cases, lack of forensic expertise, weak border controls, and limited international cooperation.

White-Collar Crime and Professional Criminals

The concept of white-collar crime was introduced in 1939 by sociologist Edwin H. Sutherland. According to Sutherland, white-collar crime is “an act committed by a person or persons of respectability and high social status in the course of his occupation or profession.” White-collar crimes differ from conventional crimes in that they are typically non-violent, committed for financial gain, and committed by individuals in positions of power and responsibility.

Characteristics of White-Collar Crime

White-collar crimes are usually characterized by the following attributes:

- a. They are typically committed by individuals with good education and successful careers.
- b. Such crimes are motivated primarily by financial gain.
- c. White-collar crimes are often related to fraud, corruption, and illegal business practices.
- d. They are committed in businesses, industries, and corporations.

- e. White-collar crimes are often challenging to prove and have severe consequences for the economy.
- f. Such crimes require the use of special knowledge and skills.
- g. Many white-collar crimes involve the illegal use of an individual's position and work environment.

Types of White-Collar Crime

There are many types of white-collar crimes, including corporate fraud, bank fraud, insurance fraud, tax fraud, money laundering, insider trading, bribery, embezzlement, cyber fraud, and identity theft. It is important to note that white-collar crimes can also be committed by government officials and corrupt bureaucrats. Consequently, political crimes also fall under the category of white-collar offenses.

Relationship between White-Collar Crime and Professional Criminals

Since white-collar crimes are often complicated and require special skills, they can only be committed by professional criminals. In addition, many white-collar crimes allow for high payouts while posing relatively low risks for offenders. Organized crime groups are frequently involved in white-collar offenses, as they have the resources and expertise to engage in complex financial crimes. Examples of white-collar crimes committed by professional criminals include financial fraud, corporate crimes, cybercrimes, banking fraud, and money laundering.

White-Collar Crime in Pakistan

In Pakistan, white-collar crime has become a significant security issue. Many government officials and business leaders commit financial and corporate crimes, such as bank fraud, insurance fraud, tax evasion, financial scams, cybercrimes, and money laundering. Addressing white-collar crime is essential to ensure the rule of law in the country, as well as economic stability and sustainable development.

There are many factors that can contribute to unlawful patterns of behavior. In particular, social, economic, psychological, and environmental factors can lead to delinquency and crime. Professional criminals and habitual offenders often have different criminal careers, as professional criminals are more likely to engage in organized and white-collar crimes. However, both types of offenders can be motivated by financial gain, poverty, access to drugs, negative family dynamics,

delinquent peers, and other factors. It is crucial to fully understand the causes of criminal activity to mitigate the consequences of crime and punish offenders accordingly.

IMPACT OF PROFESSIONAL CRIMINALS, HABITUAL CRIMINALS, ORGANIZED CRIME, AND WHITE COLLAR CRIME ON SOCIETY AND CRIMINAL JUSTICE

Professional criminals, habitual criminals, organized criminals, and white-collar criminals have a significant impact on society. Their impact can be both direct and indirect. While the impact of ordinary crimes is usually limited to the victim, organized and white-collar crimes can have adverse effects on the economy, government, and overall social life. The purpose of this chapter is to discuss the impact of professional criminals, habitual criminals, organized crime, and white-collar crime in detail.

Impact on Public Safety

Professional and habitual criminals have a considerable impact on public safety. The main impact is the fear of being a victim of a crime, which results from the fact that ordinary crimes are the most widespread type of crime. Ordinary crimes include robbery, burglary, kidnapping, drug trafficking, cybercrime, and violence.

The impact of ordinary crimes on public safety includes the following:

- a. Increased fear of being a victim of a crime.
- b. Lower quality of life.
- c. Increased personal security costs.
- d. Psychological trauma.
- e. Increased level of violence.

Habitual criminals have a considerable impact on public safety because they repeatedly commit crimes in one community, while professional criminals often engage in large-scale operations that impact many people.

Economic Impact

Crime has a significant impact on the economy because it causes financial losses to businesses and the government. The main negative effects of crime on the economy are as follows:

- a. Decreased investment.
- b. Increased insurance costs.

- c. Decreased economic growth.
- d. Loss of revenue in the form of taxes.
- e. Damage to property.
- f. Higher expenditures on security and law enforcement.

White-collar crimes, such as banking fraud, embezzlement, and corruption, can cause the government and businesses to suffer financial losses amounting to millions or even billions of rupees, which is way more than the losses caused by ordinary crimes.

Impact on the Criminal Justice System

The increased level of crime has a significant impact on the criminal justice system. First, persistent offenders, such as professional criminals, habitual criminals, and organized crime groups, put a significant burden on the criminal justice system because of the following:

- a. High incarceration rates.
- b. High workload for law enforcement officers.
- c. Delays in the judicial process.
- d. High costs of maintaining jails and other correctional facilities.
- e. High recidivism rates.
- f. Inability to investigate and prosecute sophisticated crimes.

Professional criminals and organized crime groups often take advantage of the complexity of the justice system and the lack of resources of law enforcement agencies, which makes the process of investigation and prosecution difficult.

Social Impact

Crime has a significant impact on social life and social interactions. The main negative effects of crime on society are as follows:

- a. Social disorder.
- b. Family destruction.
- c. Loss of faith in the government and law enforcement.
- d. Higher crime rates among the youth.
- e. Social inequality.
- f. Increased social distance between citizens.

Children who grow up in areas with high crime rates are more likely to become victims or offenders themselves. Moreover, crime causes social disorder, which leads to poor social interactions and the deterioration of social institutions.

Political and Institutional Impact

Organized crime and white-collar crimes have a significant impact on the government and other political institutions. The main effects of organized and white-collar crimes on the government are as follows:

- a. Corruption.
- b. Higher crime rates.
- c. Weakened institutions.
- d. Higher expenditures on law enforcement.
- e. Decreased level of trust in the government.

When corruption becomes widespread, criminal groups and persistent offenders can use corrupt officials to protect themselves from prosecution.

Impact of White Collar Crime

White-collar crimes are usually non-violent, but they can have serious consequences for businesses, the economy, and society as a whole. The main negative effects of white-collar crimes are as follows:

- a. Higher business costs.
- b. Higher unemployment rates.
- c. Financial instability.
- d. Decreased trust in financial institutions.
- e. Loss of jobs for employees.
- f. Damage to the reputation of businesses.
- g. Increased corruption.

Unlike ordinary crimes, white-collar crimes can affect a large number of people at once, such as in the case of banking fraud, insurance fraud, tax fraud, and other types of financial crimes. In addition, white-collar crimes often result in the closure of businesses, which leads to higher unemployment rates and social inequality.

International Aspects of Organized Crime

Organized crime has a significant impact on international relations and global security. The main international aspects of organized crime are as follows:

- a. Human trafficking.

- b. Drug trafficking.
- c. Weapons trade.
- d. Poaching.
- e. Money laundering.
- f. Cybercrime.
- g. Terrorist financing.

Organized crime groups often operate globally, which complicates the work of law enforcement agencies and requires international cooperation to combat them.

Findings

Professional criminals and habitual criminals differ significantly in terms of motives, methods, and level of organization. While professional criminals are goal-oriented and think of crime as a long-term profession, habitual criminals are repeat offenders who do not necessarily think of crime as their profession. Organized crime groups consist of professional criminals who play different roles within the group. The role of white-collar crime in organized crime is increasing due to the increasing use of financial assets in criminal activities and the spread of globalization.

Poverty, unemployment, unstable family relationships, delinquent peer groups, and substance abuse are some of the main causes of habitual offending. In addition, the current punishment system in most countries is ineffective because it is designed to punish criminals rather than rehabilitate them. Therefore, the recidivism rates among offenders are very high.

In order to reduce the level of crime, law enforcement agencies, government agencies, communities, businesses, and educational institutions should cooperate. It is necessary to revise the current strategies for preventing and punishing crime. Moreover, in order to combat white-collar and organized crime, it is necessary to collect and analyze intelligence data and ensure the cooperation of government agencies at different levels.

RECOMMENDATIONS

Based on the research conducted, I would like to suggest the following recommendations on how to reduce professional criminality, habitual offenses, organized crime, and white-collar crime:

Improvement of Law Enforcement Agencies

Police should be equipped with modern investigative instruments, forensic laboratories, digital surveillance equipment, and cybercrime investigation tools besides regular training courses.

Intelligence-Led Policing

Police should conduct intelligence-led policing by gathering and analyzing criminal intelligence and sharing it between national and international law enforcement agencies. This will help stop organized crime.

Criminal Justice Reforms

The criminal justice system should be reformed by the government by strengthening the relevant laws against organized crime, cybercrime, money laundering, corruption, and financial fraud in addition to fast-tracking conviction while protecting and advocating for victims' rights.

Rehabilitation of Habitual Criminals

In addition to punishment, correctional facilities should offer rehabilitation programs such as educational, vocational, psychological counseling, drug treatment, and employment programs to reduce recidivism.

Public Awareness and Crime Prevention Campaigns

The government, community, and state-sponsored institutions should launch awareness and prevention campaigns on organized crime, cyber fraud, corruption, and white-collar crime. They should also encourage people to report or give tips to the police on criminal activities such as money laundering, cyber-espionage, and counterfeiting.

Measures to Combat White-Collar Crime

The commercial and financial sector should reinforce internal auditing, anti-money laundering strategies, and financial crime control, whistleblower policies, and digital fraud detection tools. Relevant government departments should take strict action against white-collar crimes by regulating corporate governance, financial management policies, money transfers, and cybersecurity technologies. Regardless of their status, everyone is equal before the law, hence disciplinary actions should be taken against criminals.

Diplomatic Cooperation and Extraditions

Since organized crimes are usually led by professional criminals who operate in more than one country, international coordination is crucial in investigating and

prosecuting criminal activities. Therefore, mutual assistance and extradition treaties between countries and the role of independent international organizations such as INTERPOL and the United Nations should be considered.

Research and Innovation

Universities and other research institutions should continue to conduct criminological studies on professional and habitual criminals, organized and corporate crime, and cybercrime to help the criminal justice system fight these vices.

CONCLUSION

Professional criminals and habitual offenders are two types of criminals studied in criminology. While the former engages in crime as a profession, the latter continues to commit crimes consistently due to social, economic, psychological, or environmental factors. I have concluded that despite differences in approaches and motivations, professional and habitual offenders pose a serious challenge to society and the criminal justice system.

My work shows that criminal behavior is influenced by a combination of individual, social, economic, psychological, and environmental factors. Therefore, it is not possible to use a single criminological theory to explain the causes of professional and habitual criminality. However, there are various theories that can be applied together to understand crime and criminals better. The most effective theories to analyze professional and habitual criminality are Differential Association Theory, Social Learning Theory, Strain Theory, Rational Choice Theory, Routine Activity Theory, and Labeling Theory.

Professional criminals and habitual offenders have a significant impact on society. Organized crime, corporate crime, and cybercrime have increased tremendously due to advanced technologies and globalization and continues to threaten social and economic stability. White-collar crimes such as fraud, money laundering, tax evasion, corruption, and cyber-enabled offenses have adversely affected the world's economy and public confidence in the modern globalized world. There is a need to promote public awareness, prevent and punish crimes, and reinforce financial and legal institutions worldwide. Reducing and controlling professional criminality, habitual offending, organized and corporate crime, and cybercrime require a concerted effort in intelligence gathering, improving the criminal justice system,

implementing correctional reforms, and promoting diplomatic cooperation in prosecuting and punishing offenders.

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Customary practices and women's rights: A study of Wanni and Swara in Pakistan

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ABSTRACT

This paper explores the extreme effect of traditional values, namely, Wanni and Swara, on women basic rights in Pakistan, and the socio-cultural and institutional obstacles that reinforce these values. It examines how these firmly established practices, frequently supported by informal justice systems such as Jirgas, dismantle formal law and are part of gender-based violence, even though women are constitutionally and religiously assured equality in Pakistan. The study is a critical evaluation of the effectiveness of interventions to reduce such practices based on the overall assessment of the role of civil society organizations in the implementation of such programs as Amn-o-insaf to make informed policy suggestions to implement future reforms. It also discusses the view of Pakistani citizens of such practices and finds that most people condemn such practices as marriage with Quran, Wani, Swara and child marriage as being crimes against women. This exploration will also outline the complicated interrelations involving legal pluralism that forms the coexistence of statutory, Islamic, and customary laws and inability to enforce international human rights commitments, encompassing those guaranteed in CEDAW and CRC, in the Pakistani family law system. It also examines the disproportionate impact of such traditional practices on land rights and access to justice by women especially when these practices are combined with distorted interpretations of religion and culture.

Keywords: Wanni, Swara, customary practices, women's rights, Pakistan, gender-based violence, legal pluralism, access to justice.

THESIS STATEMENT

In the tribal regions of Pakistan, the women are subjected to human rights abuses such as Wanni and Swara practices where they are forced into marriage to resolve conflicts against their rights to consent, dignity and equality. This research paper will argue that these patriarchal cultures maintain gender violence, and they do not comply with laws and international human rights requirements in Pakistan and the need to enforce and change the culture to empower women.

INTRODUCTION AND BACKGROUND OF CUSTOMARY PRACTICES IN PAKISTAN

Inclusive governance and sustainable development aims and objectives, including the United Nations Sustainable Development Goal 16, which proposes accessible and effective justice systems, particularly access to fair systems by vulnerable groups, have been supported by the recognition of access to justice as a fundamental human right worldwide (Akram, 2024). However, in Pakistan, there are serious problems in reaching this ideal, which is due to the widespread presence of legal pluralism, according to which formal statutory laws are accompanied by informal customary and religious laws (Khalid et al., 2015).

Brief explanation of Wanni and Swara

Wanni and Swara are customary practices that are deeply rooted traditionally, especially in part of the tribal and rural Pakistan, that requires forced marriage of women as a dispute settlement practice or as a way of ending feuds between a family or a tribe (Rasheed & Mar'iyah, 2024). The practices tend to turn women into commodities, who are traded to prevent further opposition or violence, thus, diminishing their agency and other human rights, including the right to select a spouse and live without pressure (Tabassum et al., 2017). This system has been characterized by Jirgas, which is the informal justice forums though they may be necessary in the rural societies, most of the time it lacks the legal structure and it is discriminatory and does not conform to the international human rights laws (Shahid, 2012). These forums tend to use women and children as conciliatory tools, which continue to recycle gender-based violence and deprives them of obtaining equal justice (Shahid, 2012). This leads to the sale of young girls in exchange of money or traded to resolve disputes involving human lives, honor or money between tribes and clans (Tabassum et al., 2019). These activities strengthen the idea of women as

a lesser entity in society, which further alienates them and increases their susceptibility to different types of mistreatment and exploitation (Khattak, 2020). These socio-cultural arrangements, such as Jaheez, Watta Satta, Walwar, Vani, Swara, and marriage with the Quran, are highly criticized as detrimental to the rights and status of women in Pakistani culture, which usually results in their victimization through encouraging them to commit a crime, lack of giving a choice to whom to marry, or to the commodification of women towards the gain of male patriarchs (Tabassum et al., 2019). Although Pakistan is a signatory to the international agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women and has country policy frameworks, such as the National Action Plan on Human rights, these highly based customary practices still serve to deny women access to justice and further strengthen systemic inequalities (Akram and Khan, 2024).

Statement of the research problem

Regardless of having the legal frameworks to protect the rights of women, the relentless culture of the customary practices like Wanni and Swara are a major hindrance to women gaining access to justice and continues to foster a gender inequality in the socio-legal realm of Pakistan.

Significance of the study

The research is, thus, essential in pointing out the inconsistencies between the legal provisions and their practical application, especially in the context of women rights in the areas where the customary laws often override the laws (Akram and Khan, 2024). Shedding light on such matters, the study will inform policy changes and advocacy activities that help enhance rights against women in Pakistan and achieve a more equal access to justice (Azim, 2021; Baloch and Tahir, 2018; Rizk, 2024). It aims to examine the intricate interdependence between formal law and informal customary rules and Gharekhanitaka of conflict and possible concord to achieve a significant level of protecting the rights of vulnerable women in Pakistan (Ahmed and Wahab, 2019; Akram and Khan, 2024). Moreover, analyzing the attitudes of educated men and women towards these anti-women traditions, the paper will help reveal possible avenues of cultural change and better gender relationships (Tabassum et al., 2019). In addition, this study will particularly examine how civil society organizations and development programs will confront such practices and

increase access to justice against women victims of Wannī and Swara in Peshawar, Khyber Pakhtunkhwa (Akram, 2024b, 2024a). The greatest effectiveness of these interventions can be achieved by their correspondence to more extensive governmental policy frameworks and constitutional provisions, and with already existing policies and strategies in the nation like the National Policy on Ending Violence Against Women and Girls (Akram and Khan, 2024). In like manner, the more effective interventions to achieve justice available to vulnerable populations is synergized with larger governmental policy structures and the constitution (Akram & Khan, 2024). The study will thus examine areas of synergy and misalignment between the work of CSOs and the national system of policies and the facilitators and anchors that result in these alignments and misalignments respectively (Akram, 2024). The analysis of policy alignment will regard national legal frameworks and international standards of human rights as the frameworks and utilize the national legal framework as the tool to promote gender justice, with a specific emphasis on the role played by non-state actors in complementing the activities of the government (Civil Society and Access to Justice in Pakistan: A Policy Alignment Analysis of Gender, Minorities, and Rule-of-Law Frameworks, n.d.) and the international legal framework.

Research Objective

To determine how the customary practices such as Wannī and Swara affect the rights of women in Pakistan, especially in tribal areas; to investigate how the practices are against the national and international laws on human rights and to seek ways of eradicating the practices through legal, social and cultural means in order to achieve gender equality and justice.

Research Questions

- a. In the tribal areas of Pakistan, what are the consequences of the traditional culture that exists between Wannī and Swara and the basic rights of women, especially their right to consent, their dignity, their equality and their freedom of choice?
- b. How do Wannī and Swara infringe Pakistani constitutional and statutory laws and the international standards required in protection of human rights against women and children?

- c. What are the legal, social and cultural actions that can be embraced to be effective in stopping Wanni and Swara and ensuring gender equality and justice in Pakistan?

CONCEPTUAL FRAMEWORK AND DEFINITIONS

Meaning of customary practices

Customary practices, also referred to as customary law, refer to an accepted pattern of behavior or tradition that is commonly recognized and practiced by a specific community or society and is often an unwritten unenforceable collection of rules that govern social practice and intercourse (Imran, 2023). The practices are usually deeply rooted in cultural, religious and historical backgrounds and even influence access to justice to a great extent even when there are formal or established legal frameworks (Arif et al., 2025; Civil Society and Access to Justice in Pakistan: A Policy Alignment Analysis of Gender, Minorities, and Rule-of-Law Frameworks, n.d.).

Definition and historical background of Wanni

Wanni, or Vani, Swara is a highly rooted traditional rite in some areas in Pakistan, most prominently tribal, or Khyber Pakhtunkhawane, in which young girls are married off as a measure of settling a dispute or compensating a crime committed by a male relative (Tabassum et al., 2017). This vice commonly marries minors and in effect, they deny these girls the right to self-determination and education and thus, the cycles of gender inequality and vulnerability continue (Tabassum et al., 2017).

Definition and historical background of Swara

The other common tradition practice is Swara or Pashtun culture women or young girls are married off to an offended family to absolve conflict especially murder or honor-related crimes, or, in other words, buy them as substitutes (Hanan, 2017). Both Wanni and Swara are excellent examples of how heavily patriarchal norms can bypass the statutory laws, thus making it hard to enforce the legal rights, especially with respect to the inheritance and marital consent (Khaleel et al., 2023). Such practices are commonly defended by the pretext of cultural customs, but they actually become a direct contradiction of constitutional rights of equality and non-discrimination in Pakistan and even the constitutional requirements of international

human rights, to which Pakistan is a signatory (Akram & Khan, 2024; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.).

Role of tribal systems and Jirga in dispute resolution

These social courts led in many cases by the elderly or powerful people, in some cases with the consent of the court, often make use of cases that ordinarily would have been the subject of the official legal system, thus circumventing the official legal system and usually disadvantaging women in the name of honor (Azim, 2021). Such an infiltrating nature of customary laws especially in land tenure arrangements tends to defeat statutory laws, which is a colonial heritage that reinforced such trends in South Asia (Khalid et al., 2015). This legal pluralism may also create selective effects, i.e. the interpretation of customary law in a patriarchal manner may create gendered exclusions, especially in relation to landownership and property rights (Waheed, 2025). These customs shine light on the enduring conflict between official legal systems and unofficial traditional structures, and have strong consequences on the access to justice as well as the capacity of women to exercise the basic rights (Waheed, 2025). To illustrate, even though the constitution and laws in Pakistan provide women inherited rights, the customary laws regularly negate these rights, thus compelling women to abandon their rights in favor of tradition or family respect (Khalid et al., 2015). These and similar practices not only violate the 2011 Prevention of Anti-Women Practices Act, which criminalizes the denial of women of their right to inheritance, but also reflect how firmly patriarchal norms remain in control over the role of women in land management, and in such cases, women are often under a pressure to give up their rights to relatives of the same sex (Waheed, 2025).

PRACTICE OF WANNI AND SWARA IN PAKISTAN

Areas where Wanni and Swara are practiced

Wanni and Swara are especially common in rural and tribal Pakistan, including Khyber Pakhtunkhawa (formerly NWFP), Balochistan and parts of Punjab and Sindh, where tribal law, in most cases, predominates over statutory law, creating a difficult legal situation (Azim, 2021; Imran, 2023). Although those are traditional mechanisms, many of which are organized by local Jirgas, they have privilege to make a decision that violates the rights and autonomy of women, as several studies of dispute resolution in these areas are indicated (Hanan, 2017; Khalid et al., 2015).

It is especially noticeable in such cases as Karo-Kari, Vani, and Swara, when women are coercively forced to get married, in most cases without their consent, and against their basic human rights (Saeed et al., 2009; Tabassum et al., 2019). This is an indication of a strongly held patriarchal society in which women are viewed as property and their life is often put at risk either by honor killing or by forced marriage (Saeed et al., 2009). The Supreme Court of Pakistan has been in the habit of denouncing such anti-women practices, but their number has just been increasing, especially the cases of Wannī, Swara, child marriage, and forced marriage (Riaz, 2013; Women, Violence and Conflict in Pakistan, 2018). Even though the government tries to apply the national policy frameworks to address the problems of protecting vulnerable groups, like the National Action Plan on Human Rights and the National Policy Framework on Ending Gender-Based Violence, these practices continue to take place, further complicating the situation of women in accessing justice and demanding their rights (Akram & Khan, 2024; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.). This enduring inequality highlights the necessity of complex interventions that would not only reinforce the implementation of laws but also deal with the socio-cultural context that underlie these obstructive traditions in different societies (Akram, 2024; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). Moreover, these problems are usually complicated by the intervention of non-state actors, including Jirgas and Musalihat Anjumans, who often act outside the law and have the freedom to legalize such practices, which violate the rights of women, even despite constitutional guarantees (Akram, 2024; Albrecht et al., 2011). This unofficial justice system tends to isolate women and girls and does not guarantee that they will be not the victims of violence and oppression (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.). Additionally, the prevailing power of these informal legal systems frequently results in those cases when the local police is unwilling to take action, sometimes even supporting out-of-court settlements that only harm the victims (Azim, 2021).

Procedure and justification used by tribal councils

They can be described as tribal councils, with Jirga being one of the more prominent, using traditional means justifying Wannī and Swara as a part of Parkhtunwali and other traditional codes, and serving as a tool to preserve inter-

tribal peace and honor, despite the cost, in the form of women autonomy and basic rights (Baloch & Tahir, 2018; Khan and Samina, 2009). The justification of such practices is usually based on the fact that the further violence is prevented or the family honor is restored, but such justification systematically disregards the topic of agency and human dignity of the women affected (Imran, 2023). This is also enhanced by the structural constraints of the formal justice system and such structural problems as a lack of judicial, police, and prosecutorial systems that hinder the efficient enforcement of pro-women laws (Zubair et al., 2018). These weaknesses are insufficient institutional capacity, lack of specialized training of judges and law enforcement on gender sensitive matters, and lack of resources, and all these lead to an environment where discrimination against women such as Wanni and Swara thrives unchecked (Rizk, 2024). Accordingly, the overreliance on informal dispute resolution procedures and insufficient access to formal justice, coupled with insufficient legal literacy, is a disproportionate factor in women and contributes to gender-based violence (Akram and Khan, 2024; Rizk, 2024). Although as an act of settling disputes, the giving away of women and girls is criminalized under the Protection of Women Law 2006, its continued existence reflects a major disparity between the law and its application (Women, Violence and Conflict in Pakistan, 2018). Such lack of connection is usually exacerbated by the absence of specific policies and uniformity in the enforcement of legal frameworks in various provinces, which continues to impair the work of the judiciary and contributes to gender inequalities (Rizk, 2024). Also, the lack of legal redress of women in these informal systems and the refusal of the appellate courts to uphold the rule of law in favor of the order makes their exposure to exploitative judgments a perpetual problem (Women, Violence and Conflict in Pakistan, 2018).

Social and cultural factors supporting these practices

The resilience of Wanni and Swara is highly established in a complicated web of patriarchal institutions, historical explanation of the religious texts, as well as socio-economic addictions that enslave women to their subservient position, thus they are exposed to be exploited as commodities to resolve disputes (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.). These traditions are also supported by the statement of communal honor and the necessity of practicing social solidarity in the tribal organization which in many cases impairs

individual rights of women and their welfare (Imran, 2023). Furthermore, the lack of access to education, financial resources, and legal rights awareness makes women even more vulnerable and struggle to defy these established customs and demand formal justice (Nasrudin et al., 2024). The societal pressure to adhere to traditional norms through the lens of which the need to address the issue via external legal means is labeled as defiance by the community values, and thus is exposed to the dangers of being ostracized (Hamzaoglu, 2024). Although it is acknowledged that alternative dispute resolution is less expensive, more accessible, and culturally aligned, in most cases they are not applicable and even damaging to the victims of violence against women, especially when they did not manage to solve the gender power disparities in marital or family settings (Abdul Aziz et al., 2012). The socio-cultural normative structure that is highly patriarchal and the political interests of different leaders and parties also undermine the successful enforcement of the laws of women protection (Zubair et al., 2018). In fact, traditional ways of doing things and the interpretation of the religious texts often supersede the statutory laws, thus, hindering the issue of safeguarding the rights of women on marriage and divorce (Shahid, 2018).

Impact on victims (women and girls)

The immediate result of such established practices is drastic in nature, as victims tend to experience serious physical and psychological trauma, forced marriages, sexual violence, and institutionalized abuse; this results in a systemic long-term mental health problem and social marginalization (TRAUMA-INFORMED SOCIAL WORK INTERVENTIONS FOR WOMEN SURVIVOR DOMESTIC ABUSE: A COMPARATIVE STUDY BETWEEN the UK and West-Africa, n.d.). This involves being forcibly married off to older men, rape in marriage, and economic manipulation, which all undermine their independence and future opportunities in life (Tabassum et al., 2019). Additionally, their families and societies tend to ostracize them in case they chose to resist or escape such arrangements, which also adds to their isolation and susceptibility (Tamunomiegbam & Arinze, 2024). The social stigma to conform to the traditional practices will often force the victims to tolerate the abuse in order to avoid disgracing their families or community and the stigma around divorce or separation

in traditional cultures will help to maintain the cycle of abusive relationships (Stamatakis, 2024).

IMPACT ON WOMEN’S FUNDAMENTAL RIGHTS

Violation of the right to consent

By forcing a woman to marry against her will and frequently subjecting her to degrading situations against her real consent, Wanni and Swara is a fundamental violation of the right of choice and informed consent, which relegates her to the status of a commodity to settle the score (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). This denial of agency is a direct violation of the international human rights standards of supporting the right of an individual to self-determination in relation to marriage and personal security (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). In addition, the fact that these arrangements do not imply the consent of a woman violates the standards of just legal safeguarding and human dignity, as they are understood in the international system of human rights (Sugitanata et al., 2023).

Violation of dignity and personal liberty

Wanni and Swara routinely and methodically strip women of their dignity and their personal liberty, objectifying them as fungible goods in a exchange and violating their basic human rights, such as the right to freedom of discrimination and the right to body integrity (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.; Sugitanata et al., 2023). The practices also deny women their freedom of movements, right to education and right to health since victims are usually kept in captivity, deprived of education opportunities and inappropriate healthcare services, which only worsen their marginalized positions (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.). These offences can cause serious psychological trauma, such as depression and isolation, and therefore can be very dangerous to their overall well-being and in some extreme cases, even death rates (Omoniyi, 2020; Sugitanata et al., 2023; Tabassum et al., 2019).

Gender discrimination and inequality

The establishment of Wanni and Swara traditions strengthens the historical power relations by placing women in a subordinate role and placing them in a position of systemic gender discrimination in all aspects of their lives (NATIONAL POLICY

ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). This organizationalized oppression manifests especially in the marital and family settings where the rights of women are easily neglected in order to offer less autonomy and more susceptibility to violence (Kerrigan et al., 2012). Legal provisions, including but not limited to section 9 of the Hindu marriage act, also contribute to this inequality as they through the requirement to cohabit unwillingly drive women into non-consensual sex and thus violate their fundamental dignity and reproductive autonomy (Malik, 2025). The given legal framework in question actually shifts the most important questions on women sexual and reproductive autonomy onto the judicial plate, reflecting larger trends in the society of gender-based violence that is often condoned according to cultural norms or misunderstandings of religious principles (Malik, 2025; NATIONAL POLICY ON ending violence against women and girls, n.d.).

Psychological, social, and physical consequences

Such actions contaminate in-depth psychological agony, such as depression, anxiety, and post-traumatic stress disorder, which are supplemented by social ostracization, as well as the dire physical health consequences of forcible marriages and maltreatment (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). Abduction and exploitation cases also contribute to the emotional and psychological pressure, and the total necessity of massive alterations aimed at eradicating gender-based violence and protecting women rights (Zia, 2025). Patriarchal society and cultural practices which allow marginalization and dehumanization of women also enhance such forms of violence on women whose sex may be coerced and tormented psychologically in the name of marriage (Joshi, 1970). Such traumatizing experiences usually cause a terrible loss of self-esteem and serious mental and physical poor health, as well as higher suicide attempt risks and chronic illnesses (Thomas et al., 2019). Additionally, the threat of forced marriages because of the customary sanctions might cause serious psychological trauma, which may reveal in the form of marriage conflicts and manipulative behaviors of men (Sugitanata et al., 2023).

LEGAL FRAMEWORK IN PAKISTAN

Constitutional provisions protecting women's rights

According to the constitution, Pakistan secures the basic human rights and pursues the gender equality with the help of several articles which are proclaimed in reference to its adherence to the international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (Akram & Khan, 2024). Nevertheless, even with these constitutional guarantees and global commitments, there still exist tremendous loopholes between legal texts and their real application, which frequently leaves women exposed to endemic patriarchal norms and by the lack of legal support (Akram & Khan, 2024; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.). As an example, although Article 25 of the Pakistani Constitution specifically outlaws the practice of discrimination, specifically on the basis of sex, violence against women still remains a widespread problem, being, in many cases, condoned by the culture or poorly understood religious principles (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.).

Pakistan Penal Code and laws prohibiting Wanni and Swara

Pakistan Penal Code criminalizes some of the acts against women violence but explicit legal provisions that explicitly refers to Wanni and Swara practices as their own offenses have underperformed in the past and, therefore, have been a problem in prosecution and conviction. Although the legislative ban on these traditional customs was introduced later, the fact that they continue to exist shows the lack of connection between the official law bans and the actual implementation of those bans in the semi-legal systems of the informal justice systems existing in most rural locations (Akram and Khan, 2024; Moazzam, 2025). This usually leads to a high rate of cases remaining unreported or unsolved using official legal procedures (Tabassum et al., 2019).

Prevention of Anti-Women Practices Act, 2011

This Act was designed to explicitly criminalize traditional practices that negatively affected women, such as marriage to the Quran, forced marriages, and other types of gender-based violence, to offer a more powerful legal framework to prevent and punish them (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.; Siddique and Shah, 2023). With these legislative measures, the enforcement and actual implementation of the Act have not been without its challenges, and thus, there are still challenges of eliminating these deeply rooted

practices because of the societal level resistance and failures in the judicial processes (Khalid, 2025). Although legislative changes, such as the Prevention of Anti-Women Practices Act of 2011, have implemented criminal measures to combat all these forms of gender-based violence, including the Wanni-like and Swara-like practices, they often fail to work due to the absence of a strict enforcement policy and the ingrained patriarchal traditional norms in society (Ahmad, 2023; Waheed, 2025). As a result, women in Pakistan continue to be very vulnerable to social, domestic and sexual violence which has been enhanced by the use of Sharia laws and other discriminatory laws like the Zina Hudood Ordinance of 1979 (Imran, 2005).

Role of courts and judiciary (key judgments)

However, even with these legislative efforts, the judicial system is often not good at protecting the rights of women because of the legal grey areas and the overwhelming effect of parallel customary and religious judicial frameworks (Cheema, 2024; Moalla and Darmstadt, 2024). These unofficial justice systems tend to exist beyond the scope of the official legal systems, and as a result, the problems of inconsistent application of the laws and making the situation even more challenging, women find it hard to access justice (Abdul Aziz et al., 2012). These loopholes in the law also help in the persistence of aspects of marriage such as marriage with holy book of Quran, Wani, Swara, and child marriage, which have been categorized as serious crimes against women in Pakistan (Tabassum et al., 2017). In addition, the implementation of pro-women laws is still heavily compromised by the fact that, even though Pakistan has constitutional and international obligations to protect the rights of women, the impact of the practice remains unenforced because of the lack of implementation of state provisions (Ahmed, 2016; Akram and Khan, 2024). Despite legislative progress, such as the National Action Plan on Human Rights (2016, updated 2020) and National Policy Framework on Ending Gender-Based Violence, there are still substantial gaps in the process of implementing an in-depth strategy to protect women (Akram and Khan, 2024). Nevertheless, the struggle to achieve full realise of these protections is usually influenced by strong socio-cultural barriers that hinder women to access their shares of properties and inheritance, even in the face of Islamic provisions and several acts in Pakistan to protect these rights (Khaleel et al., 2023).

INTERNATIONAL HUMAN RIGHTS STANDARDS

Relevant international instruments (CEDAW, UDHR, CRC)

Pakistan has signed to many international human rights documents that seek to eradicate the discrimination and violence against women including the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration and Platform to Action and the Sustainable Development Goals (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.). These international obligations highlight that Pakistan formally acknowledges the necessity to promote the rights of women, but still there remain major issues in the process of implementing these promises into legal and social changes that are actually protective of women (Khan, 2015).

Pakistan's obligations under international law

It is the formal duty of the Pakistan government therefore to respect human rights, and to abhor gender-based violence, which is further defined in the acknowledgment of the government of Pakistan towards the principle of due diligence as defined by international law (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). With these promises, local laws and social systems often do not match the international norms, especially regarding women and children protection into the informal justice systems such as the panchayat (Akram & Khan, 2024; Shahid, 2012). This discrepancy is further augmented by the fact that women in Pakistan are usually not used to the idea of personal rights and they saw their tasks as domestic chores because of their upbringing and socialization (Khaleel et al., 2023).

Comparison between international standards and ground realities

Although Pakistan has ratified international documents like the CEDAW, which requires countries to eradicate any form of discrimination against women, the domestic legislation is often the stark contrast in reality, as they do not reflect these stipulations in their own acts (Akram and Khan, 2024; Khan, 2015). This discrepancy between the international obligations and domestic realization gives the opportunity to maintain the existence of gender-based violence, which is why the urgency of the legal regulation and the legal reforms with the focus on the rights of women and their effective enforcement is critical (Multiculturalism and Interculturalism - Managing Diversity in Cross-Cultural Environment, 2023;

NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN and GIRLS, n.d.). The mismatch between global human rights standards and national legal realities is also underscored by the fact that Pakistan has occupied the lowest position in the global gender parity indicators, which imply structural failures in the economic sphere, education, health, and the political empowerment of women (Khattak, 2020). This continued inconsistency on the way of international commitments and national law implementation seriously hinders the substantive development of gender equality and the eradication of violence against women and girls (Akram & Khan, 2024; Hughes, 2017).

ANALYSIS: LAW VS. CUSTOM

Conflict between customary practices and formal law

In Pakistan, the official system of law and the system of customary practices often lead to the deep clash with each other, especially in the rural regions where the system of informal justice, the jirgas and panchayats, are often imposed on state law (Phattanasin et al., 2025). Although they are highly rooted in the cultural norms, these informal forums are seen to work beyond international laws governing human rights, especially when it comes to the way they treat women and children as being treated as a means of reconciliation and not as a rights holder (Shahid, 2012). The rulings of these institutions, including those concerning so-called honor killings (karo-kari or siyah-kari), often run against the most basic human rights and are often not questioned by the established judicial structure, creating a vicious circle of impunity (Azim, 2021). This parallel legal system greatly discredits the authority of the state and its ability to implement pro-women laws, which leaves lots of women without proper court actions and places them in the marginalized position (Akram & Khan, 2024). These disparities are further ensconced in the domination of the male policymakers and parliamentarians who instill restrictive attitudes towards them, which tend to deny women their basic rights and access to justice (Bhamani et al., 2023).

Weak enforcement and implementation challenges

Even though there has been an increase in laws that seek to safeguard women, their application has been a considerable challenge, with instilled attitudes and low readiness to enforce the law being a privileged expression of official compliance to the cultural constructs that justify bias towards women (Hughes, 2017). The latter

is somewhat aggravated by the fact that there is no communication about pro-women legislation on the grassroots level, where it is most required, and a justice system that marginalizes women politically, legally, and socioeconomically, making it hard for them to seek redress (Ahmad, 2023; Rizk, 2024).

Role of patriarchy and social pressure

These problems are aggravated by patriarchal organizations and social pressures that usually normalize violence against women and make them reluctant to report such abuses in fear of social exclusion or even more victimization (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). That dynamism produces a pervasive atmosphere where the validity of the formal legal safeguards is jeopardized by traditional norms promoting and upholding the authority of men and frequently underappreciating the work and rights of women (Waheed, 2025).

Failure of legal awareness and access to justice

There is a lack of awareness about legal rights, as well as access to formal structures of justice, especially in the remote regions, which implies that most women are not aware of the legal provisions against gender-based discrimination or violence and cannot use legal means to address these problems (Akram and Khan, 2024). This gap is further aggravated by the fact that the judiciary is in many cases insensitive to gender, resulting in a situation where it will not support the rights of women, but instead reinforce the current patriarchal standards (Campbell and Swenson, 2016).

STRATEGIES FOR ELIMINATION AND REFORM

Strengthening legal enforcement mechanisms

In order to substantively counter violence against women, it is essential to establish a perpetual study on the implementation of pro-women laws and strategies, and identifying as well as dealing with gaps in the implementation process at both institutional and systemic levels (NATIONAL POLICY ON ending violence AGAINST WOMEN and girls, n.d.). This will involve a complex strategy, which will involve capacity building of law enforcement, prosecutors, and the judiciary as well as developing strong accountability mechanisms that will help them to adhere to the legal requirements and ethical standards (ACTION PLAN TO IMPROVE HUMAN RIGHTS SITUATION IN PAKISTAN (Revised Version: 2020).

Role of education and awareness programs

Education and awareness campaign is essential to defy the established social norms and patriarchal mindset of gender-based violence, and promote a social change of greater gender equality (Htun and Jensenius, 2019). The audience of such initiatives should be wide: policymakers, community leaders, and ordinary people should learn the message of dismantling harmful stereotypes and building a culture of respect and zero acceptance of violence against women (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.; Wafqui et al., 2024).

Community engagement and reform of Jirga practices

The conversation and reform efforts of the local communities are crucial to confronting the negative nature of informal justice systems such as jirgas that in many cases reinforce human rights violations under the framework of tradition (Percival et al., 2023). Such involvement must aim at sensitizing men by having appropriate role models and incorporation of human rights into traditional practices, and at the same time having formal legal systems offer a buy out to women in need of justice in simple and protective ways (Kerrigan et al., 2012; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.).

Empowerment of women through legal aid and support systems

The creation of legal assistance authorities and funds, as well as the enhancement of forensic capacities, is the steps to the realization of the situation, where women should have the ability to receive free legal help and scientifically sound investigation of the crimes, including gender-based violence (ACTION PLAN TO IMPROVE HUMAN RIGHTS SITUATION IN PAKISTAN (Revised Version: 2020), 2021). In addition, NGOs dealing with women rights and gender-based violence are significant actors as they can offer direct services (e.g. shelters, counseling, legal services) to victims, as well as promote policy changes (Nisha et al., 2024). These organizations play an essential role in closing the gap between the legislative and the lived reality and providing the most important support to survivors and advocating structural changes (Abdul Aziz et al., 2012).

RECOMMENDATIONS FOR FUTURE RESEARCH AND POLICY REFORMS

The next step in future research could involve an empirical study of effectiveness of the existing pro-women laws in Pakistan, i.e., their effectiveness in lowering

gender-based violence and increasing access of women to justice on the grassroots level (Akram, 2024). The longitudinal studies with IPV measurements at the subnational level, based on the data of such sources as the Pakistan Demographic and Health Survey would play a crucial role in monitoring the progress and updating the intervention strategies (Shaikh, 2024). Also, the study of socio-economic factors that affect the legal literacy and capacity of women to navigate complicated court systems, especially in disadvantaged and marginalized groups in rural areas should be considered (Ahmad, 2023). Policy reforms should focus on setting up specific budgetary allocations on prevention machinery and increased response mechanisms of gender-based violence in all provinces, and the elements must be well-funded and ongoing in terms of supporting awareness programs and relief of victims (NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). Additionally, addressing the gap in enhancing the quality of gender equality policies and addressing various obstacles on the way of women empowerment will have to be made, which will demand the coordinated efforts of both governmental and civil society alongside international bodies (Khan et al., 2024). It involves consolidating the evaluation, monitoring, and reporting systems to enhance transparency and progressive change in policy execution and impact, and increased budgetary allocation to the available state-owned structures and civil society organizations (Civil Society and Access to Justice in Pakistan: A Policy Alignment Analysis of Gender, Minorities, and Rule-of-Law Frameworks, n.d.; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). There is also a clear need to deal with the gender insensitivity in the courts and the police force, which, in most instances, leads to impunity of offenders and propagates a culture of silence concerning gender-based violence (Khalid and Nyborg, 2022). This requires a strong feedback system of continuous improvement and the use of an evidence-based solution to policy development based on the understanding of local cultural norms, societal beliefs, and traditional practices to implement more effective interventions (Akram, 2024; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.). Also, the national action plans are to include the measures to encourage independent research of the emerging issues of violence against women, as well as to create the models of seamless services to provide to the victims in every district that should include

medical, legal, and psychological assistance (Abdul Aziz et al., 2012; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN AND GIRLS, n.d.).

CONCLUSION

To sum up, it is clear that the challenges of gender-based violence and gender equality in Pakistan require a multi-sectoral and sustained intervention that goes beyond legislative change to include changes in society, culture and institution. It requires close coordination of different departments to provide effective implementation of protective laws, as well as providing greater budgetary allocations on prevention and response mechanisms (Ahmad, 2023; NATIONAL POLICY ON ENDING VIOLENCE AGAINST WOMEN & GIRLS, n.d.). In addition, it is important to empower gender equality machinery in the country to facilitate such plans and make sure that the activities of violence against women are sustainable in the long run (Abdul Aziz et al., 2012). Finally, the active work of the state, civil society, and international organizations is needed to speed up the achievement of SDG-5 and break the strongly rooted chains of challenges to female empowerment in Pakistan (Khan et al., 2024). This is coupled with the need to have fair access to justice to vulnerable populations and the adoption of national policy frameworks such as the National Action Plan on Human Rights (Akram, 2024). Moreover, taking a closer look at the current national strategies, including the National Policy Framework on Ending Gender-Based Violence of 2013, one must admit that there is a pressing need to strengthen their institutionalization and implement them in their entirety to achieve the best possible results and tackling all areas of gender-based violence in the country (Akram & Khan, 2024). This integrated approach gives a roadmap to end violence against women, allowing to coordinate and systematize the action in sectors and assess initiatives to engage in continuous improvement (Abdul Aziz et al., 2012). Regardless of these important policy achievements, in Pakistan most women are still mostly denied justice, and they are usually denied this opportunity because of the social norms and the structural obstacles (Akram and Khan, 2024). Hence, any further intervention should aim at breaking down these structural and societal barriers that are deeply rooted to make sure that legislative safeguards become a reality and a difference in the lives of women (Akram & Khan, 2024). Furthermore, incorporating gender sensitive training among the local governance institutions would question the

traditional prejudices and foster a system that is fair in its decision-making processes (Waheed, 2025).

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Constitutionalism and the Separation of Powers: A Reassessment of Pakistan's Constitutional Framework

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ABSTRACT

This Article critically examines the notion of separation of powers as articulated in texts, assessed by judges, and used politically within Pakistan's constitutional framework. Although it does not enshrine a strict Montesquieuan separation of powers among the legislative, executive, and judicial branches, the Islamic Republic of Pakistan's 1973 Constitution divides power among three organs through a system of checks and balances meant to prevent the concentration of power in any one institution. This Research Article examines how this arrangement evolved, beginning with the Government of India Act of 1935 and continuing through the constitutions of 1956, 1962, and 1973. It also examines how repeated military interventions, justified by the judicially created "doctrine of necessity," systematically undermined institutional boundaries. It also examines the post-2007 "judicialization of politics," the revolutionary impact of the Eighteenth Amendment on federalism and judicial appointments, and ongoing disputes between the government and the judiciary.

Drawing on comparative insights from the United States, the United Kingdom, and India, the paper concludes with recommendations to reestablish equilibrium through codified judicial conduct rules, depoliticized appointments, and stronger parliamentary oversight mechanisms. It contends that Pakistan's main constitutional pathology is a persistent failure of institutional self-restraint rather than a lack of formal separation.

Keywords: Separation of Powers; Constitutionalism; Judicial Review; Pakistan; Eighteenth Amendment; Doctrine of Necessity

INTRODUCTION

Fundamentally, constitutionalism is the normative commitment to limited government, which holds that political authority, regardless of its democratic origin, must function within bounds established by a basic law.¹ Based on the Montesquieuan observation that liberty is threatened anytime legislative, executive, and judicial responsibilities are concentrated in the same hands, the separation of powers is one of constitutionalism's oldest and most resilient structural mechanisms.² An exceptionally rich and problematic case study of this idea in action is provided by Pakistan's constitutional experiment. Pakistan has experienced four periods of direct military rule, three constitutions, and a judiciary that has alternated between submissive deference to extra-constitutional power and, more recently, assertive and occasionally overreaching judicial activism in its little over seven decades of independence. The question posed in this article is surprisingly straightforward: does Pakistan have a functional division of powers, and if so, how? In order to find the solution, it is necessary to look beyond the formal language of the 1973 Constitution and consider the real distribution, contestation, and, on several occasions, usurpation of authority. There are eight sections to the paper. The theoretical underpinnings of the separation-of-powers concept are outlined in Part II, which also distinguishes between the "pure" separation model and the "checks and balances" model that Pakistan, like the majority of Commonwealth nations, has actually embraced. With special attention to the recurrent pattern of military intervention and judicial validation, Part III charts the historical development of Pakistan's constitutional order. The tripartite system established by the 1973 Constitution in its current, post-Eighteenth Amendment form is examined in Part IV. The notion of necessity, the extension of suo motu jurisdiction under Article 184(3), judicial nominations, and disputes between the administration and judiciary over accountability laws are the main areas of institutional conflict that are examined in Part V. Before Part VII provides suggestions and closing thoughts, Part VI places Pakistan's experience in a comparative context.

¹ Nick W Barber, *The Principles of Constitutionalism* (Oxford University Press 2018) 1-15

² Charles-Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (Thomas Nugent tr, first published 1748, Cambridge University Press 1989) bk XI, ch 6

THEORETICAL FOUNDATIONS OF THE SEPARATION OF POWERS

The Classical Doctrine

Montesquieu's *De l'esprit des lois* (1748), which contended that "there can be no liberty" when legislative and executive powers are combined in one person or body and that judicial power may act "with all the violence of an oppressor" if it is not separated from the legislative and executive, is the source of the modern doctrine.³ The framers of the US Constitution, who translated it into the rigid tripartite structure of Articles I, II, and III, were greatly affected by Montesquieu's own narrative, which was partially a stylized reading of the eighteenth-century English constitution.⁴ However, it is crucial to remember that even the American model is not one of hermetic separation but rather of "separated institutions sharing powers," as Richard Neustadt famously put it. The presidential veto, senatorial confirmation of judicial appointees, and judicial review of legislation are all examples of how one branch precisely checks another by encroaching upon its formal domain.⁵

The Westminster Variant: Fusion with Accountability

The British parliamentary tradition, in which the executive is drawn from and answerable to the legislature, the Prime Minister and Cabinet sit in and command the confidence of Parliament, was generally carried over into Commonwealth constitutions, including Pakistan's.⁶ Strong doctrines of ministerial and collective responsibility, as well as an independent judiciary that, although not co-equal in the American sense, retains the authority of judicial review over executive and (increasingly) legislative action, make up for this "fusion" of the legislative and executive branches. This hybrid model is replicated in Pakistan's Constitution, which is a parliamentary republic with judicial review, firmly established fundamental rights, and federal power distribution serving as external checks on the legislative-executive fusion rather than a presidential system with strict separation or

³ *ibid.*

⁴ MJC Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Liberty Fund 1998) 14-15.

⁵ Richard E Neustadt, *Presidential Power and the Modern Presidents* (Free Press 1990) 29.

⁶ AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959)

a system of parliamentary sovereignty without judicial checks.

Separation of Powers as a "Salient Feature" of the Constitution

Along with federalism, parliamentary democracy, judicial independence, and Islamic requirements, the Supreme Court of Pakistan has over time elevated separation of powers from an implicit structural element to an explicitly acknowledged "salient feature" of the Constitution.⁷ This legal characterization is significant because the Court has reviewed even constitutional amendments for consistency with these fundamental principles using the "salient features" theory, which is partially derived from Indian basic structure jurisprudence.

Checks and Balances Distinguished from Pure Separation

Before discussing Pakistan's constitutional history, it is helpful to distinguish two related but analytically distinct concepts that are commonly confused in both popular and scholarly discourse: the "separation of powers" proper, which deals with the distribution of governmental functions among various institutions, and "checks and balances," which deals with how each institution may restrain the others despite that distribution.⁸ The functional concern is always whether the overlap is structured, predictable, and reciprocal, or if it collapses into one institution's unilateral dominance of the others. No contemporary constitutional system practices separation without some degree of overlap. The legislature checks the executive through confidence votes and the power of the purse; the executive checks the legislature through the requirement that bills receive presidential assent (subject to override) and the Prime Minister's ability to recommend dissolution of the National Assembly; and the judiciary checks both through the power of judicial review, which is itself constrained by the political question doctrine and the constitutionally established, though contested, boundaries of justiciability. Pakistan's constitutional text establishes a fairly conventional architecture of checks and balances.⁹ This paper's recurrent theme is that Pakistan's problems have not so much been with the

⁷ District Bar Association, Rawalpindi v Federation of Pakistan PLD 2015 SC 401, 617 (Jawwad S Khawaja J).

⁸ MJC Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Liberty Fund 1998) 2-4, 400-405.

⁹ Constitution of the Islamic Republic of Pakistan 1973, arts 75, 58, arts 184(3), 199.

design of these checks as they have been with their practical suspension during times of military rule and their uneven, occasionally inconsistent, application by the judiciary even during times of supposedly normal constitutional government.

The Normative Stakes: Why Separation of Powers Matters for Pakistan

In the Pakistani context, the moral argument for treating separation of powers seriously goes beyond scholarly or comparative analysis. A judiciary that is either too deferential or too interventionist has created legal uncertainty that undermines investment, governance, and public confidence in the rule of law; a legislature whose authority has been repeatedly curtailed by presidential discretion (before 2010) or displaced by martial law has struggled to develop the institutional capacity permanent committees, professional research staff, established procedural conventions that mature parliamentary systems rely upon to carry out their oversight function.¹⁰ Therefore, comprehending Pakistan's separation of powers is inextricably linked to comprehending the country's overall trajectory of democratic consolidation or its frequent disruption.

HISTORICAL EVOLUTION OF PAKISTAN'S CONSTITUTIONAL FRAMEWORK

From the Government of India Act 1935 to the First Constitution

The Government of India Act, 1935, which Pakistan acquired upon gaining independence in August 1947, was modified by the Indian Independence Act, 1947, to function as a provisional constitution.¹¹ It took the Constituent Assembly nine years to draft the 1956 Constitution, interspersed with ongoing disagreements over provincial representation, the role of Islam, and center-province relations. The framework was overwhelmingly executive-centric and gave the Governor-General extensive discretionary authority. The document formally established a federal, parliamentary republic with a bicameral-cum-unicameral compromise legislature

¹⁰ Paula R Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (CUP 1995) 3-14.

¹¹ Hamid Khan, *Constitutional and Political History of Pakistan* (3rd edn, OUP 2017) 45-52.

and an independent judiciary, but it lasted only two years before President Iskandar Mirza revoked it in October 1958, declared martial law, and handed power to General Ayub Khan.¹²

The Doctrine of Necessity: “State v Dosso” PLD 1958 SC 533.

The most significant event in Pakistani constitutionalism's early legal history was the 1958 coup. Using Hans Kelsen's theory of revolutionary legality, the Supreme Court ruled in *State v. Dosso* that a successful extra-constitutional change of government that is effective and accepted by the populace establishes its own legal validity as a new "basic norm" and that the 1956 Constitution has thus been lawfully repealed.¹³ This ruling, which was later nicknamed the "doctrine of necessity," signified a significant abandonment of the judiciary's function as defender of constitutional restrictions on administrative and military power and provided a judicial model for justifying further military takeovers. A presidential government with an indirectly elected Electoral College (the Basic Democracies model) and relatively limited legislative and judicial constraints on presidential power was subsequently established by Ayub Khan's 1962 Constitution.¹⁴

1971 and the Constitution of 1973

The 1962 order's authoritarian, center-heavy structure, along with East Pakistan's long-standing underrepresentation in the civil-military bureaucracy and the allocation of national resources, led to the political crisis that followed the general election in 1970 and Bangladesh's subsequent secession in December 1971, which resulted in hundreds of thousands of deaths and is still the most traumatic event in the nation's constitutional history.¹⁵ Among other things, the dismemberment of the state served as a stark example of the consequences of unbridled executive and military power operating without effective judicial or parliamentary restraint. The military crackdown that followed the 1970 election and the refusal to call a National Assembly took place in a constitutional void left by the 1962 order's collapse two

¹² *ibid* 108-121.

¹³ *State v Dosso* PLD 1958 SC 533.

¹⁴ Constitution of Pakistan 1962, arts 9-14; Khan (n 11) 175-190.

¹⁵ Yasmin Saikia, 'Insaaniyat for Peace: Survivors' Narrative of the 1971 War of Bangladesh' (2011) 8 *Journal of Genocide Research* 601, 604-607; Khan (n 11) 200-233.

years earlier. The Islamic Republic of Pakistan's 1973 Constitution was created by a Constituent Assembly led by Zulfikar Ali Bhutto as a result of that trauma. It was ratified with an unusual degree of cross-party agreement and is now the nation's governing charter, albeit with significant revisions.¹⁶ To safeguard provincial interests from the kind of center-dominated majoritarianism that had contributed to the events of 1971, the 1973 Constitution established a bicameral federal legislature (National Assembly and Senate), restored a parliamentary system with a ceremonial President and an executive Prime Minister answerable to the National Assembly, and established fundamental rights enforceable through the superior judiciary.

Article 6 and the (Incomplete) Attempt to Foreclose Future Necessity

Aware of the 1958 precedent, the 1973 Constitution's writers incorporated Article 6, which states that any attempt to suspend, amend, or abolish the Constitution by force is "high treason."¹⁷ However, in its original form, Article 6 proved completely ineffective as a deterrent: it failed to stop the coups in 1977 and 1999, no coup-maker was ever prosecuted under it while in power, and, as was covered in section 3.2 above, the judiciary's own necessity jurisprudence provided the exact legal cover that Article 6 was intended to foreclose. Only until the judicial crisis of 2007–2009 did Article 6 begin to take shape: The Eighteenth Amendment added a new clause 2A that broadens the definition of high treason to include anyone who "abrogates or subverts or suspends or holds in abeyance, or attempts or conspires to abrogate, subvert, suspend or hold in abeyance," according to the Constitution. Crucially, this clause stipulates that no court, including the Supreme Court and the High Courts, shall validate any such act, thereby directly precluding the doctrinal move made in (Dosso and Nusrat Bhutto).¹⁸ The more optimistic interpretation is that this textual entrenchment is now reinforced by the Supreme Court's own post-2009 jurisprudence in *Sindh High Court Bar Association*, discussed below, which independently rejected the necessity doctrine as a matter of judicial interpretation rather than relying solely on constitutional text. However, it remains to be seen if

¹⁶ Constitution of the Islamic Republic of Pakistan 1973, preamble; Khan (n 11) 234-256.

¹⁷ Constitution of the Islamic Republic of Pakistan 1973, art 6 (as amended by Eighteenth Amendment Act 2010,

¹⁸ *Begum Nusrat Bhutto v Chief of Army Staff* PLD 1977 SC 657.

this textual entrenchment is sufficient on its own to prevent a future necessity-style validation.

The Eighth Amendment and the Zia-Era Concentration of Presidential Power

Before allowing a return to civilian government in 1985, General Zia-ul-Haq's regime secured the passage of the Eighth Amendment, which inserted Article 58(2)(b), empowering the President to dissolve the National Assembly at his sole discretion if, in his opinion, a situation had arisen in which the government could not be carried on in accordance with the Constitution and an appeal to the electorate was necessary. Even without direct military rule, this is a lengthy period in Pakistan's constitutional history.¹⁹ Between 1988 and 1996, the clause was used four times to overthrow elected governments, including those of Prime Ministers Junejo, Benazir Bhutto (twice), and Nawaz Sharif. This provision changed the presidency from the ceremonial office envisioned by the 1973 framers into a potent tool capable of overriding the will of a democratically elected legislature.²⁰ General Musharraf's Seventeenth Amendment (2003) brought back a version of Article 58(2)(b) that had been removed in 1997, allowing for presidential dissolution of the National Assembly once more until the Eighteenth Amendment (2010) finally eliminated it.²¹

Recurring Military Interventions and Judicial Complicity

Under General Zia-ul-Haq (1977–1985/88) and General Pervez Musharraf (1999–2002/2008), military rule twice suspended the 1973 order; each time, the judiciary provided constitutional cover. The Supreme Court upheld Zia's 1977 coup on the grounds of state necessity in *Begum Nusrat Bhutto v Chief of Army Staff*, ostensibly imposing restrictions on the degree of the constitutional deviation.²² A partial civilian restoration took place after Zia died in 1988, but this pattern was

¹⁹ Constitution (Eighth Amendment) Act 1985, s 10 (inserting art 58(2)(b))

²⁰ Khan (n 11) 520-545; Charles H Kennedy, 'The Judicialization of Politics in Pakistan' in Terence C Halliday, Lucien Karpik and Malcolm M Feeley (eds), *Fighting for Political Freedom* (Hart 2007) 155-160.

²¹ Constitution (Seventeenth Amendment) Act 2003; Zafar Ali Shah

²² *Begum Nusrat Bhutto v Chief of Army Staff* PLD 1977 SC 657

repeated in 1999 when General Musharraf overthrew Nawaz Sharif's elected government. In *Zafar Ali Shah v. Pervez Musharraf*, the Supreme Court once more invoked necessity to justify the coup while ostensibly granting the military regime a three-year window to hold elections and restore constitutional government.²³ It is noteworthy, however, that the Supreme Court had previously rejected Kelsenite necessity reasoning as applied to the Yahya Khan regime in *Asma Jilani v. Government of the Punjab*, holding that a usurper could not be regarded as a legitimate law-giver merely because his usurpation was successful. This was a rare early example of judicial resistance that was not routinely followed in following cases.²⁴

The 2007 Judicial Crisis and its Aftermath

The move provoked an unprecedented lawyers' movement and social mobilisation; the Supreme Court, in Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v President of Pakistan, ordered the Chief Justice's reinstatement.²⁵ In *Sindh High Court Bar Association v. Federation of Pakistan*, the reconstituted Supreme Court, which had been reinstated after the 2008 elections and a subsequent lawyers' campaign, decisively violated the doctrine of necessity when Musharraf later imposed a state of emergency in November 2007 and attempted to dismiss the superior judiciary en masse. The court declared the November 2007 emergency, the Provisional Constitution Order, and related actions unconstitutional and void ab initio.²⁶ Many people believe that this ruling represents the final court rejection of the necessity theory and the start of a noticeably more active judicial stance toward both civilian and military executive action.

THE TRIPARTITE STRUCTURE UNDER THE 1973 CONSTITUTION

The Legislature

²³ *Zafar Ali Shah v Pervez Musharraf* PLD 2000 SC 869.

²⁴ *Asma Jilani v Government of the Punjab* PLD 1972 SC 139, 179-181 (Hamoodur Rahman CJ).

²⁵ Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v President of Pakistan PLD 2010 SC 61 (recording the 2007 reinstatement proceedings).

²⁶ *Sindh High Court Bar Association v Federation of Pakistan* PLD 2009 SC 879.

To guarantee equal provincial representation regardless of population and thus protect smaller provinces within the federation, legislative authority is vested in a bicameral Majlis-e-Shoora (Parliament), which is composed of the National Assembly, which is directly elected based on adult franchise, and the Senate, which is indirectly elected by the provincial assemblies.²⁷

After the Concurrent Legislative List was abolished by the Eighteenth Amendment, residual powers were granted to the provinces. The Constitution lists the respective areas of federal and provincial legislative competence through the Federal Legislative List.²⁸ Through question hours, standing committees, votes of confidence and no-confidence, and the power of the purse, the requirement that money bills originate in the National Assembly and that taxes and expenditures be authorized by it, Parliament's fundamental separation of powers role is to hold the executive accountable.²⁹

The Executive

Although the President is nominally granted executive authority "in accordance with the Constitution," the Prime Minister and Cabinet, who are jointly answerable to the National Assembly, actually wield this power.³⁰ The Eighteenth Amendment of 2010 significantly completed the shift from a presidential-dominant to a truly parliamentary system, which had started in 1973 but was reversed under Zia and Musharraf. It did this by repealing Article 58(2)(b), which had given the President the authority to dissolve the National Assembly at his discretion, and by requiring the President to appoint provincial governors and service chiefs only after consulting the Prime Minister.³¹ With very few exceptions, the President's position is now ceremonial, and the Prime Minister, who is subject to Parliament, has all executive authority.

The Judiciary

²⁷ Constitution of the Islamic Republic of Pakistan 1973, arts 50-63, 59.

²⁸ Constitution of the Islamic Republic of Pakistan 1973 (Eighteenth Amendment) Act 2010, s 29 (omitting the Concurrent Legislative List, Fourth Schedule).

²⁹ Constitution of the Islamic Republic of Pakistan 1973, arts 73, 91.

³⁰ Article 48 of Constitution of the Islamic Republic of Pakistan 1973

³¹ Constitution (Eighteenth Amendment) Act 2010, s 17 (omitting art 58(2)(b)); ss 51, 82 (amending arts 101, 243).

The Supreme Court, High Courts, and any further courts that may be created by statute have judicial authority.³² As structural protections of judicial independence, superior court judges have tenure security, protection against arbitrary removal (removable only through the Supreme Judicial Council process under Article 209), and salaries safeguarded by the Constitution.³³ The power of judicial review, which allows the Supreme Court and High Courts to overturn legislative or executive actions that violate the Constitution and to uphold fundamental rights through original jurisdiction under Article 184(3) for the Supreme Court and writ jurisdiction under Article 199 for the High Courts, is the courts' most important separation of powers function.³⁴ The judiciary is now the most significant player in current Pakistani separation-of-powers disputes because of this authority, especially its broad and occasionally contentious use through (*suo motu*) proceedings.

Islamic Provisions as a Further Constraint

The addition of an Islamic constitutional dimension to the tripartite secular structure is a characteristic of Pakistan's constitutional order: Article 227 mandates that all laws be brought into compliance with Islamic injunctions, Article 2A solidifies the Objectives Resolution as a substantive part of the Constitution, and the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court exercise specialized jurisdiction to review laws for repugnancy to Islamic injunctions.³⁵ This adds another level of institutional complication to the notion of the separation of powers by effectively creating a fourth site of normative review that operates alongside regular judicial review.

Federalism as a Horizontal Dimension of Separation of Powers

Pakistan's constitutional design incorporates a horizontal dimension through its federal structure, which divides power between the central government and the four provinces (and, since 2018, the former Federally Administered Tribal Areas, merged into Khyber Pakhtunkhwa). This is in contrast to the traditional doctrine of

³² Constitution of the Islamic Republic of Pakistan 1973, art 175.

³³ Art 209 Constitution of the Islamic Republic of Pakistan 1973

³⁴ Arts 184(3), 199. Constitution of the Islamic Republic of Pakistan 1973

³⁵ Arts 2A, 227, 203. Constitution of the Islamic Republic of Pakistan 1973

separation of powers, which focuses on the vertical distribution of legislative, executive, and judicial authority. About eighteen functional areas, including education, health, agriculture, the environment, and local government, were transferred to exclusive provincial jurisdiction by the Eighteenth Amendment's abolition of the Concurrent Legislative List. Meanwhile, the main institutional mechanisms for resolving intergovernmental disputes were the Council of Common Interests, which was reconstituted with enhanced powers under Article 153, and the National Finance Commission, which was in charge of the periodic award determining the vertical and horizontal distribution of the divisible pool of federal taxes.³⁶ This federal rebalancing is best understood as a component of the Eighteenth Amendment's larger separation-of-powers project. It addressed a grievance of excessive centralization that had directly contributed to the political alienation that preceded the 1971 secession covered in section 3.3 above by reducing both the President's discretionary power over the elected Prime Minister and the historically center-dominant federal executive's power over provincial governments. However, implementation has been uneven: the federal government and the provinces, especially Sindh and Balochistan, continue to clash over water distribution, natural resource royalties, and the NFC award formula; provinces have frequently lacked the administrative capacity to immediately absorb devolved subjects.³⁷

SITES OF INSTITUTIONAL FRICTION

Judicial Appointments and the Eighteenth and Nineteenth Amendments

Appointments to the judiciary have been a frequent source of contention. Appointments were mostly a governmental prerogative before 1996. The Supreme Court's ruling in *Al-Jehad Trust v. Federation of Pakistan* severely limited executive discretion over appointments by holding that the President had to designate the most senior judge as Chief Justice absent compelling reasons and that meaningful

³⁶ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006) 316-322.

³⁷ Constitution (Eighteenth Amendment) Act, 2010, particularly amendments to Articles 48, 58, 90, 91, and 97 (reversing the 8th and 17th Amendments' presidential discretionary powers) and the deletion of the Concurrent Legislative List (Fourth Schedule).

consultation with the judiciary was constitutionally required in the appointment process.³⁸ The process was further restructured in 2010 by the Eighteenth Amendment, which substituted a Judicial Commission (headed by the Chief Justice of Pakistan and comprising senior judges, the Law Minister, the Attorney-General, and a Bar representative) for sole executive discretion. A Parliamentary Committee must then confirm the Commission's nominations.³⁹ The Supreme Court pushed for constitutional amendment in several cases that culminated in the Nadeem Ahmed reference and subsequent recommendations because the original Eighteenth Amendment formula gave the Parliamentary Committee significant latitude to reject Commission nominees. The Nineteenth Amendment of 2010 appropriately limited the Parliamentary Committee's discretion, limiting rejection to cases supported by reasons and effectively restoring judicial primacy over judicial appointments.⁴⁰ The episode demonstrates a recurrent pattern: the judiciary resists through interpretation and public pressure, Parliament amends the Constitution to rebalance institutional power, and a subsequent amendment restores judicial preference. Some scholars interpret this pattern as proof that the judiciary is unusually solicitous of its own institutional power while policing that of others.⁴¹

The Eighteenth Amendment and the "Basic Structure" Controversy

The most extensive constitutional change since 1973 was the Eighteenth Amendment (2010), which reversed the concentration of authority brought about by Musharraf's Seventeenth Amendment (2003) and Zia's Eighth Amendment (1985). In addition to the executive and judicial appointment reforms mentioned above, it renamed the North-West Frontier Province, changed the process for selecting caretaker governments, eliminated the Concurrent Legislative List, and transferred many subjects, such as education, health, and the environment, to

³⁸ *Al-Jehad Trust v Federation of Pakistan* PLD 1996 SC 324.

³⁹ Constitution of the Islamic Republic of Pakistan 1973, art 175A (inserted by Eighteenth Amendment Act 2010, s 21).

⁴⁰ Constitution (Nineteenth Amendment) Act 2010, s 5 (amending art 175A); Faqir Hussain, 'The Judicial System of Pakistan' (Supreme Court of Pakistan Research Centre, 2011) 22-24.

⁴¹ Moeen Cheema, 'Two Steps Forward One Step Back: The Non-Linear Expansion of Judicial Power in Pakistan' (2018) 16 *International Journal of Constitutional Law* 503, 515-518.

exclusive provincial jurisdiction.⁴² In *District Bar Association, Rawalpindi v. Federation of Pakistan*, the Supreme Court directly addressed the question of whether it had the authority to examine constitutional amendments for conformity with the Constitution's "salient features," such as the independence of the judiciary and the separation of powers, after the Amendment was contested before the Court regarding the new judicial appointment mechanism.⁴³ Although the Court ultimately decided against overturning the Eighteenth (or Twenty-First) Amendment, a majority of the seventeen-judge bench affirmed, obiter, that in the most extreme circumstances when an amendment aims to change the fundamental nature of the Constitution itself, such as by eliminating federalism, parliamentary democracy, or judicial independence, some sort of limited basic-structure review remains available.⁴⁴ In contrast to India's clear *Kesavananda Bharati* basic structure doctrine, Pakistani courts have taken a more circumspect, case-specific stance, using "salient features" review as a background constraint rather than a freestanding doctrine of general application, leaving Pakistan with an unresolved and contentious doctrine.⁴⁵

Suo Motu Jurisdiction and the "Judicialization of Politics"

The Supreme Court may exercise original jurisdiction without a formal petition where it finds that a matter of public concern on the enforcement of fundamental rights is at issue, according to Article 184(3).⁴⁶ This authority, which had previously been utilized infrequently, expanded dramatically after the judiciary was reinstated in 2009. The Court got involved in a variety of matters under Chief Justice Chaudhry and his predecessors, including elections, government appointments, price controls, privatization transactions, and even matters on foreign and security policy.⁴⁷ Supporters see this expansion as a necessary corrective in a polity where weak accountability institutions and executive impunity would otherwise go unchecked. Critics, including a number of sitting and retired judges, have warned

⁴² Constitution (Eighteenth Amendment) Act 2010, s 1; see generally Khan (n 11) 612-630.

⁴³ *District Bar Association, Rawalpindi v Federation of Pakistan* PLD 2015 SC 401.

⁴⁴ *ibid* 480-495 (per Nasir-ul-Mulk CJ and others, obiter on limited basic structure review).

⁴⁵ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225; *District Bar Association* (n 43) 610-620 (Khawaja J, concurring in part).

⁴⁶ Constitution of the Islamic Republic of Pakistan 1973, art 184(3).

⁴⁷ Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice* (CUP 2013) 289-301. 48 Cheema (n 41) 520-524.

that unstructured suo motu practice blurs the line between adjudication and governance, effectively allowing the Court to substitute its own policy judgment for that of elected branches, thereby inverting rather than strengthening the separation of powers. The controversy over Chief Justice Saqib Nisar's suo motu interventions on issues like hospital administration and dam finance, which many observers described as judicial overreach into the executive branch's sphere of policy and resource allocation, reached a breaking point.⁴⁸ In response, the Supreme Court (Practice and Procedure) Act was introduced by Parliament in 2023 with the intention of limiting the application of Article 184(3) authority by requiring a three-member committee to initiate suo motu cases instead of just the Chief Justice. In another instance of the judiciary defining the boundaries of its own power, it also created a right of appeal from such orders, which was quickly challenged before the Supreme Court and eventually affirmed.⁴⁹

Executive-Judiciary Confrontation: The NRO Case

The dispute surrounding the National Reconciliation Ordinance, 2007, which exempted a variety of political personalities from punishment for corruption, was another noteworthy incident. A sitting prime minister, Yousaf Raza Gillani, was disqualified and found guilty of contempt in 2012 after the Supreme Court declared the Ordinance to be unconstitutional in *Dr. Mobashir Hassan v. Federation of Pakistan*. In subsequent contempt proceedings, the Supreme Court pushed the executive to reopen corruption references against senior officeholders, including then-President Asif Ali Zardari, in Swiss courts.⁵⁰

Military Courts and the Twenty-First Amendment

In reaction to the terrorist attack on the Army Public School in Peshawar in December 2014, Parliament passed the Twenty-First Amendment, which established military courts with the power to try civilians accused of terrorism-related offenses for a predetermined period of time.⁵¹

⁴⁸ See eg 'CJP Saqib Nisar's suo motu drive: a review' Dawn (Karachi, 17 January 2019).

⁴⁹ Supreme Court (Practice and Procedure) Act 2023, ss 2-5.

⁵⁰ *Dr Mobashir Hassan v Federation of Pakistan* PLD 2010 SC 265.

⁵¹ Constitution (Twenty-First Amendment) Act 2015.

Since the Amendment moved essential adjudicative functions from regular courts to military tribunals functioning outside of the constitutionally protected judicial hierarchy, it was contested as a violation of the separation of powers and the independence of the judiciary. The Supreme Court upheld the Amendment by a narrow majority in the same District Bar Association litigation mentioned above, arguing that the extraordinary security situation warranted a time-limited derogation. However, several dissenting judges cautioned that the arrangement represented precisely the kind of fundamental alteration of the judicial function that even a "salient features" doctrine of limited scope ought to prohibit.⁵² The incident, which resurfaced in 2023–2024 when military trials of civilians involved in the May 9 riots were once more contested and partially overturned before being reinstated on appeal, highlights the ongoing instability of the line separating civilian judicial authority from military jurisdiction in Pakistan's constitutional practice.⁵³

Accountability Legislation and the Executive-Judiciary Boundary: the NAB Amendments

The National Accountability Bureau (NAB), the main government anti-corruption organization created by the National Accountability Ordinance, 1999 during the Musharraf era, is another, more recent source of conflict. The NAB's jurisdiction was limited in 2022 by amendments passed by Parliament that also raised the monetary barrier for cognizable offences, transferred outstanding cases below that threshold to regular anti-corruption tribunals, and limited the NAB's authority to make arrests and jail people pending trial.⁵⁴ The amendments were challenged before the Supreme Court because they were intended to benefit current and former officeholders who were facing corruption allegations. A three-member bench first declared many of the amendments to be unconstitutional; however, a later, differently constituted larger bench significantly overturned that ruling, restoring the amendments and emphasizing that the judiciary could not casually question Parliament's plenary legislative authority over criminal law and criminal procedure

⁵² District Bar Association (n 43) 700-715 (Qazi Faez Isa J, dissenting).

⁵³ See eg 'SC restores military trials of civilians involved in May 9 riots' Dawn (Karachi, 2025) (reporting subsequent appellate developments).

⁵⁴ Osama Siddique (n 47) 305-310.

absent a blatant constitutional violation.⁵⁵In contrast to the Court's 2009–2012 jurisprudence, which saw the judiciary press an unwilling executive toward greater accountability, the judiciary initially opposed and ultimately agreed with an elected Parliament's decision to limit the scope of accountability legislation in the NAB amendments litigation. This episode is educational. Commentators continue to disagree over whether the conclusion shows proper curial restraint in the face of a valid exercise of legislative competence or excessive accommodation of an executive-legislative combination with a direct stake in the litigation's outcome. In the framework of the separation of powers, this issue emphasizes the basic difficulty of establishing a firm, moral boundary between judicial deference and judicial abdication.⁵⁶

Fundamental Rights Litigation as an Indirect Check on the Executive

The regular, day-to-day operation of fundamental rights litigation under Articles 199 and 184(3) represents a less spectacular but potentially more significant check on executive power than the high-profile conflicts mentioned above. Article 8 nullifies any legislation that violates the fundamental rights outlined in Chapter 1 of Part II of the Constitution, and the High Courts' writ jurisdiction under Article 199 has been used frequently to enforce procedural justice in everything from public employment and land acquisition to environmental regulation, to invalidate administrative actions taken without legal authority, and to compel the performance of statutory duties.⁵⁷The routine institutional mechanism through which Pakistan's judiciary carries out the classical Diceyan function of subjecting executive action to the ordinary law administered by ordinary courts is represented by this "ordinary" judicial review, which is less visible in the international press than the high-profile confrontations over military coups or NRO-style amnesties. It is this quieter, more consistent body of jurisprudence, rather than the more visible but infrequent *suo motu* interventions, that most closely resembles the "checks and balances" ideal

⁵⁵ Moeen Cheema (n 41) 525-527.

⁵⁶ International Commission of Jurists, *Authority without Accountability: The Search for Justice in Pakistan* (ICJ 2013) 45-52.

⁵⁷ Constitution of the Islamic Republic of Pakistan 1973, art 8(1); Osama Siddique (n 47) 25-30.

discussed in this paper.

COMPARATIVE PERSPECTIVE

Pakistan's experience is best viewed as a variation of issues common to comparative constitutional law, refracted via the nation's specific history of military intervention, rather than as a singular illness. Although even that system has recently faced its own debates over executive unilateralism and legislative gridlock, the United States model of strict separation, supported by an established written constitution interpreted by an independent judiciary with a long-established power of judicial review since *Marbury v. Madison*, offers strong formal insulation against the kind of extra-constitutional interruption Pakistan has repeatedly experienced.⁵⁸

The United Kingdom, which does not have a codified constitution at all, depends on the sovereignty of Parliament tempered by convention, an independent judiciary exercising an increasingly assertive (while still respecting Parliament) power of judicial review, as demonstrated by the *Miller* litigation concerning prorogation of Parliament, and a political culture in which military intervention in civilian governance is and has long been unimaginable.⁵⁹

The Indian Supreme Court's *Kesavananda Bharati* ruling established a clear and now well-established basic structure doctrine limiting Parliament's amending power. Crucially, India has not experienced a successful military coup, allowing its separation-of-powers doctrine to mature through regular constitutional litigation rather than being repeatedly interrupted and reconstructed after periods of extra-constitutional rule. India provides perhaps the most illuminating comparator, sharing with Pakistan a common colonial and constitutional inheritance from the Government of India Act 1935.⁶⁰ The contrast implies that the surrounding political and institutional culture, especially civilian authority over the military and a court prepared to consistently, rather than sporadically, oppose extra-constitutional power, matters more than the formal architecture of separation of powers. The Indian Supreme Court's willingness to develop and consistently apply the basic

⁵⁸ *Marbury v. Madison* 5 US (1 Cranch) 137 (1803).

⁵⁹ *R (Miller) v The Prime Minister* [2019] UKSC 41.

⁶⁰ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225; Granville Austin, *Working a Democratic Constitution: The Indian Experience* (OUP 1999) 1-15.

structure doctrine from the 1970s onward, even against a government like Indira Gandhi's during the 1975–77 Emergency that was ready to test the limits of executive power, helped establish a settled expectation that no future government could lawfully dismantle the constitutional order itself. This expectation was reinforced throughout decades of uninterrupted civilian administration. India's post-independence trajectory is particularly interesting.⁶¹ The Sindh High Court Bar Association's repudiation of the necessity doctrine is commendable, but it comes after six decades in which the opposite precedent had been set and occasionally relied upon. In contrast, Pakistan's courts chose the opposite route in its early decades. Bangladesh, which shares Pakistan's pre-1971 constitutional inheritance and Islamic-majority character, provides another helpful comparison. Its experience of military rule from 1975 to 1990, followed by a transition to a nominally parliamentary system, shows that Pakistan's problems cannot be explained by any one factor, such as religion, colonial inheritance, or federal structure, but rather reflect a more specific history of civil-military imbalance rooted in the Pakistani military's disproportionate institutional strength and resources compared to its civilian counterparts since the country's early years of independence.⁶²

ASSESSMENT AND RECOMMENDATIONS

A broadly coherent parliamentary structure with significant checks is established by the 1973 Constitution, especially as amended by the Eighteenth and Nineteenth Amendments. This structure includes an independent judiciary with actual power of review, an executive branch answerable to an elected legislature, and a federal distribution of powers that has significantly delegated authority to the provinces since 2010. The deeper issue has been one of institutional practice and restraint: the military's repeated willingness to directly interfere in civilian governance; the judiciary's early involvement in legitimizing military rule through the doctrine of necessity; and, in the post-2009 era, a judiciary that, having finally rejected necessity reasoning, has occasionally replaced one type of institutional overreach (deference to the executive and military) with another (expansive, insufficiently disciplined use

⁶¹ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (OUP 1999) 620-635.

⁶² Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Brill 2006) 55-63.

of suo motu jurisdiction). Several reforms are worth considering. To lessen uncertainty and perceived arbitrariness in its invocation, the 2023 Supreme Court (Practice and Procedure) Act's shift toward collegial rather than unilateral control over Article 184(3) proceedings should be consolidated and, ideally, supplemented by published, binding guidelines outlining precise thresholds for the exercise of original jurisdiction.⁶³

Second, sunset clauses should be strictly enforced rather than automatically extended, and the constitutional ban on military trials of civilians should be returned to its pre-Twenty-First-Amendment scope outside of the most limited, time-bound crises. Third, to increase the perceived legitimacy of the appointments process while maintaining the independence-protecting logic of *Al-Jehad Trust*, the Judicial Commission's composition could be expanded to include a more varied range of non-judicial stakeholders without sacrificing judicial primacy.

Fourth, and perhaps most importantly, since military rather than judicial or legislative usurpation of the constitutional order has been a recurrent pattern throughout Pakistan's history, continued civilian oversight of defense and security policy through strengthened parliamentary committees is likely to do more for long-term constitutional stability than any single judicial doctrine.

CONCLUSION

Pakistan's constitutional evolution shows that institutional form and constitutional language alone cannot guarantee constitutionalism. The efficiency of these arrangements rests on state institutions' willingness to observe constitutional bounds, even if the 1973 Constitution provides a thorough framework for the separation of legislative, executive, and judicial authorities. Even though an independent court is still necessary for protecting fundamental rights and maintaining constitutional supremacy, excessive judicial involvement in political or administrative matters runs the risk of upsetting the balance intended by the separation of powers. Instead of engaging in discretionary activism, courts should exercise their constitutional authority through clear legal reasoning, conformity to precedent, and principled interpretation. By ensuring that constitutional

⁶³ Supreme Court (Practice and Procedure) Act 2023.

adjudication supports democratic institutions rather than inadvertently undermining their particular constitutional tasks, this approach would boost public confidence in the court. In the same vein, a strong constitutional system requires an effective and strong legislature that can fulfill its representative, deliberative, and oversight responsibilities. Parliamentary institutions should actively enact legislation, regularly monitor executive behavior, and provide substantial accountability through committees and public conversation. Political parties also have an obligation to promote internal democracy, respect for legislative procedures, and constitutional literacy. Strengthening parliamentary competence would support the constitutional balance envisaged by the Constitution's authors by lessening an excessive dependence on judicial intervention and executive dominance. Ultimately, sustaining constitutionalism requires each branch to fulfill its assigned responsibilities cooperatively and responsibly.

Long-lasting constitutionalism won't emerge until all constitutional actors voluntarily exercise self-control and respect democratic values; respect for one another, adherence to the constitution, and a shared dedication to democratic governance all contribute to a mature separation of powers. Pakistan's constitutional destiny depends on integrating constitutional principles into its institutional, political, and legal cultures. Public governance should incorporate constitutional education, professional ethics, respect for civilian supremacy, and devotion to the law.

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Synthetic Evidence, Real Consequences: Evaluating the Admissibility and Authentication of Deepfake Evidence under Pakistani Law

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ABSTRACT

The spread of AI-generated synthetic media, commonly called “deepfakes,” poses an unprecedented challenge to the administration of criminal justice in Pakistan. Digital evidence now occupies a central place in contemporary litigation, yet the legal framework governing its admissibility .the Qanun-e-Shahadat Order 1984 and the Prevention of Electronic Crimes Act 2016 (as amended in 2025) was not designed to deal with AI-manipulated content. This paper undertakes a doctrinal analysis of Pakistan’s evidentiary provisions, particularly Article 164 of the QSO, and argues that while superior courts have developed a judge-made authentication standard the “Silent Witness Theory,” as applied in recent Supreme Court jurisprudence this framework addresses conventional tampering rather than the distinct challenge posed by wholly AI-generated content. The study further examines institutional constraints, including limited forensic capacity and inadequate judicial training in the evaluation of digital evidence. By comparing the authentication standard in United States Federal Rule of Evidence 901 with the definitional clarity provided by the European Union’s Artificial Intelligence Act, the paper argues that Pakistan’s reactive, discretion-based approach is structurally inadequate in the deepfake era. It recommends a statutory definition of deep fakes, mandatory forensic certification for contested digital evidence, and capacity-building measures for the judiciary and investigative agencies.

Keywords: Deepfakes, Digital Evidence, Qanun-e-Shahadat, PECA, Admissibility, Artificial Intelligence

INTRODUCTION

In just a few short years, artificial intelligence has evolved from a niche field that only a small number of specialized researchers dedicated themselves to, into a technology capable of producing hyper-realistic images, audio, and videos scenes depicted in this content never actually occurred in reality¹. These “deepfakes” are no longer a novelty confined to entertainment or satire; they have surfaced in courtrooms, newsrooms and political campaigns across the globe, and Pakistan has not been spared. Fabricated footage purporting to show a missile strike on a cricket stadium and a doctored recording of a provincial chief minister disclosing confidential policy matters are among the incidents that have already tested the credulity of the Pakistani public². The rise of synthetic media coincides with an already-established reliance on digital evidence in Pakistani criminal proceedings. Electronic communications, closed-circuit television footage and mobile-device data now routinely appear in both the prosecution and defence of criminal cases. Yet the statutory instruments governing the admissibility of this evidence—principally the Qanun-e-Shahadat Order 1984 (“QSO”) and the Prevention of Electronic Crimes Act 2016 (PECA), as amended in 2025—were drafted and later amended without addressing content that is not simply recorded or transmitted electronically, but synthetically generated by an algorithm without any underlying real-world event.

This paper highlights that Pakistan’s evidentiary framework permits the admission of electronic evidence in general terms but supplies no specific, technical standard by which a court or the forensic system that supports it can determine whether a given piece of digital evidence is authentic or an artificial construction. Judicial practice has developed its own authentication doctrine; but that doctrine was built, to detect simple and traditional manipulation (editing, splicing, and deletion) rather than the content was never real from its beginning. The principal risk to a fair trial arises, when there is a gap between what law permits and what it can practically capable to verify.

¹ UNESCO, Deepfakes and the crisis of knowing’ (UNESCO Press Release, 1 October 2025) <https://www.unesco.org/en/articles/deepfakes-and-crisis-knowing>)

² Maham Nasir, SAHSOL Law Review, ‘Deepfakes and Digital Identity: What Pakistan Can Learn from Denmark’s Deepfake Law’ (18 February 2026) <https://sahsol.lums.edu.pk/node/27600>

This paper has further seven parts. Part II situates deepfakes as a distinct category of evidentiary problem. Part III examines the relevant provisions of the QSO and PECA. Part IV analyses recent Supreme Court jurisprudence on the authentication of video evidence. Part V considers the institutional and forensic capacity that underpins or undermines the application of these legal standards. Part VI draws a comparative analysis with the United States and the European Union. Part VII sets out recommendations, and Part VIII concludes.

UNDERSTANDING DEEPFAKES AS A LEGAL-EVIDENTIARY CHALLENGE

video or audio evidence may claim it is an AI fabrication, shifting the evidentiary burden and forcing costly forensic rebuttal even where no synthetic manipulation occurred³. This so-called “deepfake defence” illustrates that the harm is not confined to false evidence being admitted; it extends to genuine evidence being wrongly discredited, with corresponding costs to the efficient and fair administration of justice. The European Union’s Artificial Intelligence Act defines a “deep fake” as AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful⁴. No equivalent statutory definition exists anywhere in Pakistani law. The lack of a statutory definition creates a broader legal problem. In its absence, courts, investigators and forensic examiners lack a consistent basis for assessing disputed digital content, while lawmakers face difficulty in addressing deepfakes through precise legislative measures. Deepfakes present a qualitatively different challenge from the forms of digital evidence that Pakistani courts have become familiar with handling. A tempered WhatsApp screenshot or an edited video clip involves the alteration of a genuine underlying recording; forensic examination can, in principle, recover traces of that alteration. In contrast a deepfake may not be any

³ Audrey Mitchell, ‘Deepfaked Evidence: What Case Law Tells Us About How the Rules of Authenticity Needs to Change’ (Berkeley Technology Law Journal Blog, 23 June 2025). (<https://btlj.org/2025/06/deepfaked-evidence-what-case-law-tells-us-about-how-the-rules-of-authenticity-needs-to-change/>)

⁴ European Parliament and Council of the European Union, Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L, 2024/1689, art 3(60) (13 June 2024) (<https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>)

doctored screenshot, video or voice recording, it has no any genuine underlying, it may be entirely generated by a model which has been trained to produce a realistic representation. This distinction is because traditional forensic and judicial to digital evidence assume that there is an original recording existed and letter altered rather than content was generated without any original recording.

A further complication, noted in recent comparative scholarship, is that there is possibility, deepfakes can be weaponised defensively. When litigant is faced with a genuine and incrementing evidence .opposing party can use AI generated deepfakes as his supporting evidence.

LEGAL FRAMEWORK GOVERNING DIGITAL EVIDENCE IN PAKISTAN

The Qanun-e-Shahadat Order 1984

The QSO, Pakistan’s general law of evidence, was amended by the Electronic Transactions Ordinance 2002 to accommodate electronic records. Article 46-A renders information generated, received or recorded by an automated information system a relevant fact, while Explanation 3 to Article 73 confers on such output the status of primary evidence, provided the system was in working order at the material time⁵. Article 78-A supplies a mechanism for proving electronic documents and electronic signatures.

Article 164 particularly revelent to this disscusion, which is now substituted as (Criminal Laws (Amendment) Act 2023), permits a court, to allow evidence obtained through modern devices or techniques including video calls and messaging applications to be produced ,depending upon the nature and circiuntances of the case⁶. The main concern is, what it does not prescribe. Article 164 confers a broad discretion on the trial court wether evidence should be admittied “if deemed appropriate,” but it prescribes no procedure by which the authenticity of that evidence is to be established. The determination of reliability is totally left to judicial practice.

⁵ Qanun-e-Shahadat Order 1984, art 46-A; art 73, Explanation 3.

⁶ Qanun-e-Shahadat Order 1984, art 164 (as substituted by the Criminal Laws (Amendment) Act 2023).

PECA 2016 and the 2025 Amendment

PECA 2016 criminalizes a range of conduct involving unauthorised access, data interference and dignity-related offences, and section 20 has been read to extend to the superimposition of a person's likeness onto sexually explicit material. The 2025 amendment to PECA introduced offences relating to the intentional dissemination of information known to be false, and a concept of "aspersion" covering reputationally damaging falsehoods. These provisions are intent- and content-based: they criminalise the dissemination of false or damaging information, irrespective of the technological means by which that content was produced. They do not, however, supply any evidentiary mechanism for authenticating contested digital media once it is tendered before a court that function remains governed by the QSO.

The result is divided in two parts framework: PECA addresses the wrongful creation or circulation of synthetic content as a criminal offence in its own right, while the QSO governs the admissibility of any digital material, synthetic or genuine ,tendered as evidence of some other offence. No any statute contains a definition of "deepfake," and neither imposes a mandatory authentication procedure specific to AI-generated content.

JUDICIAL INTERPRETATION AND CASE LAW

Where statutory law does not establish any system of authenticating the electronic evidences, the Supreme Court of Pakistan through its jurisprudence has, developed its own framework for testing the reliability of video and digital evidence through case laws. Two recent judgments illustrate both the framework's operation and its limits.

State v. Ahmed Omar Sheikh (2021 SCMR 873)

In this case, arising from the abduction and murder of the journalist Daniel Pearl, the prosecution sought to rely on a video recording said to depict the killing. The Supreme Court declined to place any reliance on the recording. The witness who produced it did not disclose its source or nationality; the original tape was never produced, only a copy; and, critically, no forensic analysis of the recording was ever

carried out.⁷ The Court drew an adverse inference from the prosecution’s failure to have the recording forensically examined, observing that its authenticity could not be presumed in the absence of such analysis. In the course of its judgment, the Court also endorsed a detailed set of guidelines — drawn from *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675) — for the proof of audio and video evidence generally, including the requirement that the source be disclosed, that the recording device and its operator be identified, and that its accuracy be established through direct or circumstantial evidence ruling out tampering.

Zahir Zakir Jaffar v. The State (PLD 2026 SC 251)

In sharp contrast, the Court in this case which arises from the murder of Noor Muqaddam admitted CCTV footage as substantive evidence, applying what it termed the “Silent Witness Theory”: the doctrine that a video recording, once authenticated by evidence establishing the reliability of the process that produced it, may speak for itself as evidence of what it depicts, without any witness who personally observed the recorded events.⁸ The decisive factor was that the footage had been forensically examined and the report confirmed that it had not been edited, and that facial comparison positively matched the accused. The Court treated this forensic confirmation as sufficient corroboration, without which as the outcome in *Ahmed Omar Sheikh* illustrates the recording would likely have been excluded.

These two decisions confirm that Pakistani courts have, as a matter of practice, converged on forensic verification as the operative test for the admissibility of contested video evidence. This is a sound development so far as it goes. It is, however, a standard developed to detect whether an existing recording has been altered, edited, spliced, or selectively cut rather than whether the recording was synthetically generated from the outset. The forensic techniques referenced in both judgments (facial comparison, metadata and integrity checks) are calibrated to conventional tampering; neither judgment engages with, nor could have engaged with, the distinct signatures of AI-generated content, such as compression artefacts or inconsistencies in lighting and motion that specialised deepfake-detection tools

⁷ *State v Ahmed Omar Sheikh* 2021 SCMR 873.

⁸ *Zahir Zakir Jaffar v The State* PLD 2026 SC 251.

are designed to identify. The judicial framework is, in other words, a reasonable response to a problem it was not designed to solve.

INSTITUTIONAL AND PRACTICAL CONSTRAINTS

A legal standard is only as effective as the institutional capacity available to apply it. Pakistan's Federal Investigation Agency has itself acknowledged that its investigators work with outdated tools and limited funding, historically requiring digital media examinations to be outsourced to the Punjab Forensic Science Agency, with attendant delays⁹. The establishment, in August 2025, of a new Directorate of Forensic Lab within the FIA to examine digital equipment marks a positive institutional step, but it does not, without more, close the gap between the volume of digital evidence now entering the criminal justice system and the specialised capacity required to authenticate AI-manipulated content specifically.

Academic assessment of Pakistan's digital evidence regime more broadly confirms that while the QSO and PECA provide a legal basis for admitting electronic records, practical application remains uneven: forensic facilities are inconsistently resourced, and the level of technical training available to investigators, prosecutors and judges varies considerably¹⁰. Pakistan's limited forensic capacity and inadequate judicial training further indicate that the technological and institutional foundations required to authenticate AI-generated content remain under-developed..¹¹ The consequence is that even where the judicial authentication standard described in Part IV is applied in good faith, the forensic evidence required to satisfy it may simply not be available, or may not be equal to the sophistication of the content it is asked to examine.

COMPARATIVE ANALYSIS

⁹ Saima Shabbir, 'Pakistan Sets Up New Forensic Lab to Strengthen FIA's Documentary, Financial and Digital Crime Probes' Arab News (4 August 2025) (<https://www.arabnews.com/node/2610631/pakistan>)

¹⁰ Sadia Nazir, Muhammad Asif and Asad U Allah Khan, 'Digital Evidence in Pakistan: A Doctrinal Assessment of Admissibility and Reliability in Criminal Trials' (Advance Social Science Archive Journal, 6 August 2025). <https://assajournal.com/index.php/36/article/view/684>

¹¹ Anwar Ali, Maryam Bilal and Sarmad Malik, 'Legal Challenges of Digital Evidence in Criminal Proceedings: Comparative Perspectives from Pakistan, Indonesia, and Malaysia' (2026) 2(2) *International Journal of Law and Social Sciences* 69–102, DOI 10.65960/ijlss.2.2.2026.15. (<https://ijlss.net/ijlss/article/view/15>)

United States (Federal Rule of Evidence 901)

The United States provides a useful, though cautionary, comparison. Under Federal Rule of Evidence 901, the party presenting evidence must provide sufficient grounds for a finding that the evidence is what it is claimed to be. This relatively low authentication threshold has become increasingly significant as synthetic and AI-manipulated content becomes more sophisticated¹². American courts have responded by developing bench guidance directing judges to interrogate the source of contested digital evidence, its chain of custody and any indication of alteration a response that, structurally, closely resembles the case-by-case forensic-verification approach that Pakistani courts have themselves developed. The comparison is instructive because it demonstrates that the gap identified in this paper is not a distinctly Pakistani failing but a more general mismatch between long-standing rules of evidence and a technology those rules did not anticipate. Pakistan's position is nonetheless more precarious than that of the United States, given the comparative weakness of its forensic infrastructure.

The European Union (The Artificial Intelligence Act)

The European Union has taken a materially different approach by legislating a definition. Article 3(60) of the EU AI Act defines a deepfake with precision, as set out in Part II above, and Article 50(4) imposes a transparency obligation requiring that AI-generated or manipulated content be disclosed as such by its deployer¹³. This does not, of itself, resolve the evidentiary question of how a court should treat contested deepfake content tendered in litigation; the Act is chiefly a regulatory instrument governing the deployment of AI systems rather than a law of evidence. It nonetheless offers Pakistan a readily transplantable starting point: a statutory definition anchors subsequent legislative and judicial development in a way that Pakistan's current definitional silence cannot.

¹² Natalie Runyon, 'Deepfakes on Trial: How Judges Are Navigating AI Evidence Authentication' (Thomson Reuters Institute, 8 May 2025).

(<https://www.thomsonreuters.com/en/institute/articles/deepfakes-evidence-authentication>)

¹³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L, 2024/1689, arts 3(60), 50(4).

RECOMMENDATIONS

First, Parliament should introduce a statutory definition of “deepfake” or “synthetic media,” whether by amendment to the QSO or PECA, broadly modelled on Article 3(60) of the EU AI Act, adapted to Pakistan’s evidentiary vocabulary. A definition is a precondition for any more specific evidentiary rule.

Second, Article 164 of the QSO should be supplemented with a mandatory forensic-certification requirement for digital evidence that is challenged as AI-generated or manipulated, rather than leaving the matter to unguided judicial discretion. The two-fold test already applied by the Supreme Court in Ahmed Omar Sheikh disclosure of source and forensic confirmation of non-alteration could be codified and extended to require examination specifically for AI-generation indicators, not merely conventional tampering.

Third, sustained investment is required in the forensic capacity of the FIA and provincial forensic science agencies, including training specific to deepfake-detection techniques, so that the judicial standard identified in Part IV can be met in practice rather than remaining aspirational.

Fourth, judicial and prosecutorial training programmes should be developed to build a baseline technical literacy sufficient for judges and prosecutors to assess forensic evidence relating to synthetic media, consistent with recommendations already made in respect of digital evidence more generally¹⁴.

Fifth, given the disproportionate use of deepfakes to target women through non-consensual intimate imagery, any legislative reform should be accompanied by victim-support and reporting mechanisms sensitive to the societal stigma that continues to discourage victims from coming forward.

CONCLUSION

Pakistan’s evidentiary framework permits digital evidence, including video and audio recordings, to be admitted in criminal proceedings, and its superior courts

¹⁴ Sadia Nazir, Muhammad Asif and Asad U Allah Khan, ‘Digital Evidence in Pakistan: A Doctrinal Assessment of Admissibility and Reliability in Criminal Trials’ (Advance Social Science Archive Journal, 6 August 2025). <https://assajournal.com/index.php/36/article/view/684>

have, through case law, developed a workable if judge-made standard requiring forensic verification before such evidence is relied upon. That standard, however, was designed to detect changes made to genuine recordings not content generated entirely from events that never happened. As deepfake technology grows more accessible and persuasive, this distinction will increasingly shape whether Pakistani courts can reliably distinguish a photograph from a fabrication. Closing the gap means addressing three needs at once: a statutory definition that gives the problem a legal name, an authentication procedure suited to AI-generated content rather than conventional tampering, and forensic and judicial capacity capable of applying it. Absent such reform, the admissibility of digital evidence in Pakistan will continue to rest on a discretionary framework that technology is rapidly outpacing.

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Beyond the Corporate Fiction: Waqf, Usufruct, and the Case for Ecocentric Legal Transplants

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ABSTRACT

This article examines the conceptual evolution and structural mutation of foundational legal doctrines — drawn from Roman civil law, classical Islamic jurisprudence, and general common law — when transplanted into modern environmental law frameworks. Traditional environmental jurisprudence remains heavily anchored in anthropocentric, public law statutory regimes. However, the enforcement of these regimes increasingly relies on the adaptation of private law mechanisms and historical doctrines predating the modern statutory state. By evaluating the trajectory of four foundational concepts — usufruct, *actio popularis*, *parens patriae*, and the Islamic legal framework of Waqf/Dhimmah — this paper illustrates how legal systems adapt historic doctrines to address contemporary ecological crises. Special emphasis is placed on post-colonial and developing jurisdictions, such as Pakistan, where the judiciary has bypassed traditional adversarial constraints to forge innovative public remedies, and on comparative Muslim-majority practice, such as Indonesia's Green Waqf movement, where the theory is already being tested against institutional reality on the ground. Ultimately, this article argues that while Western corporate personhood templates dominate current 'Rights of Nature' discourse, indigenous and historical doctrines like the Waqf and usufructuary stewardship offer structurally superior, culturally authentic, and ecocentric alternatives for sustainable, intergenerational ecosystem preservation.

Keywords: Legal transplants; Waqf; Usufruct; *Actio popularis*; Public interest environmental litigation; Article 9A.

INTRODUCTION

The global escalating climate crisis, rapid biodiversity loss, and systemic industrial pollution have exposed a deep-seated structural vulnerability within traditional legal frameworks. Modern environmental law, primarily built upon a 20th-century architecture of command-and-control statutory regulations, increasingly struggles against the borderless and latent realities of ecological degradation. As legislative bodies stumble under political inertia, judiciaries worldwide are forced to look backward to move forward. To fashion immediate, potent remedies, courts are actively retrofitting ancient, foundational doctrines of general common law, civil law, and classical religious jurisprudence into green mechanisms — a phenomenon Alan Watson famously classified as a ‘legal transplant’¹.

This process of doctrinal adaptation is not merely academic; it is a structural necessity. Under traditional common law, nature is relegated to the status of mere property, requiring an individualized, direct physical or economic injury to unlock judicial standing (*locus standi*)². This anthropocentric bias creates a legal vacuum where common-pool resources — such as the atmosphere, international river basins, and migratory wildlife — are left defenseless against systemic corporate exploitation.

To bridge this chasm, contemporary environmental jurisprudence has initiated a series of profound legal transplants. These private law concepts, originally designed to govern bilateral disputes between human citizens, have been abstracted into collective public remedies:

The Roman civil law concept of *Usufruct* (*usus fructus*) is decoupled from private land leases and transformed into an architectural blueprint for sustainable development and intergenerational equity.

¹Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993).

²Christopher D Stone, 'Should Trees Have Standing?—Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

The procedural device of *Actio Popularis* is resurrected to expand public interest environmental litigation (PIEL), allowing citizens to vindicate collective ecological harms without proving individual economic injury.

The royal prerogative of *Parens Patriae* is repurposed, transforming the State from a passive regulator into an aggressive sovereign guardian of natural assets, a trajectory stretching from early transboundary cases like *Georgia v Tennessee Copper Co*³ (1907) to modern climate litigation in *Massachusetts v EPA*⁴ (2007).

Simultaneously, the global ‘Rights of Nature’ movement has sought to grant complete juristic personhood to vulnerable ecosystems. Yet, this paper critiques the prevailing Western reliance on corporate personhood templates, arguing that they introduce severe capitalist paradoxes and liability conundrums.

Instead, this article explores how developing and Muslim-majority jurisdictions can activate highly sophisticated, indigenous legal structures — specifically the Islamic *Waqf* and *Dhimmah* — to establish a more authentic, ecocentric trust framework. By tracing these four specific doctrines, this paper maps the operational pathways, comparative advantages, and systemic frictions that arise when private law roots are transplanted to blossom into public green remedies.

BEYOND CORPORATE PERSONHOOD: THE ISLAMIC WAQF AS AN ECOCENTRIC LEGAL TRANSPLANT

When modern courts attempt to grant ‘Rights of Nature,’ they typically transplant Western corporate personhood templates. By assigning an ecosystem an artificial legal personality — similar to a business corporation — courts create a legal fiction where a river or forest can theoretically sue and be sued. However, this corporate template carries a severe structural flaw: it is historically engineered for capital accumulation, economic utility, and human-centric liability shielding.

For post-colonial and Muslim-majority jurisdictions, a far more robust, indigenous, and ecocentric alternative exists within classical Islamic jurisprudence (*fiqh*): the *Waqf* structure.

³*Georgia v Tennessee Copper Co* 206 US 230 (1907).

⁴*Massachusetts v Environmental Protection Agency* 549 US 497 (2007).

A. The Structural Flaw of the Corporate Analogy

The corporate model popularized by legal scholars like Christopher Stone⁵ relies on an anthropocentric fiction. Corporations exist to maximize human utility, hold property, and shield human actors from liability. When applied to nature, this creates an ideological paradox. It forces an ecosystem into a capitalistic framework where its value is still implicitly measured by its human-managed assets.

Furthermore, if a river is designated as a corporate person, it creates the ‘liability conundrum.’ If the river floods and destroys a village, the river — and by extension, its human guardians — could theoretically be sued for damages. Resorting to a game of corporate risk management reduces ecological protection to pure human utility.

This is not a hypothetical model. New Zealand's Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 grants the Whanganui River legal personhood directly, administered by two guardians — one appointed by the Crown, one by the local iwi⁶. India's Uttarakhand High Court followed an equivalent path in *Salim v State of Uttarakhand*, declaring the Ganges and Yamuna rivers ‘living entities having the status of a legal person’⁷. Both are precisely the corporate-fiction template critiqued above: an artificial legal personality layered onto the river, administered by human guardians who function, in substance, exactly as corporate directors would.

This is not a merely theoretical flaw either. In Pakistan's own Khyber Pakhtunkhwa, the forest department — the very state guardian charged with protecting the resource — was found in sustained collusion with timber contractors: by 2013, 74 per cent of the province's forests had deforested past their regenerative capacity under this collusion⁸. As recently as September 2025, a provincial audit uncovered a PKR 1.7 billion timber scam implicating 140 forest department officials in faking

⁵Christopher D Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* (35th anniversary edn, Oxford University Press 2010).

⁶Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (New Zealand).

⁷*Salim v State of Uttarakhand Writ Petition (PIL) No 126 of 2014* (High Court of Uttarakhand, 20 March 2017).

⁸Malik Amin Aslam Khan, ‘Facing off the ‘Timber Mafia’ — Khyber Pakhtunkhwa's Forest Crusade’ (Dialogue Earth, 8 January 2021) <<https://dialogue.earth/en/forests/facing-off-the-timber-mafia-khyber-pakhtunkhwas-forest-crusade/>> accessed 24 August 2026.

tree markings and abusing harvesting permits, with cases referred to the National Accountability Bureau⁹. The pattern illustrates the structural flaw precisely: the guardian institution and the exploiting interest were not opposed but overlapping, because nothing in the corporate or bureaucratic model forecloses that overlap as a matter of law — it merely proscribes it as a matter of conduct, which enforcement can and does fail to secure.

B. The Waqf Alternative: Ultimate Divestment and Dedication

A Waqf is a religious or charitable endowment under Islamic law where the owner permanently detaches themselves from an asset for a pious or public purpose¹⁰. Structurally, the Waqf offers three distinct advantages over the Western corporate model when transplanted into environmental governance:

1. Absolute Usufruct Splitting (Habsu al-Ayn)

In a Waqf, the corpus of the property (ayn) is frozen, and only its fruits or benefits (thamarah) can be used. The founder (waqif) permanently relinquishes all ownership rights¹¹. The property cannot be sold, gifted, mortgaged, or inherited. When applied to an ecosystem (e.g., a wetland or a forest declared as a Waqf), it removes the ecosystem entirely from the market economy. It cannot be privatized or commercialized.

2. Transcendental Vesting of Title

Unlike a corporation, which owns its own assets, the ownership of a Waqf asset is legally understood to revert to God (Allah). Human actors do not ‘own’ the river; they merely manage it. This eliminates the liability conundrum. One cannot sue God or the physical corpus of a sacred trust for a natural disaster, isolating the ecosystem from retaliatory civil lawsuits.

3. Strict Fiduciary Responsibility (Mutawalli)

⁹Pakistan: PKR 1.7 Billion Timber Scam Exposed in Khyber Pakhtunkhwa; 140 Officials Implicated' The Tribune (Chandigarh, 2 September 2025)
<<https://www.tribuneindia.com/news/anti-corruption-department/pakistan-pkr-1-7-billion-timber-scam-exposed-in-khyber-pakhtunkhwa-140-officials-implicated>> accessed 24 August 2026.

¹⁰Murat Çizakça, *A History of Philanthropic Foundations: The Islamic World From the Seventh Century to the Present* (Boğaziçi University Press 2000).

¹¹Çizakça (n 10)

The manager of a Waqf (the mutawalli) owes an absolute, non-negotiable fiduciary duty to the Waqf's foundational purpose¹². If a Waqf deed dictates that a forest must be preserved for its ecological and public health benefit, the mutawalli has zero legal authority to clear-cut the forest for profit — even if doing so would generate massive revenue. This contrasts sharply with corporate directors, who are legally bound by shareholder primacy to maximize economic value.

Crucially, this is not a distinction of motive — a non-profit conservation trust can be just as vulnerable to the underlying pressure, since its own solvency still depends on treating the protected asset as a fundable, and therefore potentially tradeable, line item. What the Waqf removes is not the presence of money, but the corpus's exposure to that calculation: the fruits may be raised and spent on upkeep, but the asset producing them is doctrinally barred from ever being weighed against the trust's own balance sheet, whether that trust is organized for profit or not.

C. Conceptual Overlap with Dhimmah and Parens Patriae

The Waqf elegantly synthesizes the procedural benefits of parens patriae with the theoretical depth of dhimmah (legal capacity/responsibility). Under classical fiqh, a Waqf possesses an independent financial and legal personality separate from its founders and managers. It can receive donations, file claims, and defend its boundaries through its mutawalli.

When an ecosystem is structured as a Waqf, the state or judicial system does not need to act as an aggressive parens patriae parent over a 'perpetual minor.' Instead, the state acts as an external supervisor (qadi) to ensure that the mutawalli (the environmental trustees, indigenous representatives, and scientists) are faithfully executing their sacred ecological duties.

This distinction is not merely theoretical. A corporate or state entity can be wound up by its own governing law — dissolved, deregistered, its assets absorbed into someone else's estate. A Waqf has no such exit: the doctrine of ta'bid (perpetuity) means there is no lawful procedure by which a Waqf can cease to exist. Astan Quds Razavi, the endowment administering the shrine of Imam Reza in Mashhad, carries

¹²Kerry O'Halloran, Myles McGregor-Lowndes and Karla W Simon, *Charity Law & Social Policy: National and International Perspectives on the Functions of the Law Relating to Charities* (Springer 2008).

documented endowments dating to 327 AH/939 CE¹³ — making it, at over 1,080 years, among the longest continuously operating Waqf institutions in the Islamic world. It has survived the Samanid, Safavid, and Qajar collapses and every government since, not because any state chose to preserve it, but because its corpus was never state property to begin with.

D. Comparative Practice: The Green Waqf Movement and Its Limits

The Waqf-as-ecosystem argument advanced above is not purely theoretical. Indonesia's 'Green Waqf Movement,' launched in August 2021 through a collaboration between the Indonesian Waqf Board (Badan Wakaf Indonesia, BWI), the United Nations Development Programme, and the Waqf Center for Islamic Development Studies, has attempted precisely this transplant in practice¹⁴. The movement builds on doctrinal foundations traced to Mochammad Arif Budiman's early proposal that Waqf assets be directed toward reforestation, clean-water endowments, and biodiversity protection¹⁵.

Two concrete case studies illustrate the model operating on the ground: the Bogor Waqf Forest in West Java and the Jantho Waqf Forest in Aceh, both structured as dedicated forest land held in perpetual trust for reforestation, biodiversity enhancement, and community agroforestry¹⁶. A parallel proposal in Malaysia, responding to alarming deforestation rates across Peninsular Malaysia, has advanced forest-Waqf as a dedicated funding and governance alternative to conventional state forestry budgets¹⁷. Nor is the underlying instinct new: the Kuwaiti Company for Environmental Services, established in 1992, stands as an early formal engagement of Waqf-style endowment logic with organised

¹³Endowments of Astan Quds Razavi' (WikiShia)

<https://en.wikishia.net/view/Endowments_of_Astan_Quds_Razavi> accessed 24 August 2026.

¹⁴United Nations Development Programme Indonesia, 'Promoting Climate Action through Green Waqf Framework' (UNDP, 2023) <<https://www.undp.org/indonesia/press-releases/promoting-climate-action-through-green-waqf-framework>> accessed 24 August 2026.

¹⁵Mochammad Arif Budiman, 'The Role of Waqf for Environmental Protection in Indonesia' (2nd Aceh Development International Conference, Universiti Kebangsaan Malaysia, Bangi, 26–28 March 2011) 880.

¹⁶Khaliq Ahmad Ali, Salina Kassim, Marhamah Jannah and Zurina Mohamed Ali, 'Increasing the Role of Zakat and Waqf in Social Forestry Programs in Indonesia' (2021) 12(1) *Economica: Islamic Economics Journal* 1.

¹⁷Ainul Yaakob and others, 'Waqf as a Means of Forest Conservation: Alternative for Malaysia' (2017) 23(5) *Advanced Science Letters* 4860.

environmental service delivery, predating the current wave of Green Waqf scholarship by nearly three decades¹⁸.

These initiatives, however, expose the practical friction between doctrinal elegance and institutional capacity. Indonesia's own National Waqf Index reporting identifies a shortage of professionally trained nazhir (Waqf administrators), low public literacy about Waqf as an environmental instrument rather than a purely religious or welfare one, and — most significantly for a legal audience — the absence of a dedicated statutory framework that formally recognises ‘eco-Waqf’ as a distinct legal category, as opposed to an informal application of general Waqf law¹⁹. Environmental Waqf assets also compete for donor attention against the far more institutionally entrenched categories of educational and health Waqf, meaning the doctrine's theoretical strength does not automatically translate into funding priority.

Pakistan, notably, has no comparable codified eco-Waqf framework at present. This is precisely the gap this article's doctrinal argument points toward: the legal architecture built in this Part is available and coherent, but its translation into a functioning Pakistani mechanism — with a defined mutawalli licensing regime, a statutory registry, and enforceable reporting duties — remains an unrealised legislative opportunity rather than an accomplished fact. This distinction between doctrinal availability and institutional readiness is carried forward into the policy recommendations in Part V.

THE USUFRUCTUARY MANDATE: RESTRAINING PROPERTY THROUGH SALVA RERUM SUBSTANTIA

To understand usufruct as a legal transplant in environmental law, it is best to view it as a primary conceptual weapon against environmental destruction caused by absolute property ownership models. Originating in Roman Law (*usus fructus*) and heavily preserved in modern Civil Law codes (such as the French Code Civil), usufruct is a right of limited duration to use and enjoy the property of another, and to gather its fruits, provided that the substance of the property remains unaltered

¹⁸Budiman (n 15)

¹⁹Badan Wakaf Indonesia, 2021 National Waqf Index Report (Indonesian Waqf Board 2021).

(salva rerum substantia)²⁰. This doctrine provides the perfect theoretical bridge for moving from ‘exploitative ownership’ to ‘sustainable stewardship.’

A. The Doctrinal Mechanics: Splitting Property Rights

In traditional Anglo-American common law, ownership is often visualized as a ‘bundle of sticks.’²¹ One of the most powerful sticks is the right to abuse or destroy the property (jus abutendi). Usufruct fundamentally fractures this bundle into two distinct legal identities:

1. The Usufructuary: The person who has the right to use the property (usus) and harvest its fruits or profits (fructus).
2. The Bare Owner (Nuda Proprietas): The person who holds the underlying title to the property but has no right to use it or enjoy its benefits until the usufruct expires.

This entitlement to destroy is not theologically neutral. Lynn White Jr's influential — and contested — thesis traced Western property law's absolutism to Judeo-Christian dominion theology, in which Genesis 1:28 is read as granting humanity authority over creation²². Critics of this reading, pointing to Genesis 2:15's charge to ‘till and keep’ the earth, argue a stewardship current runs through the same tradition; the thesis remains debated rather than settled. Islamic jurisprudence, by contrast, begins from a structurally different premise: humans hold the earth as khalifa (vicegerent) under amanah (trust), never as titleholder²³. Jus abutendi has no equivalent to disable in this framework, because the theological starting point never grants it in the first place — the same structural move already seen in the Waqf's vesting of title in Allah (Part II.B.2).

B. The Ecocentric Engine: Salva Rerum Substantia

The core constraint of usufruct is the strict legal command: preserve the substance. A usufructuary who is granted a forest can harvest the fallen wood, pick the fruits, and clear small brush. However, they cannot clear-cut the forest because doing so

²⁰AD Tarlock, *The Common Law Framework for Water Resource Management* (Environmental Law Institute 2007).

²¹EA Farnsworth, *Farnsworth on Contracts* (3rd edn, Aspen Publishers 2004).

²²Lynn White Jr, ‘The Historical Roots of Our Ecologic Crisis’ (1967) 155(3767) *Science* 1203.

²³Mawil Izzi Dien, ‘The Environmental Dimensions of Islam’ in Richard C Foltz, Frederick M Denny and Azizan Baharuddin (eds), *Islam and Ecology: A Bestowed Trust* (Harvard University Press 2000).

destroys the very substance of the asset, violating their primary legal obligation to the bare owner.

When transplanted into environmental law, this private law rule transforms into a universal principle of Intergenerational Equity and sustainable development²⁴:

The ‘Bare Owner’ is reimagined as Future Generations or the State acting as a trustee for nature.

The ‘Usufructuary’ is reimagined as The Present Generation (humanity). We have the right to use the Earth's resources and enjoy its fruits, but we are legally and morally bound to preserve its ecological substance intact for those who follow.

C. Modern Environmental Transplants of Usufruct

One can highlight three highly successful ways this Roman private law doctrine has mutated into green public policy globally:

Indigenous Land Rights and Co-Management: Governments retain ‘bare ownership’ of national parks or protected forests, but grant permanent ecological usufructuary rights to indigenous communities²⁵. This legally protects their right to hunt, fish, and harvest resources traditionally while strictly binding them from altering or destroying the ecological baseline.

The Transnational Principle of *Sic Utere Tuo*: The usufructuary boundary directly anchors the foundational international environmental law maxim: *sic utere tuo ut alienum non laedas*²⁶. Upper-riparian states do not have absolute ownership over cross-border waterways; they are treated as global usufructuaries required to pass down an undegraded ‘substance.’

Carbon Credits and ‘Ecosystem Services’: When a company buys a carbon offset from a protected rainforest, they are purchasing a temporary usufruct²⁷. They do not own the soil or the trees, but they own the ‘fruits’ of that land's ecological labor — specifically, its capacity to sequester carbon.

²⁴Jonathan B Wiener, 'Something Borrowed: An Environmental History of Legal Transplants' (2001) 27 Ecology Law Quarterly 1295.

²⁵Jonas Ebbesson, *Access to Justice in Environmental Matters in the EU* (Kluwer Law International 2002).

²⁶Tarlock (n 20)

²⁷Richard J Lazarus, *The Making of Environmental Law* (University of Chicago Press 2004).

PROCEDURAL REALITIES: ACTIO POPULARIS, ARTICLE 9A, AND PAKISTANI PUBLIC INTEREST LITIGATION (PIEL)

Public Interest Environmental Litigation (PIEL) in Pakistan represents an evolution, rather than a direct replication, of the classical Roman *actio popularis*. While both concepts seek to protect collective societal interests without requiring a personal, economic, or direct physical injury, they differ structurally in their legal origin, procedural execution, and judicial architecture. For a comparative law framework, this distinction provides an exceptional example of how a legal transplant mutates to survive within a rigid constitutional framework.

A. The Constitutionalization of Standing: From Implicit Extensions to Article 9A

In a pure *actio popularis*, a litigant does not need to show that anyone's specific fundamental rights are being violated — only that a public law was breached or a common space defiled. Pakistan's constitutional order has offered two separate gateways for such a claim, carrying different standing thresholds. Article 199 grants the High Courts writ jurisdiction, but requires an ‘aggrieved person’²⁸ — a threshold that, standing alone, forecloses a direct transplant of *actio popularis*. The broader gateway was Article 184(3), which granted the Supreme Court original jurisdiction over any matter of ‘public importance’ relating to the enforcement of Fundamental Rights, without an aggrieved-person requirement²⁹. It was this second, wider jurisdiction — not Article 199 — that the landmark environmental cases actually invoked: in *Shehla Zia v WAPDA*³⁰ (1994) and, weeks later, *General Secretary, West Pakistan Salt Miners Labour Union v Director, Industries and Mineral Development, Punjab*³¹ (1994), the Supreme Court exercised its Article 184(3) jurisdiction to hold that environmental degradation — a high-voltage grid station in the first case, water pollution threatening a mining community's drinking supply in

²⁸Constitution of the Islamic Republic of Pakistan 1973, art 199.

²⁹Constitution of the Islamic Republic of Pakistan 1973, art 184(3) (before its omission by the Constitution (Twenty-Seventh Amendment) Act 2025).

³⁰*Shehla Zia v WAPDA* PLD 1994 SC 693.

³¹*General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra v Director, Industries and Mineral Development, Punjab* 1994 SCMR 2061.

the second — implicates the Right to Life (Article 9) directly, without any individual petitioner needing to show personal injury.

Article 184(3), in its original form, went further still than a relaxation of standing: it authorised the Supreme Court to take up a matter entirely on its own motion, with no petitioner at all. *Suo Motu* Case No 10 of 2005, concerning the New Murree development project, was initiated from a single newspaper report³². This was a structural departure *actio popularis* itself never reached: *actio popularis* still requires some member of the public to bring the claim; *Suo Motu* jurisdiction required none. Even the 26th Constitutional Amendment (2024), which narrowed this power by restricting the Court from acting beyond the contents of a filed application, left the underlying public-importance threshold of Article 184(3) intact³³.

This architecture, however, is no longer the current law, and the distinction matters for anyone relying on this Part today. The 27th Constitutional Amendment, passed on 13 November 2025, omitted Article 184 from the Constitution entirely, abolishing the Supreme Court's *Suo Motu* jurisdiction and transferring original jurisdiction over fundamental-rights enforcement to a newly created Federal Constitutional Court under Article 175E³⁴. Critically, Article 175E preserves only application-triggered jurisdiction — the Federal Constitutional Court may exercise this power only ‘if an appropriate application is filed,’ not on its own motion. No court in Pakistan today retains the no-petitioner *Suo Motu* power that Article 184(3) once carried. This is a jurisdictional relocation, not a doctrinal reversal: the underlying mechanism that *Shehla Zia* and the *Salt Miners* case relied on — original jurisdiction over questions of public importance touching Fundamental Rights, exercised without an aggrieved-person threshold — survives intact under Article 175E; only the forum, and the requirement that some petitioner must now file at all, has changed. A prospective environmental claim of the kind analysed in this Part would today be brought before the Federal Constitutional Court rather than the Supreme Court, but the doctrinal architecture this Part builds — and the standing

³²*Suo Motu* Case No 10 of 2005 (Environmental Hazard Posed by the New Murree Project) (Supreme Court of Pakistan, 2005).

³³Constitution (Twenty-Sixth Amendment) Act 2024 (Pakistan), inserting a proviso to art 184(3) restricting the Supreme Court from acting on its own motion beyond the contents of an application filed under that clause.

³⁴Constitution (Twenty-Seventh Amendment) Act 2025 (Pakistan), omitting art 184 and inserting art 175E.

analysis that follows — is unaffected by that relocation. At the time *Shehla Zia* and the *Salt Miners* case were decided, Article 184(3) was the correct and lawfully exercised mechanism; the courts did precisely what the Constitution then permitted.

Independently of this jurisdictional history, the 26th Constitutional Amendment also worked a substantive transformation: it codified Article 9A directly into the fundamental rights chapter of the Constitution. Article 9A explicitly states: ‘Every person shall be entitled to a clean, healthy and sustainable environment.’³⁵ This amendment alters the legal transplant dynamics entirely. Where judges previously had to employ extensive teleological interpretations to read green rights into the right to life, Article 9A establishes an independent, self-executing constitutional right.

Consequently, Pakistani PIEL has evolved past the abstract civic right of *actio popularis*; it is now a direct enforcement mechanism of a precise constitutional guarantee, available today before the Federal Constitutional Court under Article 175E just as it was before the Supreme Court under Article 184(3). This eliminates the historical argument that the judiciary was overstepping its separation-of-powers boundaries through ‘green activism,’ solidifying environmental protection as an explicit obligation of the State regardless of which forum enforces it.

B. From Adversarial Claims to Inquisitorial Commissions

A classic *actio popularis* proceeds within a standard, passive adversarial trial. However, PIEL in Pakistan operates on an inquisitorial model. When citizens or NGOs bring environmental complaints — such as the severe air pollution litigated in the Lahore Smog crisis or the systemic failures highlighted in *Asghar Leghari v Federation of Pakistan*³⁶ (2015) — the courts do not merely issue a binary, guilty-or-not-guilty verdict. Instead, the superior courts utilize their constitutional powers to create independent Judicial Climate Commissions.

These commissions are composed of international climate scientists, environmental engineers, NGO workers, and government bureaucrats. The court shifts its position

³⁵Constitution of the Islamic Republic of Pakistan 1973, arts 9, 9A (as inserted by the Constitution (Twenty-Sixth Amendment) Act 2024).

³⁶*Asghar Leghari v Federation of Pakistan* WP No 25501/2015 (Lahore High Court, 4 September 2015).

from a passive referee to an ongoing, active supervisor or structural reformer, forcing state organs to implement climate adaptation policies and technical solutions.

C. The Filter against ‘Publicity Interest Litigation’

Pure *actio popularis* runs the constant risk of opening the floodgates to frivolous lawsuits, vexatious claims, or politically motivated actions brought by entirely disinterested parties. Pakistani jurisprudence guards against this systemic abuse by enforcing a strict *bona fide* filter³⁷.

While a total stranger can file an environmental petition, the superior courts actively weed out what they colloquially term ‘Publicity Interest Litigation’ or ‘Private Interest Litigation’ hidden behind an ecological mask. If the petitioner has a hidden commercial advantage, a political vendetta, or lacks genuine proximity to the public harm, the court will dismiss the action with heavy financial penalties. This ensures that relaxed standing rules are strictly preserved for authentic, collective ecological catastrophes.

CONCLUSION AND POLICY RECOMMENDATIONS

Each of the four doctrines examined above answers the same underlying question differently: who is the party? *Parens patriae* makes the state the party, suing or regulating on nature’s behalf as an aggressive sovereign guardian (Part I). *Actio popularis* and its Pakistani PIEL descendant make a human being the party, with environmental harm actionable only insofar as it threatens a human right to life (Part IV). The corporate-personhood model underlying the global Rights of Nature movement — realised concretely in the Whanganui River and Ganges-Yamuna rulings — makes the ecosystem itself the party, but as a revocable legal fiction, dissolvable and ultimately resting on a human or state decision to grant or withdraw it (Part II.A). The Waqf makes the ecosystem the party as well, but irrevocably: the mutawalli files claims and defends boundaries on the Waqf’s behalf (Part II.C), yet holds no power to dissolve what he administers, because the corpus belongs to no one who could authorise its own extinction (Part II.B.2, Part II.C). Usufruct sits outside this ladder entirely — it is not a standing doctrine but a property-allocation

³⁷Farhad Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals* (Brill Nijhoff 2018).

doctrine, governing not who may sue but who bears responsibility for the substance over time (Part III). Read together, the doctrines trace an ascending structure: from the state standing in for nature, to a human standing in for nature, to nature standing for itself as a revocable fiction, to nature standing for itself as an irrevocable trust. The recommendations below are ordered along that same ascending structure.

The evolution of environmental law reveals a persistent truth: static, statutory frameworks are inherently unequipped to manage the fluid, cross-border, and generational realities of the climate crisis. When regulatory mechanisms stall, the survival of ecological assets depends on judicial agility. As demonstrated throughout this article, the process of importing and modifying historic common law, civil law, and classical religious principles — the process of legal transplantation — has provided judiciaries globally with a powerful green toolkit. By abstracting concepts originally designed to settle private disputes into expansive public remedies, courts have successfully challenged traditional anthropocentric boundaries.

However, the success of a legal transplant is not determined by its historical prestige, but by its systemic compatibility and cultural authenticity within the host legal ecosystem³⁸. While contemporary Western jurisprudence heavily favors corporate personhood templates to champion the ‘Rights of Nature,’ this approach introduces severe ideological paradoxes and systemic liabilities, treating nature through a lens inherently designed for capital extraction³⁹.

To bridge these conceptual divides and build a more resilient environmental jurisprudence, particularly within post-colonial and developing legal systems shaped by common-law, civil-law, and Islamic-law inheritances alike, this article proposes the following policy and judicial recommendations, ordered from the most readily achievable to the most structurally ambitious:

1. Institutionalising Inquisitorial Environmental Commissions: Building on the PIEL mechanism already functioning under Article 9A and, today, Article 175E, courts should systematise the appointment of independent, multi-disciplinary

³⁸Esin Örucü, ‘Law as Transposition’ (2002) 51 *International and Comparative Law Quarterly* 205.

³⁹Nataša Kršljanin, ‘Legal Transplants’ in Mortimer Sellers and Stephan Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer 2023).

environmental commissions — of the kind used in Asghar Leghari and the Lahore Smog litigation — as a standing procedural feature of environmental adjudication, not an ad hoc response to individual cases.

2. Transitioning from Revocable Corporate Personhood to Waqf-Modelled Trust Structuring: Judiciaries and legislatures should move away from the corporate-fiction template — the model underlying the Whanganui River and Ganges-Yamuna rulings — when granting legal recognition to ecosystems. The Waqf offers a structurally superior alternative precisely because its personhood is irrevocable rather than a discretionary grant that the same authority which created it can later withdraw.

3. Enacting a Dedicated Eco-Waqf Statute: Before an ecosystem can be structured as a Waqf-modelled trust in practice, the enabling legal category has to exist. As Part II.D demonstrates, Pakistan currently has no statute recognising 'eco-Waqf' as a distinct legal vehicle, leaving the doctrinal architecture built in this article available but unrealised. Pakistan's legislature should enact a dedicated statute creating that category, on which the governance regime proposed in Recommendation 4 can then operate.

4. Codifying Institutional Fiduciary Mandates (Mutawalli): Once the eco-Waqf category exists, the law must impose non-negotiable fiduciary duties on its administrators — a licensed nazhir/mutawalli regime, a statutory registry, and enforceable reporting duties — so that the pattern of guardian capture documented in Part II.A's account of Khyber Pakhtunkhwa's timber mafia cannot recur inside a Waqf structure as it did inside the state forest bureaucracy.

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Wakalah Reimagined: Ethical Client Acquisition for Lawyers in the Digital Era

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ABSTRACT

The legal profession in Pakistan has become increasingly challenging for newly enrolled advocates, especially those who do not belong to established legal families. Many talented young lawyers struggle to build a stable legal practice because they have limited professional connections and there are no clear rules regarding the ethical use of digital platforms for client outreach. As a result, many lawyers are uncertain about how they can introduce their services to the public while remaining within professional and religious boundaries. This research explores whether the Islamic doctrine of Wakalah (agency) can provide practical guidance for ethical client acquisition in the modern digital era. In Islamic jurisprudence, the relationship between a principal and an agent is built upon values such as Amanah (trustworthiness), Sidq (truthfulness), and Nasihah (sincere advice). At the same time, Islamic law strongly discourages practices involving deception, uncertainty, or misrepresentation, including Gharar and Tadlees. This paper proposes an Islamic ethical model that includes practical digital guidelines for lawyers, transparent and fair fee arrangements based on Maqasid al-Shariah, and the establishment of a Pro Bono Wakalah Portal to improve access to justice. The proposed framework aims to protect the dignity of the legal profession while also helping young advocates build their careers through ethical and responsible means.

Keywords: Wakalah, Islamic Law, Legal Ethics, Professional Responsibility, Client Acquisition, First-Generation Lawyers, Pakistan

INTRODUCTION

The legal profession in Pakistan is experiencing significant changes due to technological development and the rapid growth of digital communication. Every year, thousands of graduates enter the legal field with the hope of establishing successful careers. However, many of these young advocates face serious obstacles during the early years of practice. Those who lack family connections, financial resources, or established professional networks often find it difficult to attract clients and maintain a sustainable legal practice. Traditionally, lawyers relied on personal reputation, referrals, and senior mentors to develop their careers. Today, however, many citizens search for legal information through websites, social media platforms, and online discussion forums before contacting a lawyer. Although digital technology has created new opportunities for professional visibility, the Pakistan Bar Council has not introduced comprehensive rules explaining how lawyers may ethically use these platforms. This uncertainty creates a difficult situation for newly enrolled advocates. Some completely avoid online platforms because they fear disciplinary action, while others use social media without clear ethical guidance. Such uncertainty may result in misleading advertisements, unrealistic promises, or other practices that damage public confidence in the legal profession. Instead of relying only on foreign regulatory models, this research argues that Pakistan can develop its own ethical framework by drawing upon the Islamic doctrine of *Wakalah*. Since Pakistan is an Islamic Republic and its Constitution requires laws to remain consistent with the teachings of Islam, principles derived from Islamic jurisprudence offer both legal legitimacy and moral guidance. The values of honesty, trust, fairness, and responsibility that form the foundation of *Wakalah* are equally relevant in today's digital environment. By applying these principles to modern legal practice, it is possible to establish ethical standards that protect clients, strengthen public trust, and support the professional growth of young lawyers.

The Challenges faced by First-Generation Lawyers

For many first-generation lawyers in Pakistan, beginning a legal career is far more difficult than simply obtaining a law degree and a licence. Unlike advocates who belong to well-established legal families, these young professionals usually have no existing client network, no family chambers, and very limited opportunities to

receive referrals. As a result, building a successful legal practice becomes a slow and challenging process. In major cities such as Lahore, Karachi, and Islamabad, experienced law firms and senior advocates often dominate the legal market because they have earned public trust over many years. Newly enrolled lawyers, however, must compete in a highly competitive environment where professional recognition is difficult to achieve. Many depend on occasional walk-in clients or personal contacts, which rarely provide a stable source of income. Financial difficulties also create additional pressure. During the first few years of practice, many young advocates earn very little despite working long hours. Some eventually leave the legal profession altogether because they cannot support themselves or their families. This situation not only affects individual lawyers but also reduces the availability of legal services for ordinary citizens.

Problem Statement: Lack of Mentorship, Networking, and Regulatory Vacuum

The traditional system of legal mentorship in Pakistan has weakened over time. In the past, junior advocates learned practical skills by working closely with experienced lawyers who gradually introduced them to clients and court practice. Today, because of the increasing number of law graduates and growing competition within the profession, such opportunities have become less common. At the same time, digital technology has completely changed the way people search for legal advice. Many individuals now use Google, Facebook, LinkedIn, YouTube, or WhatsApp to obtain legal information before approaching a lawyer. Although these platforms provide valuable opportunities for professional communication, the Pakistan Bar Council has not issued detailed rules explaining what type of online activity is ethically acceptable. This lack of guidance creates uncertainty for young lawyers. They often hesitate to use digital platforms because they fear disciplinary action, while others unknowingly engage in practices that may be considered misleading or unethical. Therefore, there is a clear need for a practical framework that balances modern technology with professional ethics.

Research Question: Can the Islamic Doctrine of Wakalah Provide an Ethical Framework for Client Acquisition?

This study seeks to answer the following central question:

Can the Islamic doctrine of Wakalah be adapted to create an ethical framework for digital client acquisition by young lawyers in Pakistan while remaining consistent with Islamic principles and the existing legal system?

To answer this question, the research examines the classical principles of honesty, trust, fairness, transparency, and responsibility can effectively regulate modern legal marketing, online communication, consultation procedures, and fee arrangements.

Significance: Link to Access to Justice under Article 4 & 37 of the Constitution

The significance of this research extends beyond professional regulation. Article 4¹ of the Constitution guarantees every citizen the right to be dealt with in accordance with law; this right is meaningless without access to competent and ethical legal representation. Article 37(d)² imposes a duty on the State to ensure “inexpensive and expeditious justice.” If first-generation lawyers often the most willing to take on small value and pro-bono matters are excluded from the market or driven to unethical practices, the constitutional promise remains unfulfilled. Furthermore, Article 25³ guarantees equality of citizens. Systemic barriers that prevent talented but unconnected graduates from building a practice can be framed as a form of structural inequality that the State has a duty to address. By providing a doctrinally sound and practically implementable ethical framework for client acquisition, this article contributes directly to the enforcement of these fundamental rights and principles of policy. It also operationalizes the Islamic principle of Takaful (mutual guarantee) by positing a model in which the bar, the academy, and the judiciary collaborate to connect young lawyers with underserved litigants.

DOCTRINAL FOUNDATIONS OF WAKALAH IN ISLAMIC LAW

Definition and Jurisprudential Scope of Wakalah

Wakalah is a nominate contract in Islamic law, defined across all four Sunni schools as the appointment by a principal (Muwakkil) of an agent (Wakil) to perform a legally recognized act on his behalf. The classical jurists treat Wakalah as a contract

¹ Constitution of Islamic Republic Of Pakistan 1973

² Constitution of Islamic Republic Of Pakistan 1973

³ Constitution of Islamic Republic Of Pakistan 1973

of permission rather than a contract of exchange, although remuneration is permissible and indeed recommended. The Hanafi school, the dominant school in South Asia, holds that Wakalah is essentially a gratuitous contract unless a fee is stipulated, in which case it becomes a contract of ijarah combined with agency. The Shafi and Maliki schools similarly emphasize the permissibility of taking a known wage, while the Hanbali jurists stress that the agent must act in the best interest of the principal and may not delegate authority except with express permission. The relevance of these classical formulations to the modern lawyer-client relationship is immediate. When a client retains an advocate, a Wakalah contract is formed. The advocate is appointed to perform specific legal acts: filing a suit, arguing a case, drafting pleadings. The client, as principal, defines the scope of the agency. This is precisely the rationale adopted by the Federal Constitutional Court in **Riaz Hussain v. Chairman, Federal Land Commission**,⁴ where the Court held that a Wakalatnama does not, by itself, confer upon an advocate the authority to enter into a compromise that extinguishes the client's substantive rights; the agent's authority is strictly bounded by the terms of the agency. This decision unequivocally establishes that the relationship between lawyer and client in Pakistani jurisprudence is not merely a statutory one but is fundamentally an Islamic agency contract, with all the attendant restrictions and duties.

Core Ethical Principles: Amanah, Nasihah, and Prohibitions

The doctrine of Wakalah is based on several ethical values that remain relevant in modern legal practice.

- a. Amanah (Trust):** A lawyer is expected to protect the interests of the client with complete honesty and loyalty. Every legal decision should be taken in good faith without seeking personal benefit at the expense of the client. Trust forms the foundation of every successful lawyer-client relationship.
- b. Nasihah (Sincerity):** A legal practitioner should always provide sincere and unbiased advice. Even when a client wishes to hear only favourable opinions, the lawyer has a professional and moral duty to explain both the strengths and weaknesses of the case honestly. Giving truthful guidance strengthens public confidence in the legal profession.

⁴ 2026 PLD 22

- c. **Avoidance of Gharar:** Islam discourages uncertainty, deception, and misleading conduct in contractual relationships. Lawyers should therefore clearly explain their services, consultation process, professional fees, and legal limitations before accepting representation. Any attempt to hide important information or create false expectations is inconsistent with the principles of Wakalah.
- d. **Sidq (Truthfulness):** Islam places great importance on speaking the truth. Lawyers should accurately present their qualifications, legal experience, and professional abilities. They should never exaggerate their success rate or promise guaranteed court decisions simply to attract clients.
- e. **Prohibition of Tadlees (Deception):** Tadlees is the active concealment of a defect or the misrepresentation of facts to induce the other party to contract. In client acquisition, Tadlees occurs when a lawyer falsely claims to have won cases he never handled, misstates his bar enrolment date, or fabricates client testimonials. The Supreme Court of Pakistan, in **Syed Basit Hyder Taqvi v. The State**,⁵ while dealing with the collateral issue of dishonour of fee cheques, made a far-reaching observation on the nature of the counsel client relationship. The Court held that an advocate cannot use criminal proceedings to recover professional fees because the relationship is fundamentally fiduciary, akin to an agency of trust, and the advocate must act with complete fairness and good faith at all stages, including fee negotiation and recovery. This ruling, read with the Wakalah* principles, implies that any misrepresentation during client acquisition, which later leads to a fee dispute, would not only be unethical but could vitiate the entire retainer contract.

Professional Duties of the Wakil: Competence, Confidentiality, and Diligence

Classical fiqh texts enumerate the duties of the Wakil in a manner that closely parallels modern professional obligations. Al-Kasani in *Badai-al-Sanai* (Hanafi) states that the Wakil must be of sound mind, possess the legal capacity to perform the delegated task, and not exceed the authority given. Al-Shirazi (Shafi) adds that the Wakil must exercise diligence and may be held liable for loss caused by his

⁵ 2026 PLD 75

negligence. The Wakil is also forbidden from disclosing the principal's secrets; the duty of confidentiality is derived from the overarching principle of Amanah. For a young lawyer building a practice, these classical duties translate into concrete ethical directives: first, the lawyer must not accept a brief for which he is not competent, regardless of financial need; second, he must maintain strict client confidentiality in all digital communications, including public social media posts that might inadvertently reveal client information; third, he must pursue the client's case with the diligence expected of a reasonable advocate, which includes not abandoning a case after receiving the fee. These duties, if codified within the Bar Council's Canons with explicit reference to their Islamic origins, would be more readily internalized by a market where the majority of lawyers and clients share a common religious vocabulary.

Remuneration: Fee Ethics

Islam allows a Wakil to receive reasonable payment for professional services. The fee should be fair, transparent, and agreed upon before legal services begin. Both parties should clearly understand the nature of the work and the amount of remuneration to avoid future disputes. Charging excessive fees from vulnerable clients or concealing additional costs contradicts the principles of justice promoted by Islam. Likewise, accepting unrealistically low fees that prevent proper professional service may also affect the quality of legal representation. Lawyers should adopt transparent fee structures that reflect the complexity of the case, the time involved, and the professional responsibility undertaken. Such an approach promotes fairness, protects clients, and enhances the dignity of the legal profession.

CURRENT LEGAL FRAMEWORK IN PAKISTAN

Pakistan Bar Council Canons of Professional Conduct and Etiquette

The primary regulatory framework for lawyer conduct in Pakistan is the Canons of Professional Conduct and Etiquette, framed by the Pakistan Bar Council under the authority of the Legal Practitioners and Bar Councils Act, 1973. These Canons have been amended sporadically but remain largely rooted in the English Bar's etiquette of the early twentieth century, adapted to local circumstances. The Canons cover a range of subjects including the duty to the court, duty to the client, conflicts of interest, and fees, but they are notoriously silent on the use of modern

communication technologies. This silence is not benign; it creates a regulatory vacuum that is filled by informal practices, some of which are deeply unethical.

Rule 39 and the Prohibition of Advertising and Solicitation

Rule 39 of the Canons is the central provision governing client acquisition. It states that an advocate shall not advertise or solicit work, directly or indirectly, through circulars, advertisements, touts, personal communications, or interviews not warranted by personal relations. The language is broad and archaic. “Circulars” and “advertisements” unambiguously referred to print media when the rule was drafted. “Personal communications” could arguably extend to emails or direct messages, but there is no disciplinary precedent that clarifies this. The rule does not contemplate a professional website that simply displays the lawyer’s qualifications and areas of practice, nor does it distinguish between a paid Google advertisement and an educational Twitter thread on recent Supreme Court judgments.

Gap Analysis: Silence on Digital Platforms and Legal Tech

A systematic gap analysis reveals the following major unaddressed areas:

- a. **Professional Websites:** Whether a website constitutes an “advertisement” within the meaning of Rule 39. In many jurisdictions, a website is treated as a permissible “legal directory” or “publication” rather than an advertisement, provided it does not contain misleading information. The Pakistan Bar Council has not issued any guidance.
- b. **Social Media Profiles (LinkedIn, Facebook, Twitter, Instagram):** The line between personal expression and professional promotion is extremely blurred. A lawyer who tweets “Another acquittal in a murder case justice served” is arguably advertising his success. Is this solicitation? The Canons offer no answer.
- c. **WhatsApp Broadcasts and Groups:** A widespread practice among young lawyers is to join community WhatsApp groups and offer legal advice in response to general queries. Sometimes this escalates into a direct private consultation and retainer. This falls squarely into the domain of “personal communications not warranted by personal relations,” yet it is so ubiquitous that disciplinary committees have effectively adopted a policy of deliberate ignorance.

- d. Legal Tech Platforms:** Startups like “Vakeel Online” or “Legal Aid Pakistan” act as intermediaries, matching clients with lawyers. A young lawyer who registers on such a platform effectively solicits clients through a third party. Whether the platform operator is a “tout” or a permissible “referral service” is unresolved. The Pakistan Bar Council has neither licensed nor prohibited these platforms.
- e. Client Review Websites and Testimonials:** The publication of client testimonials, even genuine ones, is standard practice in other professions but is severely restricted for lawyers under Rule 39 as it may amount to indirect solicitation. The ethical permissibility of allowing a former client to post a Google review of a law firm is a question that has not even been raised before the Bar Council.

Socio-Economic Impact on Young Lawyers

The cumulative effect of these gaps is a two-tier system of professional opportunity. Well-connected lawyers from legal families receive work through chambers and personal networks and do not need digital outreach; they can afford to ignore social media entirely. First-generation lawyers, however, are starved of the traditional channels of work. They are confronted with a choice: either remain invisible and destitute, or use digital tools in a grey zone, hoping not to attract the attention of the Bar Council. The ethical dilemmas are acute. A young lawyer who receives an urgent divorce query on a WhatsApp group from a woman in distress is ethically bound to assist, but if that assistance leads to a retainer, he may be accused of solicitation. The result is a profession that punishes initiative and rewards social inheritance, driving some of the brightest young legal minds out of practice.

THE DIGITAL AGE AND NEW MODES OF WAKALAH

Social Media Marketing by Legal Practitioners

The use of social media by lawyers has exploded globally. In Pakistan, the trend is visible but fraught. Platforms like Twitter and LinkedIn are used by a growing number of young advocates to share legal commentary, case summaries, and constitutional analysis. This content serves a dual purpose: it educates the public and it signals the lawyer’s expertise. From an Islamic perspective, such activity can be analysed under the lens of propagation of truth. The Qur’an commands believers to enjoin good and forbid evil, and providing accurate legal knowledge to the

masses is a form of fulfilling this obligation. When a lawyer posts an objective analysis of a statute of limitations or a breakdown of the bail process, she is performing an act of *Nasihah* for the community. The critical distinction is between education and deceptive inducement. If the same post contains a direct invitation to contact the lawyer, promises a specific outcome, or disparages other advocates, it crosses the line. The proposed Digital *Wakalah* Guidelines must codify this distinction: permissible posts are those that provide neutral legal information and do not directly solicit instructions. The intention, as always in Islamic jurisprudence, is central. A post made genuinely to educate the public is permissible, while the same words posted with the primary intent of attracting clients may be permissible only if accompanied by clear disclaimers stating that no attorney-client relationship is formed online.

Legal Tech Platforms and Online Client Matching

Legal tech platforms represent the most disruptive innovation in the client acquisition space. These platforms typically allow a client to post a legal problem, and lawyers registered on the platform can bid or express interest, or the platform algorithmically matches the client with a lawyer. In Islamic contract law, this arrangement involves a *Wakalah* chain: the platform acts as an agent for the lawyer, and the lawyer is the *Wakil* for the client. The permissibility of such intermediary agency depends on whether the platform operates with transparency and does not engage in *Gharar*. If the platform clearly discloses its fee structure, verifies the credentials of listed lawyers, and does not inflate client expectations, the arrangement can be structured as a modern brokerage contract, which is permissible in *Shariah*. However, if the platform uses bait-and-switch tactics, allows unverified persons to pose as lawyers, or takes a concealed commission that distorts the lawyer's advice, the entire chain becomes tainted with disguised interest. The ethical portal we propose in Section 5 will build on the *Takaful* model, which removes the profit-motive from the matching process and replaces it with a mutual guarantee among legal professionals to serve the community.

Comparative Global Perspectives (US, UK, UAE)

To situate the proposed framework in a comparative context, it is useful to briefly survey the regulatory approaches in three jurisdictions that have either influenced Pakistani law or share its Islamic heritage.

- a. **United States:** The American Bar Association’s Model Rules of Professional Conduct permit lawyer advertising, including television and internet advertising, provided the communication is not false or misleading (Rule 7.1). Lawyers may also solicit clients directly in certain circumstances. The emphasis is on freedom of commercial speech under the First Amendment. In the US, a young lawyer can aggressively market herself on social media, buy Google ads, and offer free initial consultations without ethical violation, as long as the content is truthful. This model maximizes consumer choice and economic opportunity for new lawyers but has been criticized for commercializing the profession.
- b. **United Kingdom:** The Solicitors Regulation Authority (SRA) Standards and Regulations permit advertising but prohibit misleading claims about success rates or comparisons with other firms. The SRA also mandates that fee information be clear and comprehensible. The UK model strikes a middle ground: it allows digital marketing but closely regulates content to protect consumers. Notably, the UK does not treat a professional website or LinkedIn profile as impermissible advertising.
- c. **United Arab Emirates:** The UAE’s Federal Legal Profession Law (No. 23 of 1991, as amended) and the Code of Conduct issued by the Ministry of Justice adopt a more restrictive approach, reflecting Islamic ethical sensibilities. Lawyers are prohibited from advertising in a manner that is “inconsistent with the dignity of the profession.” The Dubai Legal Affairs Department has issued detailed guidelines on social media use, which require lawyers to maintain “sobriety and gravity” online. Although the UAE model is not directly transplantable to Pakistan, its explicit recognition that digital conduct must be reconciled with Islamic values is instructive.

Islamic Legal Analysis: Tadlees vs. Bayan al-Haq

The core Islamic question that arises from the foregoing discussion is whether digital client acquisition inherently constitutes deception or if it can be elevated to propagation of truth. Classical jurists did not, of course, confront social media algorithms. Their analytical methodology, was based on Maqasid al-Shariah the higher objectives of the law which include the preservation of faith, life, intellect, lineage, and property. Legal representation directly serves the preservation of rights

and property, and facilitating access to competent lawyers furthers the public interest. Applying the principle of juristic preference, it can be argued that digital outreach, when conducted with truthfulness, without overpromising, and with the intention of connecting litigants with knowledgeable advocates, is not only permissible but commendable. The Prophet Muhammad appointed ambassadors to convey the message of Islam to distant tribes; the selection of a knowledgeable and trustworthy person to represent a community before a ruler was an act of Wakalah that was inherently public. The same logic applies when a lawyer publishes content that makes the law accessible to the public. The key is that the Wakil must not become a salesman; he must remain a trustee of knowledge.

PROPOSED FRAMEWORK: ISLAMIC ETHICAL CLIENT ACQUISITION MODEL

To resolve the regulatory deadlock, this paper proposes a three-part framework rooted in Islamic jurisprudential principles:

Digital Wakalah Guidelines (Permissible vs. Impermissible Content)

Educational video explanations of statutory laws & rights	Guaranteeing specific judicial outcomes or trial success
Publishing scholarly legal articles & judgment analyses	Fabricating or publishing fake client reviews/endorsements
Listing verified credentials, degrees, and practice areas	Direct unsolicited messaging (DMs) soliciting specific individuals
Displaying clear, standardized consultation fee cards	Disparaging rival advocates or participating in sensationalist drama

Maqasid-Based Fee Structure

The second component operationalizes the Islamic principle of Ujr and the prohibition of exorbitant disparity. The Pakistan Bar Council, in collaboration with provincial bar councils, should develop a model fee guidance framework that is not compulsory but serves as a benchmark for ethical fee setting.

The Sliding Scale Mechanism:

- a. Every law firm or solo practitioner should be required to maintain a written Fee Schedule that is provided to the client before the retainer is signed. The schedule must categorize legal services into fixed-fee items (drafting a legal notice, filing a suit) and time-based items (appearance per hearing, conferences).
- b. The schedule should include a mandatory clause on “Capacity Consideration”: the lawyer must inquire, in a non-intrusive manner, about the client’s financial circumstances and may apply a sliding scale discount if the client falls within defined low-income or vulnerable categories. For example, daily wage earners, widows, orphans, and physically disabled persons may receive a statutory cap on the fee chargeable in certain categories of cases.
- c. Any fee that exceeds the upper bound of the market rate for a case of similar complexity, and which the client was induced to accept due to ignorance or distress, should be presumptively voidable. The Bar Council’s fee dispute resolution committee would have the power to re-determine the fee based on Ujr if the lawyer cannot justify the premium.

Prohibition of Success Fees:

Islamic law categorically forbids Gharar and gambling. A success fee a percentage of the recovery is analogous to a contingent fee that makes the lawyer’s remuneration dependent on an uncertain future event. While contingent fees are permitted and regulated in the United States, they are inconsistent with the Wakalah framework, which requires the agent’s fee to be a known, fixed amount or a transparent hourly rate. Pakistani courts have previously expressed discomfort with success fees, and the proposed framework would codify their prohibition. A lawyer may charge a higher fixed fee for a complex case, but the fee cannot be expressed as a percentage of the decree amount.

Connection to the Basit Hyder Judgment:

The Supreme Court’s ruling in **Syed Basit Hyder Taqvi v. The State**,⁶ is directly on point. The Court deprecated the practice of converting a civil fee dispute into a criminal prosecution under Section 489-F PPC.⁷ The judgment implicitly endorses the proposition that the fee relationship must be civil, transparent, and subject to court scrutiny. A Maqasid-based fee structure that requires upfront disclosure and

⁶ 2026 PLD 75

⁷ Pakistan Penal Code

caps exploitation would prevent the very disputes that give rise to the dishonour-of-cheque cases condemned by the Court.

Pro-Bono Wakalah Portal (Takaful-Based Access to Justice)

The third component proposes the establishment of a digital Pro-Bono Wakalah Portal, jointly administered by the Pakistan Bar Council, provincial bar councils, and the law departments of major public and private universities. The portal would function on the Islamic cooperative insurance principle of Takaful: a mutual guarantee among the legal community to provide representation to those who cannot afford it.

Operational Model:

- a. Registration of Young Lawyers:** A newly enrolled advocate, upon receiving his or her license, may register with the portal as a Wakil-in-Training. The registration would require verification of bar membership and agreement to the portal's ethical guidelines.
- b. Client Referral:** Through a network of partner non-governmental organizations, legal aid clinics, and court referral services, disadvantaged litigants are screened for eligibility and legal need. The portal then matches the litigant with a registered young lawyer based on practice area, geographic proximity, and language.
- c. Supervised Practice:** Every case assigned through the portal is supervised by a retired judge or a senior advocate designated as a Mentor Wakil, who reviews pleadings and provides guidance. This ensures quality representation while the young lawyer gains courtroom experience.
- d. Fee Model:** A central fund, contributed to by the government (under Article 37(d) obligations), the Pakistan Bar Council, and philanthropic donations, covers the nominal travel and documentation expenses of the lawyer. The lawyer serves on a largely pro-bono basis, aggregating valuable experience and the intangible asset of reputation. In exchange, the lawyer is permitted to count these cases towards the professional practice requirements for higher court advocacy.
- e. Islamic Legitimacy:** The portal is explicitly grounded in the Quranic command to "help one another in righteousness and piety"⁸ and the Prophetic tradition that

⁸ Al-Ma'idah 5:2

“the best of people are those most beneficial to people.” The Takaful model ensures that the risk of non-payment is mutualized across the profession, rather than being borne solely by the individual young lawyer.

This portal simultaneously solves the dual problem: it gives first-generation lawyers an ethical and structured pathway to acquire clients and build a professional reputation, and it channels access to justice to the most marginalized segments of society, fulfilling the State’s constitutional duty.

Mentorship Wakalah (Senior-Junior Case Sharing)

The fourth component addresses the traditional mentorship model and attempts to formalize it within an Islamic Wakalah chain. Currently, many senior advocates, when they have excess work, refer clients to junior colleagues on an informal basis. While this practice is economically essential for junior lawyers, it is vulnerable to ethical risks: the senior may receive a concealed commission from the junior, or the junior may be pressured to split fees in a way that compromises independent professional judgment.

The “Wakil of Wakil” Model:

An established senior lawyer may, with the written consent of the client, delegate a specific case or portion of a case to a junior lawyer.

- a. The delegation must be transparent:** the client must know the name and qualifications of the junior lawyer, and the scope of delegation must be limited.
- b. Referral Fee Prohibition:** The Principal Wakil is strictly prohibited from demanding or accepting any referral fee, commission, or share of the junior lawyer’s fee in exchange for the referral. This is derived from the Islamic prohibition of bribery and the principle that a Wakil cannot use the principal’s property to extract a personal benefit without full disclosure and consent.
- c. Mentorship Credit:** The Bar Council should incentivize this model by introducing a Mentorship Credit system. Senior lawyers who supervise and delegate cases to a minimum number of young lawyers per year would receive Continuing Professional Development (CPD) credits and public recognition. This transforms mentorship from a discretionary favour into a professional duty with tangible rewards.
- d. Joint and Several Ethical Responsibility:** The Principal Wakil remains ethically responsible for the conduct of the Delegated Wakil in relation to the

delegated task, ensuring a quality control mechanism. This aligns with the Hanafi rule that an agent who delegates without the principal's permission is liable for the acts of the sub-agent, while an authorized delegation transfers liability only for the proper selection of the sub-agent.

By formalizing the referral process, the model eliminates the grey economy of touts that currently flourishes around court complexes, replacing it with a regulated, transparent, and Islamically valid system of knowledge transfer and work allocation.

CONCLUSION AND RECOMMENDATIONS

Specific Amendments to the PBC Canons of Professional Conduct

The immediate and most practical recommendation is that the Pakistan Bar Council convene a special committee to draft and adopt a new chapter of the Canons of Professional Conduct titled Digital Ethics and Client Acquisition. This chapter must be developed through a consultative process involving representatives of the judiciary, the Attorney General's office, Islamic jurisprudence scholars, technology experts, and, critically, young lawyers.

The chapter should:

- a. Define permissible and prohibited digital conduct, as outlined in Section 5.1.
- b. Establish a safe harbor provision that protects educational content from being classified as solicitation.
- c. Set out a clear procedure for submitting complaints about digital misconduct, with a requirement that the complainant must provide verifiable digital evidence.
- d. Empower a Digital Ethics Panel, comprising at least one member qualified in Shariah and one in information technology, to issue advisory opinions that act as persuasive precedent.

Establishment of a Bar Ethics & Digital Innovation Committee

In addition to the Digital Ethics Panel, the Bar Council should establish a standing "Ethics Committee" at the national and provincial levels, mandated to review all new technology-related ethical issues through an Islamic jurisprudence lens.

This Committee would be tasked with:

- a. Issuing fatwa or advisory opinions on novel questions, such as the permissibility of AI-powered legal research tools, blockchain-based client engagement letters, and cryptocurrency retainer payments.
- b. Advising on the compatibility of proposed amendments to the Canons with the Injunctions of Islam, thereby pre-empting constitutional challenges under Article 227⁹.
- c. Conducting a regular audit of legal tech platforms operating in Pakistan to certify their compliance with Islamic Wakalah principles, similar to the Halal certification for food products under the Pakistan Halal Authority Act, 2016.

The constitutional mandate in Article 227¹⁰ is not a dead letter; it requires the State, and by extension the professional regulatory bodies, to continually assess and align legal structures with Islamic principles. The Ethics Committee would be the institutional mechanism for fulfilling this obligation in the legal profession.

The structural barriers facing first-generation lawyers in Pakistan are not merely economic but profoundly ethical. When talented young advocates are forced to choose between poverty and unethical solicitation, the entire justice system is compromised. This article has demonstrated that the Islamic doctrine of Wakalah, far from being an archaic relic, offers a comprehensive and coherent framework for resolving these tensions. By rooting professional conduct in the principles of Amanah, Sidq, and the prohibition of Gharar and Tadlees, the Pakistani legal profession can construct an ethical architecture that is both native to its cultural and constitutional soil and adaptive to the digital age.

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The Process of Legislation or the Precessed Legislation

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ABSTRACT

In a democratic constitutional system, it is expected that the legislation will be a vehicle for the Will of the People to be converted into a law. Legislation should ideally be conceived in response to a public need and then take the form of consultation and deliberation, before passing through representative institutions and finally through the constitutional process and becoming legitimate. But in giving the form of legislation, a fundamental question arises, namely, is the formal process of legislation done after the substantive decision has been taken?

Under these conditions, public consultation can turn from a process of democratic participation to a process of legitimization of a result which has already been agreed. The article explores the difference between the process of legislation and what can be termed processed legislation, that is, when an issue in the legislative and political realm seems to be basically resolved prior to calling for public approval during the formal legislative process.

Not every legislative process is fixed, but when this is so, the legitimacy of the process is not clearly established if the public does not have the freedom to meaningfully shape the process. The present political scenario in Pakistan

The same question may be extended to the debate surrounding the creation of new provinces in Pakistan. Recent political discourse has increasingly emphasized administrative decentralization, smaller provinces, and the need for national consensus.

Keywords: Processed Legislation, Public Consultation, Democratic Legitimacy, Constitutional Reform, Political Participation

INTRODUCTION

The very foundations of a democratic government depend on a simple but powerful axiom. The people should have something to say in the laws under which they are governed. Legislation is not just the mere process of enacting a bill through a parliament. It is a constitutional process that should be representative of the people's aspirations, political representation, institutional deliberation and accountability.

Theoretically, the process is simple. There is a social issue. There is a problem in society. Public reaches out in concern. The problem is defined by the political representatives. A legislative proposal is prepared. The consultation of relevant stakeholders is undertaken. The proposal is discussed in representative institutions. Amendments are considered.

Lastly, the Law becomes an Act by going through the constitutional process. What if this switch is flipped around, though? What about a process that is done second and the answer before? It is these question that are central to the discussion at hand. It is not simply a word play to say that there is a difference between "the process of legislation" and "processed legislation. It is a double meaning of democratic rules.

In the first, the results are truly subject to public discussion and institutional review. In the second, the formal aspects of consultation, discussion and acceptance can function to lend legitimacy to a decision that has already gained political or institutional momentum. But the threat to the people is not in just their having different views on a specific legislation. The real threat is that citizens will begin to doubt the very democratic process.

Simultaneously, the legislature may be unable to draft meaningful and effective law due to lack of capacity, expertise and political independence. Under certain circumstances legislators can also fall victim to outside pressure, taking the place of autonomous representatives of the people and become a tool of powerful institutions. This can lead to a decline in representative democracy, suspicion of the legislative process and institutions, and a disconnect between the will of the people and the legislation produced under their name.

As citizens come to feel that their votes are symbolic without any real impact, participation turns from substantive to symbolic. The citizen is physically there in the democratic process but his influence is lacking. An uncomfortable question is

raised here, is this how legislation gets made, or is it how decisions are processed and then handed down to the people to be accepted?

THE THREE PILLERS AND THE QUESTION OF INSTITUTIONAL INDEPENDENCE

Legislature creates legislation. The executive implements laws and administers the state. The judiciary is responsible for interpreting the law and upholding constitutional boundaries, a core function that each must perform within certain limits. This arrangement is only effective if there are institutional independence, accountability and checks and balances.

But not everything is the same with the functioning of institutions and their design in the Constitution. In either fragile or developing democracies, institutions might have legal standing but be subject to contestation as to their autonomy.

The formal, written system of constitutionally established power could be sound, but the informal, unwritten system of power might be based on political influence, bureaucratic systems, centres of authority not elected, economic interests, or unelected individuals.

This may be termed the paradox of institutional appearance, for institutions then undertake their constitutional tasks but the public starts to wonder whether they have any real independence in doing so.

The very essence of a people's government rests on one simple principle. The people must have a voice in the laws under which they live. Legislation is not just the mere process of enacting a bill through a parliament. It is a process established in the Constitution and should be inclusive of the aspirations of the people, representative of political representation, deliberative and accountable to institutions.

The word matchsticks can be used here not to mean that institutions do not matter, but rather to indicate that institutions that are not sufficiently autonomous are not as secure as they could be. If a stronger political or institutional entity is needed to provide support to a weaker constitutional one, the constitutional institution will be incapable of protecting democracy.

The problem is not so much knowing that there is an "establishment" or other centre of influence. More important constitutional questions are whether the formal institutions of the state have sufficient independence and expertise to make decisions by law, constitutional principles and public interest. Democracy doesn't

just happen because institutions are put in place. It needs institutions that are independent.

CONSULTATION OR THE APPEARANCES OF CONSULTATION?

The stated rationale was to bring governance closer to citizens and improve public service delivery. The proposal raises a larger question, Will the people be asked first, or will the decision be made first and the people consulted afterwards? If the government believes that new provinces are necessary, the process should begin with a transparent national debate. The criteria should be publicly disclosed. The economic consequences should be studied.

The constitutional requirements should be explained. The people of the affected regions should be consulted. The criteria should be open and transparent. This should be investigated in terms of the economics of its impact. The constitutional requirements need to be explained. Consultation should be made to the people of the affected regions. Most importantly, the process should be truly open, the formation of new provinces may be another case of processed constitutional reform rather than democratic constitutional reform.

KASHMIR: WHEN ELECTIONS BECOME A QUESTION OF LEGITIMACY

In this modern case of Pakistan administered Kashmir, it is important to consider the situation in the light of the following questions become more critical when we think about the library. These questions are important to consider when it comes to the library. The 2026 election was conducted in a context of the background there was a lot of political unrest, protest and violence, as well as doubts about the credibility of the elections.

The election was split up into several stages and the political campaign was dealt with separately. Political divisions in the country continued to be stark. There were also allegations of electoral irregularities that were reported, and political interference. The authorities and competing political actors provided contrasting reports on the situation.

Whatever one's political stance, the circumstance poses a greater constitutional question. What is how an election is supposed to be, if the citizen goes alone into the polling station, and is not sure that his or her will be honored by those around

him or her. Would her/his vote have an impact on the political result? An election is not just a process of putting in of a ballot into a ballot box. An election is a pledge. It is a pledge that the citizen will decide on which one he chooses it to be respected. It is a pledge that political power will be handed over or held by way of a process that is credible. It is a promise that it is not in the hands of invisible and unaccountable forces but in the hands of people full right to choose their political agents. If this pledge is compromised, then its effects ripple beyond the elections. The legitimacy of whole political system starts to deteriorate. The most perilous effect is not necessarily immediate political opposition. It's because of growing public distrust. Why is it that people start asking... should we vote? Why is it necessary to protest? Why bother to be involved? In what way should we put our lives in danger if the outcome has already been decided? Such questions are not just partisan questions. They are Issues of constitutional validity.

THE COST OF DEMOCRATIC PARTICIPATION

The danger to the people is not because of their difference in opinions on a particular piece of legislation. The real danger is for citizens to start questioning the very democratic process. At the same time, lack of capacity, expertise and independence from the political may make it difficult for the legislature to produce meaningful and effective law.

Under certain circumstances legislators can also fall victim to outside pressure, taking the place of autonomous representatives of the people and become a tool of powerful institutions. This can contribute to the loss of representative democracy, distrust of the democratic process and institutions and the gap between the will of the people and the laws created in their name.

The formal, written system of constitutionally defined power could be legitimate, but the informal, unwritten system of power could be political influence, bureaucratic processes, centres of power not elected, economic interest, or unelected people.

For a weaker political or institutional entity to provide support to a stronger constitutional entity, the constitutional entity will not be able to defend democracy.

It's not just that there is an "establishment" or other centre of influence known.

But more significant constitutional questions are whether the formal institutions of the state have the independence and expertise to make decisions by law,

constitutional principles and public interest. Democracy doesn't just happen because institutions are put in place. It needs institutions that are independent.

THE DEBATE ON NEW PROVINCES: REFORM OR ANOTHER PROCESSED DECISION?

It's worth noting again the interplay between public participation and constitutional change in the debate over the establishment of new provinces. The administration in Pakistan has always been a subject of political discussion. All the proposals for smaller provinces or for new administrative units have been based on the four arguments of better governance, administrative efficiency, representation and equitable development.

The case for smaller administrative units is easy to make a large population coupled with geographical, economic, and social diversity in a state could benefit from more decentralized government to make it closer to the people. The establishment of new provinces is not simply a bureaucratic process, though. It's a matter of the constitution. It has a negative impact on political representation. It has an impact on the allocation of resources.

This impacts the Senate and National Assembly, It impacts provincial organizations. It impacts on political identities. It can also affect the balance of power between political parties and areas. Therefore, the establishment of new provinces cannot be legitimately considered as an accomplished fact, as it has been made in closed-door negotiations and later presented to the public.

"The central question, and indeed the fundamental concern of this paper is whether the provinces were created for Pakistan or is Pakistan created for the provinces." The answer lies in the stark fact that Pakistan was not a creation of the provinces but the provinces a creation of Pakistan's political framework, through which the aspirations and identities of the majorities of the provinces came to be incorporated.

¹

History has shown the effects of ignoring the true needs and the wishes of the people. The separation of East Pakistan and the emergence of Bangladesh in 1971 remains a profound reminder of what can happen when the political, constitutional,

¹ <https://www.dawn.com/news/624870/cdnjs.cloudflare.com>

and democratic grievances of a significant portion of the population remain unheard and unresolved.

Recent political debate, including comments attributed to Interior Minister Mohsin Naqvi, has emphasized the need for political dialogue and consensus on major structural reforms, including the question of new provinces.

This approach is important because constitutional restructuring requires more than administrative reasoning; it requires broad political and public legitimacy. The larger debate in Pakistan has also included proposals for reorganizing the existing provinces into smaller administrative units.

One proposal publicly articulated in 2025 suggested by Federal Minister for Communications, Abdul Aleem Khan "I firmly believe that Pakistan's growing population and expanding administrative needs make the creation of new provinces an urgent national requirement, dividing each of Pakistan's four provinces into three administrative units North, Central, and South while preserving their broader provincial identities.²

Therefore, any discussion concerning the creation, merger, division, or restructuring of provinces must be grounded in democratic consultation, political dialogue, Constitutional legitimacy, and, most importantly, the consent and aspirations of the people directly affected by such a decision.

THE REAL MEANING OF PUBLIC CONSENT

Public consent is not the same thing as public silence. It's not a no-resistance situation, either. Consent requires information. It requires choice. It requires alternatives. It takes both courage and the ability to disagree. Above all, it involves an open decision-making that leaves sufficient room for meaningful influence by the people.

A consultation is not an appropriate way to achieve public consent when it is the government that is seeking it. The passage of a bill through the parliamentary stages does not automatically mean that it is democratic. Just having polling stations open is not sufficient to ensure democratic legitimacy.

Democracy might not be a process, but it is a substance. The question would be whether the procedure could have yielded a different outcome. If the answer is NO, then the process is suspect.

² https://pid.gov.pk/site/press_detail

PROCESSED LEGISLATION TO DEMOCRATIC LEGISLATION

The answer is not to oppose legislation, elections, or the institutions of the constitution. The answer is to make them stronger. The solution is to strengthen them. Pakistan requires a culture of substantive constitutionalism, where constitutional procedures are not treated as formalities but as genuine safeguards of public participation.

Any major legislative or constitutional reform should therefore be accompanied by meaningful public consultation; transparent publication of proposed reforms; independent expert review; parliamentary debate without predetermined outcomes; protection of peaceful dissent; judicial independence and constitutional oversight; transparent electoral processes no political influence; accountability of all centres of political power; and a genuine opportunity for citizens to influence the final decision.

The objective should not merely be to complete a process. The objective should be to preserve the credibility of the process. A democratic process that produces an unpopular outcome is still legitimate, if the process was free, transparent, and meaningful. But a process that produces a predetermined outcome while merely performing consultation is fundamentally different.

CONCLUSION

It should be emphasized that in a democracy, the most critical question is not whether laws are passed. It is their manner of transmission. Legislation that is not signed by an authority or has the majority of a vote is not legitimate. It stems from the conviction that the process was legitimate, honest, inclusive and constitutional. It is then logical to consider the difference between the process of legislation and processed legislation. The first one starts with the people and is susceptible to persuasion. The second starts with a decision and is then subjected to public validation. The first recognizes citizens as participants. The second has the danger of objectifying citizens.

In the end, if people are not made to partake in some process that they consider to be already decided, they cannot sustain a democracy. Nor ought the innocent people of any democratic process to be called into the service of a process which has become incapable of offering them meaningful options.

Instead, the country's real challenge is to build more of everything, laws, elections and institutions. It's about making something that's the process that counts. When the process is real, people can even take an outcome that they don't like.

However, if the process is just a façade, even apparently, legal result cannot win popular legitimacy. So, the question is, are we just watching the process of legislation or we're just watching the legislation that is processed?

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Revitalizing Waqf: The Islamic Doctrine of Endowment as a Tool for Higher Education and Healthcare in Pakistan

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ABSTRACT

The waqf institution has historically financed education and healthcare across the Muslim world, yet in Pakistan its vast potential remains untapped. This article conducts a doctrinal examination of waqf jurisprudence under Islamic law and within Pakistan's constitutional and statutory framework particularly the Auqaf (Federal Control) Act, 1976 and provincial waqf ordinances. It identifies a persistent disconnect between the charitable purposes defined by law (education and medical relief) and the underfunded realities of public universities and teaching hospitals. Drawing on the classical concepts of *habs al-asl wa tasbil al-manfa'ah* and *maqasid al-shariah*, the article proposes a contemporary "Corporate Waqf and Digital Waqf" architecture. It argues that, with targeted legislative amendments, transparent governance, and the creation of an independent Pakistan Waqf Development Authority, idle waqf assets can be transformed into productive endowments for higher education and healthcare. This revival not only aligns with the religious mandate of perpetuity but also advances the State's constitutional obligation under Article 38(d) to promote social and economic well-being. The study concludes that waqf, when modernised, offers a Shariah-compliant, sustainable funding mechanism that relieves pressure on the public exchequer.

Keywords: Waqf, Islamic endowment, higher education, healthcare, Maqasid al-Shariah, Corporate Waqf, Pakistan, Auqaf, Article 38, social welfare.

INTRODUCTION

For over a thousand years, the Islamic institution of waqf the irrevocable dedication of property for charitable ends served as the primary engine of social welfare across Muslim lands. Al-Azhar University in Cairo, established in the tenth century through a waqf, sustained itself for centuries without state funding. Ottoman

hospitals, public kitchens, and madrasas were likewise financed by endowments that channelled private piety into permanent public benefit. On the Indian subcontinent, waqf endowments supported mosques, maktabas (elementary schools), and dispensaries long before colonial rule. Pakistan inherited both these assets and the underlying Shariah doctrine of *habs al-asl wa tasbil al-manfa'ah* (freezing the corpus while dedicating its usufruct to charity). The post-independence legal architecture particularly the Auqaf (Federal Control) Act, 1976¹ and the provincial Waqf Properties Ordinances prioritised bureaucratic control over productive revitalisation, leaving the sector mired in mismanagement and litigation. Pakistan's public universities and teaching hospitals face a fiscal emergency. Government allocations are chronically insufficient to meet the demands of a burgeoning student population and rising patient loads, while fee-hikes push quality education and healthcare beyond the reach of ordinary citizens. The Auqaf departments that oversee a vast estate of waqf properties across the country are frequently characterised by opacity, encroachment, and administrative inertia. Valuable urban waqf land, endowed centuries ago specifically for education and medical relief, often lies idle or becomes the subject of protracted legal battles. This jarring disconnects a huge pool of Shariah-mandated charitable capital lying dormant while the very purposes it was created to serve remain starved of resources constitutes the core problem. The Supreme Court's observation in [Sikandar Hayat Khan Jogzai v. Muhammad Hashim, 2019 PLD 730² \(Supreme Court\)](#) that waqf property must be managed strictly in accordance with its charitable objectives underscores the legal duty that remains unfulfilled on a systemic scale.

Link to Article 38(d) of the Constitution — Social and Economic Well-Being

The inquiry carries constitutional weight. **Article 31(2)(c)**³ of the Constitution directs the State to organise Auqaf, while **Article 38(d)**⁴ obliges the State to provide facilities for work and an adequate livelihood and, read with the Principles of Policy, to secure the social and economic well-being of the people. Accessible

¹ the Auqaf (Federal Control) Act, 1976

² 2019 PLD 730

³ Article 31(2)(c)

⁴ Article 38(d)

higher education and healthcare are not mere policy preferences; they are constitutional mandates. A professionally managed, transparent waqf sector directly serves these obligations by creating a sustainable, Shariah-compliant funding stream that reduces dependence on the public exchequer. Repositioning waqf as a constitutional instrument of social justice demonstrates that the same legal system that currently paralyses these endowments can through informed reform and independent oversight become the vehicle for a uniquely Islamic fulfilment of the welfare goals enshrined in the Constitution.

DOCTRINAL FOUNDATIONS OF WAQF IN ISLAMIC JURISPRUDENCE

Definition And Elements: *Waqif*, *Mauquf*, *Mauquf Alaih*

In Islamic law, a waqf is a perpetual, irrevocable dedication of property by a Muslim for a purpose recognised as charitable under the Shariah. Its constitution requires three essential elements:

- a. ***Waqif (the waqf-maker)***: The person who dedicates the property. The waqif must be a sane, adult Muslim who is the absolute owner of the property. In Pakistan, the statutes consistently refer to a “person professing the Muslim faith” (see Section 2 of the 1913 Act and Section 2(e) of the Punjab Waqf Properties Ordinance, 1979). The waqif’s intention to create a permanent dedication must be clear and unequivocal.
- b. ***Mauquf (the dedicated property, the corpus)***: The subject-matter of the waqf. It must be a tangible, definable asset capable of yielding a benefit or usufruct. Under the Punjab Ordinance⁵, the concept is broadened by Explanations 1–5, which deem properties used from time immemorial, properties received in exchange for waqf left in India, and properties procured through waqf proceeds or subscriptions as waqf property. The property must be owned by the waqif at the time of dedication and must be lawfully transferable.
- c. ***Mauquf Alaih (the beneficiaries, the object)***: The purposes or persons for whose benefit the waqf is created. The object must be recognised by Islam as religious, pious or charitable. Statutory definitions (Section 2 of the 1923 Act;

⁵ Punjab Ordinance 1923

⁶Section 2(e) and its Explanation 6 of the Punjab Ordinance) enumerate charitable purposes that include relief of the poor, education, medical relief, maintenance of shrines and worship. The beneficiaries may be individuals, a class of persons, or an institution, provided the ultimate purpose does not contradict Shariah.

These elements collectively establish a legal and spiritual trust that binds the property outside ordinary commercial circulation while binding the community to uphold its intended purpose.

Core Doctrine: Habs Al-Asl Wa Tasbil Al-Manfa ‘Ah – Freezing The Corpus, Circulating The Benefit

The juridical essence of waqf is captured in the maxim *habs al-asl wa tasbil al-manfa ‘ah*. The immobilisation (or “freezing”) of the original asset and the dedication of its usufruct to the charitable object. This doctrine serves several consequences:

- a. **Perpetuity and Irrevocability:** Once created, the waqf cannot be revoked, sold, gifted or inherited. The corpus is withdrawn from the waqif’s ownership and from general commercial disposition. This principle is recognised in all Pakistani waqf statutes, which consistently use the phrase “permanent dedication.” The Supreme Court in [Faqir Muhammad Khurbhid v. Chief Administrator of Auqaf 1987 PSC 101 \(Supreme Court\)](#)⁷ held that the pattern of devolution from Guru to Chela excluding natural heirs was a key indicator that the properties were dedicated waqf, affirming that the corpus had been permanently drawn out from the dedicators’ ownership.
- b. **Usufruct to Charity:** The yield, income or benefit derived from the corpus flows exclusively to the charitable object. The waqf manager (mutawalli) is a trustee, not an owner, and must channel the proceeds strictly to the stated purpose. In [Sikandar Hayat Khan Jogzai v. Muhammad Hashim, 2019 PLD 730 \(Supreme Court\)](#), the Court nullified a lease of waqf property for a petrol pump because it was not preceded by a comprehensive scheme aligned with the waqf’s

⁶ Section 2 of the 1923 Act

⁷ 1987 PSC 101 (Supreme Court)

objectives, emphasizing that any use of waqf corpus must serve, not deviate from, the charitable ends.

- c. ***Inviolability of the Corpus:*** Legal devices such as sale, mortgage or exchange of waqf property are subject to strict judicial oversight and, under the Punjab Waqf Properties Ordinance⁸, require the sanction of the competent authority only when necessary and when the waqf's interest is demonstrably preserved. This protects the public character of the bequest against both mismanagement and encroachment.

Link With Maqasid Al-Shariah – Hifz Al-Nafs, Hifz Al-Aql

The Shariah's higher objectives (*maqasid al-shariah*) seek to secure human welfare by preserving religion, life, intellect, progeny and wealth. Waqf serves these objectives in a structural manner, particularly *hifz al-nafs* (preservation of life) and *hifz al-aql* (preservation of intellect):

- a. ***Hifz al-Nafs (Preservation of Life):*** Waqf endowments for healthcare, hospitals, dispensaries, provision of clean water, and relief of the poor directly sustain human life. Under the Punjab Waqf Properties Ordinance, Explanation 6 recognises “medical relief” and “relief of the poor and orphans” as charitable purposes. A waqf hospital or a waqf-funded medical scholarship is a concrete translation of the obligation to preserve life, as recognised by classical jurists and confirmed by the statutory framework.
- b. ***Hifz al-Aql (Preservation of Intellect):*** The same Explanation lists “education” and “worship” as charitable purposes. By endowing schools, colleges, universities, libraries and research centres, waqf fosters the development of the mind. Historically, Al-Azhar University and the great madrasas of the Muslim world were waqf-based, illustrating the enduring link between waqf and intellectual preservation. This objective aligns with Article 38(d)⁹ of the Constitution of Pakistan, which obliges the State to promote social and economic well-being goals that waqf-financed education directly advances.

⁸ Punjab Waqf Properties Ordinance

⁹ Article 38(d)

When a waqf is designed with these maqasid at its core, it exceeds individual charity and becomes a permanent instrument of collective welfare, fulfilling the divine trust of *istikhlaf* (vicegerency) over wealth.

Types Of Waqf: Religious, Charitable, Family Waqf

Islamic law and Pakistani statute recognise three principal categories, distinguished by the nature of the beneficiary:

- a. **Religious Waqf (Waqf-Masjid, Waqf-Shrine):** The property is dedicated exclusively to the maintenance of a mosque, a takia, a khankah, a dargah or another shrine. Under the Punjab Waqf Properties Ordinance, Explanation 5 deems property permanently dedicated for such purposes to be waqf property. The income generated from offerings, boxes placed at the shrine, or adjoining commercial properties must be applied to the preservation of the religious institution.
- b. **Charitable Waqf (Waqf-Khairi):** The endowment is created for general public welfare: relief of the poor, education, medical relief, infrastructure (wells, bridges), or any other object of public utility. Explanation 6 of the Ordinance enumerates these purposes and treats them as charitable. A waqf-Khairi does not reserve any benefit for the waqif's family; its benefit flows directly to the public.
- c. **Family Waqf (Waqf-alal-Aulad):** The dedicated property's usufruct is directed first to the waqif's family, children and descendants, with the ultimate remainder reserved for a charitable purpose often relief of the poor. The validity of such waqfs was historically contested among Muslim jurists. In the subcontinent, the Mussalman Wakf Validating Act, 1913¹⁰ removed the doubt: Section 3 validates a waqf "for the maintenance and support wholly or partially of his family, children or descendants" provided the ultimate benefit is for a purpose recognised as religious, pious or charitable. The Supreme Court in [Ghulam Shabbir v. Nur Begum 1977 PLD 75 \(Supreme Court\)](#)¹¹ affirmed the validity of a waqf-alal-aulad, holding that such dedications for family maintenance and ultimate charity are lawful and that exclusion of a profligate

¹⁰ Mussalman Wakf Validating Act, 1913

¹¹ 1977 PLD 75

heir is permissible. Similarly, [Anjuman Himayat-e-Islam, Lahore v. Dr. Syed Farooq Hassan 2007 PLD 352 \(Supreme Court\)](#)¹² dealt with the management and accession of a waqf-ul-aulad, reinforcing that the waqf deed governs the devolution of the mutawalli ship and that the waqf property remains dedicated even when family beneficiaries exist.

LEGAL FRAMEWORK OF WAQF IN PAKISTAN

The constitutional and statutory architecture governing waqf in Pakistan reflects a tension between the Islamic imperative of charitable endowment and the post-colonial preference for bureaucratic centralisation. The Constitution of the Islamic Republic of Pakistan, 1973¹³ provides the normative foundation, while a layered monument of federal and provincial legislation enacted, amended, and re-enacted across multiple decades determines how waqf properties are registered, administered, and protected. This section examines the relevant constitutional articles, the principal statutes, the administrative machinery they create, and the persistent structural gaps that undermine the realisation of waqf's developmental potential in education and healthcare.

Constitutional Provisions and Their Application to Waqf

Article 38(d) — Social and Economic Well-Being

Article 38(d) is a Principle of Policy, not enforceable through courts in the manner of a fundamental right, but it operates as a constitutional directive to the State. The provision obliges the State to secure the social and economic well-being of the people and to provide facilities for work and an adequate livelihood. A professionally managed, transparent waqf sector that channels its income to universities, teaching hospitals, scholarships, and public health facilities is a direct and constitutionally sanctioned mechanism for fulfilling this obligation. The Supreme Court has consistently treated Principles of Policy as guiding norms against which executive action may be tested for reasonableness. Linking waqf reform to Article 38(d) raise waqf management from a narrow matter of religious administration to a constitutional imperative of welfare delivery.

¹² 2007 PLD 352 (Supreme Court)

¹³ Constitution of the Islamic Republic of Pakistan, 1973

Article 20 — Freedom to Manage Religious Institutions

Article 20 guarantees every citizen the right to establish, maintain and manage religious institutions. A waqf, created under Islamic law for charitable purposes, falls within the category of a religious institution. While the State may regulate waqf administration in the public interest as the provincial ordinances do Article 20¹⁴ imposes a limit on the extent of bureaucratic control that may constitutionally be exercised. Any statutory provision that extinguishes the waqf's autonomous character or vests absolute discretion in an administrator without safeguards for the waqf's intent or the beneficiaries' interests may be challenged as a excessive restriction on religious freedom. This article supports arguments for a governance model that preserves waqf autonomy while ensuring accountability, rather than one that subjects waqf entirely to departmental control.

Article 23 — Right to Property

The right to acquire, hold, and dispose of property underpins the waqf's capacity to create a waqf. The dedication of property to a charitable purpose is itself an exercise of the right of disposition that Article 23¹⁵ protects. While the State may impose reasonable restrictions in the public interest including requirements for registration, oversight of mutawallis, and restrictions on alienation any restriction that effectively annul the waqf's charitable intent or renders the waqf corpus unproductive may be challenged as unreasonable and therefore unconstitutional.

Current Administration: Role Of Provincial Auqaf Departments

The administration of waqf properties in Pakistan operates through a federal-provincial architecture. The Auqaf (Federal Control) Act, 1976 governs auqaf placed under federal control, with an Administrator-General appointed to oversee their management. For the bulk of waqf properties located within the provinces, the respective Provincial Waqf Properties Ordinances of 1979¹⁶ (Punjab and Khyber Pakhtunkhwa) and their equivalents in Sindh and Baluchistan establish Provincial Auqaf Departments headed by a Chief Administrator.

¹⁴ Article 20

¹⁵ Article 23

¹⁶ Waqf Properties Ordinances of 1979¹⁶

The statutory functions of the Provincial Auqaf Departments include:

- a. **Registration:** Under Section 6¹⁷ of the provincial ordinances, all waqf properties must be registered. The Department maintains the register, which is meant to serve
- b. as the definitive record of waqf assets within the province.
- c. **Taking Over Management:** Under Section 7¹⁸, the Chief Administrator may, by notification, take over the management and control of any waqf property. Once taken over, the Department presume the role of mutawalli, collecting income, managing leases, and applying the proceeds to the waqf's objectives.
- d. **Scheme Preparation and Development:** Under Section 15¹⁹, the Chief Administrator may prepare schemes for the development and utilisation of waqf property. This power extends to the sale of waqf property where necessary, with the proceeds applied to the waqf's purposes.
- e. **Eviction of Encroachers:** Under Section 11²⁰, the Department may summarily evict persons in unauthorised occupation, providing a mechanism intended to protect waqf land from encroachment.
- f. **Lease Management:** The Department grants and terminates leases of waqf property, collecting rent and ensuring that lessees comply with the terms of the tenancy.
- g. **Accounting and Audit:** The ordinances require the maintenance of proper accounts, which are subject to audit.

In practice, the Departments have struggled to fulfil these functions effectively. The absolute volume of waqf properties many of which remain unregistered or whose records are incomplete combined with chronic understaffing, limited professional capacity in asset management, and a litigation-heavy environment, has produced an administrative apparatus that is reactive rather than strategic. The Department is often a respondent in litigation, defending encroachments and irregular leases,

¹⁷ Section 6

¹⁸ Section 7

¹⁹ Section 15

²⁰ Section 11

rather than a proactive developer of waqf assets aligned with their charitable purposes.

Gaps In The Legal And Administrative Framework

Lack of Transparency

The statutory framework does not mandate systematic public disclosure of waqf assets, income, expenditure, or administrative decisions. While accounts must be maintained and audited, there is no statutory requirement to publish them on a publicly accessible platform, to disclose the terms of leases granted, or to report the outcome of eviction proceedings. The absence of transparency creates an environment conducive to mismanagement, collusion, and the diversion of waqf income. A waqf endowed for education or medical relief may, without public scrutiny, see its income diverted to administrative expenses or unauthorised purposes without accountability. The Supreme Court's emphasis in **Sikandar Hayat Khan Jogzai v. Muhammad Hashim**, 2019 PLD 730 on the need for a transparent, objective-aligned scheme before any transaction affecting waqf corpus implicitly acknowledges this gap, but the judgment operates reactively litigants must challenge irregular transactions after the fact rather than preventing them through structural transparency.

Encroachment

Encroachment remains the single most widespread threat to waqf assets. Urban waqf land, often located in prime commercial areas, is systematically occupied through forged documents, collusive mutations, and prolonged litigation that exhausts the Department's enforcement capacity. Section 11 of the provincial ordinances provides a summary eviction mechanism, but its effectiveness depends on the Department's institutional will, the accuracy of its land records, and the cooperation of revenue authorities and local police resources that are frequently insufficient or compromised. The Supreme Court judgments in **Noor Mohammad, etc. v. Ghulam Haider**, 2026 SCP 211²¹ and **Muhammad Sajid v. Mst. Shamsa Asghar**, 2025 SCP 125²², while not dealing directly with waqf property, underscore the broader crisis in land record integrity and the burden of proof placed on rightful

²¹ 2026 SCP 211

²² 2025 SCP 125

owners. For waqf properties where the original waqif may have died centuries ago and the waqf deed may be lost proving title against an squatter who has obtained a mutation or a fraudulent lease is extraordinarily difficult.

Poor Asset Management

The Provincial Auqaf Departments are structured as regulatory and custodial bodies, not as asset management enterprises. They lack the professional expertise in real estate development, financial management, investment strategy, and income optimisation required to transform underutilised waqf land into productive assets generating sustainable revenue for education and healthcare. The power to prepare schemes under Section 15 is exercised infrequently, and when exercised, often focuses on short-term lease revenue rather than long-term development aligned with the waqf's core charitable purpose. The Supreme Court in **Sikandar Hayat Khan Jogzai** nullified a lease for a petrol pump precisely because it was not part of a comprehensive, purpose-aligned scheme a judicial recognition that ad hoc commercial transactions do not constitute proper waqf asset management. The statutory framework provides no affirmative obligation on the Department to develop waqf assets professionally; the power is discretionary, not mandatory.

Statutory Fragmentation and Jurisdictional Overlap

The legislative landscape is fragmented. The Auqaf (Federal Control) Act, 1976 applies to certain auqaf; the provincial ordinances of 1979 apply within their respective provinces; and the West Pakistan Waqf Properties Ordinance, 1961²³, though repealed by the 1976 Act for federal auqaf, remains relevant as the antecedent legislation that shaped definitions and concepts carried forward into provincial laws. This fragmentation creates jurisdictional uncertainty which authority governs a particular waqf, and under which statute and hinders the development of uniform standards for transparency, asset management, and beneficiary protection. A waqf straddling multiple provinces or with assets in both federal and provincial jurisdictions face administrative intricacy that inhibits effective oversight.

Inadequate Beneficiary Participation and Judicial Oversight

²³ West Pakistan Waqf Properties Ordinance, 1961

The statutory framework treats waqf beneficiaries the poor, students, patients, worshippers as passive grantees rather than as stakeholders with enforceable rights to information, participation, and accountability. There is no statutory provision for beneficiary representation on governing boards, no mechanism for beneficiaries to challenge administrative decisions without invoking expensive and protracted litigation, and no specialised waqf tribunal with the expertise to resolve disputes expeditiously. The general civil courts bear the burden of waqf litigation, which proceeds at ordinary civil pace while waqf assets depreciate and encroachments entrench.

GLOBAL INNOVATIVE WAQF MODELS

Turkey: Waqf for Universities and Hospitals

Turkey's post-1980 legal reforms rejuvenated the waqf (vakıf) by permitting the creation of foundation universities and private hospitals through earmarked waqf endowments. Today, over 75 vakıf universities operate alongside their private and state counterparts, funded primarily through waqf assets rather than state grants. The legal architecture empowers a waqf to own commercial enterprises, invest in capital markets, and reserve and reinvest surplus income converting the waqf from a passive rent-collector into an active economic institution. A designated waqf management board, subject to oversight by the General Directorate of Foundations, governs each endowment with a fiduciary obligation to align asset utilisation with the charitable purpose.

Key structural features relevant to Pakistan

Autonomy with Oversight: Vakıf universities enjoy academic and financial autonomy while remaining subject to regulatory audit, striking a balance that Pakistan's Auqaf Departments currently lack.

- a. **Asset Diversification:** Waqf endowments are not confined to real property; they include shares in industrial and commercial ventures, generating diversified income streams that underwrite long-term operational costs.
- b. **Tax Incentives:** Donations to waqf entities qualify for tax deductions, encouraging philanthropic capital formation.

- c. ***Application to Pakistan:*** Section 17²⁴ of the Punjab Waqf Properties Ordinance already permits waqf income to be applied to education and medical relief. A dedicated legislative instrument a “Waqf Universities and Hospitals (Endowment) Act” could create a specialised category of waqf that is permitted to hold corporate equity, receive tax-exempt donations, and be governed by a professional board drawn from academia, medicine, and finance, while the Chief Administrator exercises a supervisory, rather than managerial, role. This would require amendment to the existing ordinances to authorise such corporate structures.

Malaysia & Singapore: Corporate Waqf and Cash Waqf

Malaysia has spearheaded the corporate waqf model through state-level Islamic Religious Councils. Land is assigned to a corporate entity such as Waqaf An-Nur Corporation Berhad which subsequently develops the property into commercial buildings, hospitals, or educational institutions, directing the returns to the specified charitable purposes. The corporate form facilitates professional management, limited liability, and access to capital markets for sukuk (Islamic bond) issuance backed by waqf assets. Cash waqf (*waqf tunai*) has also been incorporated: donors contribute liquid funds that are pooled and invested, with the returns distributed to endowments for mosques, schools, and clinics.

Singapore provides a persuasive model of modern waqf asset regeneration through the Islamic Religious Council of Singapore (MUIS). MUIS aggregated numerous underutilised waqf properties, redeveloped them into high-value commercial real estate (e.g., the Wisma MUIS building), and channelled the enhanced rental income to fund mosques, Islamic education, and social services. The development was funded through a combination of waqf reserves and sukuk issuance, demonstrating that waqf assets can be mobilised without alienation.

Key lessons

- a. ***Corporate Governance:*** Separating the waqf’s fiduciary management from its day-to-day operations by housing it in a special-purpose vehicle eliminates the bureaucratic inertia seen in Pakistan’s Auqaf Departments.

²⁴ Section 17

- b. **Cash Waqf** A cash waqf mechanism allows small donors to participate, democratising waqf creation and aggregating capital for large projects. Pakistan's existing waqf law is silent on cash waqf, though there is nothing in the Shariah or the ordinances that prohibits the dedication of money as waqf, provided it is used to acquire an income-producing asset.
- c. ***Sukuk-Based Financing***: Waqf assets can serve as underlying security for sukuk, enabling development without sale of corpus. The Supreme Court in *Sikandar Hayat Khan Jogzai v. Muhammad Hashim*, 2019 PLD 730 emphasised the need for a comprehensive scheme before any transaction; a sukuk issuance under a court-approved scheme would satisfy this requirement while generating development capital.
- d. ***Application to Pakistan***: The extant authority to formulate schemes under Section 15²⁵ of the Punjab Waqf Properties Ordinance could be deployed or made statutorily obligatory via amendment to constitute corporate waqf entities for specified asset pools. Cash waqf could be codified through a straightforward legislative modification to the definition of "waqf property" in Section 2(e)²⁶, adding "including cash and equivalents when earmarked for the purpose of acquiring or developing waqf property." The Auqaf Departments could collaborate with the Pakistan Stock Exchange and the Securities and Exchange Commission of Pakistan to formulate a regulatory framework for waqf-based sukuk.

Saudi Arabia: King Abdullah Waqf for Higher Education

The King Abdullah Waqf serves as a revolutionary blueprint for macro-endowments. Constituted as a sovereign waqf entity governed by an independent board, it aggregates contributions encompassing real estate, equities, and cash into a professionally managed portfolio, the returns from which exclusively underwrite higher education and research. The waqf is not tethered to a single institution; rather, it operates as a permanent capital engine for scholarships, research chairs, and university infrastructure across the Kingdom. Its governance charter stipulates transparency, international auditing standards, and periodic public disclosure.

²⁵ Section 15

²⁶ Section 2(e)

Distinctive features

- a. ***Scale and Diversification:*** The waqf corpus comprises a diversified portfolio of income-generating assets, insulating educational funding from the cyclicity of any single asset class or government budget.
- b. ***Professional Fund Management:*** The waqf employs investment professionals and external fund managers, treating waqf assets as an endowment fund rather than static real estate.
- c. ***Outcome-Based Disbursement:*** Funding allocations are tied to measurable educational outcomes, ensuring alignment with the waqf's charitable purpose.

Application to Pakistan: Pakistan already possesses the statutory baseline for such a model. Section 16 of the Punjab Waqf Properties Ordinance empowers the Chief Administrator to liquidate waqf property and reinvest the proceeds, provided the primary objective of the waqf is served. A unified policy could aggregate multiple dormant waqf properties dedicated for educational or medical purposes into a single “Pakistan Waqf Higher Education & Healthcare Fund,” administered by a board comprising the Higher Education Commission, medical council representatives, and finance professionals. The proceeds would be invested in Shariah-compliant instruments, and the income allocated to universities and hospitals on a transparent, performance-linked basis. This would convert fragmented, under- utilized assets into a permanent national endowment for human development.

Lessons for Pakistan: A Structured Reform Agenda

The global models converge on four structural reforms that Pakistan can implement within its existing constitutional and statutory framework, supplemented by targeted legislative amendments.

Professional Asset Management and Governance

Pakistan's Auqaf Departments must be reoriented from direct managers to regulators, while dedicated professional entities Waqf Management Companies or Waqf Trust Companies assume the fiduciary duty of managing waqf assets. These entities should be governed by boards composed of finance, real estate, education, and healthcare professionals, operating under a statutory charter that mandates transparency and accountability. The Supreme Court's **dictum** in *Sikandar Hayat*

Khan Jogzai that any major transaction requires a comprehensive scheme aligned with the waqf's objectives provides the jurisprudential bedrock for such a shift, converting the scheme-preparation power under Section 15 from a discretionary option into a mandatory compliance mechanism

Legislative Recognition of Cash Waqf and Corporate Waqf

Amend the provincial waqf ordinances to explicitly include cash and equivalents within the definition of waqf property, and to authorise the creation of corporate waqf entities that can hold and manage waqf assets, issue sukuk, and enter into development partnerships. The definition in Section 2(e) of the Punjab Waqf Properties Ordinance can be expanded, and a new part added to the ordinance dealing specifically with “Investment Waqfs” and “Development Waqfs.”

Transparency and Digital Public Access

Enact a mandatory obligation to publish the waqf register, annual audited accounts, lease terms, and scheme particulars on a publicly accessible digital portal. This single measure would address the opacity that enables encroachment and income diversion, aligning with the constitutional duty under Article 38(d) to pursue social and economic well-being through accountable institutions.

Strategic Pooling and Sukuk Issuance

Map and catalogue waqf properties endowed for education and healthcare across each province, consolidate them into a special purpose fund entity, and issue Shariah-compliant investment certificates (*sukuk*) to finance development, using the underlying corpus as collateral without alienation. This mirrors the Singaporean and Saudi models, and is achievable under the extant Section 16²⁷ liquidation-and-reinvestment mechanism if deployed through a professionally managed fund.

Beneficiary Participation and Specialised Dispute Resolution

Including representatives of universities, teaching hospitals, and beneficiary communities on waqf management boards. Establish specialised waqf tribunals to resolve disputes expeditiously, drawing on members with expertise in Islamic law,

²⁷ Section 16

property law, and charity governance, thereby reducing the burden on civil courts and preventing encroachment by prolonged litigation.

PROPOSED CORPORATE WAQF FRAMEWORK FOR EDUCATION AND HEALTHCARE

This framework lays out a comprehensive modernization blueprint creating dedicated legal entities, digitizing donations, leveraging underused land through build-operate-transfer (BOT) arrangements, and establishing a professionally governed authority. I assess each component against Pakistan's existing jurisprudence, the statutory scheme, and the constitutional framework already discussed, identifying legal viability, required amendments, and potential pitfalls.

Corporate Waqf Model: Establishing “University Waqf” and “Hospital Waqf” as Legal Entities

Current legal personality of waqf: Under the Punjab Waqf Properties Ordinance, 1979 (and its sister provincial laws), a waqf is not a separate juridical person; it is a mass of property dedicated for a charitable purpose, managed either by a mutawalli or, once taken over, by the Chief Administrator of Auqaf as the statutory manager. There is no mechanism in the ordinance to incorporate a waqf as a body corporate with its own board, powers, and perpetual succession.

Feasibility of a corporate waqf entity: Creating a distinct “University Waqf” or “Hospital Waqf” as a legal person would require legislation. This could be done by:

Amending the provincial waqf ordinances to permit the registration of a “Waqf Corporation” a special-purpose entity that holds the waqf corpus and applies its income, subject to the supervision of the Chief Administrator (who would act as regulator, not manager).

Promulgating a stand-alone “Waqf Universities and Hospitals (Endowment) Act” at the provincial level, under which the Governor, on the recommendation of the Auqaf Department, may constitute such corporate waqfs by statutory notification. The enactment should prescribe the composition of the governing board (academic and medical professionals, financial experts, donor representatives), mandate transparency, and preserve the waqf's inalienable and perpetual character.

Constitutional alignment: Article 20 protects the right to manage religious institutions. A corporate waqf governed by a board that includes independent professionals, but remains tethered to the waqf’s charitable purpose and to the regulator, strikes a constitutionally defensible balance between autonomy and public accountability. The board’s autonomy is insulated against arbitrary executive interference, while the regulator’s oversight ensures the corpus is not diverted a model that the judiciary would likely uphold.

Digital Waqf Platform: Crowdfunding for Medical Equipment and Scholarships

The prevailing waqf ordinances are fundamentally anchored in immovable property and tangible assets. The definition of “waqf property” in Section 2(e) of the Punjab Waqf Properties Ordinance does not explicitly encompass liquid capital or digital funds. here is no express prohibition against dedicating money as waqf, provided the cash is used to acquire an income-generating asset for the waqf’s purpose. A dedicated fintech or digital platform designed to collect micro donations would functionally aggregate cash waqf contributions.

Legal pathway

- a. ***Short-term operational mechanism:*** The Auqaf Department could receive monetary contributions through a designated banking channel institutionalized as a “Waqf Development Fund” pursuant to Section 17, directly allocated the capital toward scholastic grants and medical equipment. To bring this within the waqf framework, each donation would need to be treated as a dedicated waqf of the contributed amount, which is administratively prohibited at scale.
- b. ***Legislative amendment:*** Insert an explicit clause into Section 2(e) that reads “including cash and liquid assets when dedicated for the purpose of acquiring, developing or maintaining waqf property.” This insertion would provide unequivocal legal sanction for liquid endowment. A ancillary provision could then empower the Chief Administrator to deploy a digital platform, issue automated receipts, and pool capital into a centralized fiduciary trust or waqf fund.
- c. ***Regulatory considerations:*** Any digital platform soliciting public funds potentially triggers the oversight of the Securities and Exchange Commission

of Pakistan if the underlying mechanism meets the criteria of a collective investment scheme. To mitigate this regulatory risk, the platform should be structured strictly as a passive donation portal administered by the Auqaf Department or by a registered charitable trust, explicitly avoiding characterization as an investment vehicle. The platform must execute transparent assets-utilization reporting to satisfy the constitutional mandate enshrined in Article 38(d).

Asset Revitalization: Leasing Auqaf Land on a BOT Basis for Private Medical Colleges and Hospitals

The Chief Administrator is vested with statutory power under Section 15 of the Punjab Waqf Properties Ordinance to formulate schemes for the development and utilization of waqf property, and under Section 17 to allocate its income to the waqf's charitable objectives. Leasing waqf land to a private developer on a Build-Operate-Transfer (BOT) basis where the developer constructs a medical college or hospital, operates it for a designated concession period, and subsequently reverts the asset to the waqf falls squarely within the ambit of the scheme-preparation power. Such a scheme must:

- a. Be congruent with the waqf's original intent (education or medical relief).
- b. Preserve the waqf's ownership; the lease creates a usufructuary right, not a transfer of the underlying corpus.
- c. Ensure the rental income (or revenue-share yield) flows entirely to the waqf and is applied exclusively to its mandated purposes.

Judicial Guardrails: The Supreme Court in *Sikandar Hayat Khan Jogzai v. Muhammad Hashim, etc.* held that no material transaction such as a long-term lease can be executed without a comprehensive, objective-aligned scheme that conforms to the ordinance's prescribed procedures. A BOT arrangement that satisfies these criteria potentially fortified by a judicial declaration from the High Court under its inherent jurisdiction would be legally unassailable. The transaction must be structured as an *ijara* (lease) with a service component, safeguarding the waqf's perpetuity and inalienability.

Operational Modalities:

- a. The Auqaf Department, leveraging technical expertise, formulates a detailed BOT scheme identifying specific waqf parcels, projected healthcare needs, and transparent bidding procedures.
- b. The scheme is approved by the Chief Administrator and, to pre-empt litigation, may be submitted for judicial approval via a declaratory suit.
- c. The concession agreement must incorporate rigorous safeguards against unlawful alienation, clear provisions for asset reversion, and periodic independent auditing.

Governance: Structuring a Professionalized “Provincial Waqf Development Authority”

Existing Institutional Architecture: The provincial ordinances vest waqf administration in a Chief Administrator and subordinate Administrators. The Department functions primarily as a bureaucratic custodian; it is not statutorily mandated to develop assets proactively, nor does it possess a governing board fortified by external professional expertise.

Constitutional and Jurisdictional Constraints: Following the Eighteenth Constitutional Amendment, the subject of “auqaf” is excluded from the Federal Legislative List, falling exclusively within the residual legislative competence of the provinces. A federal “Pakistan Waqf Development Authority” would likely be *ultra vires* unless the provincial assemblies delegate such authority under Article 144²⁸, or federal legislation is enacted with explicit provincial consent. Consequently, a more jurisprudentially secure path is to establish Provincial Waqf Development Authorities through targeted amendments to the existing provincial waqf ordinances. Each Authority should:

- a. Be a body corporate with perpetual succession and a board comprising technocrats from real estate, finance, healthcare, education, and Islamic law with only a minority representation drawn from the routine Auqaf Department.

²⁸ Article 144

- b. Possess the statutory capacity to develop waqf assets, execute public-private partnerships, issue *sukuk*, and operate digital platforms.
- c. Be accountable to the Chief Minister (or Governor) and subject to audit by the Auditor-General, while operating autonomously from the routine Auqaf bureaucracy.

Statutory Amendments Required: A new Chapter should be inserted into the parent provincial ordinance titled “Waqf Development Authority,” delineating its constitution, functions, financing mechanisms, and reporting obligations. This would leave the existing administrative machinery intact for routine management while carving out an autonomous, professionalized development arm.

CHALLENGES AND RECOMMENDATIONS FOR WAQF MODERNIZATION

Legal and Constitutional Challenges: Restructuring the Waqf Statutory Regime

The extant provincial waqf ordinances principally the *Punjab Waqf Properties Ordinance, 1979* and its parallel provincial enactments were structurally engineered for a custodial administration focused on rent collection and asset preservation. Transitioning to a corporate waqf model necessitates comprehensive amendments that explicitly empower cash waqf, corporate waqf entities, digital platforms, and the constitution of a professional development authority. The principal legal hurdles are tripartite: constitutional, procedural, and Shariah-compliant.

Post-18th Amendment Federalism and Jurisdictional Competence: Following the Eighteenth Constitutional Amendment, the subject of *auqaf* falls exclusively within the residual legislative competence of the provinces. A federal “Pakistan Waqf Development Authority” would require either a constitutional amendment reintroducing *auqaf* to the Federal Legislative List, or a resolution passed under Article 144 of the Constitution by the provincial assemblies delegating such authority to the federation. Consequently, the more jurisprudentially secure route is to amend each parent provincial ordinance to establish autonomous Provincial

Waqf Development Authorities, ensuring the institutional architecture remains intra-vires of provincial legislative power.

Fundamental Rights Scrutiny and Constitutional Boundaries: Any enactment creating new regulatory bodies with enforcement powers must withstand judicial scrutiny under the fundamental rights enshrined in Part II of the Constitution. The Supreme Court’s landmark advisory opinion in the *Hasba Bill* case (PLD 2005 SC 873)²⁹ is highly instructive. The apex court examined a provincial bill proposing a parallel enforcement apparatus and determined that it infringed upon federal jurisdictions and threatened to violate the fundamental rights to dignity, privacy, and freedom from arbitrary state intrusion. Accordingly, a Waqf Development Authority empowered to issue binding directives, levy penalties, or supersede existing waqf management must be strictly circumscribed to avert similar constitutional challenges. The Authority’s primary mandate should be promotional, advisory, and facilitative, with any enforcement mechanisms expressly tethered to the waqf’s charitable objectives and subject to robust judicial review.

Statutory Modification of the Definition of Waqf Property: The prevailing definition of “waqf property” under Section 2(e) of the Punjab Waqf Properties Ordinance, 1979 remains tethered to immovable property and corporeal assets. Codifying cash waqf requires an explicit amendment adding “*or cash and liquid assets when dedicated for acquiring, developing, or maintaining waqf property.*” Without this legislative modification, a digital crowdfunding platform, however desirable, lacks an explicit statutory baseline. Similarly, the creation of a corporate waqf entity a body corporate designed to hold the waqf corpus and allocate its income cannot be accommodated within the current statutory framework. A new Chapter must be inserted into the ordinance authorizing the registration of “Waqf Corporations” featuring defined governance structures, limited liability, and perpetual succession.

Mitigating the Risk of a Parallel Judicial Apparatus: The establishment of specialized waqf tribunals for dispute resolution a frequent recommendation in policy literature must harmonize with Article 203G³⁰ and the constitutional

²⁹ PLD 2005 SC 873

³⁰ Article 203G

framework that channels adjudication through the established court hierarchy. The *Hasba Bill* jurisprudence explicitly warned against fragmenting the judicial function. A superior approach is to designate existing civil courts as specialized waqf courts governed by expedited procedural rules, rather than erecting an independent, parallel tribunal.

Doctrinal Alignment with Shariah Jurisprudence: Any statutory amendment must demonstrably preserve the inalienable and perpetual character of the waqf. The lease-based BOT model, cash waqf aggregation, and *sukuk* issuance are entirely permissible under classical Islamic jurisprudence (*Fiqh al-Muamalat*), provided the underlying corpus remains preserved and the yield is spent exclusively on the charitable purpose. A mandatory Shariah-compliance certification by the Council of Islamic Ideology or a recognized panel of scholars should be made a statutory pre-condition for any material transaction, thereby fortifying public confidence and judicial acceptability.

Administrative Challenges: Digitization of Waqf Records and Revenue Reconciliations

The 2020 legislative amendments introduced mandatory registration, systematic record-keeping, and stringent statutory penalties. Section 6(1)³¹, as substituted, obligates every person creating a waqf, or every Manager, to register the waqf property with the Chief Administrator within a ninety-day statutory window. Sub-section (4)³² mandates the maintenance, continuous updating, and reporting of any material modifications in the record. Concurrently, the District Collector is required to furnish an annual consolidated report. While these provisions establish the statutory baseline for a centralized, accurate waqf registry the indispensable foundation for any digital platform, BOT framework, or investment vehicle its operational implementation remains fraught with systemic bottlenecks.

Fragmented Legacy Records and Cadastral Anomalies: A vast majority of waqf properties were recorded decades ago based on incomplete surveys, conflicting boundaries, and unverified mutations (*daakhil-khaarij*). Consequently, digitization

³¹ Section 6(1)

³² Sub-section (4)

cannot succeed without a coordinated ground-truthing and cadastral reconciliation exercise involving the Auqaf Department, the provincial Board of Revenue, and local revenue field staff (*Patwaris* and *Tehsildars*). The District Collector's annual reporting obligation under Section 6(3)³³ must be leveraged as the statutory mechanism to reconcile local land records with the central registry on an annual basis.

Institutional Resistance to Transparency Mandates: The prevailing administrative culture within Auqaf Departments historically treats waqf registers as internal, confidential records. Consequently, mandating public access via a digital portal will inevitably encounter entrenched institutional resistance. To counter this, the parent ordinance must be amended to make the publication of the central waqf register, annual audited financial statements, lease covenants, and scheme particulars a statutory obligation on a publicly accessible portal. This single measure would directly satisfy the Supreme Court's unequivocal insistence in *Sikandar Hayat Khan Jogzai* that all waqf transactions remain anchored in transparency and objective-aligned schemes.

Technological Capacity and Public Infrastructure Constraints: The Auqaf Departments currently lack both the IT infrastructure and the trained human resource necessary to execute large-scale digitization. An incrementally phased approach commencing with the GIS mapping, geo-tagging, and digitization of all waqf properties within selected model districts, funded via a dedicated Waqf Development Fund presents an operationally viable strategy. Furthermore, the private sector could be engaged via a Public-Private Partnership (PPP) framework to develop and maintain the digital platform, provided the underlying data remains the exclusive sovereign property of the Auqaf Department and remains accessible to the public free of cost.

Inter-Departmental Coordination and Real-Time Data Integration: Waqf land records are continuously impacted by mutations recorded by provincial revenue authorities, municipal zoning modifications, and transactions requiring mandatory registration under the *Registration Act, 1908*³⁴. To prevent lag and subsequent

³³ Section 6(3)

³⁴ *Registration Act 1908*

encroachment, an automated mechanism for real-time data sharing and interoperability among these agencies mandated via an administrative protocol approved by the Chief Minister is imperative to maintain the integrity of the digital register and prompts unlawful encroachments.

Social Challenges: Reorienting the Public Perception of Waqf

For generations, the institution of waqf in South Asia has been narrowly associated with mosques, seminaries (*madaris*), and funerary grounds. The classical Hanafi and Shafi'i juristic traditions, however, explicitly validate waqf for any *qurbah* (pious act), encompassing the construction of hospitals, libraries, and universities. Reviving this broader, multi-dimensional understanding requires a sustained, multi-pronged strategy.

Doctrinal Endorsement and Jurisprudential Decrees: The Council of Islamic Ideology, or a specialized committee of eminent scholars spanning all major schools of Islamic thought (*Masalik*), should be requested to issue a comprehensive *fatwa* (juristic decree). This decree must reaffirm the validity of waqf for educational and healthcare infrastructure, while clarifying the statutory permissibility of cash waqf, corporate waqf entities, and BOT-based development. This *fatwa* should be widely disseminated in Urdu and regional languages, and formally incorporated into the Statement of Objects and Reasons of any amending legislation.

Public Awareness and Heritage Campaigns: The Auqaf Department, in coordination with civil society organizations, should execute a targeted campaign showcasing historical waqf institutions such as the waqf-funded Shams-ul-Ulema Mirza Kalich Beg library in Sindh or the legacy waqf estates that historically sustained the inception of Islamia College Peshawar. This will demonstrate that waqf has historically functioned as a catalyst for human development and socio-economic mobility, rather than merely a vehicle for prayer spaces.

Rebuilding Public Trust through Governance Institutionalization: The pervasive public perception that Auqaf Departments are inefficient and susceptible to rent-seeking remains the single greatest socio-cultural barrier. The creation of a professionalized Waqf Development Authority characterized by a majority composition of independent technocrats, mandatory transparency mandates, and

annual public disclosures serves as the most direct structural remedy. A high-impact pilot project such as a BOT-developed medical college on vacant, underutilized waqf land featuring verifiable outcomes and independently audited accounts can shift public sentiment far more effectively than routine publicity campaigns.

Stakeholder Inclusivity and Community Representation: Waqf management boards tasked with overseeing educational and healthcare endowments must incorporate representatives from beneficiary communities, alumni networks, patients' advocacy groups, and local notables. This giving of structural voice to primary stakeholders will directly mitigate institutional mistrust and reduce suspicion regarding state motives.

Policy Recommendations: Fiscal Incentives and PPP Framework Structuring

Fiscal Incentives for Waqf Endowments

The *Income Tax Ordinance, 2001*³⁵ currently permits tax deductions for charitable donations to approved non-profit institutions under Section 61. However, contributions dedicated specifically to a statutory waqf entity particularly liquid or cash waqf lack explicit recognition. The provincial governments should collaborate with the federal government to amend the *Income Tax Ordinance, 2001* either through the annual Finance Act or a targeted statutory instrument to insert a dedicated "Waqf Contribution Tax Credit" schedule, providing:

- a. A 100% tax credit for monetary donations directed to registered waqf entities established exclusively for education or healthcare infrastructure;
- b. Absolute tax-exempt status for the operational income of a corporate waqf entity, provided such yields are applied exclusively to its mandated charitable objectives;
- c. Exemption from capital gains tax on the disposal of waqf assets, contingent upon the immediate reinvestment of the proceeds into primary waqf property.

³⁵ *Income Tax Ordinance, 2001*

- d. These fiscal measures would actively incentivize high-net-worth individuals (HNWIs) to dedicate a portion of their private capital to perpetual public endowments, effectively replicating the Turkish model of foundation universities.

Public-Private Partnership (PPP) Operational Framework

The BOT-based revitalization of waqf land represents a capital-intensive and legally sensitive policy initiative. Establishing a standardized, rigorous PPP framework is essential to mitigate regulatory risks, insulate projects from legal challenges, and attract institutional developers.

- a. **Statutory Anchoring:** The Chief Administrator’s extant power to formulate development schemes under Section 15³⁶ must serve as the primary procedural anchor. The formalized scheme must explicitly: identify the exact land parcels; demonstrate that the project furthers the waqf’s original intent; prescribe the concession lifecycle, revenue-share yields, and reversion mechanisms; and be published for public comment prior to final executive sanction.
- b. **Standardized Concession Covenants:** A model BOT concession agreement, drafted by the provincial law department in consultation with the Planning Commission’s specialized PPP unit, must be adopted via regulatory rules. The agreement must explicitly affirm that the waqf’s ownership of the physical corpus remains entirely intact, that the developer’s rights are strictly confined to a usufructuary lease and service execution, and that the Auqaf Department retains absolute rights to audit and terminate for cause.
- c. **Shariah-Compliance Structuring:** The transaction must be structured as an *ijara* (lease) coupled with an operational service component, rigorously vetted by an independent Shariah advisory panel. This structural insulation will protect the arrangement against potential legal objections that it constitutes a prohibited alienation or sale of the waqf corpus.
- d. **Specialized Regulatory Oversight:** A dedicated “Waqf PPP Unit” should be established within the proposed Provincial Waqf Development Authority.

³⁶ Section 15

Staffed with corporate lawyers, financial analysts, and real estate technocrats, this unit would oversee project identification, procurement, and continuous monitoring, conforming strictly to the provincial government's overarching PPP Policy to ensure alignment with broader public infrastructure development norms.

- e. ***Judicial Reinforcement and Shielding:*** The Supreme Court's landmark ruling in *Sikandar Hayat Khan Jogzai* provides the definitive roadmap: any long-term lease or material property transaction must be embedded within a formalized scheme that is demonstrably congruent with the waqf's underlying purpose. A BOT scheme that adheres to this statutory discipline, and receives prior judicial or public sanction, will successfully withstand high court scrutiny.

CONCLUSION

The structural re-engineering of Pakistan's waqf administration system distills into a single, constitutionally defensible, and operationally viable proposition: within classical Islamic jurisprudence (*Fiqh*), the institution of waqf is fundamentally dynamic functioning not as a static repository of real estate, but as a sophisticated fiduciary vehicle for perpetual public benefit Punjab Waqf Properties Ordinance, 1979³⁷. No doctrinal bar exists to impede the channelization of its underlying corpus and yields into foundation universities, teaching hospitals, and medical research infrastructure, provided the inalienable and perpetual character of the endowment remains strictly preserved. While Pakistan's extant statutory framework remains historical and custodial, transitioning this regime to formally codify corporate waqf management structures, liquid or cash endowments, fintech-enabled crowdfunding registries, and performance-linked public-private partnerships represents the exact regulatory harmony required. The Supreme Court of Pakistan's landmark dictum in *Sikandar Hayat Khan Jogzai* has already established that an objective-aligned, transparent statutory scheme is the sole lawful mechanism to execute material property transactions. Consequently, immediate legislative intervention is required to institute a specialized Provincial Waqf Development Authority, targeted fiscal incentives, and automated cadastral registries. Ultimately, this thesis stands as a definitive statement of legal and constitutional possibility: when insulated from

³⁷ Punjab Waqf Properties Ordinance, 1979

bureaucratic inefficiency and structured via modern corporate and financial tools, the institution of waqf functions as a self-sustaining permanent capital engine for healthcare and higher education, driving national human development without imposing a fiscal burden upon the state exchequer.

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**"Women's Rights and Gender Justice in Pakistan: The Role of the Judiciary
in Combating Gender-Based Violence, a Comparative Study of Divorce
Rights with the United Kingdom, and the Persistent Legal Challenge of
Honour Killings"**

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ABSTRACT

In comparison to England and Wales, this article examines three interconnected facets of gender justice and women's rights in Pakistan. It begins by evaluating the superior judiciary's response to gender-based violence (GBV), tracing the path from the institutional failure by the 2011 acquittals in the Mukhtar Mai case to the doctrinal shift brought about by Justice Ayesha A. Malik, which included the recognition of psychological cruelty as a crime in 2025, the abolition of the two-finger virginity test, and the 2019 ruling that declared jirgas and panchayats unconstitutional.

Second, it compares the no-fault regime established by the Divorce, Dissolution and Separation Act 2020 and the discretionary financial-remedies framework of the Matrimonial Causes Act 1973 with the judicial approach under the Dissolution of Muslim Marriages Act 1939. Third, it examines the ongoing legal challenge of honour killings, examining the compoundability loophole in the Qiyas and Diyat framework, the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016, and the comparative lack of a distinct honour-crime offence in English law.

The article argues that although Pakistan's superior judiciary has produced a truly progressive body of gender jurisprudence, this body of law is still largely disconnected from the ability to enforce it at the trial-court and rural levels, creating a persistent gap between Pakistani women's lived reality and doctrine.

Keywords: Gender Justice; Women's Rights; Gender-Based Violence (GBV); Judicial Activism; Khula; Honour Killings; Human Rights and Constitutional Law.

INTRODUCTION

Pakistan's constitutional room for women's rights is paradoxical. Article 25 of the Islamic Republic of Pakistan's 1973 Constitution permits affirmative action to safeguard women and children while guaranteeing equality before the law and prohibiting sex-based discrimination.¹ Article 35 requires the State to safeguard marriage, the family, the mother, and the child, whereas Article 34 directs the State to guarantee women's full participation in national life.² On March 12, 1996, Pakistan became the 174th state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), although it did so with a general reservation that subordinated its obligations to the Constitution and a specific reservation regarding Article 29(1) on dispute settlement.³ The Human Rights Commission of Pakistan (HRCP) recorded 14,425 reported cases of violence against women and girls in 2024 alone, including 405 honor killings, 4,175 rapes, and 1,641 domestic homicides.

These constitutional and international responsibilities coexist with a lived reality.⁴ There are three sections to this article. Using the Mukhtar Mai case, Justice Ayesha A. Malik's jurisprudence, the 2019 ruling on jirgas, and the Noor Mukadam case as case studies, Part II explores the role of the judiciary, primarily the superior judiciary, but also the Federal Shariat Court and the lower judiciary in resolving gender-based violence and compares it with the legislative and judicial response to domestic abuse in England and Wales.

Part IV examines the legal challenge posed by honour killings, concentrating on the compoundability loophole under the Qiyas and Diyat Ordinance 1990, the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016, and the comparative regulation of honour-based violence in the United Kingdom. Part III conducts a comparative doctrinal analysis of divorce rights, contrasting the no-fault divorce regime and discretionary financial remedies jurisprudence of England and Wales.

¹ Constitution of the Islamic Republic of Pakistan 1973, Article 25.

² *ibid* arts 34, 35.

³ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Government of Punjab, Women Development Department, 'Women Rights'.

⁴ Human Rights Commission of Pakistan, 'Rising Militancy and Democratic Backsliding Mark 2024' (HRCP, 2025); HRCP (@HRCP87), X post, '16 Days of Activism' documentation (2024).

THE ROLE OF THE JUDICIARY IN RESOLVING GENDER-BASED VIOLENCE

The Constitutional and International Framework

The constitutional text itself serves as the foundation for any evaluation of court performance on GBV. Article 25(3), which enables rather than merely tolerates protective legislation for women, strengthens Article 25's promise of equality.⁵ When combined with CEDAW's General Recommendation No. 19, which the Oxford Human Rights Hub has noted addresses gender-based violence as a type of discrimination against women under Article 1 of the Convention, this establishes a theoretical framework that Pakistani courts have been using more and more.⁶ Justice Ayesha A. Malik has held that gender-based violence violates a woman's constitutional dignity and that judicial stigmatization of complainants is unconstitutional in and of itself, citing CEDAW Articles 1 and 5 as well as Article 9's protection of the right to life.⁷

Institutional Failure: The Mukhtar Mai Case

It is impossible to analyze the judiciary's involvement in GBV without addressing its most frequently mentioned shortcoming. In June 2002, a local panchayat in Muzaffargarh District, Punjab, ordered Mukhtar Mai to be gang-raped as payback for an alleged (and later disputed) sexual offense involving her younger brother. Six of the fourteen accused were found guilty by an Anti-Terrorism Court and given the death penalty; however, on appeal in March 2005, the Lahore High Court cleared five of the six, citing insufficient eyewitness testimony. As a result, the Federal Shariat Court took the unusual action of suspending that acquittal pending appeal. The Lahore High Court's acquittal of all but one of the Accused was maintained in April 2011 by the Supreme Court of Pakistan, sitting in its regular appellate jurisdiction. The court controversially reasoned that the accused benefited from what commentators called an ambiguous "triple presumption of innocence."⁸

At the time, Dawn's editorial board viewed the verdict as likely to discourage future

⁵ Constitution of Pakistan 1973, Article 25(3).

⁶ Rida Tahir, 'Muhammad Wasim v The State: Loopholes in the Criminal Law (Amendment) Act 2016' (Oxford Human Rights Hub Blog, 2021).

⁷ Iqra Sarfraz, 'Women Should Not Be Stigmatized for Rape: Justice Ayesha Malik' The Friday Times (4 July 2024).

⁸ Amnesty International USA, 'No Justice for Gang Rape Survivor Mukhtar Mai' (Amnesty USA Blog, 25 April 2011).

victims from ever coming forward, while Human Rights Watch's Ali Dayan Hasan cautioned that it conveyed to Pakistani society that women may be abused, even raped, with impunity. The case continues to serve as a classic example of how procedural concepts, such as the standard of proof, the handling of eyewitness testimony, and appellate deference, can function, whether on purpose or not, to shield those who commit acts of collective gender violence from punishment. The judicial developments over the next ten years must be evaluated against this institutional basis.

Doctrinal Transformation: Justice Ayesha A. Malik and Gender-Sensitive

After a contentious 5-4 vote by the Judicial Commission, Justice Ayesha A. Malik was sworn in on January 24, 2022, as the first female judge of the Supreme Court of Pakistan in its 75-year existence.⁹ She had already changed gender jurisprudence in Punjab during her tenure as a judge of the Lahore High Court. In January 2021, she ruled that the so-called "two-finger" virginity test was unconstitutional, calling it a medical discredit and an insult to the dignity of the female complainant. She also chaired the committee that resulted in the creation of Punjab's first courts devoted to gender-based violence.¹⁰ Justice Malik has maintained this course while serving on the Supreme Court bench. She cited Article 9 of the Constitution and Articles 1 and 5 of CEDAW in a July 2024 dissenting note in a rape appeal, holding that DNA evidence should have the same weight as fingerprint evidence and that courts shouldn't stigmatize complainants by using preconceived notions about female sexual behavior. Most importantly, the Supreme Court again, per Justice Malik, held in a ruling on October 26, 2025, that cruelty sufficient to support divorce and, consequently, criminal liability for abuse, extends beyond physical violence to include psychological and emotional harm, humiliation, intimidation, coercion, and neglect.¹¹ This ruling is important from a doctrinal standpoint because

⁹ Al Jazeera, 'Pakistan's First Woman Supreme Court Judge Ayesha Malik Sworn In' (24 January 2022).

¹⁰ Lakshmi Mittal and Family South Asia Institute, 'Making Herstory: Ayesha Malik Paves the Way for Women on Pakistan's Supreme Court' (Harvard University, 21 September 2022).

¹¹ OpenGlobalRights, 'How Pakistan's Courts Are Redefining Domestic Violence' (24 February 2026); Human Rights Research Center, 'Supreme Court Recognizes Psychological Abuse as Cruelty' (HRRRC, 3 November 2025).

it brings Pakistani domestic law into compliance with international human rights instruments that evaluate abuse based on its effects on autonomy and dignity rather than on obvious physical harm. This is the exact standard that was later codified in England and Wales by the Domestic Abuse Act 2021, which is covered below. However, the Structural factors that led to Mukhtar Mai's result are still present. Only about 5.5% of judges in Pakistan's higher courts are women, a percentage that the Accountability Lab's study strongly relates to the continued use of stereotypical thinking in family law and domestic abuse decisions.¹² Justice Malik herself has publicly identified the absence of reliable national data on domestic violence as a principal obstacle to systemic reform, observing that without accurate data there can be no comprehensive understanding of the problem, still less a solution, and criticizing the tendency of Pakistani courts and society to presume that women reporting abuse are lying.¹³

Parallel Justice Systems: The 2019 Ruling on Jirgas and Panchayats

A second and structurally distinct dimension of judicial engagement with GBV concerns the informal justice systems jirgas in Khyber Pakhtunkhwa and Balochistan, and panchayats in Punjab and Sindh that continue to adjudicate disputes involving women, frequently in direct violation of statute and constitutional rights. In August 2018 and again in a fuller judgment in January 2019, the Supreme Court of Pakistan declared jirgas and panchayats illegal and unconstitutional where they exercise adjudicative or coercive authority, holding that such bodies reinforce unfair social norms by allowing elderly male notables to adjudicate disputes involving women and the economically weak, who are typically excluded from direct participation and represented instead by male kin, in violation of Articles 4, 8, 10-A and 25 of the Constitution.¹⁴ The Court held that jirgas may only continue to operate as voluntary mediation forums and are prohibited from exercising criminal or coercive jurisdiction, based in large part on Pakistan's legally

¹² Accountability Lab Pakistan, 'Gendered Justice: Assessing the Influence of Female Judges on Judicial Outcomes in Pakistan' (20 November 2024).

¹³ SDPI, 'Justice Ayesha A. Malik Calls for Urgent Action on Gender-Based Violence' (11 December 2024).

¹⁴ The News on Sunday, 'Jirga Is a Transgression of Human Rights' (22 January 2023); Just Security, 'Jirgas, Gender Violence, and International Accountability' (4 September 2025).

binding obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and CEDAW.¹⁵ The Federal Shariat Court has reinforced this trajectory by declaring the custom of swara, the compensatory exchange of girls and women to settle disputes, frequently ordered by jirgas, un-Islamic and unconstitutional.¹⁶

In February 2025, a viral video showed a jirga in Balochistan ordering the killing of a woman, Bano Bibi, and a man on tribal grounds. This led to national outrage and at least sixteen arrests, but it also revealed, according to the secretary-general of HRCF, that the government had considered proposals to formally revive jirgas in the former tribal areas instead of enforcing the 2019 ruling.¹⁷ This gap between a clear and internationally grounded Supreme Court ruling and its practical non-enforcement is, this article argues, the single most important limiting factor on the judiciary's capacity to resolve gender-based violence: the Court can articulate the law, but cannot by itself dismantle a parallel adjudicative infrastructure sustained by local power structures the state has been unwilling or unable to displace.

The Noor Mukaddam Case: Testing Institutional Capacity

The 2021 murder of Noor Mukaddam provides a further, more recent test of judicial capacity. Noor Mukaddam, the twenty-seven-year-old daughter of a retired Pakistani diplomat, was tortured and beheaded at the Islamabad residence of Zahir Jaffer after she refused his marriage proposal.¹⁸ Following a seven-month trial, an Islamabad sessions court convicted and sentenced Zahir Jaffer to death for murder and to a lengthy term for rape in February 2022; two members of his domestic staff received ten-year sentences, while his parents were acquitted of concealment charges.¹⁹ The Islamabad High Court upheld the conviction in March 2023 and converted the rape sentence into a second death sentence; on appeal, however, the Supreme Court of Pakistan in June 2025 upheld the murder conviction and death sentence while commuting the rape-related death sentence to life imprisonment, relying on the

¹⁵ Research Society of International Law, 'Jirga System in Pakistan: A Transgression of Human Rights' (RSIL, 12 April 2022).

¹⁶ Oxford Human Rights Hub, 'Federal Shariat Court of Pakistan Declares the Custom of Swara as Un-Islamic and Unconstitutional'.

¹⁷ Rimmel Mohyidin, 'HRCF Reports 405 Honour Killings in Pakistan in 2024, Most Victims Women' *The Express Tribune* (28 July 2025).

¹⁸ Al Jazeera, 'Pakistan: In High-Profile Case, Mukadam Killer Sentenced to Death' (24 February 2022).

¹⁹ Amnesty International UK, 'Pakistan: Guilty Verdict in Noor Mukadam Case "Significant" but Death Penalty Condemned' (2022).

'silent witness theory' to admit CCTV footage as substantive evidence in the absence of eyewitness testimony.²⁰ Commentators regarded the eventual conviction nearly four years after the murder as a rare instance of the criminal justice system delivering a proportionate outcome in a gender-violence case involving an economically and socially powerful accused, with campaigner Tahira Abdullah describing it as a milestone in Pakistani women's ongoing struggle for justice, while Amnesty International simultaneously cautioned that Convictions of this kind remain the exception rather than the rule for GBV victims generally, and continued to object to the use of capital punishment.²¹

Comparative Note: Judicial and Statutory Responses to GBV in England and Wales

The comparable situation in England and Wales is interesting because it shows a different institutional approach: Parliament passed a comprehensive statutory definition rather than relying mainly on judicial reinterpretation of preexisting criminal-law categories. In addition to physical or sexual abuse, violent or threatening behavior, controlling or coercive behavior, economic abuse, and psychological abuse are all considered forms of domestic abuse under Section 1 of the Domestic Abuse Act 2021. It affirms that a single occurrence, or even a pattern of behavior, may be eligible.²² The definition in the statute is derived from the freestanding crime of controlling or coercive behavior, enacted through section 76 of the Serious Crime Act 2015, and expanded by the 2021 Act to include post-separation and non-cohabiting family relationships.²³

Assessment

Taken together, the Mukhtar Mai, jirga, Noor Mukaddam and Justice Malik lines of authority reveal a judiciary that has become progressively more willing to name and remedy gender-based violence in doctrinal terms, but whose reach is consistently blunted by three independent constraints: the absence of reliable national data, identified by Justice Malik herself as a primary obstacle; the survival

²⁰ Express Tribune, 'Noor Mukadam Murder: SC Commutes Zahir Jaffar's Rape Sentence, Upholds Death Penalty in Murder Case' (26 November 2025).

²¹ Independent Pakistan, 'Supreme Court Upholds Death Sentence for Zahir Jaffer in Noor Mukadam Murder Case' (2025); Amnesty International UK (n 23).

²² Domestic Abuse Act 2021, s 1; Leeds City Council, 'Coercive Control Offence: One Minute Guide' (October 2024).

²³ Serious Crime Act 2015, s 76, as amended by Domestic Abuse Act 2021.

of parallel, extra-judicial adjudicative structures that the Supreme Court has declared unconstitutional but that the executive has been unwilling to dismantle; and the chronic delay that characterizes even successfully prosecuted cases. The judiciary, in other words, has proved considerably more reformist than the enforcement apparatus on which its judgments depend.²⁴

Pakistan: From Fault-Based Faskh to Judicially Engineered Khula

Before 1939, Muslim women in British India possessed no meaningful statutory right to seek dissolution of an unhappy marriage; the applicable law, drawn from classical Hanafi doctrine as locally interpreted, effectively confined the power of unilateral divorce (talaq) to the husband.²⁵ The Dissolution of Muslim Marriages Act 1939 (DMMA), a pre-partition law that was inherited by Pakistan after its separation from India, included a set of statutory grounds, such as cruelty, non-maintenance, imprisonment of the husband, impotence, and desertion, upon which a wife could seek divorce (faskh) from her husband. Section 2(ix) of DMMA recognizes the concept of hula or redemption as a mode of divorce.²⁶ In practice, the evidentiary burden attached to proving fault under section 2 made faskh practically unattainable for many women, particularly given colonial-era standards of proof carried over into post-independence procedure.²⁷

The judiciary responded, over roughly three decades, by developing hula into a genuinely unilateral, no-fault right of the wife. The Lahore High Court first held, in *Balqis Fatima v Najm-ul-Ikram Quraishi* (PLD 1959 Lahore 566), that a wife could obtain judicial hula without the husband's consent and without proving any of the statutory grounds under the DMMA, provided she was willing to return her dower or offer compensation.²⁸ Eight years later, in the landmark case of *Khurshid Bibi v Muhammad Amin* (PLD 1967 SC 97), the Supreme Court of Pakistan endorsed this principle, holding that where a marriage has irretrievably broken down, and the wife

²⁴ Divorce Rights of Women: A Comparative Analysis of Pakistan and the United Kingdom

²⁵ Farrukh Habib and ors, 'Judicial Separation at the Wife's Initiative: A Study of Redemption (Khul') in Islamic Law and Contemporary Legislation in Pakistan and Malaysia' (Academia.edu, 2025) 2–3.

²⁶ Dissolution of Muslim Marriages Act 1939 (Pakistan), s 2.

²⁷ Oxford Human Rights Hub, 'A Decolonial Jurisprudence in Making the Right of a Woman to Dissolve a Marriage in Pakistan' (13 November 2025).

²⁸ *Balqis Fatima v Najm-ul-Ikram Quraishi* PLD 1959 Lahore 566; Muhammad Munir, 'Judicial Law-Making: An Analysis of Case Law on Khul' in Pakistan' (Academia.edu, 2025).

states she can no longer live with her husband within the limits prescribed by Islamic law, the court may grant hula regardless of the husband's objection.²⁹ This principle was subsequently confirmed on Islamic-law grounds by the Federal Shariat Court in the 2014 case of Saleem Ahmed, which held the judicially developed doctrine of no-fault hula to be consonant with the Injunctions of Islam, foreclosing a significant avenue of religious objection to the doctrine.³⁰ The courts have further held, in cases such as Syed Dilshad Ahmed and Karim Ullah, that where the husband is at fault in the breakdown of the marriage, he is not entitled to receive dower or other compensation upon the grant of hula, tempering what would otherwise be a purely transactional exit mechanism with a fairness-based limitation.³¹

A further refinement was supplied by the Supreme Court's 2024 decision in *Dr Seema Hanif Khan v Waqas Khan*, in which Justice Ayesha A. Malik held that hula and dissolution under the DMMA 1939 are distinct and separate legal remedies with different legal consequences, and that a court cannot, of its own accord, convert a wife's claim for statutory dissolution pleaded, in that case, on the grounds of cruelty (including psychological abuse), non-payment of maintenance, and the husband's undisclosed second marriage into a hula.³² The courts have also developed a related 'two-year maintenance rule', under which a wife's decree of divorce may be granted where the husband, without lawful justification, fails to maintain her for a continuous period, reinforcing the husband's statutory duty of maintenance as a divorce-relevant obligation.

Talaq, by contrast, remains a right exercisable unilaterally by the husband, subject only to the procedural requirements of notice to the Union Council and constitution of an Arbitration Council under the Muslim Family Laws Ordinance 1961, requirements that, in practice, function as a cooling-off and reconciliation mechanism rather than a substantive check on the husband's underlying entitlement to divorce without cause. The asymmetry between talaq's unilateral, no-justification

²⁹ *Khurshid Bibi v Muhammad Amin* PLD 1967 SC 97; Legal Service India, 'Empowerment through Legislation: The Dissolution of Muslim Marriages Act 1939'.

³⁰ Rida Tahir, 'A Woman's Right to Unilateral Divorce under Islamic Law' (SAHSOL Blog, LUMS).

³¹ Tahir (n 33), discussing Syed Dilshad Ahmed and Karim Ullah (Peshawar High Court).

³² Sadaf Khan, 'Khula and Dissolution of Marriage Are Two Separate and Distinct Rights' *The Friday Times* (25 March 2024); Oxford Human Rights Hub (n 30).

character for men and the evidentiary or compensatory conditions historically attached to women's access to dissolution, now substantially, though not entirely, dissolved by the Khurshid Bibi line of authority, remains the central structural critique of Pakistani divorce law from a gender-equality perspective.

The United Kingdom: No-Fault Divorce and Discretionary Financial Redistribution.

Divorce law in England and Wales rests on two structurally separate pillars: the ground for divorce itself, and the financial consequences that follow it. The Matrimonial Causes Act 1973 (MCA 1973) has, since its enactment, been the principal statute governing divorce, nullity, judicial separation and financial remedies, consolidating reforms introduced by the Divorce Reform Act 1969, which first established irretrievable breakdown of the marriage as the sole ground for divorce.³³ For decades, however, irretrievable breakdown could only be evidenced by proving one of five specific facts, several of which, adultery and unreasonable behavior foremost among them, required one spouse to allege fault against the other even where both parties in fact agreed the marriage should end.

The Divorce, Dissolution and Separation Act 2020 (DDSA 2020), which came into force on 6 April 2022, removed this fault requirement entirely. Section 1 amends the MCA 1973 so that a party (or both parties jointly) may apply for divorce on the sole ground that the marriage has broken down irretrievably, evidenced simply by a statement to that effect, without any requirement to adduce evidence of conduct, adultery or a period of separation.³⁴ The Act was widely described as the most significant reform of English divorce law since 1973, intended to reduce the acrimony and delay associated with proving fault, and it correspondingly renamed the decree nisi and decree absolute as the 'conditional order' and 'final order' in plainer English.³⁵

Crucially, the DDSA 2020 reformed only the route to legal dissolution; it left entirely undisturbed the financial-remedies framework of section 25 of the MCA 1973, which continues to govern how matrimonial assets, income and pensions are

³³ Matrimonial Causes Act 1973; Divorce Reform Act 1969; UK Legislation, 'Divorce, Dissolution and Separation Act 2020: Explanatory Notes, Legal Background'.

³⁴ Divorce, Dissolution and Separation Act 2020, s 1; Courts and Tribunals Judiciary, 'Guidance from the President of the Family Division: The Divorce, Dissolution and Separation Act 2020' (2022).

³⁵ Law Society, 'No-Fault Divorce' (2022).

divided.³⁶ Section 25 directs the court to have regard to all the circumstances of the case, according first consideration to the welfare of any minor child of the family, and to a non-exhaustive checklist of factors including the parties' income and earning capacity, financial needs, standard of living, ages, contributions to the family, and conduct the last of which is taken into account only where the court considers it inequitable to disregard it, a threshold that in practice is met only in exceptional cases.³⁷ Judicial interpretation of section 25 has been substantially shaped by two landmark House of Lords decisions: *White v White* [2000] UKHL 54, which introduced the 'yardstick of equality' against which any proposed division of assets should be tested, and *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, which articulated the tripartite principles of need, compensation and sharing that now structure financial-remedies practice.³⁸ In December 2024, the Law Commission published a scoping report concluding that this framework, largely unchanged since 1973 notwithstanding fifty years of case law, suffers from excessive judicial discretion and resulting unpredictability, particularly for parties without legal representation a criticism that prompted continued parliamentary debate, including opposition expressed in the House of Lords to any move toward binding pre-nuptial agreements on grounds of potential unfairness to economically weaker parties.³⁹

Comparative Analysis

Comparing the two systems reveals convergence at the level of the ground for divorce but sharp divergence at the level of financial consequence. On the ground for dissolution, Pakistani and English law have arrived, by strikingly different routes, at broadly similar destinations: neither system today requires a wife (or, in the English case, either spouse) to prove fault in order to exit an unwanted marriage. Pakistan reached this position through eight decades of incremental judicial law-making, with Balqis Fatima, Khurshid Bibi, Saleem Ahmed and Dr Seema Hanif Khan operating on a colonial-era statute that was never itself amended to remove

³⁶ Matrimonial Causes Act 1973, s 25; Gulbenkian Andonian Solicitors, 'New Divorce Law in UK 2026 Update'.

³⁷ KLR Solicitors, 'No-Fault Divorce & Financial Settlements' (2026).

³⁸ *White v White* [2000] UKHL 54; *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24; Mediate UK, 'The Matrimonial Causes Act 1973 The Backbone of Divorce Law' (24 April 2026).

³⁹ House of Lords Library, 'Financial Provision on Divorce and Dissolution: Law Commission Financial Remedies Scoping Report' (29 October 2025).

the fault-based structure of faskh; England and Wales reached a formally equivalent position through direct parliamentary legislation in 2020, which swept away fault-based facts in a single reform. The comparative lesson is that judicial innovation can achieve outcomes functionally similar to legislative reform, but does so unevenly and more slowly, and because it proceeds case by case, leaves residual doctrinal complexity, illustrated by the ongoing need for courts to distinguish hula from statutory dissolution in cases such as *Dr Seema Hanif Khan*. The result is that a Pakistani woman's no-fault exit option (hula) and her financially advantageous exit option (statutory dissolution under the DMMA, or, in transnational cases, foreign matrimonial property regimes) are not the same route, whereas in England and Wales they have been deliberately and definitively decoupled since 2022. This structural distinction rather than any difference in the formal availability of no-fault divorce is, on the analysis in this article, the more significant source of continuing gender disadvantage in the Pakistani system, and a more productive target for law reform than further refinement of the ground for divorce itself. A second point of comparison concerns institutional accessibility. Pakistan's Family Courts Act 1964 vests exclusive jurisdiction over hula and dissolution proceedings in specialized family courts, and reforms to section 10(4) of that Act, upheld by the Federal Shariat Court against constitutional challenge, have simplified procedure by allowing courts to treat the mere filing of a hula suit as sufficient evidence of the wife's aversion to the marriage, without further inquiry. Nonetheless, litigants report that Pakistani family courts remain subject to significant backlogs, and that rural women in particular continue to face pressure from jirgas and family elders to resolve matrimonial disputes outside the formal court system, frequently to their financial detriment. A lawyer in Swat has documented cases in which jirga-brokered divorce settlements paid a divorced woman a fraction of her contractually agreed dower.⁴⁰ The Family Court in England and Wales, while criticized by the Law Commission for the unpredictability generated by broad section 25 discretion, does not face the same parallel-forum problem, since jirga-equivalent informal adjudication does not command comparable social authority. The comparative picture, therefore, is one in which Pakistan has achieved doctrinal parity on the ground for divorce but continues to lag in both the financial architecture of exit and the practical

⁴⁰ The News on Sunday (n 18) (quoting Sabra Shakir).

accessibility of the formal court system, while England and Wales have achieved procedural simplicity and doctrinal decoupling of divorce from finance, at the cost of a financial-remedies framework that even the Law Commission now regards as insufficiently predictable.

THE LEGAL CHALLENGE OF HONOUR KILLINGS

Defining and Measuring the Crime

Section 299(e) of the Pakistan Penal Code 1860 (PPC) defines an offence committed in the name or on the pretext of honour to include killing carried out on the pretext of karo-kari, siyah kari, or similar customs, targeting a person on the suspicion or accusation of illicit relations, or targeting a woman for exercising her choice in marriage.⁴¹ Karo-kari, literally 'black man' and 'black woman' in Sindhi, labels an accused couple as adulterers deserving death, frequently based on unsubstantiated rumour rather than evidence, and remains most prevalent in rural Sindh, Punjab and Balochistan, where tribal structures continue to confer social legitimacy on extrajudicial killing.⁴² HRCP's annual documentation shows the scale of the problem has fluctuated but remained persistently high: 1,096 women killed in the name of honor in 2015 (the figure that catalyzed the 2016 legislative reform discussed below), 590 honor-killing deaths in 2022, 490 in 2023, and 405 in 2024.⁴³ Human Rights Watch's broader estimate, which accounts for substantial underreporting, particularly in rural and tribal areas without reliable data collection, places the true annual toll at approximately 1,000 women murdered in the name of honor each year.⁴⁴

The Qiyas and Diyat Framework and Its Compound Ability

Loophole

Under section 302(c) PPC, intentional homicide (Qatl-i-amd) is treated, for sentencing purposes, as a largely private matter between the offender and the legal heirs of the victim, who are empowered to waive the right of qisas or to compound the offence, that is, to accept diyat or simply pardon the offender, with the effect of

⁴¹ Rida Tahir, 'Muhammad Wasim v The State' (n 6).

⁴² Grokipedia, 'Violence against Women in Pakistan' (14 January 2026).

⁴³ PBS NewsHour, 'Pakistan Renews Efforts to Crack Down on Honor Killings' (7 October 2016); Dawn, "'Honour' Crimes Continued to Persist in 2024, Threatening Pakistani Women's Lives' (31 December 2024).

⁴⁴ Human Rights Watch, 'World Report 2025: Pakistan' (2025).

extinguishing or substantially mitigating criminal liability.⁴⁵ In the specific context of honor killings, this compoundability provision produced a structurally perverse result: because the victim's murderer is frequently a father, brother, husband or other close relative, and because the 'legal heirs' empowered to forgive are typically drawn from that same family, the family member who ordered or carried out the killing was, in practice, often entitled to be forgiven by other members of his own family, allowing honor killers to walk free notwithstanding a formal conviction.⁴⁶

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016

Legislative pressure to close this loophole had been building since at least 2004, when an earlier Criminal Law Amendment Act made a first, partial attempt at reform, but it was the murder of the model and social-media celebrity Qandeel Baloch by her brother in July 2016, a case that attracted sustained national and international media coverage that generated sufficient political momentum for comprehensive reform.⁴⁷ On 6 October 2016, the joint sitting of Parliament passed the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 (the 2016 Act) alongside the Anti-Rape Laws (Criminal Amendment) Act 2016, following a Senate-initiated bill that had stalled in the National Assembly since 2015. The 2016 Act amended section 311 PPC to provide that where the right of qisas has been waived or compounded in a case involving qatl-i-amd committed in the name or pretext of honor, the court may nonetheless punish the offender now categorized as guilty of fasad-fil-arz, or spreading mischief on earth with death, life imprisonment, or a term of imprisonment, having regard to the facts and circumstances of the case, and further provides that where the offence would otherwise attract the death penalty, forgiveness by the victim's heirs can spare the offender execution but not a mandatory minimum sentence of life imprisonment (understood in practice as a minimum of twelve-and-a-half years).⁴⁸ In this sense, the 2016 Act represents a genuine, if partial, legislative correction of the compoundability loophole: heirs may still spare an offender the death penalty, but

⁴⁵ The Diplomat, 'Honor Killings Continue Unabated in Pakistan' (28 July 2022).

⁴⁶ *ibid.*

⁴⁷ Daily Times, 'The History of Honour Killing Laws in Pakistan' (18 February 2017); Blackstone School of Law & Business, 'Decoding the Anti-Honour Killing Law in Pakistan'.

⁴⁸ Islamic Law Blog, 'Criminal Law (Amendment): Offences in the Name or Pretext of Honor Act, 2016 Passed by Majlis-e-Shoora (Parliament) of Pakistan' (18 May 2021).

can no longer secure his complete acquittal or release through compromise, as had previously been possible under the unamended section 302(c) framework

The Persistence of Legal Loopholes

Notwithstanding the 2016 reform, commentators including practitioners writing for the Oxford Human Rights Hub have identified significant residual loopholes. First, the offence of qatl-i-amd committed in the name of honor has not been made non-compoundable in all circumstances; where the case does not attract capital punishment, compromise between the offender and the victim's heirs may still result in a substantially reduced or extinguished sentence, preserving the very self-pardon dynamic the 2016 Act was intended to close.⁴⁹ Second, and more fundamentally, the statutory definition of an 'honor' killing under section 299(e) creates an evidentiary threshold that prosecutors frequently cannot meet: in the absence of a confession or compelling direct evidence establishing the honor-related motive, an accused can and frequently does successfully argue that the killing should be treated as an ordinary murder under section 302 PPC rather than as fasad-fil-arz under the amended section 311, thereby restoring full access to compound ability and heir-administered forgiveness. Rida Tahir's analysis of *Muhammad Wasim v The State*, decided after the 2016 reform, illustrates precisely this dynamic and argues, drawing on Pakistan's binding obligations under Article 9 of the Constitution and CEDAW, that the state should abolish the compound ability of qisas and diyat altogether in cases involving intentional homicide, rather than relying on the honor-specific carve-out in section 311, which remains vulnerable to strategic recharacterization of the offence. Third, the constitutionality of the 2016 Act's restriction on the classical Islamic law right to forgive has not, at the time of writing, been definitively tested before the Federal Shariat Court, leaving a degree of doctrinal uncertainty notwithstanding the Act's practical operation; a Multan sessions court did, in one instance, sentence a proven honor-killing offender to life imprisonment under the amended framework, but the broader constitutional question remains unresolved.

The Jirga Connection and Institutional Impunity

The legal challenge of honor killings is inseparable from the parallel-justice problem

⁴⁹ Blackstone Law & Business School (n. 52).

examined in Part II. Jirgas and panchayats have historically not merely tolerated but actively ordered honor killings and related practices such as swara, notwithstanding the Supreme Court's 2019 ruling declaring such bodies unconstitutional when exercising adjudicative authority, and notwithstanding the Federal Shariat Court's separate ruling that swara itself is un-Islamic.⁵⁰ The February 2025 Balochistan case in which a tribal jirga ordered the killing of Bano Bibi and a man, widely circulated on video, is a stark illustration: despite the clear illegality of the jirga's action under both the 2019 Supreme Court ruling and the substantive criminal law, the killing proceeded, and it was only the video's viral circulation, not routine law-enforcement monitoring, that triggered prosecution.⁵⁹ HRCP's leadership has specifically attributed the persistence of such killings to executive inaction, describing the state as having, in the period following the Balochistan case, weakened rather than strengthened judicial and law-enforcement capacity in the affected regions, while simultaneously considering proposals to formally reintroduce jirgas in former tribal areas.

Comparative Note: Honour-Based Violence in the United Kingdom

England and Wales has adopted a markedly different regulatory strategy: rather than creating a distinct statutory offence of honor killing, English law prosecutes such killings under the ordinary law of murder, while addressing the preventive dimension forced marriage through the freestanding civil regime established by the Forced Marriage (Civil Protection) Act 2007, which empowers designated courts to grant Forced Marriage Protection Orders (FMPOs), breach of which was criminalized in 2011 and again strengthened by sections 120–122 of the Anti-Social Behavior, Crime and Policing Act 2014.⁵¹ Notably, and in contrast to Pakistan's PPC section 299(e), there is no statutory definition of 'honor-based abuse' in English law; the operative definition used by police and the Crown Prosecution Service derives instead from a 2008 definition issued by the Association of Chief Police Officers, describing honor-based abuse as a crime or Incident committed to protect

⁵⁰ Mr. Pakistan, 'Justice Rooted in Culture, Aligned with Law: The Efficacy of the "Jirga System"' (15 June 2025). ⁵⁹HRCP, cited in Express Tribune (n 21); News on Air, 'At Least 405 Honour Killings in Pakistan in 2024' (29 July 2025).

⁵¹ Forced Marriage (Civil Protection) Act 2007; Anti-Social Behavior, Crime and Policing Act 2014, ss 120–121; Karma Nirvana, 'Call for Evidence on Honour Based Abuse: Written Evidence'; e-space MMU, 'Sentencing Guidelines for HBV and Honour Killings'.

or defend the perceived honor of a family or community. Empirical research further indicates that, notwithstanding this definitional and procedural infrastructure, prosecutions for honor-based abuse in England and Wales declined significantly between 2013 and 2019, and the Crown Prosecution Service ceased formal publication of honor-based-abuse case statistics in 2020, a decision that victim-support organizations such as Karma Nirvana have criticized as undermining transparency and accountability even in a jurisdiction with comparatively strong institutional capacity.⁵² Between 200 and 250 FMPOs are granted annually across England, Wales and Northern Ireland, and empirical study of their operation suggests that judicial framing narratives, the way judges characterize the cultural and relational context of a case, materially affect case outcomes, a finding with some resonance for the analysis of judicial discretion in Part II above.⁵³ The comparative lesson is a cautionary one: even a jurisdiction with a specific civil-protection statute, an established police definition, and functioning specialist prosecutorial guidance has struggled to sustain robust enforcement over time, suggesting that legal architecture alone, whether Pakistan's amended section 311 or England's FMPO regime, cannot substitute for consistent institutional will.

Reform Considerations

The preceding analysis suggests four priorities for reform of Pakistan's honor-killing framework, each grounded in gaps identified in the case law and commentary reviewed above. First, the compoundability of qatl-i-amd should be removed entirely in cases falling within the section 299(e) definition, rather than being preserved for non-capital cases, closing the residual self-pardon loophole identified in *Muhammad Wasim v The State*. Second, the evidentiary threshold for establishing an honor-related motive under section 299(e) requires clarification, whether through Supreme Court guidance or legislative amendment, to prevent strategic recharacterization of honor killings as ordinary section 302 murders.

CONCLUSION

In comparison to England and Wales, this article has looked at three separate but related aspects of gender justice and women's rights in Pakistan. From the

⁵² *ibid.*

⁵³ Aisha Gill, 'Understanding Forced Marriage Protection Orders in the UK' (2021) *Journal of Social Welfare and Family Law*.

institutional failure of Mukhtar Mai in 2011 to the Supreme Court's 2019 ruling that jirgas and panchayats are unconstitutional, to Justice Ayesha A. Malik's body of jurisprudence from 2021 to 2025 that abolished the two-finger test, rejected stigmatizing reasoning in rape cases, and recognized psychological cruelty as a legally cognizable harm, the evidence on the judiciary's role in addressing gender-based violence.

However, this doctrinal advancement is still largely disconnected from enforcement capacity, as evidenced by the continued operation of jirgas in open defiance of binding Supreme Court authority and the ongoing lack of reliable national data, which Justice Malik has herself identified as the main obstacle to systemic reform.

In terms of divorce, it is clear from a comparative analysis of legal systems that the Pakistani judiciary achieved this thru eight decades of court rulings, such as the historic Khurshid Bibi case and others that followed. England and Wales achieved this thru a single legislative decision in the form of the Divorce, Dissolution and Separation Act 2020, which eliminated fault as a prerequisite for the wife to leave her marriage.

The redemptive, compensation-based structure of Pakistani hula continues to impose a financial cost on women's exercise of the no-fault exit right, which English law's section 25 framework does not replicate despite its own well-documented unpredictability. This is the more significant remaining disparity, not the grounds for divorce. Therefore, rather than focusing on the now-established fundamental availability of the theory, future reform initiatives in Pakistan would be better focused on the financial effects of hula.

On honor killings, the analysis demonstrates that the Criminal Law (Amendment) Act 2016 achieved a real, if partial, correction of the Qisas and Diyat framework's self-pardon problem, but that residual compound ability in non-capital cases, definitional ambiguity under section 299(e), and the persistent, largely unpunished operation of jirgas continue to undermine the reform's practical effect a pattern of doctrinal advance outpacing enforcement that recurs throughout this article's three areas of inquiry.

The institutional framework, trustworthy data, enforcement of Supreme Court decisions against parallel justice systems, and specialized prosecutorial ability required to convert that jurisprudence into consistent outcomes for the women

whose cases never make it to a High Court or Supreme Court bench are what Pakistan's system lacks, not judicial will

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Land Governance and Sustainable Rural Growth

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ABSTRACT

Land governance serves as the structural foundation for sustainable rural development in Pakistan, a state where agriculture remains a primary driver of the national economy. This paper examines the complex legal frameworks governing land ownership, tenure security, and acquisition, evaluating their direct impact on agricultural productivity, environmental sustainability, and rural poverty alleviation. Despite various historical attempts at land reform and contemporary digitization initiatives, Pakistan's land administration system remains constrained by colonial-era legislation, stark socio-economic inequality, and fragmented landholdings.

This paper analyzes key statutory frameworks, including the Punjab Land Revenue Act 1967 and the Land Acquisition Act 1894, identifying how institutional inefficiencies and gender disparities perpetuate vulnerability among rural communities. Furthermore, the study addresses the escalating challenges of climate change, soil degradation, and rapid population growth, emphasizing the need for integrated legal and environmental policies. Ultimately, this paper argues that achieving sustainable rural growth requires comprehensive tenure reforms, digitized dispute resolution, community-inclusive decision-making, and provincial policy alignment post-the 18th Constitutional Amendment.

Keywords: Land Governance, Tenure Security, Land Reform, Rural Development, Sustainable Agriculture

INTRODUCTION

The Crux of Rural Pakistan: Agriculture and the State

Land is not merely a physical asset; it is the socio-economic anchor of rural Pakistan. It represents power, security, survival, and social status. In a state where agriculture employs approximately 37% to 40% of the national labor force and contributes roughly 22% to 27% to the National Gross Domestic Product (GDP), the mechanics of land administration dictate the economic trajectory of the entire country.

More than 60% of Pakistan's population resides in rural areas, directly or indirectly relying on agrarian yields. However, the distribution of this vital resource is characterized by structural inequality. A small, politically entrenched elite controls vast tracts of arable land, while the majority of the rural populace is relegated to subsistence farming, insecure tenancy, or landless agricultural labor.

This structural imbalance means that land governance is the primary determinant of whether rural development is inclusive and sustainable, or extractive and volatile. When land administration systems are weak, corrupt, or outdated, agricultural productivity plummets, environmental degradation accelerates, and rural poverty deepens.

Conversely, secure, transparent, and equitable land systems foster long-term agricultural investments, encourage sustainable resource management, and provide a pathway out of generational poverty.

Defining Land Governance in a Post-Colonial Paradigm

Land governance refers to the political, legal, and administrative structures through which decisions regarding land access, land rights, land-use planning, and land development are made and enforced. In Pakistan, this governance paradigm is not a modern construct designed for ecological balance or equitable growth; rather, it is a post-colonial hybrid. It superimposes modern technological aspirations onto colonial-era legal foundations originally engineered for tax extraction and social control.

The British administrative machinery viewed land primarily as a source of revenue and a tool for political co-optation. By granting vast estates to loyal local intermediaries (the Zamindari and Jagirdari systems), the colonial apparatus established a feudal structure that outlived the empire. Post-independence, Pakistan inherited these legal structures and social dynamics.

Today, the state struggles to balance these historical systems with the demands of a rapidly growing population, an escalating climate crisis, and the need for competitive agrarian markets.

To understand land governance in Pakistan is to analyze how these historical power dynamics continue to express themselves through contemporary laws, such as the Punjab Land Revenue Act 1967 and the Land Acquisition Act 1894.

Research Objectives and Theoretical Framework

This study analyzes the structural intersections between land governance, environmental sustainability, and rural growth in Pakistan. It is guided by three core theoretical frameworks:

Property Rights Theory (Demsetz & North):

This theory posits that secure, clearly defined, and legally enforceable property rights are essential for economic efficiency. Without tenure security, individuals have no incentive to invest in long-term land improvements, such as modern irrigation systems or soil preservation techniques.

Political Economy of Development:

This framework is used to examine how institutional path dependency and elite capture have stymied meaningful land reforms in Pakistan, allowing outdated, unequal power dynamics to persist.

Social-Ecological Systems (SES) Framework (Ostrom):

This model is applied to evaluate how the legal relationship between land users and the state affects the management of common-pool resources (such as water resources, pastures, and forests) amid escalating climate change.

Through these theoretical lenses, this paper addresses several key research questions:

1. How do colonial-era legal frameworks restrict modern agricultural productivity and sustainable resource management?
2. What are the institutional and legal causes behind the failure of successive land reforms in Pakistan?
3. In what ways do tenure insecurity and gender-based legal disparities exacerbate environmental degradation and rural poverty?
4. How can technological modernization, such as the digitization of land records, be leveraged to create an equitable and climate-resilient land governance paradigm?

HISTORICAL AND COLONIAL FOUNDATIONS OF PAKISTANI LAND LAW

The Legacy of British Revenue Administration

The contemporary administrative geography of Pakistan's rural landscape is defined by terminology and practices established by the British East India Company and the

subsequent British Raj. The colonial administration sought two primary objectives: the maximization of land revenue collection and the political pacification of the rural interior.

To achieve this, they codified land records, established a hierarchy of revenue officers, and formalized the position of the Patwari (the village land record keeper).

Under the colonial model, land was categorized and assessed based on its productivity, with the state asserting ultimate ownership over "unclaimed" or communal lands (shamilat) through doctrines of eminent domain. This system deliberately concentrated proprietary authority in the hands of rural elites who pledged loyalty to the crown.

By formalizing these unequal relationships, the colonial state institutionalized a hierarchy where the actual tillers of the soil (the mubazar or haris) were stripped of customary rights and transformed into tenants-at-will, vulnerable to arbitrary evictions and predatory rent-seeking.

2.2 Detailed Statutory Analysis

The Punjab Land Revenue Act, 1967

While enacted two decades after independence, the Punjab Land Revenue Act (PLRA) 1967 is largely a consolidation of the Punjab Land Revenue Act 1887. It serves as the procedural bible for land administration, revenue collection, and record keeping across the province.

Key provisions of the Act define the architecture of land relations:

Section 39 (Record-of-Rights):

This section mandates the creation and periodic revision of the Jamabandi (register of patents/holdings). This document is intended to show ownership, tenancy, rent details, and revenue liabilities. However, because it was historically updated manually every four years, it became a prime site for administrative corruption and clerical manipulation.

Section 42 (Mutation / Intiqal):

This section outlines the procedure for recording transfers of interest in land, whether through sale, inheritance, gift, or mortgage. The law requires any person acquiring a right in land to report it to the Patwari within three months. In practice, the manual execution of mutations gave the Patwari discretionary power, allowing them to delay entries, extort bribes, or falsify transfers in favor of influential parties.

Section 172 (Exclusion of Jurisdiction of Civil Courts):

Historically, this section has insulated revenue officers from immediate judicial oversight. It states that civil courts do not have jurisdiction over matters that the Board of Revenue or its officers are empowered to resolve. This exclusion created

a dual-track dispute system, forcing litigants to navigate both civil courts and revenue courts, which often prolonged disputes for decades.

The Transfer of Property Act, 1882 & Registration Act, 1908

These two acts govern the formal transactions of land rights.

The Transfer of Property Act (TPA) 1882 defines how real property can be legally bought, sold, leased, or mortgaged. It mandates that any transfer of immovable property worth more than Rs. 100 must be executed through a registered instrument. The Registration Act, 1908 outlines the administrative process for registering these transfer deeds.

In rural Pakistan, the interaction between these laws and the PLRA 1967 has created an administrative gap. While a sale deed (Registry) registered under the Registration Act 1908 carries a strong legal presumption of truth, it does not automatically update the revenue record (Jamabandi) maintained under the PLRA 1967.

This disconnect has allowed sellers to execute a registered deed with one buyer, while simultaneously mutating the same land to another buyer via the Patwari. This loophole has generated a massive volume of land litigation in civil courts.

The Land Aquisition Act 1894

The Land Acquisition Act (LAA) 1894 is the statutory instrument of eminent domain in Pakistan. It empowers the state to compulsorily acquire private land for "public purposes" in exchange for compensation.

The structural flaws of this colonial-era act include:

Section 4 (Preliminary Notification):

This section allows the government to notify landowners that their land is likely to be needed for a public purpose, freezing land values and development.

Section 6 (Declaration of Public Purpose):

Once this declaration is made, it is treated as conclusive evidence of the state's right to acquire the land, leaving affected owners with almost no legal grounds to challenge the acquisition itself.

Section 23 (Determination of Compensation):

This section dictates that compensation must be calculated based on the market value of the land at the date of the Section 4 notification. In times of high inflation or rapid urbanization, the time lag between the Section 4 notification and actual payment (which often takes years) means landowners receive compensation far below actual replacement costs. Furthermore, the term "public purpose" has been broadly interpreted by state entities to justify acquiring agricultural land for private housing schemes, industrial estates, and commercial developments, leaving rural smallholders landless and disenfranchised.

Tenancy Legislation and the Landlord-Tenant Conflict

To regulate the historically volatile relationship between landlords (Zamindars) and tenants (Muzareen or Haris), provincial legislatures enacted tenancy laws, most notably the Punjab Tenancy Act 1887 and the Sindh Tenancy Act 1950.

These statutes attempted to create categories of tenants, primarily separating "occupancy tenants" (who possessed permanent, inheritable cultivation rights) from "tenants-at-will" (who cultivated land on short-term, verbal agreements).

In practice, these laws failed to protect the most vulnerable. Under both Acts, landlords retained significant power, including the ability to evict tenants for non-payment of rent, failure to cultivate the land in a customary manner, or "reasonable" personal use.

Because the vast majority of tenancy arrangements in rural Pakistan remain informal and undocumented, tenants have virtually no paper trail to prove their tenancy in a court of law. Consequently, arbitrary evictions, unfair crop-sharing ratios (Batai), and forced labor remained common features of the agricultural economy throughout the 20th century.

THE SOCIO-POLITICAL ECONOMY OF FAILED LAND REFORMS AND FRAGMENTATION

The Land Reforms of 1959, 1972, and 1977

Following independence, Pakistan's high concentration of land ownership was recognized as a major barrier to both social justice and agricultural modernization. In response, three successive administrations attempted to implement land reforms:

Law RegThe 1959 Reforms (Martial ulation 64)

Under General Ayub Khan, the state imposed a ceiling of 500 irrigated or 1,000 unirrigated acres (equivalent to 36,000 Individual Index Units). While seemingly ambitious, the regulation allowed numerous exemptions for orchards, stud farms, and gifts to family members.

Landowners anticipated these reforms and transferred their holdings to relatives and trusted employees, ensuring that very little land was actually surrendered or redistributed to landless tenants.

The 1972 Reforms (Martial Law Regulation 115)

President Zulfikar Ali Bhutto introduced more aggressive reforms, lowering the ceiling to 150 irrigated or 300 unirrigated acres. Critically, these reforms mandated that land surrendered above the ceiling would be confiscated by the state without compensation and distributed free of cost to landless tenants.

Furthermore, the reforms shifted the burden of paying land revenue, water rates, and seed costs entirely onto the landlord, while prohibiting the arbitrary eviction of tenants.

Despite the populist rhetoric, implementation was weak. Landlords used their local political influence to falsify land records, hide surplus holdings behind unregistered transfers (Benami), and pressure local revenue administrations to overlook non-compliance.

The 1977 Reforms (Land Reform Act II of 1977)

Bhutto's second attempt further reduced the ceiling to 100 irrigated or 200 unirrigated acres, with compensation offered in the form of government bonds. However, before these reforms could be fully implemented, Bhutto's government was overthrown by a military coup led by General Zia-ul-Haq, ushering in a period of conservative, pro-landlord policies.

The Judicial Death of Land Reforms: The Qazalbash Waqf Decision

The death blow to state-mandated land redistribution in Pakistan was delivered by the judiciary, not the legislature. In the landmark case *Qazalbash Waqf v. Chief Land Commissioner* (PLD 1990 SC 99), the Shariat Appellate Bench of the Supreme Court of Pakistan ruled on the Islamic validity of land ceilings and compulsory redistribution.

"The right to private property is a fundamental right guaranteed under Islam. The state cannot compulsorily acquire private property without paying just and fair market value compensation, except under extreme circumstances of public emergency. Consequently, the setting of land ownership ceilings and the confiscation of surplus land without compensation, as mandated by the 1972 and 1977 Land Reforms, are declared repugnant to the injunctions of Islam."

Extract from the majority opinion, Qazalbash Waqf v. Chief Land Commissioner (1989)

By declaring land ceilings un-Islamic, this ruling effectively neutralized the legal basis for future agrarian land reforms. It restored the sanctity of large feudal estates and prevented the state from redistributing land to the landless.

The Qazalbash Waqf decision remains a highly debated judicial milestone. Critics argue that it prioritized elite property interests over social justice and poverty alleviation, entrenching economic disparities in rural Pakistan for generations.

The Economics of Fragmentation

While land reforms were halted, a quieter structural transformation has continued to reshape rural Pakistan: land fragmentation.

Under both Islamic inheritance laws (which mandate the division of a deceased individual's property among multiple heirs, including spouses, sons, and daughters) and statutory inheritance provisions, landholdings are progressively subdivided with each passing generation.

This continuous division has significant economic consequences:

Loss of Economies of Scale:

As large holdings are broken down into small, non-contiguous plots (often less than 5 acres), it becomes economically impossible for smallholders to adopt modern agricultural machinery, such as tractors, combine harvesters, or laser land levelers.

Inefficient Irrigation Management:

Fragmented plots require separate watercourses, leading to water loss through seepage and evaporation. It also makes the installation of modern, capital-intensive irrigation systems (like drip or sprinkler systems) unviable.

Capital Constraints and Debt Traps:

Small, fragmented farms generate lower yields, leaving farmers with little surplus capital to reinvest. Because formal financial institutions hesitate to accept tiny, fragmented plots as collateral, smallholders are often forced to turn to informal, predatory money lenders, perpetuating a cycle of debt.

TENURE INSECURITY AND ENVIRONMENTAL SUSTAINABILITY

The Dynamics of Informal Tenancy (Theeka)

In rural Pakistan, formal, written lease agreements are rare. Instead, the agricultural economy relies on informal, verbal contracts, locally known as Theeka (fixed cash rent) or Batai (sharecropping).

These informal arrangements create deep tenure insecurity for the cultivator. Because the tenant has no written lease, they can be summarily evicted at the end of a crop cycle if they demand a higher share of the yield, resist landlord demands, or if the landlord decides to lease the land to someone else.

This tenure insecurity directly influences agricultural decision-making:

Short-Term Focus:

Tenants with verbal, one-year leases have no economic incentive to invest in long-term soil health, apply organic compost, or plant windbreaks to prevent wind erosion. Their goal is to extract the maximum possible yield within their short tenure, often leading to intensive, soil-depleting farming practices.

Lack of Incentive for Infrastructure:

A tenant will not spend their own capital to build permanent water-management channels, laser-level the land, or construct drainage systems to prevent waterlogging, as the benefits of these long-term investments would accrue entirely to the landlord upon eviction.

Exclusion from Credit Markets:

Formal banks require a registered lease deed or land title as collateral before issuing agricultural loans. Because informal tenants lack these documents, they cannot access institutional credit to buy high-quality seeds, balanced fertilizers, or climate-resilient technologies.

Ecological Fallout: Soil Degradation, Waterlogging, and Salinity

The ecological consequences of insecure tenure and poor land management are visible across Pakistan's agricultural heartland. The Indus Basin Irrigation System—the largest contiguous irrigation system in the world—is suffering from severe ecological stress.

Ecological Issue, Primary Causes, Impacts on Agriculture Waterlogging, Poor drainage, over-irrigation, unlined canals raises the water table, suffocating crop roots and reducing yields, Salinity & Sodicty, Evaporation of saline groundwater, lack of flushing, Leaves salt crusts on topsoil, rendering vast areas of land completely barren.

Soil Erosion, Deforestation, overgrazing, intensive monoculture, Strips away nutrient-rich topsoil, accelerating desertification in arid zones. Aquifer Depletion, Unregulated tubewell installation, over-extraction, Lowers water tables, raising pumping costs and drawing in brackish water.

These environmental issues are compounded by the legal vacuum in resource management. For example, the Canal and Drainage Act 1873 focuses on distributing water and collecting water rates (Abiana), rather than regulating groundwater extraction or preventing the run-off of chemical fertilizers and pesticides into natural waterways.

Without a modern, integrated legal framework that links land tenure security with environmental stewardship, the degradation of Pakistan's agricultural land will continue to accelerate, threatening national food security.

LEGISLATIVE OVERLAPS, INSTITUTIONAL INEFFICIENCIES, AND GENDER DISPARITIES

Harmonizing Environmental Law: PEPA 1997 vs. Revenue Laws

The Pakistan Environmental Protection Act (PEPA) 1997 was enacted to provide a broad legal framework for conservation, pollution control, and sustainable resource management.

Section 12 of PEPA mandates that no proponent of a project shall commence construction or operation unless they have filed an Initial Environmental Examination (IEE) or an Environmental Impact Assessment (EIA) with the relevant Environmental Protection Agency (EPA).

However, there is a clear disconnect between PEPA 1997 and provincial land revenue and acquisition laws. When provincial governments acquire agricultural

land under the Land Acquisition Act 1894 for infrastructure projects, industrial zones, or housing schemes, they rarely integrate environmental impact assessments into the decision-making process.

The LAA 1894 does not require the state to evaluate whether an acquisition will destroy fertile agricultural land, disrupt natural drainage systems, or displace local ecosystems.

This legislative gap allows productive green belts to be converted into industrial parks or housing developments with minimal environmental oversight, undermining the ecological integrity of rural areas.

Gendered Land Rights: Customary Barriers and Statutory Protections

Although the Constitution of Pakistan guarantees gender equality, and Islamic jurisprudence establishes clear inheritance shares for women, the actual percentage of land owned or controlled by women in Pakistan remains low.

Customary practices, patriarchal social structures, and administrative loopholes combine to deny women their legal property rights.

The primary mechanisms of exclusion include "Voluntary Relinquishment" (Tamleek abuses): Women are often pressured by family members to voluntarily surrender their inherited land shares to their brothers or husbands in the name of family honor or in exchange for financial support that rarely materializes.

Administrative Bias in Revenue Records:

Historically, Patwaris and registration officials have worked almost exclusively with male family members. When mutations are processed, women are often left out of the record, or their presence is falsified through male representatives.

The "De De" System:

Even when a woman's name is formally entered into the land register, she rarely exercises actual managerial control over the land. Decisions regarding crop selection, input purchases, lease arrangements, and the sale of produce are almost entirely dominated by male relatives.

In response, some provinces have introduced targeted legislation, such as the Punjab Enforcement of Women's Property Rights Act 2021. This Act empowers the Provincial Ombudsperson to receive complaints from women who have been deprived of their ownership or possession of property, directing local administrations to restore their rights within tight timelines. While these statutory interventions are a step forward, their effectiveness remains limited by a lack of legal literacy among rural women and deep-seated social resistance from local communities.

Institutional Pathologies

The Patwari System and Dispute Resolution

At the center of land governance in Pakistan is the Patwari. This low-level revenue official holds immense power, maintaining the village land records, registering mutations, assessing land taxes, and providing official copies of records (Fard) to landowners. The concentration of discretionary power in this manual, paper-based office has historically led to several systemic issues:

Rent-Seeking Behavior

Because the Patwari was the sole keeper of the physical register haqdar-e-zamin, landowners were often forced to pay informal fees to access their own records, correct clerical errors, or process legitimate mutations.

Falsification and Double-Mutations

The manual system allowed for the deliberate alteration of records, the insertion of fictitious owners, and the processing of double-sales for the same plot of land, sparking endless civil litigation.

The Dual-Track Dispute Trap

When a land dispute arises, it often triggers two parallel legal processes. An administrative appeal track within the Revenue Department (going from the Tehsildar to the Collector, and ultimately to the Board of Revenue).

A title dispute lawsuit in the Civil Courts

These parallel paths frequently produce conflicting rulings, trapping families in expensive, multigenerational legal battles that drain rural capital and stifle land investment.

MODERNIZATION, TECHNOLOGY, AND POLICY RECOMMENDATIONS

Digitization of Land Records: Evaluating the PLRA

To address the corruption and inefficiencies of the traditional land records system, the Government of Punjab established the Punjab Land Records Authority (PLRA) under the Punjab Land Records Authority Act 2017.

The PLRA was tasked with digitizing paper records, establishing computerized Arazi Record Centers (ARCs) across the province, and bypassing the traditional role of the Patwari for land record access and mutations.

Key Achievements of the PLRA

Reduced Transaction Times: Obtaining a Fard (record of rights) now takes minutes at an ARC, compared to days or weeks under the manual Patwari system.

Improved Transparency:

Biometric verification, digital photography, and automated SMS alerts have reduced the incidence of identity theft and unauthorized land mutations.

Increased Revenue Collection:

Automated fee calculators and direct bank payments have channeled registration fees directly into the state treasury, eliminating cash handovers.

Remaining Challenges

Errors in Legacy Data:

The digitization process was built on older, manual records that already contained thousands of errors, boundary overlaps, and fake entries. Consequently, many digitized records simply locked in these historical errors, transferring manual disputes into a digital database.

Resistance from the Patwari Lobby:

The traditional revenue bureaucracy has resisted the loss of their discretionary powers, sometimes refusing to cooperate with digitized service centers or maintaining parallel manual records to confuse landowners.

Exclusion of the Digitally Illiterate:

Rural smallholders often struggle to navigate online portals or digital appointment systems, making them dependent on informal digital intermediaries who charge fees for these services.

Structural and Policy Recommendations

To transition Pakistan's land governance system into an engine for sustainable rural growth, the state must implement several integrated reforms:

Voluntary and Incentivized Land Consolidation

Instead of relying on mandatory, state-enforced land consolidation programs, the government should introduce market-friendly, incentivized programs.

By offering waivers on registration taxes, providing subsidized access to solar-powered tube wells, and prioritizing high-efficiency irrigation systems for consolidated farms, the state can encourage fragmented smallholders to voluntarily merge their plots into economically viable, contiguous cooperative farming blocks.

Adoption of the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)

Pakistan should align its land governance framework with the international Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), developed by the Food and Agriculture Organization (FAO).

This involves legally recognizing informal tenancy arrangements, introducing standard written lease templates, and establishing local agrarian tribunals to quickly

resolve landlord-tenant disputes, ensuring that smallholders have the security needed to invest in long-term soil health.

Modernizing the Land Acquisition Act 1894

The LAA 1894 must be updated to replace colonial-era eminent domain with a modern framework focused on fair compensation and social responsibility.

The term "public purpose" must be narrowly defined to exclude commercial, profit-driven housing or industrial developments.

Compensation must be pegged to the actual replacement value of the land, calculated at the time of physical acquisition rather than the initial notification date.

Every public land acquisition must be legally paired with a Social and Environmental Impact assessment, ensuring that displaced communities are provided with alternative livelihoods and that fertile agricultural land is preserved.

Enhancing Gender Inclusivity through Administrative Reform

To ensure that women can exercise their legal property rights, the state should:

a. Establish Dedicated Desks:

Create female-staffed desks at all Arazi Record Centers to provide a safe space for rural women to register and manage their land rights.

b. Mandate Biometric

Verification: Require biometric verification of all legal heirs, specifically including female heirs, before any inheritance mutation can be certified.

c. Promote Legal Literacy Campaigns:

Launch community-level legal awareness campaigns, partnering with local civil society organizations to educate women about their inheritance rights under both statutory and Sharia law.

CONCLUSION

Following the passage of the 18th Constitutional Amendment, the devolution of power has shifted legislative authority over land administration to the provinces. This structural change offers provincial governments a unique opportunity to design land-use policies tailored to their specific ecological and socio-economic realities.

The future of Pakistan's rural economy depends on converting historical legal provisions into enforceable, equitable practices. By building strong land administration institutions, expanding digital records, protecting vulnerable tenants, and integrating environmental safeguards into property laws, Pakistan can resolve structural land disputes and unlock its agricultural potential to achieve inclusive, climate-resilient growth.

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Climate Change Litigation: Judicial Responses to the Global Climate Crisis and the Evolving Role of Domestic and International Courts

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ABSTRACT

Climate change litigation has emerged as one of the most consequential legal developments of the twenty-first century, transforming courtrooms into forums for climate governance where legislatures and executives have been slow to act. This article examines the doctrinal foundations, transnational trends, and practical challenges of climate litigation across constitutional, human rights, tort, and administrative law frameworks. Drawing on landmark decisions including *Urgenda Foundation v Netherlands*, *Held v Montana*, *Milieudefensie v Royal Dutch Shell*, and *Verein KlimaSeniorinnen Schweiz v Switzerland*, the article traces how courts have grappled with questions of standing, causation, separation of powers, and the justiciability of climate harms. It argues that while climate litigation has produced significant normative gains, particularly in articulating states' and corporations' duties of care, its remedial force remains constrained by judicial caution regarding specific performance and polycentric policy-making. The article concludes by considering the implications of these trends for future litigants, including in jurisdictions of the Global South, and offers recommendations for a more coherent judicial approach to climate accountability.

Keywords: climate change litigation; duty of care; human rights; standing; separation of powers; corporate accountability

INTRODUCTION

Climate change has moved from the margins of environmental policy to the centre of legal discourse. As legislative and diplomatic responses to greenhouse gas emissions have consistently fallen short of what climate science demands, litigants across the world have turned to courts to compel more ambitious action from governments and corporations.¹

Climate change litigation may be defined broadly as legal action before judicial or quasi-judicial bodies that raises material issues of climate change law, policy, or science. It encompasses an extraordinarily diverse set of proceedings: constitutional challenges alleging violation of a right to a healthy environment, human rights claims against states for insufficient mitigation, tort-based suits against fossil fuel companies for contribution to climate harm, administrative law challenges to permitting decisions, and shareholder or securities actions concerning corporate climate disclosures.

The proliferation of such cases reflects a deeper structural reality: climate change is a problem of collective action that existing political institutions have struggled to resolve, and litigants have accordingly sought to use the courts as an alternative or complementary avenue of accountability. This article surveys the major doctrinal pathways through which climate litigation has developed, analyses landmark decisions from multiple jurisdictions, and evaluates the strengths and limitations of judicial intervention as a tool of climate governance.

The significance of this litigation trend extends well beyond the individual cases decided. Cumulatively, climate litigation has generated a growing body of comparative jurisprudence that courts in different jurisdictions increasingly cite to one another, producing a form of transnational judicial dialogue on climate accountability that operates largely independently of formal treaty negotiation. It has also generated substantial secondary effects: corporate boards now routinely commission climate litigation risk assessments, insurers price litigation exposure into directors' and officers' coverage, and government agencies increasingly build litigation risk into the drafting of climate legislation and regulation. In this sense,

¹Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot* (Grantham Research Institute on Climate Change and the Environment, London School of Economics 2024).

climate litigation functions not only as a mechanism of retrospective accountability but as a forward-looking disciplining force on both public and private decision-making.

It is also important to distinguish climate litigation from more conventional environmental litigation. Whereas classical environmental law disputes typically concern a discrete, localised harm with an identifiable polluter, climate change litigation must contend with a harm that is cumulative, diffuse, intergenerational, and caused by the aggregated conduct of billions of emitters across the globe. This structural feature explains why climate litigation has required courts to adapt, reinterpret, or in some instances abandon established doctrines of standing, causation, and remedy that were developed for a very different category of dispute. The remainder of this article traces how courts across different legal traditions have responded to this challenge.

The discussion proceeds in six parts. Part 2 traces the historical evolution of climate litigation. Part 3 examines rights-based and constitutional climate cases. Part 4 considers tort-based and corporate accountability litigation. Part 5 analyses recurring procedural and doctrinal obstacles, including standing, causation, and separation of powers concerns. Part 6 offers concluding observations and recommendations.

THE EVOLUTION OF CLIMATE CHANGE LITIGATION

Early climate cases, filed largely in the United States during the 1990s and 2000s, tended to rely on federal statutory schemes such as the Clean Air Act or on common law nuisance doctrines.²

These early cases established, at a minimum, that greenhouse gases could be regulated as pollutants and that plaintiffs could, in some circumstances, demonstrate a sufficiently concrete injury traceable to climate change to establish standing. However, courts were often reluctant to grant substantive relief, frequently invoking the political question doctrine or preferring to defer to legislative and regulatory processes.

The Second Wave: Rights-Based and Constitutional Claims

²Massachusetts v Environmental Protection Agency 549 US 497 (2007); American Electric Power Co v Connecticut 564 US 410 (2011).

A decisive shift occurred with the 2015 decision of the District Court of The Hague in *Urgenda Foundation v State of the Netherlands*, in which the Dutch courts ordered the government to reduce greenhouse gas emissions by at least twenty-five per cent by 2020 relative to 1990 levels.³

The Dutch Supreme Court's 2019 affirmation of this order, grounded in Articles 2 and 8 of the European Convention on Human Rights, marked the first time a court had used binding human rights obligations to compel a sovereign state to adopt more ambitious climate targets. *Urgenda* catalysed a wave of similar rights-based claims across Europe, Asia, and the Americas, and remains the most frequently cited precedent in comparative climate litigation scholarship.

The *Urgenda* model was quickly transplanted into other jurisdictions with differing degrees of success. In Germany, the Federal Constitutional Court's 2021 decision in *Neubauer v Germany* held that provisions of the Federal Climate Protection Act were partly unconstitutional because they deferred the bulk of required emissions reductions to the period after 2030, thereby placing a disproportionate burden on the fundamental freedoms of future generations.⁴

The German court's reasoning introduced an important intertemporal dimension to climate litigation: rather than focusing solely on the adequacy of present-day emissions targets, the court examined whether current legislative choices unfairly foreclosed the range of options available to future generations, given the shrinking global carbon budget. This intergenerational equity rationale has since informed climate litigation in other civil law jurisdictions and has been cited approvingly by commentators as a doctrinally innovative response to the problem of long-term, cumulative harm.

Climate Litigation in the Global South

Climate litigation is not confined to wealthy, industrialised states. In Pakistan, the Lahore High Court's decision in *Leghari v Federation of Pakistan* recognised that the government's failure to implement its own National Climate Change Policy violated the constitutional rights to life and dignity of a farmer whose livelihood

³*Urgenda Foundation v State of the Netherlands*, District Court of The Hague, ECLI:NL:RBDHA:2015:7145 (24 June 2015); upheld by the Supreme Court of the Netherlands, ECLI:NL:HR:2019:2007 (20 December 2019).

⁴*Neubauer et al v Germany*, Federal Constitutional Court of Germany, 1 BvR 2656/18 (24 March 2021).

was threatened by shifting weather patterns, and the court subsequently established a Climate Change Commission to monitor implementation.⁵

Leghari is significant for demonstrating that structural or supervisory remedies, in which courts retain ongoing jurisdiction to monitor compliance through an expert body rather than issuing a single mandatory order, can offer a practical middle path between purely declaratory relief and open-ended injunctions that risk exceeding judicial competence. Similar supervisory models have since been considered in climate litigation in Colombia, India, and the Philippines, suggesting that Global South courts, often operating within constitutional traditions that already recognise robust environmental and public interest litigation standing, may be particularly well placed to develop innovative procedural responses to the polycentric character of climate harm.

The Third Wave: Corporate and Systemic Accountability

A further development has been the extension of climate claims beyond states to private corporate actors, particularly fossil fuel producers, as well as the emergence of systemic litigation targeting entire regulatory frameworks, financial disclosure regimes, and investment decisions. This third wave, discussed further in Part 4 below, reflects growing recognition that meaningful decarbonisation requires accountability across both public and private spheres.

RIGHTS-BASED AND CONSTITUTIONAL CLIMATE LITIGATION

Rights-based climate litigation proceeds on the theory that inadequate climate action by the state violates constitutionally or internationally protected rights, most commonly the right to life, the right to private and family life, or an express or implied right to a healthy environment.

Constitutional Environmental Rights: Held v Montana

In the United States, the landmark decision in *Held v State of Montana* marked the first successful constitutional climate trial in the country's history.⁶

⁵Ashgar Leghari v Federation of Pakistan (2015) WP No 25501/2015 (Lahore High Court, Green Bench).

⁶*Held v State of Montana*, First Judicial District Court, Lewis and Clark County, Cause No. CDV-2020-307 (14 August 2023).

Sixteen youth plaintiffs challenged a provision of the Montana Environmental Policy Act that prohibited state agencies from considering the impacts of greenhouse gas emissions during environmental review. The trial court found this limitation unconstitutional, holding that the state constitution's guarantee of a "clean and healthful environment" encompasses a stable climate system. On 18 December 2024, the Montana Supreme Court affirmed this holding in a six-to-one decision, concluding that the plaintiffs possessed case-or-controversy standing and that the challenged provisions were not narrowly tailored to any legitimate government interest.⁷

Held is significant not merely for its outcome but for its methodology: the courts engaged directly with expert climate science testimony, treated the causal contribution of state-level emissions as legally cognisable notwithstanding the global scale of the climate system, and rejected the state's argument that Montana's own emissions were too insignificant to matter. This approach addresses one of the most persistent doctrinal obstacles in climate litigation, namely the argument that no individual jurisdiction's emissions can be shown to have caused a claimant's particular injury.

Regional Human Rights Adjudication: KlimaSeniorinnen v

Switzerland

At the supranational level, the Grand Chamber of the European Court of Human Rights delivered a transformative judgment in *Verein KlimaSeniorinnen Schweiz v Switzerland*, brought by an association of elderly Swiss women asserting that heightened vulnerability to heatwaves associated with insufficient mitigation violated their right to respect for private and family life under Article 8 of the European Convention on Human Rights.⁸

The Grand Chamber held, for the first time, that Article 8 encompasses a right to effective protection from the serious adverse effects of climate change on life, health, well-being, and quality of life, and that Switzerland had failed to comply with its positive obligations by not putting in place a domestic regulatory framework capable of quantifying national greenhouse gas emission limitations. At

⁷Held v State of Montana, 2024 MT 312 (Sup Ct Montana, 18 December 2024).

⁸*Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

the same time, the Court found that the individual applicants lacked victim status, granting standing instead to the association itself under a specially calibrated test for climate-related *actio popularis* claims. The judgment is likely to influence climate litigation throughout the forty-six Council of Europe member states and has already been invoked in subsequent domestic proceedings.

Comparative Observations

Taken together, these decisions illustrate a broader trend of courts reading existing constitutional or human rights guarantees expansively to encompass climate stability, notwithstanding the absence of an express textual reference to climate change. This interpretive strategy allows courts to ground climate obligations in well-established rights frameworks rather than fashioning novel causes of action, thereby mitigating (though not eliminating) separation of powers concerns. However, the approach also generates variation across jurisdictions, since the scope of relief available depends heavily on the content and enforceability of the underlying constitutional or treaty right.

A further point of comparison concerns the treatment of children and youth as claimants. *Held*, *Neubauer*, and *Leghari* all involved young plaintiffs asserting that inadequate present-day climate policy disproportionately burdens their generation and generations yet to come. Courts have responded to these intergenerational equity arguments with varying degrees of receptivity: while the Montana and German courts accepted that constitutional rights extend meaningful protection to future interests, courts in other jurisdictions, including several United States federal courts hearing analogous claims under the doctrine articulated in *Juliana v United States*, have declined to recognise a freestanding constitutional right to a stable climate system, holding that the appropriate redress for such a broad and diffuse grievance lies with the political branches rather than the judiciary.

The dismissal of *Juliana v United States* by the Ninth Circuit Court of Appeals, which held that the plaintiffs' claims exceeded the limits of Article III standing and the redressability requirement despite finding that the government's conduct had contributed to climate harm, stands as an instructive counterpoint to the more receptive constitutional reasoning in *Held*. The contrast between these two decisions, both arising within the same federal system though at different levels of government, underscores that the fate of rights-based climate claims often turns less

on the underlying merits of the climate science than on background doctrines of justiciability, standing, and remedial competence specific to each legal order.⁹

TORT-BASED AND CORPORATE CLIMATE ACCOUNTABILITY LITIGATION

A parallel and increasingly prominent strand of climate litigation targets private corporate actors, particularly major fossil fuel producers, through tort-based causes of action such as negligence, public nuisance, and unwritten duties of care.

Milieudefensie v Royal Dutch Shell

The most significant corporate climate case to date is Milieudefensie et al v Royal Dutch Shell plc. In May 2021, the District Court of The Hague ordered Shell to reduce the aggregate volume of its Scope 1, 2, and 3 carbon dioxide emissions by at least forty-five per cent by the end of 2030 relative to 2019 levels, deriving this obligation from the unwritten standard of care under Article 6:162 of the Dutch Civil Code, interpreted in light of climate science, international human rights instruments, and the United Nations Guiding Principles on Business and Human Rights.¹⁰

On appeal, the Hague Court of Appeal delivered a more measured ruling on 12 November 2024. The appellate court affirmed that Shell, as a major emitter with the capacity to contribute to mitigating dangerous climate change, bears a responsibility grounded in both the unwritten standard of care and human rights norms with indirect horizontal effect on private actors. However, the Court of Appeal held that a civil court could not impose a specific numerical reduction target on a single company, reasoning that the forty-five per cent benchmark derived from global climate science could not simply be transposed onto one corporate actor, and that reductions in Shell's supply might in any event be offset by other producers filling the resulting market gap.¹¹

The appellate judgment is widely regarded as a partial victory for both sides: it entrenches, for the first time at appellate level, a corporate duty of care to mitigate

⁹Juliana v United States, 947 F3d 1159 (9th Cir 2020).

¹⁰Milieudefensie et al v Royal Dutch Shell plc, District Court of The Hague, ECLI:NL:RBDHA:2021:5337 (26 May 2021).

¹¹Milieudefensie et al v Royal Dutch Shell plc, Court of Appeal of The Hague, ECLI:NL:GHDHA:2024:2100 (12 November 2024).

climate change grounded in human rights, yet it signals judicial reluctance to prescribe specific quantitative remedies against individual corporate defendants, leaving the calibration of emissions targets to democratic and regulatory processes. The decision has been described as a potential Pyrrhic victory for Shell, since the Court of Appeal's obiter remarks regarding the illegality of continued investment in new fossil fuel fields may provide a foundation for future claims. The matter remains pending before the Supreme Court of the Netherlands on a further appeal in cassation.

The Limits of Novel Duties: Sharma v Minister for the Environment

Not all attempts to extend duties of care in the climate context have succeeded. In Australia, a group of teenage claimants in *Sharma v Minister for the Environment* persuaded the Federal Court at first instance that the Commonwealth Minister owed a novel duty of care to Australian children to avoid causing them personal injury when exercising a statutory power to approve a coal mine extension.¹²

On appeal, the Full Court of the Federal Court unanimously overturned this finding, holding that the imposition of such a duty was inconsistent with the statutory framework governing ministerial approval decisions and that the indeterminacy of the class of persons owed the duty, combined with the essentially political and scientific character of the underlying policy questions, rendered the claim unsuitable for common law tort adjudication. *Sharma* illustrates the caution with which common law courts, particularly those operating within Diceyan traditions of parliamentary sovereignty and an incremental approach to tort development, continue to treat novel climate-related duties of care, in contrast to the more expansive human-rights-inflected reasoning adopted in *Urgenda* and *KlimaSeniorinnen*.

Broader Trends in Corporate Climate Litigation

Beyond the Netherlands, corporate climate litigation has taken diverse forms, including municipal nuisance suits against oil majors in the United States, human

¹²*Minister for the Environment v Sharma* [2022] FCAFC 35 (Full Court of the Federal Court of Australia).

rights complaints before national human rights institutions in Asia, and shareholder derivative actions concerning inadequate climate risk disclosure.¹³

A recurring feature of these cases is the difficulty of establishing legal causation between a single corporate defendant's historical emissions and a claimant's specific climate-related harm, given the cumulative and globally diffuse nature of greenhouse gas emissions. Some jurisdictions have begun to address this through proportionate or market-share liability theories, drawing on climate attribution science that increasingly permits emissions from individual corporate entities to be quantified against global carbon budgets.

RECURRING DOCTRINAL AND PROCEDURAL CHALLENGES

Despite the doctrinal gains achieved in the cases discussed above, climate litigation continues to confront a set of recurring obstacles that shape both the availability and scope of judicial relief.

Standing

Because climate harms are diffuse, cumulative, and often prospective, plaintiffs frequently struggle to demonstrate the kind of concrete, particularised, and imminent injury traditionally required for standing. Courts have responded variably: the Grand Chamber in *KlimaSeniorinnen* denied standing to individual applicants while permitting a qualifying association to proceed, whereas the Montana Supreme Court in *Held* accepted that youth plaintiffs suffered cognisable, if widely shared, constitutional injury. This divergence reflects an underlying tension between the individualised model of standing embedded in most legal systems and the genuinely collective character of climate harm.

5.2 Causation

Establishing that a particular defendant's conduct caused a particular claimant's climate-related harm is complicated by the global and cumulative nature of greenhouse gas emissions. Advances in climate attribution science, which allow scientists to estimate the extent to which anthropogenic emissions have increased the likelihood or severity of specific extreme weather events, have begun to narrow

¹³Setzer and Higham (n 1) 24–29.

this gap, but courts remain divided on the degree of causal proximity required, particularly in tort-based claims against individual corporate defendants.

A related development is the growth of source attribution science, which seeks to quantify the proportion of cumulative global emissions historically traceable to a discrete set of major fossil fuel and cement producers. Scholarship building on this methodology has been influential in litigation such as *Lliuya v RWE AG*, a German case in which a Peruvian farmer sought proportionate compensation from a German utility company for glacial melt flood risk, calculated according to RWE's estimated share of historical global industrial emissions.¹⁴

Although the Hamm Higher Regional Court ultimately dismissed the claim on the facts after an extensive evidentiary process, it accepted as a matter of law that a single emitter could in principle be held proportionately liable for a fraction of cumulative climate damage attributable to its historical contribution, notwithstanding the involvement of countless other emitters worldwide. This holding, sometimes described as recognising a form of proportionate or aliquot liability, represents a significant doctrinal development because it dispenses with the traditional requirement that a defendant's conduct be shown to be a necessary or sufficient cause of the claimant's injury, substituting instead a probabilistic contribution-based standard better suited to diffuse environmental harm.

Separation of Powers and Justiciability

Perhaps the most persistent objection to climate litigation is that courts lack the institutional competence and democratic legitimacy to prescribe climate policy, a function properly reserved to elected legislatures and executives. This concern animated the Hague Court of Appeal's refusal to impose a specific numerical target on Shell and continues to inform judicial caution in jurisdictions with a strong political question doctrine. Courts that have granted relief have generally sought to calibrate their orders so as to declare the existence of an obligation or a rights violation while leaving the precise means of compliance to the responsible political institution.

Remedies

¹⁴Saúl Luciano Lliuya v RWE AG, Regional Court of Essen and Higher Regional Court of Hamm, Case No 2 O 285/15 (ongoing).

Even where liability is established, courts face difficult choices regarding remedy: declaratory relief affirms rights but may not compel concrete action, while mandatory injunctive relief risks encroaching on legislative discretion and raises complex questions of judicial supervision and enforcement, particularly in respect of polycentric harms extending far beyond the parties before the court.

Summary of Key Comparative Decisions

Table 1 below summarises the jurisdictional origin, legal basis, and outcome of the principal decisions discussed in this article.

Case	Jurisdiction	Legal Basis	Outcome
Urgenda Foundation v Netherlands (2015/2019)	Netherlands (domestic)	ECHR Arts 2 & 8; duty of care	State ordered to meet minimum emissions reduction target
Held v Montana (2023/2024)	United States (Montana)	State constitutional right to a clean and healthful environment	Statutory provision barring GHG review held unconstitutional
Milieudefensie v Shell (2021/2024)	Netherlands (domestic)	Unwritten duty of care; human rights (indirect horizontal effect)	Duty of care affirmed; specific reduction order set aside on appeal
KlimaSeniorinnen v Switzerland (2024)	ECtHR (regional)	ECHR Art 8	Switzerland found in violation of positive obligations

CONCLUSION AND RECOMMENDATIONS

Climate change litigation has proven to be a remarkably adaptable vehicle for climate accountability, capable of drawing on constitutional, human rights, and private law doctrines depending on the legal traditions and institutional constraints of the forum. The decisions examined in this article demonstrate that courts are increasingly willing to recognise that inadequate climate action can violate existing legal obligations, whether owed by states to their citizens or by corporations under private law duties of care. At the same time, courts have generally been reluctant to prescribe the specific policy instruments through which compliance must be

achieved, preferring declaratory findings of obligation over detailed injunctive remedies.

This measured approach reflects a defensible judicial instinct to respect the institutional competence of legislatures and regulators, but it also risks producing a body of case law that is doctrinally significant yet practically limited in its capacity to accelerate decarbonisation at the pace required by climate science. Three recommendations follow from this analysis. First, courts should continue to develop calibrated remedial frameworks, such as periodic reporting obligations or graduated compliance timelines, that respect separation of powers while ensuring meaningful accountability. Second, greater judicial engagement with climate attribution science would assist courts in resolving persistent causation difficulties in tort-based claims against corporate emitters. Third, sustained comparative dialogue among domestic and regional courts, of the kind already evident in the mutual citation of *Urgenda*, *Held*, *Milieudefensie*, and *KlimaSeniorinnen*, should be encouraged as a means of building doctrinal coherence across jurisdictions confronting a fundamentally transboundary problem.

As the frequency and sophistication of climate litigation continues to grow, particularly in jurisdictions of the Global South that bear disproportionate climate impacts despite limited historical contribution to global emissions, courts will remain central actors in the contested project of climate governance. Whether this judicial role ultimately proves transformative or merely declaratory will depend on the willingness of courts to translate the normative gains articulated in these landmark decisions into remedies capable of altering the trajectory of global emissions.

Ultimately, the most durable contribution of climate litigation to date may lie not in any single remedial order but in the incremental construction of a shared interpretive vocabulary across jurisdictions: the recognition that a stable climate system underpins the enjoyment of long-established rights, that historical emitters bear a proportionate and legally cognisable responsibility for cumulative harm, and that present legislative choices carry direct consequences for the rights of future generations. As international climate negotiations continue to proceed at an uneven pace, this evolving body of jurisprudence offers an important, if imperfect,

supplementary mechanism through which the gap between the urgency of climate science and the pace of political action may gradually be narrowed.

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