



## RESEARCH ARTICLE

## Harmony and Disparities: A Comparative Analysis of Wife's Maintenance Laws in Pakistan and Malaysia

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### ABSTRACT

This study critically evaluates the limitations of Pakistan's legal framework concerning spousal maintenance, mainly focusing on the inadequate protection provided to wives. The research delves into Pakistani Islamic Family Law, comparing its approach to wife's maintenance with that of Malaysian Islamic Family Law. Employing qualitative, descriptive, and analytical methods, the study synthesizes insights from library resources and semi-structured interviews in Pakistan. This research adopted face-to-face interviews in which twenty respondents were chosen. Among them, four judges, four lawyers, and two Islamic scholars from Pakistan, selected based on their expertise. Additionally, ten aggrieved women were involved in maintenance problems in Pakistan. Findings highlight deficiencies in areas like post-divorce maintenance and others. The paper advocates for necessary amendments to align Pakistan's maintenance laws with Malaysia's, offering valuable recommendations. Based on the study's findings and the recommendations put forth in this study, it is hoped that women in Pakistan will have better protection of their rights to maintenance under the MFLO of 1961. Future research should explore family courts' function in addressing wives' maintenance rights. This study would contribute to examining global best practices in spousal laws, including legal frameworks within Islamic nations. This research is pertinent to scholars and researchers in social science and law.

### INTRODUCTION

In 2000, there were 944,000 divorces and annulments, resulting in a crude divorce rate of 4.00 per population. However, by 2021, this rate had decreased to 2.5 per 1,000 people, with only 689,308 divorces occurring that year. Based on the collected data across 56 countries, the global average crude divorce rate in 2022 was approximately 1.6, reflecting a decline

from the 2021 rate of 1.8. This indicates an overall downward trend in divorces worldwide across various regions (Bieber, 2023).

Concurrently, the concept of maintenance, denoted by terms like "nafaqah" represents a fundamental obligation incumbent upon the husband in a marital relationship. Within the context of this responsibility, the husband is duty-bound to provide for the essential financial needs of his wife (Mohd and Ibrahim,

2010). Correspondingly, divorce rates are escalating globally, with Belgium reaching 70% and Hungary, Luxembourg, the Czech Republic, and Portugal at 60%. This trend is mirrored in Pakistan, where khula cases rose from 16,942 in 2014 to 18,901 in 2016. In 2017 alone, 15,000 khula cases were reported, with 6,000 cases each in Karachi and Lahore, major cities of Pakistan (Sultana and Azzam, 2021). This record showed that the issue of wife maintenance is very crucial in Pakistan. However, despite the huge number of marriages and divorces in Pakistan, the maintenance of wives needs to be properly incorporated into the statutes of Pakistan (Shahid, 2018).

It is noted that MFLO 1961 is a very vague law, and the ulama brought in a scathing attack on it. There are limited provisions regarding the maintenance of a wife in MFLO 1961 (Rehman, 2004). Article 35 of the constitution clearly tells the government to protect mothers, children, families, and marriage. However, traditional Pakistani beliefs and practices about marriage, child support, and divorce continue to violate the constitutional protections based on Islamic law (Ahmad and Ahmed, 2021). Invariably, these practices and the weaknesses of the law affect the protection of women in marriages.

Islamic teachings offers a comprehensive guideline for various aspects of human life. Particularly within Islamic law, the maintenance of a wife during marriage and post-divorce assumes a paramount position emphasized greatly in the Quran and Prophetic traditions (Sunnah) (Jalal and Zubair, 2023). This underscores the significant duty imposed upon husbands in Islamic law to ensure their wife's maintenance. The importance is seen in some Quranic verses as follows:

"Men are the protectors and maintainers of women because Allah has made one of them to excel the other and because they spend (to support them) from their means." (Quran Surah Nisa: 34)

"And the child's father shall bear the cost of the mother's food and clothing on a reasonable basis." (Quran Surah Baqarah: 233)

Likewise, the Prophet Muhammad Peace Be Upon

Him (abbreviated as PBUH) has emphasized the importance of maintenance in several hadith, such as: Narrated by Abdullah bin Umar, Allah's Apostle said,

"The most hated persons to Allah are three: (1) A person who divorces his wife, asks for her Mahr to be paid from him, and he does not pay it. (2) A man who lends some money and the borrower does not repay it when it is due. (3) A person who employs a labourer and gets the full work done by him but does not pay him his wages." (Hadith, Sahih Bukhari, 186)

In addition, in Islamic law, a Muslim woman's entitlement to maintenance from her husband is contingent upon her cohabitation and submission to her husband's authority (Rahman, 1979). Upon fulfilling her spousal responsibilities, it becomes incumbent upon the husband to ensure the provision of the wife's entitlement to maintenance. This legal entitlement, denoted as "nafaqah," encompasses the obligation to furnish sustenance, lodging, clothing, and shelter to the wife. Furthermore, the extent of these provisions may vary, contingent upon the financial circumstances of both the husband and wife (Baillie, 1865). These responsibilities are as follows:

#### **Shelter**

The husband is responsible for providing a suitable dwelling for the wife during the iddah period. This includes ensuring she has a safe and secure place to reside where her privacy is protected (Razali et al., 2020).

#### **Financial support**

The husband must continue providing financial support to the wife during the iddah period. This includes meeting her basic needs, such as food, clothing, and other necessary expenses. The level of financial support should be based on the husband's financial capacity and the lifestyle established during the marriage (Shaykh, n.d.).

#### **Maintenance allowance**

Besides providing for the wife's basic needs, the husband is also be required to pay a maintenance allowance during the iddah period. This allowance serves as financial support to cover any additional expenses the wife may have, such as medical care or personal requirements (Asari et al., 2017).

### **Marital obligations**

During the iddah period, the husband must maintain a respectful and dignified relationship with his wife. He should not mistreat her or subject her to any form of harassment. Instead, he should fulfil his marital obligations with kindness and fairness (Asari et al., 2017).

In this study, the respondents' responses also reveal the importance of maintenance to a wife, which trickles down to her children. Respondent 1 (a housewife or aggrieved woman) emphasized the importance of essentials such as lodging, clothing, food, and a good education for their children. On the other hand, Respondent 2 (divorced women or aggrieved women) required these requirements by stating that these basic maintenance needs should continue until the divorced woman's remarriage or death. Respondent 3 (a housewife or aggrieved woman) also desired the core needs of their children, such as lodging, clothing, and educational expenses. Respondent 4 (teacher, divorced or aggrieved woman) added that these basic requirements should include food, lodging, education for the children, and custody of the children until they complete their education.

In many Muslim countries, legal frameworks, constitutional obligations, and religious duties require the state to take specific steps to uphold these maintenance rights for a wife in a marital relationship (Shahid, 2018).

In the case of Pakistan, the legal framework governing the provision of maintenance to wives is limited in scope. It does not provide a comprehensive protective mechanism for wives in a marriage (Munir, 2023). MFLO 1961 is silent in these areas, especially post-divorce wife maintenance during the iddah period. Therefore, this research examined the problems of post-divorce maintenance of a wife in Pakistani society and the provision provided by the MFLO 1961 of Pakistan. However, Malaysia has a more comprehensive and robust legal mechanism for maintaining wives under Islamic law (Yelwa, 2013). Hence, this paper engages in a comparative analysis of the laws on the maintenance of wives in Pakistan and Malaysia to examine their adequacy, comparing the provisions of the Pakistani legal framework on the maintenance of wives to the Malaysian Islamic Family Law Federal Territories Act 1984 as a model for

reforms in Pakistan. This study is expected to be the first in-depth analysis of the laws of the maintenance of wives and children in Pakistan in an analysis of Muslim family laws in Malaysia. The research has great significance for the stakeholders in the current research. The stakeholders of the current research include the legal fraternity, parliament, academicians, society at large, and, more specifically, aggrieved women. Moreover, this paper seeks to provide suggestions and recommendations for improving the law of maintenance of wives in Pakistan, which seems to need to be added in Pakistan (MFLO 1961) compared to Malaysian law (IFLA 1984).

### **LITERATURE REVIEW**

#### **Overview of Pakistan and Malaysian legal framework governing maintenance of wife under Islamic law**

The MFLO 1961 in Pakistan governs family matters, including wife maintenance. In particular, Section 9 only provides for the maintenance of a wife during the subsistence of the marriage (Section 9 of the MFLO, 1961).

Maintenance obligations under Islamic law is significant in ensuring the financial well-being and stability of the family unit. These obligations are deeply rooted in the principles and teachings of Islam, as derived from the Quran and Hadith (Mohd and Ibrahim, 2010).

The Quran emphasizes the importance of fulfilling maintenance obligations towards family members. It states,

"Men are the protectors and maintainers of women because Allah has given one more strength than the other, and because they support them from their means."  
(Surah An-Nisa, 4:34)

"And divorced women should keep themselves waiting for three menstrual cycles. And it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this period if they want reconciliation. And due to the wives, it is similar to what is expected of

them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise."(Surah Al-Baqarah 2:228)

These verses highlight the duty of husbands to provide for their wives, encompassing their basic needs such as shelter, food, clothing, and other essential expenses. The Hadith also provides guidance on maintenance obligations. The Prophet Muhammad (PBUH) stated,

"When a Muslim spends something on his family intending to receive Allah's reward, it is regarded as sadaqa for him."(Sahih Bukhari, 2630)

Hind bint 'Utba came and said,

"O Allah's Apostle! Abu Sufyan is a miser, so is it sinful of me to feed our children from his property?" Allah's Apostle said, "No, except if you take for your needs what is just and reasonable." (Sahih Bukhari 277)

The Prophetic Hadiths emphasize the importance of fulfilling one's obligations towards family members, including providing for their financial needs to ensure their well-being and prevent them from relying on others. Islamic scholars and jurists have derived legal rulings and principles from these Quranic verses and hadiths, establishing the maintenance obligation for husbands towards their wives. The maintenance amount is determined based on the financial capacity of the husband, ensuring fairness and equity in the distribution of resources (Shahid, 2018).

Maintenance obligations in Islamic law may vary slightly across different schools of thought (Maghniyah, 1995). The Hanafi School emphasizes the husband's responsibility for providing maintenance to his wife, considering his financial capacity and the standard of living to which the family is accustomed. The Shafi'i school views maintenance as the wife's right, and the husband must provide it according to his means and the family's needs. The Maliki and Hanbali schools generally align with the Hanafi and Shafi'i schools, emphasizing the husband's obligation to provide maintenance based on his financial capability and the family's needs. While there may be nuanced

differences in interpretation and details, all schools agree on the importance of fulfilling maintenance obligations to ensure the financial well-being and stability of the family unit (Mohd and Ibrahim, 2010). In Islamic law, after a divorce is initiated, there is a waiting period during which the wife remains in the marital home. During this time, the husband maintains certain responsibilities towards his wife (Mohd and Ibrahim, 2010).

It is important to note that the Iddah period differs depending on the divorce circumstances. In the case of a revocable divorce (talaq raj'i), where the divorce can be revoked during the iddah period, the husband's responsibilities remain in effect. However, in the case of an irrevocable divorce (talaq bain), where reconciliation is not possible, the husband's responsibilities towards the wife cease. The specific details and interpretations of the husband's responsibilities in wife maintenance during the iddah period may vary among different schools of thought (Yelwa, 2013).

#### **Maintenance laws in Pakistan**

Historically, the development of maintenance laws in Pakistan can be traced to British rule in India. During this time, the British government of India introduced the laws on maintenance in 1861. With the British assuming governance over India, a necessity arose for the gradual codification of laws, leading to the enactment of significant legal instruments like the Indian Penal Code in 1860 and the Code of Criminal Procedure in 1861. As a part of this legal framework, the non-payment of maintenance to wives was addressed for the first time and deemed a punishable offense. During Pakistan's independence, Section 488 of CRPC 1898, inherited from the British colonial legal system, was the only law to protect the wife's right to maintenance. The provisions of 488 were enacted to provide for the wife's maintenance by the husband during the duration of marriage. However, there was no clear provision catering for maintenance after divorce or during the iddah period under the Criminal Procedure Code (Fyzee and Mahmood, 2009).

The superior judiciary combined the maintenance provisions under Section 488 of CRPC 1898 with the Islamic Personal Law. However, divorced Muslim women were not entitled to their full entitlement to

maintenance even during the iddah period, instead of the clear Islamic provisions thereof. Even the judges, while ordering iddah period maintenance, did not observe the divorced wife's Quranic right for post-divorce maintenance. The judges followed the traditional view without discussing the reasons that divorced Muslim women are not entitled to any maintenance (Moudoodi and Zaujain, 1961; Anwar et al., 2021). Though the Pakistani legal system has accepted the right to the maintenance of different persons, including the wife, during the marriage, it has yet to fully protect deliberately divorced women. Hence, in the case of Muhammad Nawaz vs Khurshid Begum, the appellant argued that under the MFLO 1961, past maintenance cannot be allowed (PLD 1972 SC 302).

As time progressed, the provision for maintenance under Section 9 of MFLO 1961 came because of the recommendations of the said commission. It was an additional remedy for neglected wives to claim maintenance from their husbands during the continuation of their marriage. However, this law is silent, like the provisions of 488 of CRPC 1898 for maintenance after divorce until the iddah period. (Abdul Latif v. Mst. Bakht Bhari, 1985).

In Pakistan, little effort has been made towards reforming some family laws concerning the maintenance of wives within the scope of MFLO 1961. However, the recommendations of the report on the Commission on Marriage and Family Law in 1956 still need to be implemented. It is still a social and legal problem that must be resolved. At present, no law would safeguard women who have been divorced deliberately (Jamila, 2023).

In the case of Malaysia, there is a coexistence of Islamic law and civil law. Muslims are governed under the Islamic family law which is based on Shariah law. This includes matters relating to marriage, divorce, custody and maintenance of wife and children (Abdullah, 2007). The principles of Islamic law are applied to issues concerning the maintenance of wives by the Quranic teachings and the Hadith. The nafaqah of a wife is the responsibility of the husband. The authorities of the Quran, the Prophet's (PBUH) Sunnah, and the Fuqaha all emphasized this.

The Islamic family law concerning a wife's right to maintenance during marriage and after divorce,

as well as the Malaysian Islamic family law, has ample laws regarding maintenance where this right is denied. Malaysia consists of 13 states, and all states have various Islamic family law since the jurisdiction of Islamic law is under the jurisdiction of the states. One of the law is the Islamic Family Law (Federal Territories) Act (IFLA 1984), which serves as a model reference in this context (Yelwa, 2013).

### **Comparative analysis of Pakistani and Malaysian laws on the maintenance of wives**

This section examines the laws on the maintenance of wives in Pakistan and Malaysia on a comparative basis. Pakistan has a legal framework for protecting the rights of wives regarding maintenance. Hence, more than these laws are needed to protect wives completely. On the other hand, Malaysian Islamic family law contains several laws about the wife's maintenance; in this specific context, statutory laws truly represent an exemplary model (Yelwa, 2013; Jam et al., 2019).

The IFLA 1984 comprises several parts and sections, each addressing different aspects of family matters within the Muslim community in Malaysia. Specifically, the IFLA 1984 consists of ten parts and 135 sections, encompassing various topics such as marriage, divorce, custody, and maintenance. The provisions related to the maintenance of the wife and children are primarily discussed in Part 5 of the IFLA 1984, which specifically focuses on maintenance. This segment, encompassing Sections 59 to 80 of the Act, presents the legal obligations of husbands to provide financial support for their wives and children, aiming to ensure their well-being (IFLA 1984).

In Pakistan, the MFLO 1961 in Pakistan is structured into 13 different sections, each dealing with important aspects of family matters. Among these sections, the maintenance topic, which involves financial support for wives and children, is specifically addressed in Section 9. This section outlines the legal responsibilities and obligations related to providing necessary financial assistance to ensure the well-being of wives (MFLO, 1961).

Thus, the comparative analysis is carried out based on the following sub-headings between the Pakistan MFLO 1961 and the Malaysia IFLA 1984.

*Maintenance of the wife and the effect of disobedience (Nusyuz):* Islam clearly provides for the implication

of the maintenance of a wife by a husband in the event of obedience or disobedience. In the event of 'Nusyuz' (disobedience) by a wife, the husband is not compelled to carry out his maintenance duties in Islam (Yelwa, 2013). Under Pakistani law, the provision about the maintenance of a wife under Section 9 of the MFLO 1961 does not provide for the circumstances or situations of nusyuz (disobedience). In fact, there is no mention of the nushuz or disobedient scenario under the MFLO of 1961. In the Muhammad Ali v. Mst. Ghulam Fatima case, the Court urged legislation regarding the wife's disobedience. It imposed two conditions upon the wife: (a) being faithful and (b) obeying the husband (Ali & Fatima, 1935). However, in Malaysia, Section 59(1) of IFLA 1984 has aptly captured the scenario of a wife disobedient to her husband and the effect on the maintenance requirement. The Malaysian provision states that.

"(1) The Court may, subject to Hukum Syarak, order a man to pay maintenance to his wife or former wife. (2) Subject to Hukum Syarak and confirmation by the Court, a wife shall not be entitled to maintenance when she is nusyuz or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, among other things— (a) when she withholds her association with her husband; (b) when she leaves her husband's home against his will; or (c) when she refuses to move with him to another home or place, without any valid reason according to Hukum Syarak. (3) As soon as the wife repents and obeys her husband's lawful wishes and commands, she ceases to be nusyuz."

Thus, the Malaysian provision implies that the Court may order a man to pay maintenance to his wife or former wife, provided she is not disobedient. The provision states that the nature of disobedience is in the case of withholding association, leaving the husband's home at will, and refusing to move to another place without a valid reason (Section 59 IFLA 1984). This Malaysian provision clearly shows that Pakistani law is not all-encompassing.

*The role of the court in marital maintenance disputes*  
: The role of the Court in settling marital issues

must be emphasized. In this vein, the Court, as the arbiter, is saddled with giving the necessary orders for all marital issues. Under the MFLO 1961, the provisions relating to the powers of the Court to grant maintenance orders are limited in terms of coverage and scope. However, under the IFLA 1984 comprehensively provides the Court with the powers to issue orders for maintenance issues as follows:

"The Court may order any person liable to it, according to Hukum Syarak, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood because of mental or physical injury or ill-health, and the Court is satisfied that, having regard to the means of the first-mentioned person, it is reasonable so to order." (Section 59 IFLA 1984)

In addition, Section 60 of the IFLA 1984 also confers authority upon the Shari'ah court to issue orders about providing financial support for certain individuals (Yelwa, 2013).

Therefore, IFLA 1984 demonstrates an inclusive approach to maintenance. Thus, Section 60 reflects this by allowing the Court to ensure financial support when someone can't work due to injury or illness. This shows how IFLA 1984 protects people's welfare and basic needs of life, making it effective and forward-looking in addressing maintenance issues in Malaysia. Furthermore, under the MFLO 1961, Pakistan also lacks a provision that addresses the duration of maintenance orders and provides a clear guideline for the duration of these orders, supporting the legal framework with a comprehensive and precise approach. In contrast, the IFLA 1984 of Malaysia includes a detailed provision outlining the duration of such orders. For example, Section 64 of the IFLA 1984 specifies that unless an order for maintenance indicates a shorter period or is revoked, the order shall remain in effect until the death of the individual in whose favour or against whom the order was issued, whichever happens first.

As an arbiter, the Court is saddled with judicial functions, which include the power to review agreements and various orders to reach a settlement. In Pakistan, the Court's power to vary orders and agreements is not contained in the MFLO of

1961. In contrast, Malaysia addresses this aspect comprehensively through sections 66 and 67 of the IFLA 1984. These sections outline that the Court retains the power to alter or rescind existing maintenance orders, whether secured or unsecured, based on applications from the parties involved. However, this adjustment can occur when the Court identifies misrepresentation, factual errors, or significant changes in circumstances.

*Assessment and security of maintenance:* The MFLO 1961 of Pakistan does not have a specific provision regarding the assessment and security of maintenance, whereas Malaysia does. In Pakistan, the Court often decides cases according to Muslim Personal Law (Sabreen, 2020); the maintenance of a wife can be accessed under the teachings of Islam, according to the husband's capacity. However, in Malaysia, in the process of determining the quantum of maintenance payments, the Court's evaluation is based primarily on the financial capacities and necessities of the involved parties, as stipulated in Section 61 of the IFLA 1984 as follows:

"In determining the amount of any maintenance to be paid, the Court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion the maintenance bears to the income of the person against whom the order is made." (Section 61 IFLA 1984).

The Court has considered both the means and needs of the parties to access maintenance. In other words, the position of husband and wife must be considered to determine the amount of maintenance. For example, in the case of (*Azura v Mohd Zulkifli* [2009] 1 MLJ 690), the Court considered, besides the husband's income, the wife's needs, which included her food and medical attention. The resulting calculation exceeded the ability of the husband to pay. In such a situation, the Court had to determine a reasonable amount that was possible for the husband to pay. Therefore, the issue of the financial inability of the husband to provide maintenance due to low income could not be used as an excuse for not paying; it will not hinder the Court from making an order of maintenance so that a man with less income is still liable accordingly. This decision was previously upheld by the Chief Kadi of

Penang, Haji Harussani Haji Zakaria, in the case of *Asiaamal v. Abdul Jabar* 4 JH 262.

In addition, Section 62 of IFLA 1984 states the security of maintenance, and a noteworthy provision comes to light that ensures the assurance of maintenance. When the Court grants a maintenance order, it has the authority to require the responsible individual to safeguard all or a portion of the maintenance. This safeguarding can be accomplished by entrusting property to trustees, who hold the property in trust to disburse the maintenance or a portion of the property's generated income. This part talks about the IFLA 1984 comprehensive approach, which helps protect the rights and well-being of people entitled to maintenance by setting up a way to ensure they get consistent financial support.

The husband's income remains the most important factor to consider in ascertaining the maintenance amount. Hence, the judges have discretionary power in doing so. Although for maintenance, the Court is quick to award a large amount when it is proved that the husband is prosperous.

*Right to maintenance or gift after divorce:* Post-divorce maintenance is a fundamental entitlement for Muslim women following separation. According to Islamic law, this right ensures that it is provided during the iddah period (Shahid, 2013).

According to the Quran:

"Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this period if they want reconciliation. And due to the wives, it is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise" (Surat Al Baqarah:228)

However, MFLO 1961 is silent regarding post-divorce maintenance (Shahid, 2018). Respondent 6 (an advocate of the High Court) specifies that these basic needs should extend to the period after divorce during iddah, emphasizing the need for continuity. Notably, the MFLO 1961 needs to incorporate provisions

addressing post-divorce maintenance, creating uncertainty on whether post-divorce maintenance is expressly permitted. Section 65 expressly provides for comprehensive regulations about post-divorce maintenance and gift-related provisions. These provisions, such as (1) the termination of a divorced wife's right to receive court-ordered maintenance upon the completion of the iddah period or due to nusyuz, and (2) the cessation of a divorced wife's entitlement to a pemberian (gift) from her former husband upon her remarriage, exemplify Malaysia's comprehensive and detailed legal approach to addressing the intricate dynamics of post-divorce financial support.

This apparent contrast highlights the pronounced differences in the legislative treatment of post-divorce maintenance between Pakistan and Malaysia. The absence of post-divorce maintenance provisions within the MFLO 1961 raises questions about the adequacy of the legal framework to safeguard the rights and financial well-being of divorced women during this critical period. Respondent 10 (an Islamic scholar) explained that from some religious perspective, he referred to Surah Talaq, a part of Islamic teachings. He added that, according to the Quranic verses, it is the husband's responsibility during marriage to provide maintenance as per his capacity. He added that specific rights to maintaining a wife under MFLO 1961 are provided, but post-divorce provisions are not provided in MFLO 1961. In contrast, the comprehensive provisions within the IFLA 1984, particularly in Section 65, show Malaysia's concerted efforts to address the comprehensive aspects of post-divorce maintenance and related matters (Yelwa, 2013).

*Arrears of maintenance:* The arrears of maintenance are the payments that a husband did not give to his ex-wife during their marriage. These unpaid amounts turn into a debt that the husband must repay. This debt can be claimed in any Syariah Court. Respondent 8 (the additional district and session judge) emphasized that there is a central challenge to the non-recovery of past maintenance due to the need for proper legislation in some cases when the family courts pronounce the order for maintenance. He suggested the need for legal reforms.

Arrears of maintenance for the wife are provided

in Subsection 3 of Section 9 of the MFLO 1961 in Pakistan. MFLO 1961 stated:

"(3) Any amount payable under subsection (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue, provided that the Commissioner of a Division may, on an application made on this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a Collector to any other Collector, or a Director, Local Government, or to an Additional Commissioner in his Division."

The above provision within the MFLO 1961 outlines that if the amounts due under subsections (1) or (2), which pertain to maintenance, are not paid on time, they can be reclaimed as arrears of land revenue. This legal framework ensures that the unpaid maintenance is treated as a debt to be collected by the authorities, safeguarding the wife's financial rights. Additionally, the provision empowers the Commissioner of a Division to transfer applications for revising certificates related to the arrears from one collector to another or even to higher-ranking officials like a Director, Local Government, or an Additional Commissioner if circumstances warrant such action (Section 9 MFLO 1961). Respondent 7 explained the specific rights that unpaid maintenance of the wife can be collected. He added that unpaid maintenance can be reclaimed like land revenue. In addition, he pointed out that individuals can seek maintenance by approaching the union council chairman, which constitutes an arbitration council.

Under Section 9 of the MFLO 1961, in the case of Rashid Ahmad Khan vs Nasim Ara PLD 1968 Lahore 93, the Lahore High Court held the same. The petitioner had argued that the Arbitration Council had no jurisdiction to award arrears of past maintenance. The Court answered, "Nothing in Section 9 of the MFLO 1961 to confine its application only to grant future maintenance, not covering the past.

In Malaysia, Section 69 of IFLA 1984 provides arrears for maintenance. Under subsection (1), the recoverability of arrears of unsecured maintenance is established as a debt the defaulter owes. If a person fails to pay maintenance on time, the overdue amount becomes a legal debt that the defaulter must



settle. Moreover, if these arrears accrued before the defaulter's financial situation led to a receiving order in bankruptcy, they can be proved within the bankruptcy proceedings. Similarly, if these arrears existed before the defaulter's passing, they would become a debt that the defaulter's estate is liable to pay.

The provisions within Section 69 of IFLA 1984 of Malaysia and Section 9 of MFLO 1961 of Pakistan offer distinct perspectives on addressing maintenance arrears. Malaysia's IFLA 1984 exhibits a comprehensive and well-structured approach by defining arrears of unsecured maintenance as recoverable debts. This provision ensures that unpaid maintenance is treated as a legal obligation, recoverable from the defaulter's assets even in bankruptcy cases. On the other hand, Pakistan's MFLO 1961 presents a less detailed mechanism, designating unpaid maintenance as arrears of land revenue. While the provision offers a route for recovering unpaid maintenance, it lacks the specificity seen in Malaysia's IFLA 1984. However, Pakistan could consider adopting a more detailed and comprehensive approach like Malaysia's IFLA 1984 to enhance the legal framework. By incorporating clear provisions that define unpaid maintenance as recoverable debts and outlining scenarios where these debts can be pursued, Pakistan can strengthen its ability to enforce financial responsibilities effectively.

*Right to accommodation:* During the iddah period, the husband is responsible for providing maintenance and accommodation for his wife, as mandated by Islamic law (Zafar Iqbal Kalanauri, 2009). Although MFLO 1961 is the main legislation that deals with family matters, it has no proper provision for the accommodation of wives. Under the MFLO 1984, however, it provides proper provision regarding the wife's accommodation under Section 71: a divorced woman holds the right to accommodation in the former matrimonial residence, provided her husband cannot arrange suitable alternative accommodations. Most aggrieved women, the respondents to this study, were urged to accommodate their wives.

Furthermore, the entitlement to accommodation, as delineated in subsection (1) of Malaysia's IFLA 1984, ceases under particular circumstances: (a) Upon the conclusion of the iddah period. (b) When the period

of guardianship over the children terminates. (c) in the event of the woman's remarriage. (d) If the woman is guilty of open lewdness (*fahisyah*). Upon these conditions, the husband can petition the Court to restore the home's possession (Section 70 IFLA 1984).

## METHODOLOGY

The paper is library-based, and fieldwork is carried out through interviews. The library-based study involves the analysis of the legal doctrine, its development, and its application (Vibhute and Aynalem, 2009). Additionally, this method requires the researcher to ascertain the facts, concepts, principles, themes, provisions, and laws dealing with the issues of the maintenance of a wife during marriage and post-divorce and how both legal systems (Malaysia and Pakistan). On the other hand, the paper conducted semi-structured interviews with twenty respondents chosen, comprising four lawyers, four judges, and two Islamic scholars. In addition, ten aggrieved Pakistani women who have experienced challenges relating to maintenance in their marriages were interviewed. The respondents were selected because of their experiences and knowledge of maintaining wives in marriage under Islamic Law in legal practice and judicial functions in Pakistan (Yaqin, 2007). The interviews provided the researcher with enriching data on the practical situation in Pakistan to complement the library-based data through direct information from the respondents (Bernard, 2011). The study is pertinent to the maintenance of a wife in Pakistani society, where the maintenance of divorce is not fully expressed. Therefore, the data is collected from Pakistan's respondents to find real issues attached to them. Hence, the socio-legal research approach is used only in Pakistan. Furthermore, doctrinal legal research is investigated between Pakistani and Malaysian laws to analyze the legal doctrine, its development, and its application (Vibhute and Aynalem, 2009). In addition to doctrinal and socio-legal research, the qualitative method of interviews was adopted to promote the methodology and make the research findings more reasonable.

## FINDINGS AND DISCUSSION

Compared with the provision of maintenance written in Pakistani law (MFLO 1961) and Malaysian law

(IFLA 1984), the following findings have surfaced. First, the paper found that the MFLO 1961 of Pakistan has no detailed provisions about wife maintenance. In particular, the MFLO 1961 does not have a provision for maintaining a wife in the event of a wife's disobedience. The absence creates uncertainty about whether a wife is entitled to maintenance after divorce, irrespective of her disobedience and bad behaviour. In contrast, Malaysian law provides for the provision to deal with situations of disobedience by a wife and whether she is entitled to maintenance.

Secondly, Malaysia has a robust provision covering the Court's power to make maintenance orders, unlike the Pakistan MFLO 1961, which restricts the Court's express power. Hence, the Malaysian law demonstrates an inclusive approach to maintenance. In addition to the above, the comparison between the MFLO 1961 of Pakistan and the Islamic IFLA 1984 of Malaysia points out a significant divergence in addressing the temporal aspect of maintenance orders. While the MFLO 1961 is silent regarding the duration of maintenance orders, the IFLA 1984 offers a well-defined and detailed provision in Section 64, ensuring clarity and consistency in maintenance order duration. Another crucial aspect covered by Section 67 of the IFLA 1984 involves the Court's ability to revise terms within maintenance agreements made between spouses, irrespective of whether they were established before or after the appointed date. This legal provision highlights Malaysia's dedication to accommodating advancing circumstances while maintaining a balanced approach to addressing the intricacies of maintenance agreements (Sections 66 and 66 IFLA 1984).

Thirdly, the issue of post-divorce maintenance concerns virtually all the respondents interviewed for this paper. Despite the position of Islamic law that a wife is entitled to post-divorce maintenance during her iddah period, Pakistani law does not contain a provision dealing with that, unlike the Malaysian position. According to the responses of the female respondents (aggrieved women), the absence of the provision results in fear of how they will sustain and cater for themselves after the divorce. A related finding is on the issue of maintenance arrears. The Pakistan MFLO 1961 needs to provide a clear guide on how the wife can recover her debts owed during the

pendency of her marriage with her husband. The lack of clear guidelines results in panicking, according to respondents.

Fourthly, based on the previous discussion, MFLO 1961 contains no specific provision regarding a wife's right to accommodation after a divorce. This finding shed light on an important area where the current law could be expanded to provide more comprehensive protections and support for women in both marriage and post-divorce contexts. However, during the iddah period, it was crucial to spell out the right to divorce women to get accommodation. Furthermore, in line with the responses to interviews, it also showed that the MFLO 1961 does not include legal provisions about the right to accommodation. Most of the respondents (aggrieved women) felt that they were deprived of their rights to accommodation after divorce. They opined that accommodation is a basic need of women during marriage, and after divorce, it is crucial for a woman to rebuild her life and ensure her well-being.

In addition to the above findings, this study is based on interviews related to post-divorce maintenance. All respondents viewed the legal provision that protects the rights of wives and children to get maintenance as insufficient. Furthermore, they pointed out the crucial gaps in providing post-divorce maintenance for wives in the current legal system (MFLO 1961). However, it is essential to consider all these aspects when looking at maintenance rights under the MFLO of 1961.

Furthermore, regarding the arrears of maintenance, responses collectively highlight some of the core challenges related to the law and its enforcement. The absence of provisions about post-divorce maintenance of wives, difficulties in determining maintenance amounts, insufficiency of family courts, and delays in case proceedings are some of the significant issues that need to be addressed to ensure the effective implementation of maintenance laws in Pakistan.

Lastly, related to accommodation and others, the respondents collectively emphasized that the maintenance laws should consist of lodging, clothing, food, and a good education for their children, both during and after divorce, with a strong consensus on these fundamental provisions. Furthermore, they pointed out their basic needs and expectations of

improvement in the laws of maintenance. These fundamental needs, which they believed should be provided for under the law, encompass lodging, clothing, food, and education for themselves and their children. Aligned with the Islamic perspective, right after divorce, Muslim women are entitled to nafakah iddah, which is a mandatory form of support covering food, clothing, and accommodation for the wife, children, and widows, as stipulated by Hukum Syariah (Iqbal and Associate, 2023). Top of Form

### **Implications and recommendations**

This paper motivates more concentrated research on protecting the rights of maintenance of wives due to the status of this subject and its incredible impression on Pakistani nationals and society. When studying the arena of the rights of maintenance of wife, it would be clear to the stakeholder that the study provides clear implications regarding the protection of maintenance rights to Pakistani individuals, specifically maintenance of wife, specifically post-divorce in Pakistan, as well as suggesting that the MFLO 1961 also incorporate proper detailed legal provisions about recovering arrears of maintenance of wife.

Based on the findings mentioned above, it is proposed that the legal framework concerning the rights of post-divorce maintenance for wives in Pakistan undergo enhancements to ensure comprehensive protection of maintenance rights for individuals in the country. Additionally, the MFLO 1961 should encompass more detailed provisions delineating the authority of family courts in Pakistan. It is also recommended that the MFLO of 1961 incorporate specific and comprehensive legal measures to recover maintenance arrears owed to wives. The provision in subsection 3 of Section 9 of the MFLO 1961 needs to be revised as it only outlines an administrative recovery procedure. Furthermore, the MFLO 1961 should include explicit legal provisions addressing the right to accommodation for wives during the marriage and the period following divorce until the completion of the iddah.

### **CONCLUSION**

This paper has shown that Malaysian maintenance law is more detailed, comprehensive, and adequate for maintaining the wife during marriage and after

divorce. The paper found that the current Pakistani legal system needs to provide more protection for the right to the maintenance of a wife during marriage, especially after divorce. Evidence from this paper arising from the responses of respondents indicates the growing need to reform the MFLO 1961 in line with the Malaysian IFLA 1984. In particular, the paper has shown that the amendment of the MFLO 1961 should consider issues of maintenance in the event of disobedience, clarification on the powers of the Court on maintenance issues, and the need to provide for a provision that incorporates post-divorce maintenance.

Ultimately, this paper contributes to shaping reform of the Islamic Family Law in Pakistan in line with Islamic Law injunctions learned from the Malaysian experience by integrating comparable provisions into the MFLO 1961, which provide a more approachable and equitable legal mechanism, ensuring that maintenance orders and agreements remain reflective of evolving circumstances and aligned with the principles of justice. Based on the study's findings and the recommendations put forth in this study, it is hoped that women in Pakistan will have better protection of their rights to maintenance under the MFLO 1961.

### **Limitations and future research**

The main objective of this study is to resolve the problems of the maintenance of wives during marriage and post-divorce in Pakistan. The study also extends its scope to examine the legal and regulatory frameworks and systems applied by the respective regulatory bodies in both countries (Pakistan and Malaysia). However, this research also faced the problem of limited resources for academic discussion in terms of this issue. Especially those that are relevant to the Pakistan context. Therefore, the study has been conducted in comparison with the Malaysian Islamic family law on maintenance, particularly IFLA 1984. Malaysian laws are referred to to help the researcher come up with the proper rules and regulations that help Pakistan cover all aspects of the maintenance of wives and children's issues during marriage and post-divorce. This study will likely motivate more concentrated research on protecting the rights of maintenance of wives due to the status of this subject and its incredible impression on Pakistani

nationals and society. For future research, a study should be conducted on the role of family courts in the maintenance rights of wives, comparative legal frameworks with other Islamic countries, and international best practices about the maintenance laws of wives.

## REFERENCES

- Abdullah R; 2007. A study of Islamic family law in Malaysia: A select bibliography. *International Journal of Legal Information*, 35(3):514-536.
- Ahmad G, Ahmed MG; 2021. Marital relationship: The Islamic perspective and prevailing practices in Pakistan. *American Research Journal of Humanities & Social Science*, 4(06):15-31.
- Anwar SM, Khan AA, et al.; 2021. Sociological study about the issues of women career advancement at male-dominated workplace. *Journal of Management Practices, Humanities and Social Sciences*, 5(1):87-94.
- Asari K, Makhtar M, Hamid N, Abdullah Asuhaimi F, Pauzai N; 2017. Iddah maintenance: Concept, issues and methods of enforcement. *Pertanika Journal of Social Science And Humanities*, 25(8):145-151.
- Baillie NBE; 1865. *A Digest of Moohummudan Law*. Smith, Elder.
- Bernard HR; 2017. *Research methods in anthropology: Qualitative and quantitative approaches*. Rowman & Littlefield.
- Bieber C, *Revealing divorce statistics in 2023*; 2023. <https://shorturl.at/BHLO9>.
- Fyzee AAA, Mahmood T; 2009. *Outlines of Muhammadan Law*. Oxford University Press.
- IFLA; 1984. *Islamic Family Law (Federal Territories) Act*.
- Iqbal K, Associate, *Women's right to post-divorce*; 2023. <https://shorturl.at/xzDS9>.
- Jalal S, Zubair M; 2023. Married women right to dower and maintenance, gap between theory and practice. *Journal of Educational Research and Social Sciences Review (JERSSR)*, 3(2):68-76.
- Jam FA, et al.; 2019. Crypto currency--a new phenomenon in monetary circulation. *Farabi Journal of Social Sciences*, 4(1):39-46.
- Jamila, *Wife maintenance law in Pakistan-Jamila law associates*; 2023. <https://shorturl.at/luUY3>.
- Maghniyah MJ; 1995. *The Five Schools of Islamic Law: Al-Hanafi, Al-Hanbali, Al-Ja'fari, Al-Maliki, Al-Shafi'i*. Anssariyan.
- MFL0; 1961. *The Muslim Family Laws Ordinance*.
- Mohd A, Ibrahim BH; 2010. Muslim wife's rights to maintenance: Husband's duty to maintain a working wife in Islamic law and the law in Malaysia. *IJUMJ*, 18:103.
- Moudoodi AA, Zaujain HA, p.187(translation); 1961.
- Munir M; 2023. *Maintenance of the wife and children in Islamic law and Pakistani legal system*. Available at SSRN 4330754.
- Razali M, Hadigunawan N, Jamil AN; 2020. Analysis of Islamic legal rulings relating to women activities during waiting period (Iddah) of revocable divorce (Talaq raj'ie) according to muslim jurists. *Jurnal Islam Dan Masyarakat Kontemporari*, 21(1):276-286.
- Rehman Fu.; 2004. *Islamic law of maintenance for wives in Pakistan and Afghanistan since 1960*. PhD thesis, University of peshawar.
- Sabreen M; 2020. *Maintenance of the child in Pakistan: A much-needed legislation*. *LUMS LJ*, 7:105.
- Shahid A; 2013. *Post-divorce maintenance for muslim women in Pakistan and Bangladesh: A comparative perspective*. *International Journal of Law, Policy and the Family*, 27(2):197-215.
- Shahid A; 2018. *Post-divorce maintenance rights for muslim women in Pakistan and Iran: making the case for law reform*. *Muslim world journal of human rights*, 15(1):59-98.
- Shaykh MIA, *The husband's financial responsibility after divorce*; <https://islamqa.org/?p=7840>.
- Sultana M, Azzam Q; 2021. *Factors pertaining to rising divorce rate and post-divorce problems faced by women in Pakistan: A qualitative study*. *al-Īqāz* (), p. 01-14.

Vibhute K, Aynalem F; 2009. Legal research methods.  
The Justice and Legal System Research Institute.

Yaqin A; 2007. Legal Research and Writing, vol. 1. 1st  
ed. Lexis Nexis.

Yelwa MI; 2013. Protection of wife's right  
to maintenance in Islamic law and its  
implementation in the Malaysian Islamic  
family law. IIUMLJ, 21:209.