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REVISITING WIFE'S FINANCIAL RIGHTS UNDER MUSLIM FAMILY LAW IN MALAYSIA AND PAKISTAN: AN OVERVIEW

Dr Azizah Mohd,
Professor of Law, Ahmad Ibrahim Kulliyyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Gombak, PO Box 10, 50728 Kuala Lumpur, Malaysia.
azizahmohd@iium.edu.my

Dr Badruddin Hj Ibrahim
Associate Professor, Ahmad Ibrahim Kulliyyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Gombak, PO Box 10, 50728 Kuala Lumpur, Malaysia.
badruddin@iium.edu.my

Bilal Hussain
PhD Scholar, Ahmad Ibrahim Kulliyyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Gombak, PO Box 10, 50728 Kuala Lumpur, Malaysia.
hmbilal1204@gmail.com

Abstract

Family is the foundation of human society that shapes individual identity and promotes social cohesion. In Muslim societies, family law is based on Sharīʿah principles from the Qur'an, Sunnah, and classical fiqh, which regulate matrimonial rights and obligations. This article briefly appraises wife's financial rights under Muslim family law in Malaysia and Pakistan as each applies Islamic jurisprudence through distinct legal systems. This research examines how these differing approaches influence the development and protection of wife's financial rights amid contemporary reforms. It scrutinizes persistent tensions between traditional Islamic jurisprudence and evolving statutory laws governing wife's rights in marital relationship particularly right to dower, maintenance and matrimonial property. This study employs a qualitative comparative legal approach, utilizing primary sources such as Qur'anic texts, prophetic traditions, statutes, and judicial decisions, alongside secondary academic literature. It emphasizes dower, maintenance and matrimonial property as connected financial rights and proposes reforms rooted in both Islamic and statutory law. The article concludes with recommendations to improve post-divorce maintenance, asset distribution, and judicial consistency, aiming to create more gender-equitable and Sharīʿah-compliant family law frameworks in Muslim jurisdictions particularly in Malaysia and Pakistan where relevant and necessary.

Keywords: *wife's financial rights, dower, maintenance, matrimonial property, Malaysia and Pakistan*

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INTRODUCTION

Family is the foundational brick of human society that provides first shelter to individuals, including their nutrition and mentorship. Family law governs spousal rights and obligations related to marriage, divorce, maintenance, child custody, dower (*mahr*), matrimonial property and inheritance. In Muslim societies, Sharīʿah foregrounds matrimonial relationships in fostering justice (ʿ*adl*), compassion (*raḥmah*), and mutual responsibility (*masʾūliyyah*) within the marital bond. The Qur'an consistently affirms these values, instructing, "And live with them in kindness"[1], and "For women are rights similar to those of men, according to what is fair".[2] It further commands, "Give the women their dower graciously"[3], underlining financial security as a core spousal right. The Prophetic Sunnah reinforces this ethos: "The best of you is those who are best to their wives"[4], and "Fear Allah with regard to women, for you have taken them on the security of Allah". [5] Classical jurists across the Sunni schools consistently affirmed wife's financial right to dower (mahr), maintenance (*nafāqah*) and matrimonial property alongside the husband's leadership role (*qiwāmah*) as reciprocal obligations, but bounded by the legal maxims *lā ḍarar wa-lā ḍirār* ("no harm and no harassment") and *al-ʿādah muḥakkama*h ("custom is authoritative").[6] This doctrinal foundation underscores that the marital bond in Islam is both a legal contract and an ethical covenant, aimed at balancing fairness, protection, and mutual respect between spouses. Nonetheless, the contemporary application of Muslim family law in many countries is based on codified statutes inflected by political, judicial, and cultural factors as much as legal doctrine. For example, Ziba Mir-Hosseini (2009)[7] has argued that many of the laws of recent decades are a reflection of the patriarchal culture overlaid upon the Islamic legal heritage and often erase mutuality and ethical responsibility, which is not consistent with the Qur'anic ethos of *muwada/emaan* (love/faith) between husband and wife.

There is a tension between Sharīʿah and statutory law in the regulation of spousal rights, reflected in countries like Malaysia and Pakistan. Malaysia is a country with dual legal system, and the Islamic family law system follows procedure that is derived from Shāfiʿī school of Islamic jurisprudence, which is largely codified in various enactments pioneered by the Islamic Family Law (Federal Territories) Act 1984[8] and enforced by Syariah courts at state level.[9] In comparison, the legal setup in Pakistan is more centralized and based on the Ḥanafī school of thought[10] which has been codified in laws like the Muslim Family Laws Ordinance 1961[11] and Dissolution of Muslim Marriages Act 1939.[12] While both jurisdictions claim adherence to Islamic principles, inconsistencies in interpretation, judicial discretion, and socio-cultural pressures often result in the erosion of women's legal entitlements, particularly in matters such as divorce procedures, post-divorce maintenance, and matrimonial property distribution. For example, although the concept of matrimonial property is well developed in Malaysia under *harta*

[1] Sūrah al-Nisāʾ 4:19
[2] Sūrah al-Baqarah 2:228
[3] Sūrah al-Nisāʾ 4:4
[4] Al-Tirmidhī, *Jāmiʿ*, no. 3895 (Kitāb al-Radaʿ, Bāb mā jāʾa fī ḥaqq al-marʾah ʿalā zawjihā)
[5] Ṣaḥīḥ Muslim, no. 1218 (Kitāb al-Ḥajj, Ḥadīth of Farewell Sermon mentioning rights of women).
[6] Ibn ʿĀbidīn, Radd al-Muḥtār, vol. 3, pp. 609-615; al-Kāsānī, Badāʾiʿ al-Ṣanāʾiʿ, vol. 2, pp. 152-157
[7] Mir-Hosseini, Ziba. *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah, 2009. 23-63.
[8] Family Law (Federal Territories) Act 1984
[9] Islamic Family Law (Federal Territories) Act 1984 (Act 303), Kuala Lumpur: ILBS, 2006.; Ahmad, Ibrahim. *The Administration of Islamic Law in Malaysia*. Kuala Lumpur: IKIM, 2000.; Nasir, Nik Noraini. "The Concept of Harta Sepencarian and the Legal Mechanism for Property Division upon Divorce under Islamic Law in Malaysia." *Malaysian Journal of Syariah and Law* 4, no. 2 (2016): 45–60.
[10] Constitution of Islamic republic of Pakistan 1973, Art.227
[11] Muslim Family Laws Ordinance 1961
[12] Dissolution of Muslim Marriages Act 1939

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sepencarian,[13] its recognition in Pakistan remains subject to judicial discretion and is not yet codified—despite rising litigation on women's financial contributions during marriage.

This study contributes to the broader discourse on Islamic legal reform by highlighting how spousal rights may be more effectively protected through harmonisation of Sharīʿah principles with statutory law. It offers a novel analytical lens by framing dower and matrimonial property as interconnected financial rights and examining how the Malaysian model of *harta sepencarian* might inform legal developments in Pakistan. It also proposes actionable reforms, including the codification of post-divorce maintenance and equitable asset division in Pakistan, and the streamlining of procedural justice in Malaysian Syariah courts.

CONSTITUTIONAL PROTECTION

Both Malaysia and Pakistan explicitly embed Islamic constitutional identity within their family law frameworks, but they differ in the structure and operation of spousal rights protection. In Malaysia, the Federal Constitution affirms the central role of Islam in public life. Article 3(1) declares Islam as the religion of the Federation, while allowing the practice of other religions.[14] More importantly for family law, Article 121(1A) vests exclusive jurisdiction in the Syariah Courts over matters of Islamic personal and family law for Muslims, thereby creating a distinct legal space for the regulation of marriage, divorce, maintenance, and custody.[15] The Ninth Schedule, List II (State List), empowers each state to legislate on Islamic law and family matters,[16] leading to a framework where the Islamic Family Law Enactments, based largely on the Shāfiʿī school, are enacted and applied at state level. Although the Constitution does not contain a direct clause mandating the protection of marriage and the family, its provisions on equality before the law[17] and personal liberty,[18] together with the statutory Islamic family law system, provide a constitutional basis for safeguarding wife's financial rights in line with Islamic principles.

In Pakistan, the Constitution embeds Islam even more explicitly within its legal system. Article 2 declares Islam as the state religion[19], and Article 227 requires all existing laws to conform to the injunctions of the Qur'an and Sunnah.[20] The Council of Islamic Ideology advises Parliament on whether laws are in line with Islamic injunctions,[21] influencing the development of family law. Articles 25 and 27 guarantee equality and non-discrimination, while Article 14 upholds human dignity, a principle extended to matters of marital rights and family life.[22] Significantly, Article 35 expressly obligates the State to protect the marriage, the family, the mother, and the child, granting constitutional recognition to the preservation of family life.[23] While the Constitution does not enumerate detailed spousal rights, it sets a normative foundation for family law statutes such as the Muslim Family Laws Ordinance 1961 and the Dissolution of Muslim Marriages Act 1939. These laws operate under the broader constitutional

[13] See: Islamic Family Law (Federal Territories) Act 1984 (Act 303), ss 2(1), 122; Hujjah Lijah bt Jamal v Fatimah bt Mat Diah [1950] MLJ 63; Hj Ahmad bin Bubong v Habidah bt Hj Awang Layeh [2016] 1 SHLR 96; Mohd Nor Mat Hussin et al, 'The Division of Harta Sepencarian of Muslim Converts upon Conversion in Malaysia' (2024) 12(1) Malaysian Journal of Syariah and Law 45.
[14] Federal Constitution of Malaysia 1957, Art.3 (1).
[15] Federal Constitution of Malaysia 1957, Art. 121(1A)
[16] Federal Constitution of Malaysia 1957, Art. Ninth Schedule, List II (State List).
[17] Federal Constitution of Malaysia 1957, Art. 8
[18] Federal Constitution of Malaysia 1957, Art. 5.
[19] Constitution of the Islamic Republic of Pakistan 1973, Art. 2.
[20] Constitution of the Islamic Republic of Pakistan 1973, Art. 227.
[21] Constitution of the Islamic Republic of Pakistan 1973, Arts. 228-230.
[22] Constitution of the Islamic Republic of Pakistan 1973, Arts. 14, 25, 27.
[23] Constitution of the Islamic Republic of Pakistan 1973, Art. 35.

mandate to harmonise civil legislation with Islamic principles while safeguarding the marital bond and familial responsibilities.

Comparatively, Malaysia functions with a decentralized model allowing state-level legislative diversity, often resulting in jurisdictional variation in family law applications. Pakistan employs a centralized model with federal oversight ensuring Islamic conformity in laws. Both countries share the constitutional commitment to Islam, which shapes their interpretation and application of family and spousal laws, including their engagements with international human rights instruments such as CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) 1979,[24] However, each includes reservations to preserve their Islamic constitutional identity, reflecting a careful balancing act between international norms and religious frameworks.

This comparative constitutional framework provides scope for harmonization where constitutional mandates, Sharīʿah-based legal principles, and selected international human rights standards can coalesce. Such harmonization aims to reinforce the protection of spousal and family rights in ways that uphold justice, compassion, and Islamic legal values, even as both face ongoing challenges in aligning statutory provisions, judicial interpretation, and practical enforcement consistently. The constitutional structures in Malaysia and Pakistan, while distinct, thus offer complementary pathways to advance gender justice and strengthen family law protections within the context of their shared Islamic identities.

CONCEPT OF MARRIAGE UNDER THE SHARI'AH

Marriage (nikāḥ) in Islam is both a sacred covenant (mīthāq ghalīẓ "strong covenant") and a binding legal contract (ʿaqd) that aims to establish a stable family rooted in love (mawaddah), mercy (raḥmah), and justice (ʿadl), as affirmed in Qur'an: "And of His signs is that He created for you from yourselves mates that you may find tranquillity in them, and He placed between you affection and mercy."[25] The Qur'an also frames marriage as part of the divine order for human society[26] and as a lawful alternative to fornication.[27] The Prophet ﷺ described marriage as "half of faith" and a safeguard against immorality.[28]Classical jurists across all Sunni schools agree that marriage serves key *maqāṣid al-sharīʿah*, especially the protection of religion (*ḥifẓ al-dīn*), lineage (*ḥifẓ al-nasab*), and honour (*ʿirḍ*).[29]

While the legal nature of marriage is contractual, it is elevated beyond mere civil agreement by its moral and spiritual objectives. The Shāfiʿī school stresses procedural validity ensuring all conditions are met for the contract to be binding[30] while the Ḥanafī school prioritises substantive consent and the enforceability of rights over rigid formalities.[31] Contemporary Sharīʿah councils and jurists have affirmed that marriage retains both its religious sanctity and legal enforceability, making it subject to

[24] Convention on the Elimination of All Forms of Discrimination against Women, 1979
[25] Sūrah al-Rūm 30:21
[26] Sūrah al-Nisāʾ 4:1
[27] Sūrah al-Nūr 24:32
[28] Al-Bayhaqī, Abū Bakr Aḥmad ibn al-Ḥusayn. *Shuʿab al-Īmān*. Vol. 4. Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000. Ḥadīth no. 5486.
[29] Al-Shāfiʿī, Abū ʿAbd Allāh Muḥammad ibn Idrīs. *Al-Umm.* Beirut: Dār al-Fikr, 1983 ،5/5–6.; Ibn Qudāmah, Abū Muḥammad ʿAbd Allāh ibn Aḥmad ibn Muḥammad. *Al-Mughnī.* Cairo: Maktabat al-Qāhirah, 1968, 7/2.; Ibn Rushd, Abū al-Walīd Muḥammad ibn Aḥmad ibn Muḥammad ibn Aḥmad al-Qurṭubī. *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid.* Cairo: Dār al-Ḥadīth, 2004, 2/3.
[30] Al-Nawawī, Abū Zakariyyā Yaḥyā ibn Sharaf. *Minhāj al-Ṭālibīn wa ʿUmdat al-Muftīn fī al-Fiqh*. Beirut: Dār al-Fikr, 2005, pp. 191–193.
[31] Al-Marghīnānī, Burhān al-Dīn Abū al-Ḥasan ʿAlī ibn Abī Bakr ibn ʿAbd al-Jalīl al-Rashdānī. *Al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī.* Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2004, 1/201–205.

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regulation to prevent harm (*ḍarar*) and uphold justice (*ʿadl*).[32] They affirm that marriage retains both its religious sanctity and legal enforceability, making it subject to state regulation to prevent harm (ḍarar) and uphold justice (ʿadl), in line with the legal maxims *lā ḍarar wa-lā ḍirār* ("no harm, no harassment") and *al-ʿādah muḥakkamah* ("custom is authoritative").

In Malaysia, Muslim marriage is recognized as both a religious and legal institution under the Islamic Family Law (Federal Territories) Act 1984 (IFLA)[33] and corresponding state enactments. The Federal Constitution's Ninth Schedule, List II, assigns Islamic law to state jurisdiction, with Article 121(1A) granting Syariah Courts exclusive authority over Islamic family law matters, including marriage.[34] The IFLA establishes marriage as a Syariah-compliant contract, requiring procedural compliance for legal validity, such as spousal mutual consent, consent and the role of a wali (guardian), and solemnisation by an authorised wali or registrar.[35] The Federal Court in *Latifah Mat Zin v. Rosmawati Sharibun* [2007] 5 MLJ 101 affirmed that this statutory framework operates within the constitutional guarantee of Syariah jurisdiction, ensuring Muslim marriages are both religiously valid and legally enforceable.[36]

In Pakistan, the legal recognition of marriage is grounded in both Sharīʿah and statutory law. Article 35 of the Constitution obliges the State to protect marriage and the family, while Article 227 ensures that all laws conform to Qur'an and Sunnah.[37] The Muslim Family Laws Ordinance 1961 (MFLO) and Dissolution of Muslim Marriages Act 1939 form the core statutory framework. The MFLO treats marriage as a legally enforceable contract with civil consequences, mandating its registration under Section 5.[38] Courts have consistently upheld the contractual nature of nikāḥ, as in *Khalid Mahmood v. State* (PLD 1985 FSC 173), where the Federal Shariat Court emphasised that marriage is a Sharīʿah-governed institution with enforceable legal rights and duties.[39]

The normative essence of marriage in Sharīʿah as a moral covenant and legal contract finds recognition in both Malaysia and Pakistan, though their structural approaches differ. Malaysia's decentralised, state-based codification emphasises procedural compliance in line with the Shāfiʿī tradition, majority of the fuqaha' and some the Hanafis, while Pakistan's centralised framework reflects Ḥanafī flexibility but is more susceptible to informal practices that escape legal oversight. Harmonisation requires bridging these approaches by embedding the Sharīʿah spirit of marriage, justice, mercy, and the protection of family life into both the procedural safeguards seen in Malaysia and the substantive rights emphasis in Pakistan. A blended model could integrate robust documentation and uniform enforcement with sensitivity to local jurisprudential traditions, ensuring that marriage remains both a sacred trust and a legally protected spousal and wife's right.

WIFE'S RIGHT TO DOWER (*MAHR*)

Under the Sharīʿah, *mahr* is husband's obligation to pay immediately after the conclusion of marriage 'aqd. It represents a husband's financial commitment and a gesture of honour toward his wife, not a price for the marriage contract. The Qur'an commands, "And give the women [upon marriage] their

[32] Al-Suyūṭī, Jalāl al-Dīn ʿAbd al-Raḥmān. *Al-Ashbāh wa al-Naẓāʾir ʿalā Madhhab al-Shāfiʿiyyah*. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1983, p. 60.; Ibn Nujaym, Zayn al-Dīn ibn Ibrāhīm ibn Muḥammad. *Al-Ashbāh wa al-Naẓāʾir ʿalā Madhhab Abī Ḥanīfah al-Nuʿmān*. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999, p. 87.
[33] Islamic Family Law (Federal Territories) Act 1984
[34] Islamic Family Law (Federal Territories) Act 1984 (IFLA), Art. 121(1A)
[35] Islamic Family Law (Federal Territories) Act 1984 (IFLA), Art. 11, 13, 16
[36] *Latifah Mat Zin v. Rosmawati Sharibun* [2007] 5 MLJ 101
[37] Constitution of Islamic Republic of Pakistan 1973, Arts. 35, 227.
[38] Muslim Family Laws Ordinance 1961 (MFLO), s.5
[39] *Khalid Mahmood v. State* (PLD 1985 FSC 173)

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bridal gifts graciously"[40] emphasising both obligation and goodwill in its payment. Classical jurists, such as Imām al-Shāfiʿī,[41] Ibn Qudāmah,[42] and Ibn ʿĀbidīn[43] affirm that mahr is a binding right of the wife from the moment of contract, enforceable upon 'aqd, consummation or lawful dissolution. The Sunnah confirms this, with the Prophet ﷺ approving both small and large amounts but advising moderation according to the husband's means.[44] All Sunni schools agree that *mahr* is obligatory, but they differ on its amount, timing, and procedural requirements. The Shāfiʿī school treats the specification of *mahr* at the time of contract as recommended but not essential for validity, though payment becomes mandatory upon completion of marriage 'aqd, consummation or dissolution; they also encourage prompt payment unless deferred for a valid reason. The Ḥanafī school allows *mahr* to be specified later and supports deferred payment (*muʾajjal*) as long as the wife retains the right to demand it at any time. Jurists unanimously hold that *mahr* is the exclusive property of the wife, to be used or saved at her discretion, and that any deliberate inflation with no intention of payment (*mahr al-ghalū*) is prohibited as deception.[45] It is better and supportive to codify minimum *mahr* amounts to prevent exploitation, especially in contexts where symbolic sums are used to diminish women's financial security.[46]

In Malaysia, mahr (mas kahwin) is a mandatory marriage component under the IFLA recorded during marriage solemnization.[47] The IFLA requires mahr to be agreed upon before solemnisation and paid to the bride, promptly or deferred.[48] State religious authorities set customary minima (e.g., RM300 in Selangor), with no fixed national amount. For example, in the case of *Salma v Mat Akhir*,[49] The Syariah court ordered the husband to pay RM600 amount of mahr which was not paid during marriage 'aqd. Mahr is distinct from mut'ah, a discretionary consolatory payment upon divorce.[50] The IFLA defines mut'ah as a consolatory gift that is reasonable according to Hukum Syarak, given to a divorced wife. To illustrate, in the case *Norhayati binti Mamat v A Rahman bin Ismail,*[51] the Syariah court ordered the husband RM21,000 mut'ah for the divorce without reasonable cause taking into account the length of marriage and financial standing of the husband. A wife may also claim unpaid or deferred mahr after divorce.[52] Syariah Courts enforce unpaid mahr, as in *Siti Fatimah bt Abdul Karim v. Abdul Rahman bin Yusof*[53], ordering payment based on the recorded amount, reflecting Shafi'i principles requiring mahr as lawful property (māl mutaqawwam).[54] While modest mahr amounts are common, public perceptions of mahr as symbolic may undermine its financial significance. Malaysia's structured registration system strengthens spousal rights enforcement, though state variations persist. In addition, apart from mas kahwin (mahr) the IFLA also regulates payment of pemberian that is recorded together with mas kahwin

[40] Nisa, 4:4
[41] Al-Shāfiʿī, Abū ʿAbd Allāh Muḥammad ibn Idrīs. *Al-Umm.* Beirut: Dār al-Fikr, 1983 ،5/139–142,
[42] Abū Muḥammad ʿAbd Allāh ibn Aḥmad ibn Muḥammad. *Al-Mughnī.* Cairo: Maktabat al-Qāhirah, 1968, 7/138–140
[43] Ibn ʿĀbidīn, Muḥammad Amīn, Radd al-Muḥtār ʿalā al-Durr al-Mukhtār, (Beirut: Dār al-Fikr, 1987), 3/320–330.
[44] Abū Dāwūd, Sulaymān ibn al-Ashʿath al-Sijistānī, Sunan Abī Dāwūd, (Beirut: Dār al-Fikr, 2000), Hadith 2106; Muslim ibn al-Ḥajjāj al-Naysābūrī, Ṣaḥīḥ Muslim, (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2006), Hadith 1425.
[45] Ibn ʿĀbidīn, Muḥammad Amīn, Radd al-Muḥtār ʿalā al-Durr al-Mukhtār, (Beirut: Dār al-Fikr, 1987), 3/327–328.
[46] See: Musawah, Matrimonial Property Division in Muslim Family Law: Policy Brief (Kuala Lumpur: Musawah, 2020), 12.
[47] Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.21.
[48] Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.21
[49] (1983) 5 JH 161.
[50] Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.56.
[51] [2012] 1 ShLR 109.
[52] Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.57 & s. 56.
[53] [1997] 2 MLJ 375.
[54] Abdul Karim v. Abdul Rahman bin Yusof [1997] 2 MLJ 375

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upon marriage 'aqd.[55] The IFLA defines mas kahwin as 'the obligatory marriage payment due under Hukum Syarak (the Shari'ah) by the husband to the wife at the time the marriage is solemnized, whether in the form of money actually paid or acknowledged as a debt with or without security, or in the form of something that, according to Hukum Syarak, is capable of being valued in terms of money'. Meanwhile, *Pemberian* is defined as 'a gift whether in the form of money or things given by a husband to a wife at the time of the marriage'.[56] According to Ahmad Ibrahim, *Pemberian* is based on Malay custom consisting of a series of conventional presents beginning with betrothal and sometimes continuing till the birth of the first child or even later.[57]

In Pakistan, mahr is an obligatory marriage component under the Muslim Family Laws Ordinance 1961 (MFLO), recorded in the Nikahnama.[58] Section 10 allows mahr to be immediate or deferred, with no statutory minimum or maximum, determined by agreement.[59] Socio-cultural practices undermine mahr's protective role: Nikahnamas are often signed without review, with vague terms like "Shariah haq mahr" or "mahr-e-Fāṭimī" (e.g., 32 rupees, outdated for modern needs). Mahr is frequently unpaid, diverted to families or charity, or waived in bad faith, contrary to Shariah's principle that mahr is the bride's exclusive property.[60] In *Khurshid Bibi v. Baboo Muhammad Amin*,[61] the court held that non-payment of mahr constitutes constructive cruelty, justifying khula'.[62] Unregistered marriages and provincial Nikahnama variations (e.g., differing clauses) hinder enforcement, limiting women's ability to claim mahr in court.

Unlike Malaysia, Pakistan's legal framework does not codify a concept equivalent to pemberian. However, customary gifts, such as jewellery, clothing, or cash (e.g., salami or bari), are often given to the bride by the groom or his family during betrothal, nikah, or post-marriage events like walima. These gifts, rooted in cultural practices rather than statutory law, lack legal enforceability unless explicitly included in the Nikahnama as part of mahr or a separate contractual agreement.[63] The absence of codification for such gifts, unlike Malaysia's pemberian, leaves brides vulnerable to discretionary family practices, with no legal recourse to claim them post-marriage.To align with Sharīʿah's objectives of justice (ʿadl) and dignity (karāmah), Pakistan could consider amending the MFLO to document customary gifts in the Nikahnama, drawing on Malaysia's model of pemberian to enhance women's financial security.

A comparative view shows that Malaysia's Shāfiʿī-based framework offers stronger procedural safeguards through mandatory documentation and court-enforced payment orders, while Pakistan's Ḥanafī-based approach provides flexibility but leaves room for exploitation due to lax enforcement and socio-cultural misinterpretations. Harmonisation could involve Pakistan adopting Malaysia's structured registration and court oversight mechanisms to ensure timely and documented *mahr* payments, while Malaysia might consider setting contextually realistic *mahr* levels that reflect both affordability and the Qur'anic intent of honouring the wife. Both jurisdictions should engage in public legal education to correct misconceptions, emphasising that *mahr* is neither a token nor a burdensome debt but a binding financial right. Standardising marriage contracts with explicit clauses on *mahr* amount, form, and payment schedule, coupled with penalties for deliberate evasion, would align legal practice with Sharīʿah's objectives of justice, dignity, and financial protection for women, while also preventing the

[55] See Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.21
[56] See Islamic Family Law (Federal Territories) Act 1984 (IFLA). s.2.
[57] See Ahmad Ibrahim (1997). *Family Law in Malaysia*, third edition, Kuala Lumpur: Malayan Law Journal, 209.
[58] Nikahnama, s.5.
[59] Muslim Family Laws Ordinance 1961 (MFLO), s.10.
[60] Al-Kāsānī, ʿAlāʾ al-Dīn. *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*. Vol. 2, Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000, pp. 334–336
[61] (PLD) 1967 SC 97.
[62] Khurshid Bibi v. Baboo Muhammad Amin (PLD 1967 SC 97)
[63] Ali, Shaheen Sardar, Modern Challenges to Islamic Law (Cambridge: Cambridge University Press, 2020), 112

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misuse of inflated amounts as a tool for coercion or litigation. Standardising marriage contracts with explicit clauses detailing the mahr amount, form, and payment schedule, with enforceable penalties for deliberate evasion would align legal practice with Sharīʿah's objectives of justice (ʿadl), dignity (karāmah), and financial protection for women.

WIFE'S RIGHT TO MAINTENANCE (*NAFAQAH*)

Under the Sharīʿah, *nafaqah* is a legally binding obligation on the husband to provide for his wife's needs during the subsistence of the marriage, covering food, clothing, accommodation, and other necessities according to his means. The Qur'an commands, "Men are protectors and maintainers of women…"[64] and instructs husbands to "Let them live [in fairness] where you dwell, according to your means",[65] with explicit guidance to provide maintenance during the *ʿiddah* period after divorce. The Sunnah reinforces this duty: in the Farewell Sermon, the Prophet ﷺ said, "You have rights over your wives, and your wives have rights over you… You are obliged to provide for them and clothe them in a reasonable manner".[66] Classical jurists such as Ibn Qudāmah,[67] Al-Kasani,[68] and al-Nawawi[69] interpret this obligation as covering all necessary expenses for reasonable living standards proportional to the husband's means, emphasizing justice and prevention of harm (*lā ḍarar wa-lā ḍirār*). Jurists agree that failure to provide *nafaqah* without lawful excuse constitutes harm (*ḍarar*), giving the wife a right to judicial dissolution. The Ḥanafī school extends support to post-divorce maintenance within the *ʿiddah* period, while the Shāfiʿī jurists extend support only in the 'iddah of a revocable divorce and in cases if the wife is pregnant. The Qur'anic injunction is: "For divorced women is a provision according to what is acceptable, a duty upon the righteous".[70] In light of this, post-divorce financial protection could be reviewed including mutʿah (a consolatory gift).[71]

In Malaysia, the obligation of maintenance is codified under the Islamic Family Law (Federal Territories) Act 1984 (IFLA). Section 59 mandates that a husband provides his wife with food, clothing, accommodation, medical care, and other necessities based on his means, continuing through the iddah period post-divorce (especially in the case of revocable divorce or where the wife is pregnant).[72] The case of Zainuddin v. Anita [1996] 3 MLJ 145 demonstrates courts' assessment of the husband's capacity and wife's needs in maintenance awards.[73]

In Pakistan, nafaqah (maintenance) is recognized under the Muslim Family Laws Ordinance 1961,[74] and Dissolution of Muslim Marriages Act 1939 (DMMA),[75] though less detailed than Malaysia's framework.

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[64] Nisa 4:34
[65] Qur'an 65:6
[66] Abū Dāwūd, Sulaymān ibn al-Ashʿath al-Sijistānī. *Sunan Abī Dāwūd.* Beirut: Dār al-Fikr, 2000., Hadith 2142.; Al-Tirmidhī, Muḥammad ibn ʿĪsā. *Jāmiʿ al-Tirmidhī.* Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2006., Hadith 1163.
[67] See: Ibn Qudāmah, Abū Muḥammad ʿAbd Allāh ibn Aḥmad ibn Muḥammad. *Al-Mughnī.* Cairo: Maktabat al-Qāhirah, 1968, 7/2.
[68] Al-Kāsānī, ʿAlāʾ al-Dīn. *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ.* Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000, 2.
[69] Al-Nawawī, Abū Zakariyyā Yaḥyā ibn Sharaf. *Minhāj al-Ṭālibīn wa ʿUmdat al-Muftīn fī al-Fiqh.* Beirut: Dār al-Fikr, 2005,191–193.
[70] Surah Baqarah, 2:241
[71] Al-Hibri, Azizah Y., *Islam, Law and Custom: Redefining Muslim Women's Rights* (Cambridge: Harvard University Press, 2000), 89; Musawah, *CEDAW and Muslim Family Laws: In Search of Common Ground* (Kuala Lumpur: Musawah Working Group), 45.
[72] Islamic Family Law (Federal Territories) Act 1984 (IFLA), s.59 (1). See also *Khairul Faezah bte Haji Abdul Majid v Muhamad Salleh bin Bidin*, [2005] 1 SHLR 171
[73] *Zainuddin v. Anita* [1996] 3 MLJ 145,
[74] Muslim Family Laws Ordinance 1961 (MFLO), s.9.
[75] Dissolution of Muslim Marriages Act 1939, s 2

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A husband's obligation to provide maintenance extends through marriage and the iddah period post-divorce, per Hanafi doctrine. Unlike Malaysia, no statutory provision exists for mut'ah, except limited maintenance for pregnant divorcees until delivery.[76] In Khatoon Bibi v. Yousaf Ali (PLD 2004 Lahore 568), the court held that persistent non-payment of nafaqah constitutes cruelty, justifying dissolution and financial redress. Courts generally adhere to Hanafi limits, rejecting post-iddah maintenance despite scholarly arguments for extension based on Shariah's maqāṣid (protecting dignity and wealth). Weak enforcement, with no standardized mechanisms like Malaysia's salary deductions, leads to prolonged litigation for small arrears. Socio-cultural stigma against women claiming financial rights further undermines enforcement

A comparative assessment shows that Malaysia's codified and judicially enforced system offers stronger procedural guarantees and includes *mutʿah* as a statutory right, reflecting an expanded interpretation of Qur'anic guidance in light of contemporary social realities. Pakistan's reliance on classical doctrine provides consistency with the Ḥanafī tradition but fails to address the financial vulnerability of divorced women, especially in contexts where women are economically dependent. Harmonisation could involve Pakistan legislating for *mutʿah* and considering limited post-divorce maintenance in line with Qur'an[77] and the maqāṣid al-sharīʿah principles of protecting dignity (*ḥifẓ al-ʿird*) and wealth (*ḥifẓ al-māl*). Malaysia, while procedurally stronger, could improve inter-state uniformity and adopt faster, technology-enabled enforcement processes. Both jurisdictions would benefit from public legal education on the ethical and legal nature of *nafaqah*, ensuring that it is understood not as charity but as an enforceable Sharīʿah-based right essential to marital justice.

WIFE'S RIGHT TO MATRIMONIAL PROPERTY

In classical Islamic law, property rights between spouses remain entirely separate; each retains ownership over assets acquired before and during marriage, unless a voluntary transfer (*hibah*) or contractual arrangement specifies otherwise. The Qur'an clearly upholds a woman's independent proprietary rights: *"For men is a share of what they earn, and for women is a share of what they earn"*.[78] Upon divorce, a husband's financial obligations are limited to payment of deferred *mahr*, any outstanding maintenance (*nafaqah*), and possibly consolatory gift (*mutʿah)*,[79] with no automatic division of property unless co-ownership is proven.

While the notion of *community property* is absent from classical fiqh, Islamic jurisprudence contains mechanisms that can be used to address the modern reality of joint marital effort. Juristic principles such as *al-ghunm bi al-ghurm* (entitlement is proportional to liability) and *al-ʿādah muḥakkamah* (custom is authoritative) provide a basis for recognising beneficial ownership when societal norms and fairness demand it. Classical jurists like Al-Kāsānī[80] and Ibn Rushd[81] outlined these principles as means to prevent unjust enrichment.[82] Mālikī jurists, for example, have been more open to compensating a spouse for labour or contribution that enhances the other's property, especially where it prevents unjust enrichment (*akl māl al-nās bi-l-bāṭil*). In light of this, the doctrine of maqāṣid al-sharīʿah, particularly the preservation of wealth (*ḥifẓ al-māl*) and protection of the family unit (*ḥifẓ al-nasl*) could be employed

[76] Muslim Family Laws Ordinance 1961 (MFLO), s.9.
[77] Surah Baqarah, 2:241
[78] Qur'an 4:32
[79] Qur'an 2:241
[80] Al-Kāsānī in Badā'iʿ al-Ṣanā'iʿ vol. 2, pp. 300–310
[81] Bidāyat al-Mujtahid vol. 2, pp. 640–645
[82] akl māl al-nās bi-l-bāṭil Qur'an 4:29

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to justify equitable division where property accumulation is demonstrably the product of joint effort, even if only one spouse's name appears on the title.[83]

In Malaysia, joint matrimonial property (harta sepencarian) originates from local ʿurf (custom) and is now enshrined in Islamic family law under Section 122 of the Islamic Family Law (Federal Territories) Act 1984 (the IFLA).[84] This provision empowers Syariah Courts to divide property acquired during marriage through the joint efforts of both spouses, regardless of whose name the property is registered under. The courts consider both monetary contributions, such as income used to purchase assets, and non-monetary contributions, like domestic work, childcare, and household management. Adopting a fair and balanced approach, judges weigh factors such as the marriage's duration, each spouse's contributions, and their post-divorce needs. In Nafsiah v. Abdul Majid [1998] 3 MLJ 768, the court recognized the wife's domestic efforts as vital to asset accumulation, granting her a fair share.[85] This reflects the Shāfiʿī legal tradition and Malaysian socio-legal norms, ensuring justice for non-earning spouses.[86] However, challenges persist due to state-specific variations in family law administration and inconsistent methods for valuing non-monetary contributions. In *Masiran bin Saadali lwn Azizah bt Abd Rahman,*[87] the divorced housewife claimed her share in a house bought after marriage. The Syariah court has granted her half share of the property taking into consideration that she served the husband and family for 12 years, doing all the house jobs and assisting in the family management and decreased the husband's responsibility. In *Saleh bin Husin v Salamah bte Abdullah,*[88] the Syariah court has divided the property acquired during marriage to the three of the parties' children based on the agreement which has been done before their divorce.

Pakistan's legal framework does not provide for matrimonial property division upon divorce in the absence of explicit co-ownership or contractual stipulation. Under the prevailing Ḥanafī-based system, assets acquired during marriage belong to the spouse who purchased or legally owns them, unless the other can prove financial contribution. This often leaves non-earning wives particularly those engaged solely in unpaid domestic work without a share in marital assets after divorce, except for *mahr* and *ʿiddah* maintenance. However, judicial trends show incremental shifts. In *Khadija v. Mansoor Ali* (2020 SCMR 862), the Supreme Court acknowledged that the wife's efforts in maintaining the household and supporting her husband's career indirectly contributed to asset accumulation, warranting partial financial compensation.[89] Similarly, in *Ghulam Sarwar v. Mst. Ayesha Bibi* (PLD 2016 Lahore 1), the court entertained claims for equitable relief on grounds of unjust enrichment, though no statutory framework exists to standardise such awards.[90] The absence of codified law and reliance on proof of financial input mean that most women still face significant evidentiary hurdles.

Harmonising matrimonial property rules between Sharīʿah principles and contemporary social realities requires both doctrinal flexibility and legislative clarity. For Pakistan, codification is the key step: adopting statutory provisions that recognise direct and indirect contributions including domestic work as a basis for equitable division would align the law with both Is lamic maxims (*al-ʿādah muḥakkamah*, *lā ḍarar wa lā ḍirār*) and modern gender justice imperatives. Malaysia's *harta sepencarian* framework could serve as a model but should be refined through standardised federal guidelines on valuation and contribution assessment to ensure uniformity across states. Both jurisdictions would benefit from

[83] Musawah, Matrimonial Property Division in Muslim Family Law: Policy Brief (Kuala Lumpur: Musawah, 2020), 12–14.
[84] Section 122 of the Islamic Family Law (Federal Territories) Act 1984 (IFLA)
[85] *Nafsiah v. Abdul Majid* [1998] 3 MLJ 768
[86] Ibn Qudamah, *Al-Mughni*, vol. 7, pp. 145-150
[87] Jun (2003) JLD XVI BHG I JH 33
[88] Dis (2007) JLD 24 (2) 323.
[89] *Khadija v. Mansoor Ali* (2020 SCMR 862),
[90] *Ghulam Sarwar v. Mst. Ayesha Bibi* (PLD 2016 Lahore 1),

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integrating pre-marital contractual options into family law, enabling couples to agree in advance on property division mechanisms in line with Sharīʿah. Such reforms would not only address socio-economic disparities post-divorce but also reflect the Qur'anic ethos of fairness, mutual support, and the protection of rights acquired during the marital partnership.

The above discussion reveals two distinct legal trajectories in integrating Sharīʿah principles into modern statutory frameworks. Malaysia's Islamic Family Law (Federal Territories) Act 1984 (IFLA), shaped to a certain extent by Shāfiʿī jurisprudence as well as other Sunni schools of law including the Hanafis, provides a codified, relatively uniform structure for marriage, maintenance, dower, mut'ah and matrimonial property. In contrast, Pakistan's framework anchored in the Muslim Family Laws Ordinance 1961 (MFLO) and the Dissolution of Muslim Marriages Act 1939 (DMMA) is grounded in Ḥanafī jurisprudence, with less codification and greater reliance on judicial discretion. This divergence creates different strengths and weaknesses i.e. Malaysia benefits from procedural predictability and judicial consistency, whereas Pakistan's case law allows adaptive flexibility rooted in classical principles of *ijtihād*, though often at the expense of legal clarity and enforcement consistency.

Across both jurisdictions, central tension emerges between Sharīʿah's ethical imperatives justice (*ʿadl*), compassion (*raḥmah*), and protection of rights (*ḥifẓ al-ḥuqūq*) and socio-cultural practices that undermine these ideals. While both systems recognise women's entitlement to mahr, Pakistan struggles with enforcement of deferred mahr, particularly in rural contexts where unregistered marriages and customary practices prevail. Malaysia codifies *mutʿah* and post-divorce maintenance, yet delay in Syariah court proceedings and variations between state laws reduce the practical impact of such provisions.

Matrimonial property division starkly illustrates the divergence. Malaysia's doctrine of *harta sepencarian*, recognising both financial and domestic contributions, reflects a creative fusion of local custom (*ʿurf*) with Sharīʿah's commitment to fairness, aligning with the legal maxim *lā ḍarar wa lā ḍirār* (no harm, no harassment). Pakistan, however, lacks a comparable statutory mechanism, with women rarely securing a share in property acquired during marriage unless direct financial contribution is proven, disregarding the economic value of unpaid domestic labour and the maqāṣid al-Sharīʿah principle of *ḥifẓ al-māl* (protection of wealth).

`CONCLUSION

This legal study has appraised wife's financial rights in Malaysia and Pakistan through the combined lenses of Sharīʿah and statutory law. While both jurisdictions share a common Islamic jurisprudential heritage the school of Shāfiʿī in Malaysia and the school of Ḥanafī in Pakistan, their legislative and judicial trajectories differ markedly. Malaysia has embraced a codified and moderately centralised framework, with statutory innovations such as *harta sepencarian* and judicially awarded *mutʿah* illustrating attempts to balance Sharīʿah principles with contemporary social realities. Pakistan, by contrast, operates within a partially codified yet heavily discretionary system, where progressive judicial rulings on maintenance coexist with significant implementation gaps, especially in rural and customary-law contexts.

A key finding is that Sharīʿah, when interpreted holistically and contextually through its recognised interpretive tools including *maqāṣid al-sharīʿah* (higher objectives of Islamic law), *qawāʿid fiqhiyyah* (legal maxims), and the principles of *istihsān* (juristic preference) and *maslaha* (public interest) contains inherent mechanisms to support gender-equitable reforms without departing from its foundational principles. The core Sharīʿah objectives of *ʿadl* (justice), *raḥmah* (compassion), and prevention of harm (*darʾ al-mafāsid*) can be operationalised within modern statutory systems to achieve more equitable outcomes. The challenge lies less in doctrinal incompatibility and more in procedural

inefficiencies, fragmented enforcement, and the persistence of patriarchal socio-cultural norms. Importantly, the study reaffirms the classical juristic position[91] that the protection of wife's financial rights rights is a judicial duty that may be enforced through binding orders and administrative safeguards.

This research contributes to the literature by offering a multi-dimensional comparative framework covering marriage, maintenance, dower, mut'ah and jointly acquired property by embedding socio-cultural analysis into legal comparison; and by showing how judicial discretion shapes gender-justice outcomes. It also reframes *mahr*, mut'ah, maintenance, and matrimonial property not as isolated entitlements but as interconnected financial safeguards grounded in Qur'ānic injunctions[92] and juristic consensus for the protection of women within contemporary Muslim family structures.

On the basis of these findings, several policy directions emerge: For Pakistan move towards codifying post-divorce maintenance and matrimonial property division, drawing on Malaysia's *harta sepencarian* model and grounding reforms in Islamic legal maxims such as *al-ʿurf muḥakkam* (custom is authoritative) and *lā ḍarar wa lā ḍirār* (no harm, no harassment) to ensure Sharīʿah legitimacy. Formalise *mutʿah* payments as part of financial closure and strengthen *ṭalāq* regulation by requiring court-supervised reconciliation. For Malaysia — enhance inter-state uniformity in Syariah-court interpretation, particularly in matters of maintenance, custody, and valuation of indirect contributions to matrimonial property, through federal-level interpretive guidelines while respecting the constitutional autonomy of states.

Both jurisdictions require stronger public legal-literacy initiatives. In Pakistan, this should prioritise rural outreach on women's Qur'ānic rights in maintenance, and property; in Malaysia, targeted awareness could address procedural rights and avenues for redress within the Syariah system. For both, continuous judicial training on gender-sensitive interpretation and *maqāṣid-based* reasoning would help align adjudication with Sharīʿah's ethical objectives of justice, dignity, and welfare (*ḥifẓ al-nafs*, *ḥifẓ al-nasl*, *ḥifẓ al-māl*).

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[91] Ibn Qudāmah, *Al-Mughnī*, vol. 7, pp. 240-245
[92] Quran 4:4, Quran 4:19, Quran 2:241