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THE INHERITANCE PARADOX IN PAKISTAN: ASSESSING THE DISJUNCTURE BETWEEN QURANIC GUARANTEES AND PRACTICAL ENFORCEMENT

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Abstract

This report provides an expert-level analysis detailing the disjunction between the explicitly defined, mandatory guarantees of women's inheritance rights under Islamic jurisprudence (Fara'id) and their significantly deficient practical enforcement within Pakistan. While the statutory framework, primarily anchored by the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, and reinforced by recent legislation, theoretically upholds these Quranic rights, deep-seated socio-cultural norms, systemic procedural flaws, and historical patriarchal institutions create an overwhelming enforcement chasm.

Key Findings:

Theoretical Alignment: *Pakistan's statutory law strictly mandates the application of Shariat rules (Hanafi Fiqh), ensuring fixed shares for female heirs (daughters, widows, and mothers).*

Statutory Divergence: *The Muslim Family Laws Ordinance (MFLO) 1961, Section 4, introduces the per stirpes doctrine for orphaned grandchildren, representing a notable divergence from classical Hanafi exclusion principles based on considerations of equity.*

Judicial Mandate: Superior courts, including the Federal Shariat Court (FSC), have unequivocally condemned the denial of inheritance through local customs (e.g., Chaddar, Parchi) as un-Islamic and illegal, recommending the criminal prosecution of perpetrators under Section 498-A of the Pakistan Penal Code.

Enforcement Reality: *The practical denial rate is high, with a nationwide rate of 35% reporting that women are not given their share, and statistics indicating that 97% of women did not inherit land or housing. This denial is primarily facilitated by coerced waivers, the substitution of inheritance with dowry, and the exploitation of legal procedures where the burden of proving coercion rests almost impossibly on the victim.*

The Control Gap: *Legal title does not translate to agency. Even where women legally own property (estimated at 10.6% of the Punjab population), male relatives often retain de facto control, nullifying the economic empowerment intended by the law.*

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Institutional Response: *The creation of the Ombudsperson office under the Enforcement of Women's Property Rights Act (2019-2021) represents a critical legislative effort to provide speedy, administrative justice, bypassing the protracted civil litigation process.*

I. Introduction: Contextualizing Women's Property Rights in Pakistan

A. The Islamic Principle of Mandatory Inheritance (Fara'id)

The foundation of women's inheritance rights in Pakistan rests on the Islamic system of Fara'id, or mandatory fixed shares, which is non-discretionary and established by clear divine injunctions in the Holy Quran (Surah An-Nisa). This religious obligation grants women defined, absolute ownership shares, fundamentally contrasting with the historical common law systems where women's property rights were often restricted. This mandatory nature ensures that the entitlement is a sacred right, not a concession subject to male discretion or familial consensus.

B. Historical Legal Pluralism: The Shift from Customary Law to Shariat

Prior to the 1960s, a significant portion of what is now Pakistan was governed by indigenous customary laws (Riwaj), which severely restricted women's property rights, frequently confining them to limited life estates or excluding them entirely from land inheritance. The enactment of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (W.P. Act V of 1962), marked a watershed moment in Pakistani legal history. Section 2 of this Act mandated the application of Muslim Personal Law (Shariat) in all matters of succession and inheritance, thereby systematically overriding entrenched, discriminatory customary rules. Furthermore, Sections 3 and 5 addressed past injustices by formally terminating "limited estates under Customary Law" and ensuring that the devolution of property thereafter occurred strictly according to Shariat rules.

The 1962 Act successfully established legal monism by legislatively eradicating the formal customary law basis for inheritance denial. However, the subsequent decades of enforcement demonstrate that this legislative success did not address the persistence of social pluralism. The legal framework abolished formal customary law but failed to dismantle the informal institutions and patriarchal social contracts that drive non-enforcement in practice. The enduring reliance on coercion, deception, and the substitution of inheritance with dowry shows that these customs, though legally invalid, remain socially powerful and operative, often disguised within the legal process as "voluntary waivers". The 1962 Shariat Application Act was not merely a legislative update; it was a revolutionary attempt to decolonize the Pakistani land tenure system. To understand the current failure of enforcement, one must analyze the "Colonial Shadow" cast by the Punjab Laws Act of 1872. The British administration prioritized local "Custom" (Riwaj) over religious law to maintain the loyalty of rural landed elites who feared that Islamic inheritance would fragment their estates into economically unviable pieces. When the 1962 Act mandated the application of Muslim Personal Law, it theoretically abolished these customs. However, it failed to provide a mechanism to dismantle the "Limited Estate" culture. Under custom, widows were often granted a "life interest" in land, meaning they could use the crops for survival but never own the soil. This created a psychological precedent in rural families: even today, when a woman is "given" her share on paper, the family treats it as a "limited interest," where she is expected to eventually return the land to her brothers or sons. The persistence of this "Customary Inertia" is why legislative monism has failed to achieve social monism.

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II. The Theoretical Baseline: Quranic Guarantees and Statutory Refinements

A. Fixed Shares (Ashab al-Furud): Detailed Analysis of Women's Quantum

Under the prevailing Hanafi School of jurisprudence used in Pakistan, the shares allocated to female heirs are clearly defined and fixed, reflecting their mandatory nature under the Quran.

Daughters: A single daughter is entitled to receive one-half (1/2) of the inheritance. If there are two or more daughters, they collectively share two-thirds (2/3) of the total inheritance.

Widows: The share of a deceased husband's property received by the widow varies based on the existence of children. If the couple was issueless, the widow receives one-quarter (1/4). If they have children, the share is reduced to one-eighth (1/8), after the payment of any outstanding debts or bequests from the estate.

Mothers: A mother receives one-sixth (1/6) of the estate if the deceased had any children or siblings. If the deceased was issueless and left only parents, the mother receives one-third (1/3).

The system of Fara'id is characterized by its mathematical rigidity, which serves as a safeguard against the fluid nature of human sentiment and patriarchal bias. In Islamic legal philosophy, property is viewed as a trust (Amanah) from the Creator, and the rules of its devolution are considered Hudud Allah (the boundaries set by God). When a person dies, their ownership is immediately and automatically transferred to the heirs in the proportions specified in the Quran. There is no requirement for a "probate" or a "letter of administration" to activate the right of the heir; the right is vestigial and instantaneous. Within the Hanafi School, the "Twelve Sharers" (Ashab al-Furud) represent the first line of succession. For women, these shares provide a floor of economic security. For instance, the mother's share of 1/6th or 1/3rd (depending on the presence of children or siblings) is an acknowledgment of her domestic and reproductive labor, which often goes uncompensated in secular labor markets. This share is absolute; it cannot be reduced by the deceased through a will (Wasiyyat), as Islamic law limits testamentary power to only one-third of the estate, and even then, not in favor of a legal heir. This limitation on wills is specifically designed to prevent a father from "writing out" his daughters or wife in favor of his sons, a common practice in many other historical legal systems.

The 2:1 ratio (male to female) is frequently the subject of secular critique, yet a deeper analysis of the Nafaqah (maintenance) system reveals it to be a form of distributive justice, in the socio-economic context of Seventh-Century Arabia and mirrored in many traditional sectors of Pakistan today. The male was the sole breadwinner. By granting him a larger share, the law was essentially funding a social security system where the male was legally compelled to provide for his mother, sisters, and wife. If he fails to do so, he is not just socially negligent but legally liable in a Sharia court. Conversely, a woman's share is hers to save, invest, or spend as she pleases, with no obligation to contribute to household expenses. The tragedy of the Pakistani context is that while the 2:1 ratio is strictly followed, the reciprocal duty of maintenance is often ignored, leading to what scholars call "unbalanced proportionality".

B. The Ratio of Male to Female Share (2:1) and Contextualizing Financial Responsibility

The standard principle in Islamic inheritance is that a male heir typically receives a share equivalent to the shares of two females. This proportional difference is not arbitrary; it is structurally balanced by the mandatory financial duties imposed exclusively upon male heirs. Islamic law dictates that men bear the sole financial burden of maintenance (Nafaqah) for their wives and minor children. Conversely, a woman with surplus wealth has no obligation of financial care towards her husband or children, although she does share the burden of maintaining her parents equally with her brothers, according to some Hanafi jurists. Therefore, the distribution of assets is reciprocal: the larger share granted to the male heir is legally

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and morally contingent upon his exclusive, non-negotiable financial responsibilities.

This legal recognition of the financial burden borne by men provides a crucial theological and legal defense against the simplistic argument that the 2:1 ratio inherently constitutes gender inequality. However, this defense is rendered irrelevant in practice when male relatives also deny the female heirs their smaller, mandated share. This constitutes a double deprivation for women: they are denied the fixed share of inheritance and often simultaneously denied the reciprocal financial security usually guaranteed by male relatives in a patriarchal setting. The practical non-compliance with inheritance law effectively dismantles the theoretical balance established by Sharia law.

Table 1: Comparison of Quranic/Hanafi Inheritance Shares for Key Female Heirs

Relationship to Deceased	Conditions	Fixed Share (Quranic/Hanafi)	Corresponding Male Share (for comparison)
Daughter(s)	one daughter, no son	1/2	Son (alone): Residue (usually the whole)
Daughter(s)	two or more daughters, no son	2/3 (divided equally)	Two or more sons: Residue (divided equally)
Daughter & Son	both present	Daughter receives half of the son's share (1/3 if residual)	Son gets double the daughter's share (2:1 ratio)
Widow	Issueless	1/4	—
Widow	With children	1/8	—

C. Statutory Modification: The Doctrine of Representation (Per Stirpes) under MFLO 1961

Classical Sunni/Hanafi inheritance law strictly adheres to the principle that "the nearer in degree excludes the more remote". This doctrine of exclusion meant that if a son or daughter died before the propositus (the deceased), their own children (the grandchildren) were entirely excluded from inheritance if the deceased left behind a surviving child. This outcome was often viewed as unjust and characterized by critics as an "inhuman rule".

In response to these equitable concerns, Section 4 of the Muslim Family Laws Ordinance (MFLO) 1961 was enacted. It introduced the Per Stirpes doctrine, a concept adopted from Roman/Latin law. This section mandates that if a son or daughter of the deceased dies before the succession opens, their children shall "receive a share equivalent to the share which such son or daughter... would have received if alive". This modification is recognized by some jurists as directly conflicting with the core Hanafi principles of inheritance. However, this legislative action is justified as an exercise of Ijtihad (independent legal reasoning) to ensure social justice for orphaned grandchildren, demonstrating the capacity of the Pakistani state to reform aspects of traditional Fiqh when they are perceived to cause social injustice. This capacity to prioritize equity over the rigidity of Taqlid (imitation of past legal thought) creates a critical precedent for future legislative interventions targeting systemic injustices, such as addressing the flawed evidentiary standards in proving coerced waivers.

The Per Stirpes doctrine introduced by the MFLO 1961 is the most intellectually contested area of Pakistani inheritance law. Traditionalists argue that this section violates the principle of al-aqrab fa'l-aqrab (the nearer in degree excludes the more remote), which is a cornerstone of Hanafi Fiqh. However, proponents of the law argue that

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it is a necessary application of Maslaha (public interest) to prevent the destitution of orphans. This debate is crucial for this thesis because it sets a precedent for "Social Justice Ijtihad". If the state can intervene to modify 1,400 years of consensus to protect orphaned grandchildren, it possesses the same legal authority to modify the "Law of Evidence" regarding property waivers. This thesis proposes that the state should utilise the same logic used in Section 4 to mandate that no female waiver is legally valid unless it is executed before a judge with independent legal counsel, thereby overriding the "Contract Law" principle that assumes all signed documents are voluntary.

III. The Judicial Mandate: Shaping Inheritance Law through Precedent

The role of Pakistan's superior judiciary has transitioned from mere interpretation to active protection of women's property rights. While the statutory framework provides the skeletal structure, judicial precedents have provided the muscle for enforcement. The Supreme Court of Pakistan has consistently recognised the essential role women play in upholding the rule of law and ensuring access to justice. Mirroring this commitment, the Federal Shariat Court (FSC) has explicitly ruled that the denial of inheritance to women is fundamentally "un-Islamic". A landmark judgment, reflected in a 2025 press release, saw the FSC unequivocally declare customs such as "Chaddar" and "Parchi" — historically used in regions like Bannu to deprive women of their property rights — to be "un-Islamic and illegal," constituting a clear violation of Islamic injunctions. Crucially, the FSC judgment elevated this denial from a mere civil wrong to a potentially criminal act, recommending that authorities take strict action against perpetrators under Section 498-A of the Pakistan Penal Code. This shift attempts to leverage the criminal justice system to punish those who use coercion or fraud to deny these fundamental rights.

However, the efficacy of this judicial mandate is entirely dependent on the willingness of local law enforcement agencies to act against perpetrators. Systemic corruption and powerful patriarchal local influences often obstruct effective justice at the district level. While the judicial mandate is a declarative victory, its functional impact relies heavily on improving institutional integrity. One of the most complex areas of judicial intervention involves the "voluntary waiver." Judicial records reveal that property rights are frequently violated through "coercion, fraud, fabrication, forgery and cheating". The prevailing legal practice compounds this: if a male heir presents a document signed by a female heir waiving her right, authorities often accept this as sufficient evidence. The structural disadvantage lies in the fact that the burden of proof rests entirely on the female heir to prove she was coerced or misled. Proving coercion against powerful family members, often without access to independent resources, is nearly impossible, making the legal process inaccessible for vulnerable women. Furthermore, the Supreme Court has established limitations, ruling that inheritance can only be claimed during the woman's lifetime. In a case concerning property transfer from 1935, the SC nullified claims filed by children of a deprived daughter decades after their mothers' deaths, noting that the mothers had not challenged the deprivation during their lifetimes. While aiming for finality in property titles, this ruling inadvertently reinforces the power of coercion. A woman fearing social breakup or family fighting may silently submit to deprivation. By making the right lapse upon her death, the court implicitly rewards family pressure tactics.

The Federal Shariat Court's 2025 ruling marks a paradigm shift by moving inheritance denial from civil law to criminal law. By recommending prosecution under Section 498-A of the Pakistan Penal Code, the court recognises that "Coerced Waiver" is a form of domestic violence. However, a technical analysis of Section 498-A reveals a flaw: it requires the victim to file a complaint against her own family members, which carries the risk of total social ostracisation. To make this judicial mandate effective, the state must move toward "Proactive Criminalisation," where the

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Revenue Department is legally required to report any inheritance file involving a female "waiver" to a specialised monitoring unit for a mandatory audit. Without this, the FSC's ruling remains a symbolic victory rather than an enforceable deterrent.

IV. The Enforcement Chasm: Socio-Cultural and Economic Barriers

The disjunction between the Quranic guarantees and practical reality is most acute in the realm of enforcement, where deep-seated patriarchal customs override statutory law, transforming legal rights into paper entitlements.

A. The Persistence of Patriarchal Norms and the Substitution Fallacy

Patriarchal norms overwhelmingly prevail in Pakistan, perpetuating the belief that property must remain consolidated within the male lineage. This societal imperative to keep landholdings under male control is the driving force behind the widespread denial of rights.

One of the most insidious methods of deprivation is the dowry substitution fallacy. A pervasive cultural argument suggests that the woman's share of inheritance has already been given to her in the form of dowry (Jahaiz), and she is therefore no longer entitled to land from her deceased father. This practice is profoundly manipulative, as it confuses a social gift (dowry, typically movable assets) with a mandatory religious and legal right (inheritance, often valuable immovable land). The substitution functions as an economically rational mechanism within the patriarchal structure to settle the future property claim at a discounted, immediate value, liquidating the claim early to protect the male lineage's control over fixed capital (land).

Furthermore, the pressure to retain property within the family line drives coercive marriage practices. Women are sometimes forced into endogamous arrangements, such as Watta-Satta (exchange marriages) or marriages within the family, explicitly "to save the property from going outside the family". These forced customs are intrinsically linked to the restriction of inheritance rights and can exacerbate violence in married life.

B. Systemic Malpractice and Procedural Exploitation

The effectiveness of legal redress is severely undermined by systemic malpractice and the exploitation of legal loopholes. The rights of ownership are routinely violated by family members using "coercion, fraud, fabrication, forgery and cheating". The most common procedural fraud involves making women sign documents waiving their rights without their knowledge or understanding.

The scale of the denial is striking, demonstrating a widespread systemic failure: approximately 35% of Pakistanis nationwide report that women are not given their share of inheritance in their households. Data from the 2017–2018 Demographic and Health Survey shows that 97% of women did not inherit land or housing. In rural Punjab, a 2014 survey found that only 36 women out of a thousand households owned land in their names, and of those, only nine had independent power to sell or trade without male permission.

For women, particularly those from rural areas or lower socio-economic backgrounds, legal recourse is fraught with challenges. Asserting their rights leads to personal stigma, isolation, and outright threats. The process itself is cumbersome, costly, and requires significant legal knowledge, further discouraging women from pursuing claims that they are legally entitled to.

The ultimate gatekeeper of women's inheritance is not the judge, but the Patwari (village revenue officer). Despite the digitisation of land records via the Land Records Management and Information System (LRMIS), the revenue department remains a "male-only" space. The "Inheritance Tree" (Shajra-e-Nasab) is the foundational document for any property transfer. Systemic corruption allows male heirs to "omit" female names from these trees entirely before they ever reach a computer screen. Furthermore, the

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"Digital Divide" prevents rural women from verifying their records. While 10.6% of women may hold title, they often do not know their "Khatuni" or "Khasra" numbers. This lack of digital literacy is weaponised by male relatives who manage the online portals, effectively keeping women in the dark about the true size and value of their holdings. The "Mutation" process is where most inheritance fraud occurs. When a person dies, the "Warasti Intiqal" (Inheritance Mutation) is supposed to be a purely administrative record-keeping act. However, because the Punjab Land Revenue Act historically allowed mutations to be processed based on the statement of a few "notable males" of the village, female heirs were easily bypassed. The 2012 and 2015 reforms in Punjab made the physical presence of female heirs mandatory. While this was a significant step forward, it created a new problem: "The Proxy Scam." Male heirs often bring an unrelated woman (sometimes a domestic worker or a distant relative) to the revenue office, posing her as the sister to sign the waiver. This suggests that "physical presence" alone is insufficient; it should be coupled with biometric authentication linked to NADRA's family tree data, so that a fingerprint mismatch automatically locks the file and alerts the nearest Ombudsperson office.

C. The Disconnect Between Ownership and Control

While the law aims to establish ownership, the practical application often results in a massive "control gap." In Punjab, one of the most proactive provinces, only 10.6% of the total population are registered as female landowners. Furthermore, the aggregate ratio of female to male landholdings in Punjab is 0.4. Since Sharia mandates a 1:2 ratio, the minimum expected ratio is 0.5. The fact that the ratio is 0.4 suggests that women are inheriting proportionally less land than even the Sharia proportion dictates, indicating either systemic exclusion from large estates or procedural bias during property division.

Crucially, formal ownership reflected in official land records (LRMIS) does not automatically translate into agency. Informal cultural norms often mandate that women must remain "completely dependent on a male relative for asset management," meaning they lack operational control over the assets legally registered in their name. A critical, often overlooked dimension of the "Control Gap" is the role of agricultural credit and collateralisation. Even when a woman's name is registered in LRMIS, she is often denied the economic fruits of that title. In rural Pakistan, land title is the primary requirement for obtaining bank loans (Zarai Taraqiati Bank loans) for seeds, fertilisers, and machinery. Male relatives frequently use a woman's land title to secure loans for their own ventures, while the woman remains legally liable for the debt without ever touching the capital. Furthermore, the "Ratio of Landholdings" (statistically 0.4 in Punjab compared to the 0.5 mandated by Sharia) reveals a hidden "valuation fraud". In cases of property division, male heirs often allocate the marginal or less fertile land to sisters while keeping the prime, irrigated land for themselves. Because women often lack the mobility or technical knowledge to challenge land quality assessments during the partition process, they receive their Quranic share in acreage but not in economic value.

V. Legislative and Institutional Responses to the Crisis

The systemic failure of the conventional civil court system to enforce these rights led the government to develop specialised administrative mechanisms aimed at providing faster justice.

A. Introduction of Specialised Enforcement Mechanisms

The core legislative response is the Enforcement of Women's Property Rights Act 2019 (amended in 2020/2021). The Act was specifically motivated by the documented reality that women's rights were routinely violated by family members through fraudulent and coercive means. This legislation empowered the Federal and

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Provincial Ombudspersons (FOSPAH/Provincial Offices) to act as specialised tribunals. Women can file complaints directly with the Ombudsperson, enabling them to bypass the prolonged, often compromised civil litigation process and seek speedy redressal.

This shift to an administrative tribunal model is an implicit recognition that the traditional judiciary, due to its bureaucratic inefficiencies and susceptibility to external influence, has been part of the structural problem in enforcement. The state's attempt is to de-judicialise the enforcement phase, offering a quicker and less intimidating route to justice. The Enforcement of Women's Property Rights Act 2019 represents a shift from "Substantive Law" to "Procedural Justice." It recognises that the problem is not a lack of rights, but a lack of a forum to claim those rights. The Act empowers the Ombudsperson to exercise powers similar to a civil court, but with a mandate for speed — theoretically resolving cases within 60 to 90 days. This is a direct response to the "Litigation Trap" in Pakistan's civil courts, where an inheritance case can easily span two decades, by which time the female heir has often passed away, and the property has been sold to third parties. A critical technicality of this Act is the "Interim Order" capability. Under Section 4, the Ombudsperson can prevent the sale or transfer of a disputed property while the case is pending. This is vital because male relatives often engage in "anticipatory disposal" — selling the land to a third party as soon as a sister files a claim — thereby complicating the legal title for years. By freezing the asset, the Ombudsperson preserves the status quo and protects the woman's potential share. However, the "Execution" phase remains the Achilles' heel of this legislation. Once the Ombudsperson issues a decision, it must be enforced by the local Deputy Commissioner (DC) and the police. In several documented instances, the administrative machinery has shown hesitation in enforcing orders against powerful local elites, especially in districts where the landholders have significant political clout. Therefore, the Act's success depends not on its legal language, but on the administrative backbone of the provincial government to hold the DC and police accountable for non-compliance.

B. Provincial Implementation and Procedural Reforms

Provincial governments have followed suit, recognising the decentralised nature of land and property records. The Government of Khyber Pakhtunkhwa (KP) promulgated the Khyber Pakhtunkhwa Enforcement of Women Property Rights Act 2019, empowering their Ombudsperson office. Punjab has been particularly proactive, enacting the Punjab Enforcement of Women Property Right Act 2021, alongside earlier amendments to the Punjab Land Revenue Act in 2012 and the comprehensive 2015 legal reforms.

One significant procedural reform in Punjab was the mandatory requirement for both male and female heirs to be physically present during the partition and mutation (transfer of title) process. This low-cost, high-impact intervention dramatically limited the ability of male relatives to present fraudulent or coerced waiver documents. This reform successfully compelled more women to "start confronting the inheritance process" by requiring their direct, verifiable engagement. Furthermore, legal initiatives in Punjab have simplified the partition of joint urban property, allowing co-owners to file suits and, if necessary, forcing an auction amongst co-owners to ensure equitable division. The concept of "Voluntary Relinquishment" (Tanazul) in Pakistan differs significantly from property waivers in other jurisdictions. In Western common law, a waiver is a contractual act that requires "consideration" — something of value must be given in return for the right being given up. In Pakistan's inheritance practice, however, women are expected to waive their rights for nothing in return, often under the guise of "preserving family love". Superior courts have begun to view this lack of consideration as evidence of fraud. In several unreported cases, the High Courts have observed that it is "against

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human nature" for a person to give up millions in land value without a single rupee in return, unless they were under extreme duress. This thesis argues that the law should adopt the "Doctrine of Unconscionability." If a waiver results in a brother becoming a millionaire while his sister remains landless and dependent, the court should automatically strike down the waiver as "unconscionable" and "void ab initio" (void from the beginning), regardless of whether she signed it.

C. Assessment of Institutional Capacity (The Ombudsperson)

The Ombudsperson mechanism offers the promise of speed. FOSPAH handled approximately 865 overall cases in the 2023–2024 period. While this high volume suggests engagement, detailed, publicly available statistics that specifically isolate cases filed, disposed of, and the value of property recovered under the Enforcement of Women's Property Rights Act are not clearly available in the accessible annual reports. The effectiveness of this key institutional intervention hinges on its capacity — its staffing, resources, and, critically, its ability to enforce decisions against local powerful elites.

Table 2: Key Legislative Frameworks Governing Women's Inheritance in Pakistan

Legislation	Year	Primary Function in Inheritance	Impact on Women's Rights
West Pakistan Muslim Personal Law (Shariat) Application Act	1962	Abolished customary law/limited estates; mandated application of Shariat law for inheritance	Established the legal supremacy of Quranic shares over cultural customs
Muslim Family Laws Ordinance (MFLO), s 4	1961	Introduced the per stirpes doctrine for orphaned grandchildren	Rectified an anomaly in classical Hanafi law by preventing exclusion of orphaned grandchildren by immediate uncles
Enforcement of Women's Property Rights Act (Federal/Provincial)	2019–2021	Established the Ombudsperson as a specialised, speedy tribunal for property claims	Provided an administrative alternative to lengthy civil litigation, focusing on enforcement against family coercion

VI. Regional Disparities and Enforcement Variation

The challenges in enforcement are not monolithic; they are deeply differentiated by geographical location, economic structure, and the power of local feudal institutions. The ultimate gatekeeper of women's inheritance is not the judge, but the Patwari (village revenue officer). The "Inheritance Tree" (Shajra-e-Nasab) is the foundational document for any property transfer. Systemic corruption at the local level often allows male heirs to "omit" female names from these trees entirely. The digitisation of land records was intended to solve this, but it has created a new "Digital Divide". While 10.6% of women are registered landowners, many do not know their "Khatuni" or "Khasra" numbers. This lack of digital literacy is weaponised by male relatives who manage the online portals on behalf of the female heirs, effectively keeping them in the dark about the true size and value of their holdings.

A significant, yet under-researched driver of inheritance denial is the "Feudal Logic of Consolidation." In an agricultural economy like South Punjab, land is the primary currency of

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political power and access to credit. The Islamic system of Fara'id is inherently distributive; every generation further divides the land. Feudal families argue that if property is divided among four daughters and two sons, the resulting acreage is too small to support modern machinery or secure significant bank loans (Zarai Taraqiati Bank).

Consequently, the "Dowry Substitution Fallacy" is a calculated economic hedge. By providing a daughter with a dowry (Jahaiz), the family liquidates her capital share into "wasting assets" (clothes, furniture, electronics) that lose value immediately. In exchange, the male heirs retain the "productive asset" (land), which generates rent and appreciates in value. This is a form of economic structural violence: the woman is given immediate liquidity but stripped of long-term wealth generation. In the most extreme cases of feudal resistance, specifically in parts of Sindh and Southern Punjab, the illegal practice of Haq Bakshish (marriage to the Quran) remains a hidden deterrent. By "marrying" a daughter to the Holy Book, the family ensures she will never marry a man, thus ensuring her property share never leaves the paternal family estate.

This is not just a cultural oddity; it is a sophisticated economic tool of capital preservation. By preventing the daughter from having children, the family ensures that even if she "owns" the land for her lifetime, it will legally revert back to her brothers upon her death because she has no heirs of her own. The state's limited enforcement of the Prevention of Anti-Women Practices Act in such cases shows that even when the law is clear, local police often view these as "private family matters" rather than criminal human rights violations.

A. Rural vs Urban Contexts

In rural Pakistan, inheritance is intrinsically linked to agricultural land, which serves as the primary source of economic power, security, and access to credit. Denial of land rights here has severe, immediate economic consequences, reinforcing women's dependency on males. Women in rural areas and those from marginalised socio-economic backgrounds face significant knowledge and access gaps, often lacking the financial means and legal literacy required to pursue their claims. Non-governmental organisations, like Transparency International, play a role in addressing this justice gap by running awareness campaigns detailing property and inheritance law. Conversely, advancements such as land record digitisation and simplified mutation processes, notably championed in Punjab, are facilitating women's ability to file claims and secure land titles.

B. Provincial Variations and Embedded Institutions

Punjab, as the agricultural heartland, has been at the forefront of reform. However, even within this reforming province, enforcement is uneven. Regions dominated by old landed families, such as Sargodha, exhibit strong historical resistance to change. In these areas, embedded institutions and cultural values deeply favour the eldest male son, insulating them from the positive impact of reforms observed elsewhere. This suggests that the denial of inheritance is tied not merely to religious interpretation, but to feudal power dynamics and the economic necessity of land consolidation, intended to prevent the fragmentation of large estates. Therefore, effective enforcement must challenge the political economy of land ownership, not just the legal framework.

The resistance to women's inheritance in Pakistan is most pronounced in the agricultural heartlands of South Punjab and rural Sindh. In these regions, land is not merely an economic asset; it is the currency of political and social power. When land is fragmented through inheritance, especially when it moves to a daughter who may marry outside the immediate family, the political influence of the paternal household is diluted. This fear of fragmentation feeds the "Marriage to the Quran" (Haq Bakshish) practice described above. While this practice is criminalised and rare in urban centres, the underlying logic protecting

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the male lineage's capital remains a dominant psychological force in rural Pakistan. Furthermore, the Patwari acts as gatekeeper of this feudal status quo. Despite the digitisation of land records (LRMIS) in Punjab, the Patwari often maintains informal "village registers" used to mislead female heirs about the size of their father's estate or to facilitate fraudulent "waivers". Corruption in the revenue department is gendered: male heirs have the mobility and financial resources to bribe officials to "omit" their sisters from the inheritance tree (Shajra-e-Nasab), while women are often barred from entering these male-dominated spaces due to Parda (seclusion) or lack of mobility. In these contexts, the law is not being "broken"; it is being "absorbed" and neutralised by feudal institutions that prioritise estate integrity over individual rights.

C. The Impact of Legal Pluralism

The conflict between state law (Shariat, mandated since 1962) and unofficial law (local Riwaj) results in a system of legal pluralism. The vulnerability of women in this environment is systematically exploited by powerful family members who use mechanisms intended for autonomy, such as the right to waive property, as tools of oppression and coercion, effectively nullifying the legal protections guaranteed by both Islamic law and the state.

D. The Revenue Black Box and the Constitutional Dimension

The most formidable barrier to the enforcement of inheritance rights is not the superior judiciary, but the "Revenue Black Box" — the decentralised and often opaque system of village land administration. At the centre of this box is the Patwari. While the 1962 Shariat Application Act established the law, the Patwari controls the "Shajra-e-Nasab" (inheritance tree), the foundational document for any property transfer. Male heirs, possessing greater local mobility and financial resources, frequently influence the Patwari to omit female names from the inheritance tree entirely. Even with the introduction of LRMIS, a "Digital Divide" prevents many women from verifying these records. To bridge this, the state could implement an "Auto-Mutation Audit" — a mandatory cross-referencing system between NADRA and land records that automatically flags any inheritance file where a registered female heir is missing or has "waived" her share.

The legal struggle for women's inheritance is not just a matter of family law; it is a constitutional imperative. Under Article 2-A (the Objectives Resolution) and Article 31 of the Constitution of Pakistan, the state is under a positive obligation to enable Muslims to order their lives in accordance with the fundamental principles of Islam. When the state fails to enforce Fara'id, it arguably falls short of this constitutional aspiration to implement Sharia as the supreme law of the land for Muslim citizens. Furthermore, Article 25 guarantees equality before the law and prohibits discrimination on the basis of sex, yet it allows the state to make "special provisions for the protection of women". This "Protection Clause" provides the legal basis for the Enforcement of Women's Property Rights Act. The current "neutrality" of the civil courts, where a judge waits for a woman to prove she was cheated, arguably facilitates discrimination. To be more fully constitutionally compliant, the state could transition toward a "Protective Model" in which it assumes the role of Parens Patriae, actively auditing inheritance files to ensure no female heir is overlooked.

Finally, the denial of inheritance is a drag on Pakistan's GDP. Land is the primary collateral for agricultural loans. When the overwhelming majority of women are landless, they are effectively "banked out" of the economy: they cannot start businesses, buy seeds, or invest in modern farming techniques. If women in Pakistan were granted their rightful shares, billions of rupees in "dead capital" could be unlocked. Women landowners tend to invest more in their children's education and nutrition compared to male landowners. Therefore,

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enforcing inheritance is not just about religious Fara'id; it is an economic development strategy.

To bridge the deprivation gap, this thesis proposes a "Triple-Lock" verification system for all inheritance mutations: (1) Biometric Lock — no property can be transferred unless the fingerprints of all female heirs (verified via NADRA) are scanned at a government kiosk; (2) Judicial Lock — any waiver of property by a woman must be executed in a private session before a judicial magistrate, not a revenue officer, to ensure the absence of male family pressure; and (3) Financial Lock — the state should mandate that any buyout of a sister's share be paid via a cross-checked transfer to her own bank account at the fair market rate, failing which the land title cannot be transferred to the brothers.

VII. Conclusion and Strategic Recommendations

A. Synthesis of Alignment and Misalignment

The analysis demonstrates that the Quranic guarantees of women's inheritance rights are broadly consistent with, and mandated by, Pakistan's core statutory framework and the precedents set by the superior judiciary. The misalignment is not one of law, but of execution. The chasm between theory and practice is a structural failure driven by the collision of mandatory religious law with deeply entrenched patriarchal social norms, administrative flaws, and the exploitation of legal procedures related to property waiver. While the state has largely succeeded in providing legal titles, it has struggled to secure economic control and agency for female heirs.

B. Strategic Recommendations for Closing the Enforcement Gap

To ensure that the Quranic guarantees translate into enforceable reality, a targeted strategy focusing on legal modification, institutional enhancement, and social re-education is necessary.

Legal Strengthening and Shifting the Burden of Proof

Reverse Coercion Presumption: The current legal burden on women to prove coercion should be reconsidered in cases involving waivers challenged by immediate family members. Legislation could be amended, particularly within the Enforcement of Women's Property Rights Act, to place the burden on the male claimants to prove the waiver was genuinely voluntary, executed before a judicial magistrate, and involved independent legal counsel.

Explicitly Invalidating Substitution: New legal provisions could explicitly nullify any purported document or agreement claiming that dowry or other non-inherited movable assets satisfy or substitute the mandated Quranic inheritance share, addressing the cultural basis for this common form of fraud.

Enhancing Institutional Capacity and Accountability

Resource the Ombudsperson: Financial and staffing allocations for the Federal and Provincial Ombudsperson offices should be increased to ensure that the promise of speedy resolution (targeting disposition within 90 days) is consistently met.

Mandate Transparency and Audit: FOSPAH and provincial Ombudsperson offices should be encouraged to publish detailed, disaggregated annual reports, including statistics on the value of property recovered and the rate of enforcement of their decisions.

Enforcing the Criminal Mandate: Specialised monitoring units could track the application of Section 498-A of the Pakistan Penal Code, as directed by the FSC, holding local police and administrative officials accountable for failing to prosecute the criminal denial of inheritance rights.

Procedural and Land Management Reforms

Universal Mandatory Presence: The procedural reform in Punjab requiring the mandatory physical presence of all heirs during the mutation

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process could be extended across all provinces and for all types of property (urban and rural), to minimise procedural fraud. The final frontier of enforcement may lie in treating denial of inheritance, as recommended by the Federal Shariat Court, as a non-bailable offence under Section 498-A of the Pakistan Penal Code. Currently, inheritance is generally treated as a civil matter, which means the police will not intervene. By shifting this toward a criminal matter, the state could change the power dynamic within the household.

Auto-Mutation Audit: A system of mandatory audit checks by senior revenue officers (Assistant Commissioners), specifically designed to scrutinise all inheritance mutations that include female waivers, would provide additional scrutiny for transactions prone to coercion.

Socio-Cultural and Economic Empowerment

Targeted Awareness Campaigns: Sustained public awareness programmes, utilising religious leaders and media, could emphasise that the denial of inheritance is a serious religious prohibition (haram) and an illegal act, directly challenging patriarchal justifications at the community level.

Financial Agency: Linking the formal legal transfer of property to women with state-sponsored financial literacy and asset management training programmes would help ensure that women possess the knowledge and confidence required to exercise control over their assets, bridging the control gap.

C. The Macro-Economic Imperative: Inheritance as a Development Tool

The denial of inheritance to women is not merely a social or religious grievance; it is a significant drag on Pakistan's national economy. In an agrarian society, land is the primary form of collateral. When the vast majority of women are effectively landless, they are systematically "banked out" of the formal economy. Extending property rights to women would help unlock "dead capital." Research indicates that women landowners are more likely than their male counterparts to invest surplus income into household nutrition, healthcare, and the primary education of their children. Therefore, the enforcement of Fara'id acts as a potential catalyst for human capital development.

D. The Technological Frontier: From LRMIS to Biometric Verification

The transition from the manual Patwari system to LRMIS has been a milestone, yet it has also revealed new vulnerabilities. The next phase of reform could focus on stronger biometric safeguards. Currently, forgeries and "proxy impersonations" remain a threat during the mutation process. To counter this, the state could integrate NADRA's family tree data directly into the land revenue portals, so that no inheritance mutation is legally "closed" until the biometric verification of every registered female heir is recorded. Furthermore, a "Digital Inheritance Dashboard" for women would allow them to track their father's or husband's estate in real time, reducing the "knowledge gap" that male relatives currently exploit to hide assets.

E. A Final Jurisprudential Synthesis: Reclaiming the Spirit of Shariat

In conclusion, the "Inheritance Paradox" in Pakistan reflects a conflict between the letter of the law and the spirit of the society. While the 1962 Act and the 2019 Enforcement Acts provide the necessary legal instruments, they are often applied in a social environment that views female property ownership as a threat to the family unit. The superior judiciary and the Federal Shariat Court have done their part by declaring customary deprivation "un-Islamic" and "illegal". However, for these rulings to move from the courtroom to the village, sustained institutional effort is required.

The recommendations advanced above — reconsidering the burden of proof, addressing the dowry-substitution defence, and strengthening biometric verification — are not radical departures but are intended to restore the balance envisaged

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by Quranic jurisprudence. The broader goal is not just the transfer of title, but the transfer of agency, so that every daughter in Pakistan can claim her inheritance without fear of social exile.

VIII. Appendix: Statistical and Qualitative Evidence of the Enforcement Gap

A. Land Ownership and Control Disparity (Source: Punjab Studies)

Quantitative Disparity: Approximately 10.6% of the total population of Punjab are female landowners.

Ratio of Landholdings: The calculated ratio of female to male landholdings is 0.4, which is statistically below the theoretical minimum proportional sharing mandated by Sharia law (0.5), indicating a systemic shortfall in the property women actually receive.

Control vs Title: A survey of rural Punjab households showed that while 36 women owned land in their names, only 9 had the power to sell or trade the land without explicit permission from male relatives, confirming that legal title often lacks corresponding economic agency.

B. Qualitative Constraints Mitigating Female Agency

Social Pressure: Women frequently fear "social breakup, pressure, and fighting with family" if they attempt to assert their rights, leading many to willingly or unwillingly relinquish their claims to maintain familial harmony.

Coercion Mechanisms: The principal methods of denial involve the substitution of inheritance with dowry and pressuring women, under deception, to sign documents they do not read or understand, effectively waiving their mandated share.

Geographic Disparities: Districts in South Punjab record the worst statistics regarding female land ownership and control, reflecting the powerful, institutionalised resistance of historically entrenched landed families.

C. Statistical Snapshot of Denial

Reported Denial Rate: A Gallup & Gilani Pakistan survey found that over one-third (35%) of Pakistanis report that women in their households are not given a share of the inheritance.

Land/Housing Deprivation: The Demographic and Health Survey (2017–2018) indicated that 97% of women did not inherit land or housing.

D. Comparative Analysis of Institutional Efficacy

An audit of current institutional responses suggests a rough hierarchy of effectiveness:

The Civil Courts: Comparatively ineffective, given average resolution times of ten to twenty years, which often exceed the lifespan of the claimant.

The Revenue Department: Vulnerable to "local capture" and corruption, with the Patwari remaining a bottleneck for women's access to records.

The Ombudsperson (FOSPAH): Currently the most promising mechanism, offering a 60- to 90-day resolution window, but requiring significantly more field-level staff to manage an increasing volume of cases.

E. Qualitative Barriers: The "Brotherhood of Silence"

Interviews and qualitative studies consistently highlight a "Brotherhood of Silence" — a social contract whereby male relatives, local elders, and even revenue officials cooperate to maintain land in the male lineage. Breaking this pattern likely requires not just legal threats but economic incentives for families that comply with Sharia mandates; targeted tax rebates for households that can demonstrate verified inheritance transfers to all female heirs could be a novel approach worth exploring.

Key Findings:

Theoretical Alignment: Pakistan's statutory law strictly mandates the application of Shariat rules (Hanafi Fiqh), ensuring fixed shares for female heirs (daughters, widows, and mothers).

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Statutory Divergence: The Muslim Family Laws Ordinance (MFLO) 1961, Section 4, introduces the per stirpes doctrine for orphaned grandchildren, representing a notable divergence from classical Hanafi exclusion principles based on considerations of equity.

Judicial Mandate: Superior courts, including the Federal Shariat Court (FSC), have unequivocally condemned the denial of inheritance through local customs (e.g., Chaddar, Parchi) as un-Islamic and illegal, recommending the criminal prosecution of perpetrators under Section 498-A of the Pakistan Penal Code.

Enforcement Reality: The practical denial rate is high, with a nationwide rate of 35% reporting that women are not given their share, and statistics indicating that 97% of women did not inherit land or housing. This denial is primarily facilitated by coerced waivers, the substitution of inheritance with dowry, and the exploitation of legal procedures where the burden of proving coercion rests almost impossibly on the victim.

The Control Gap: Legal title does not translate to agency. Even where women legally own property (estimated at 10.6% of the Punjab population), male relatives often retain de facto control, nullifying the economic empowerment intended by the law.

Institutional Response: The creation of the Ombudsperson office under the Enforcement of Women's Property Rights Act (2019-2021) represents a critical legislative effort to provide speedy, administrative justice, bypassing the protracted civil litigation process.

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