

Facilitating Women's Access to Property Rights

through Alternative Dispute
Resolution (ADR)

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SLACC
Sindh Legal Advisory Call Center

LAS
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Law Department
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About Us

The Legal Aid Society (LAS) is a non-profit organization committed to the mission of providing legal assistance and empowerment to marginalized and underserved communities in Pakistan. Since its inception, LAS has worked diligently to ensure that access to justice is not a privilege but a fundamental right for all. With its focus on legal awareness, capacity building, and advocacy, LAS addresses barriers to justice by bridging the gap between the legal system and those who need it most.

One of LAS's flagship initiatives is the Sindh Legal Advisory Call Centre (SLACC) which was launched in September 2014 to provide free legal advice. In 2018, this evolved into the Sindh Legal Advisory Call Centre (SLACC) through a public-private partnership with the Government of Sindh, under the Legal Empowerment of People Program in Sindh (LEPPS). Since its establishment, SLACC has responded to thousands of queries, addressing issues ranging from civil and criminal matters to family disputes and public service concerns.

SLACC's highly trained team of Sindh High Court enrolled lawyers provides accurate and timely legal guidance, empowering citizens to understand and exercise their rights. Through its innovative approach, SLACC has also played a key role in promoting legal awareness and serving as a critical link between citizens and legal institutions. By leveraging technology and data-driven insights, SLACC not only resolves individual legal queries but also identifies systemic gaps, contributing to evidence-based policy recommendations.

At the heart of SLACC's mission lies a commitment to inclusivity, accountability, and empowerment; values that continue to drive its efforts to create a more equitable legal system for all.

Introduction

Women's property ownership catalyzes economic independence, fosters enhanced social productivity and participation, and plays a pivotal role in enhancing decision-making powers and agency in households and communities. Women's participation in land ownership and management is significantly curtailed, evidenced by women owning less than 20% of land across the globe, with the figure being as low as 10% in developing countries.¹ In particular, several countries in South Asia, the Middle East, and North Africa are affected by what the World Economic Forum terms, a "vacuum of rights" despite certain legal protections.²

Akin to this, women's right to property ownership, acquisition, and inheritance— both movable and immovable³ – is enshrined in Pakistan's Constitution⁴, but in actuality, this access is marred by a plethora of obstacles. Including the patrilineal and patriarchal custom of inheritance, a complex legal framework of property rights, and staggeringly low levels of women's education and employment rates leading to hampered mobility and access to public spaces as compared to their male counterparts.⁵ In the Pakistani context, considering that land is a valuable source of income and status, women are often pressured to relinquish their inheritance rights, leading to a significant disparity in property ownership between the genders.⁶ Sons receive the majority of assets, depriving women of their right to inherit the land, thus preventing them from exercising said rights. This is evidenced by the data from the Demographic Health Survey (2017–2018), claiming that an overwhelming majority of 97% of women across the country have been unable to inherit land or property. Currently, Pakistan does not have any laws that afford women a share in the marital property assets created during the marriage, upon ending the marriage through a divorce (initiated by either side)⁸. This intensifies disputes during divorce concerning property division, as outlined in the categories of dower, dowry, and specific commitments made in the 17th column of the Nikahnama, often involving assets like land, houses, household items, cash, and gold.

1. Women own less than 20% of the world's land. It's time to give them equal property rights (no date) World Economic Forum. Available at: <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/> (Accessed: 16 August 2024).

2. Ibid. | 3. Immovable property is something that you own but cannot move from one position to another. For example: land, shops, and houses. Movable property include cars, sewing machines, fridges, jewelry, or financial bonds. These definitions are extracted from LAS's JEC material, "Muslim Women's Right to Movable and Immovable Property".

4. Constitution of Pakistan, articles 23, 24, 172, and 173. | 5. Jacob, P. (2022). Reimagining Women's Property Rights: The Challenges for Minority Religious Communities. LAS. <https://reimagining-women-property-rights> | 6. Ahmad, E., Bibi, A. and Mahmood, T. (2012) 'Attitudes towards women's rights to inheritance in district Lakki Marwat, Pakistan', *The Pakistan Development Review*, 51(3), pp. 197–217. doi:10.30541/v51i3pp.197–217.

7. Bacha, U. (2022) 'Women's Right to Inheritance is Enshrined in Islam and the Law', *Prism*, 5 March. Available at: <https://www.dawn.com/news/1678231> (Accessed: 01 December 2024). | 8. SAHSOL Matrimonial Property: Protecting Women Financially. Accessed: July 30, 2024. <https://sahsolums.edu.pk/node/12899>.

Compounding these challenges is the substantial backlog of property-related cases within the formal legal system, placing further impediments in the path of women seeking justice. Nearly 40,000 property suits were pending in district courts of Sindh in 2019, with the number being substantially higher across the country, as per the Law and Justice Commission of Pakistan.⁹ Thus, the issue of case pendency within the legal system amplifies the temporal aspect of case resolution, particularly within the realm of property disputes. The over 50-year-long legal battle of widow Tahira Sultana in pursuit of her late husband's property, another aspect of matrimonial property division, stands as an example of one such case that has received prominence lately. Unfortunately, this protracted legal battle is not an isolated one.¹⁰ Given the hurdles of the legal landscape, women undergoing the adjudicative process for property disputes find themselves confronted with a multitude of impediments, both in the legal and social realms. Therefore, Alternative Dispute Resolution (ADR), offers a plausible avenue for extrajudicial dispute resolution, alleviating the adversities experienced by women when navigating the formal legal system to get access to their property rights.

9. Sahoutara, N. (2019) 'Inexpensive, speedy justice remains a dream for litigants in property cases', Dawn, 20 October. Available at: <https://www.dawn.com/news/1511795> (Accessed: 01 December 2023).

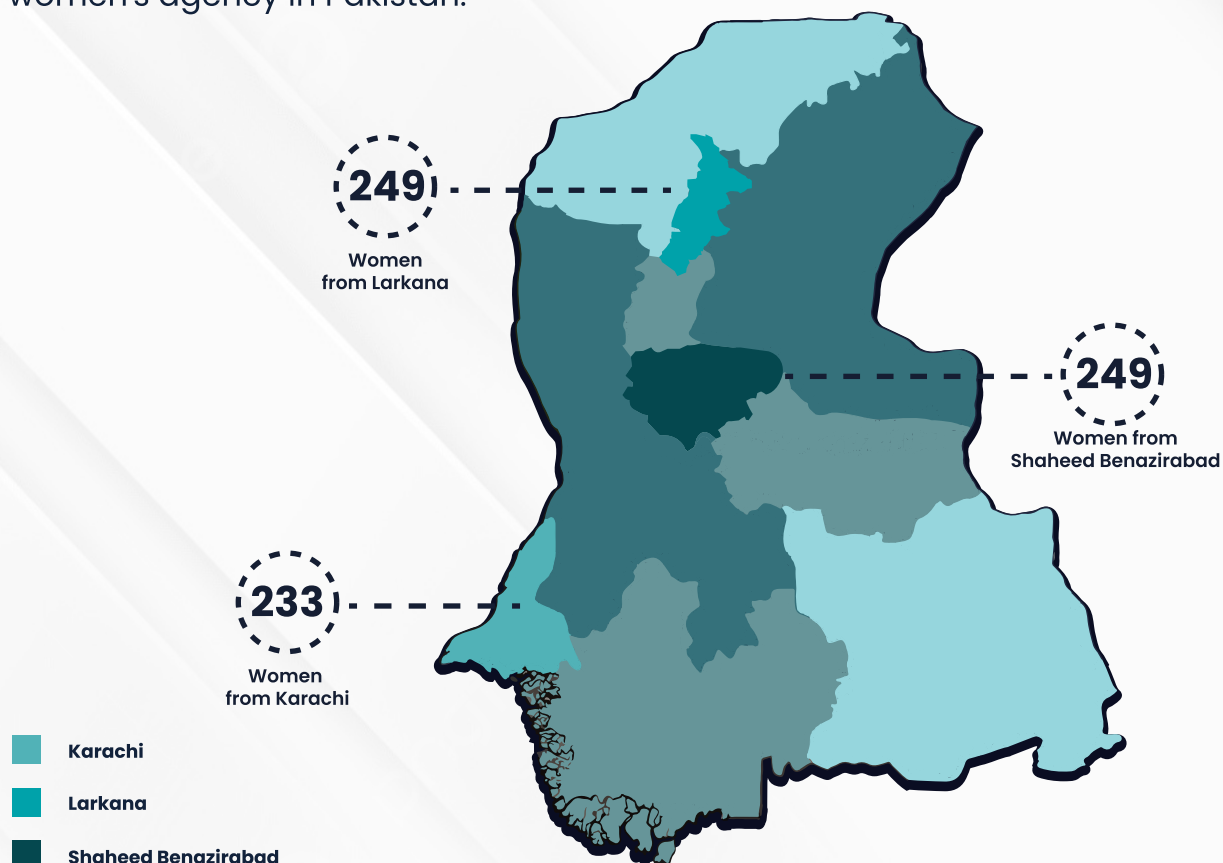
10. Imran, M. (2023) 'Widow, 91 fighting for inheritance rights for last 22 years', The News, 21 January. Available at: <https://www.thenews.com.pk/print/1032661-widow-91-fighting-for-inheritance-rights-for-last-22-years> (Accessed: 01 December 2023).

Methodology

The study was envisioned as a mixed-methods inquiry to assess the trends, attitudes, and perceptions of women seeking access to property rights in Sindh, Pakistan, through data gathered under various programs at the Legal Aid Society (LAS).

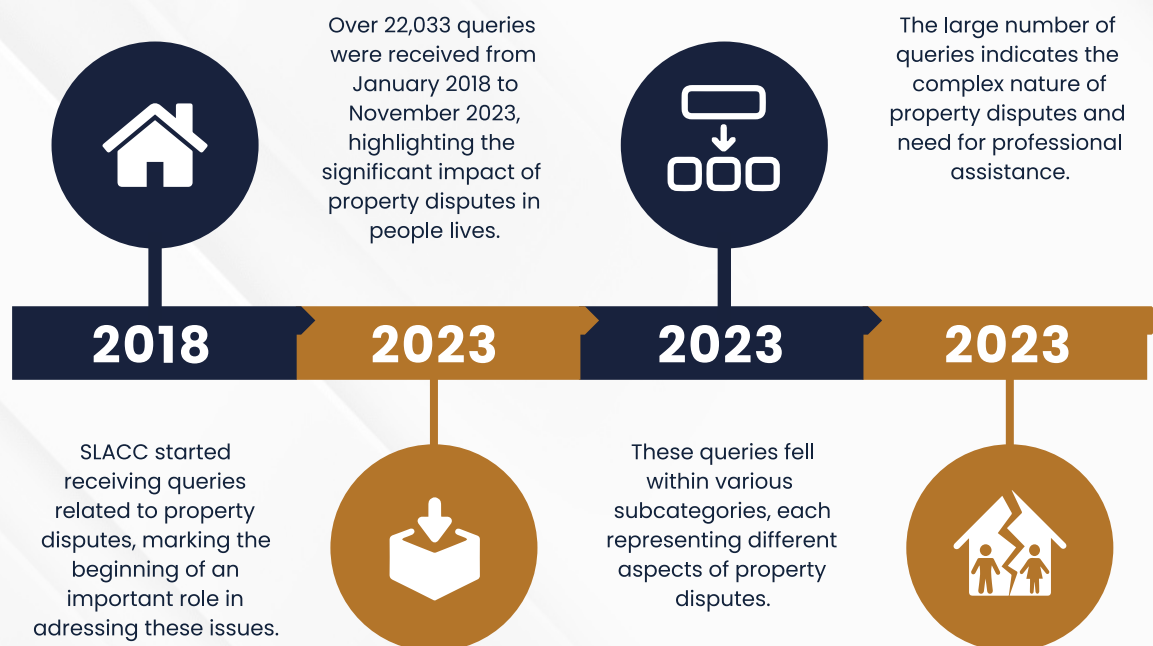
Firstly, it entails a quantitative and qualitative examination of the legal queries registered at the Sindh Legal Advisory Call Center (SLACC), between January 2018 and November 2023, particularly looking at the demographics of the callers and questions/concerns in property-related queries. Secondly, it undertook a quantitative inquiry of survey data collected from **731** women in three regions of Sindh: Karachi **(233)**, Larkana **(249)**, and Shaheed Benazirabad **(249)**.

Cumulatively, the data gathered from the SLACC, household survey, and secondary literature pertaining to women's property issues are utilized in this policy brief to examine the gaps in the system, and preferences and perceptions of women regarding resolving property matters. Using these insights, we recommend establishing a women-responsive ADR system to address property-related disputes, specifically designed to overcome the mobility challenges and barriers women face in navigating the formal justice system. This approach aims to facilitate economic empowerment and enhance women's agency in Pakistan.



FINDINGS

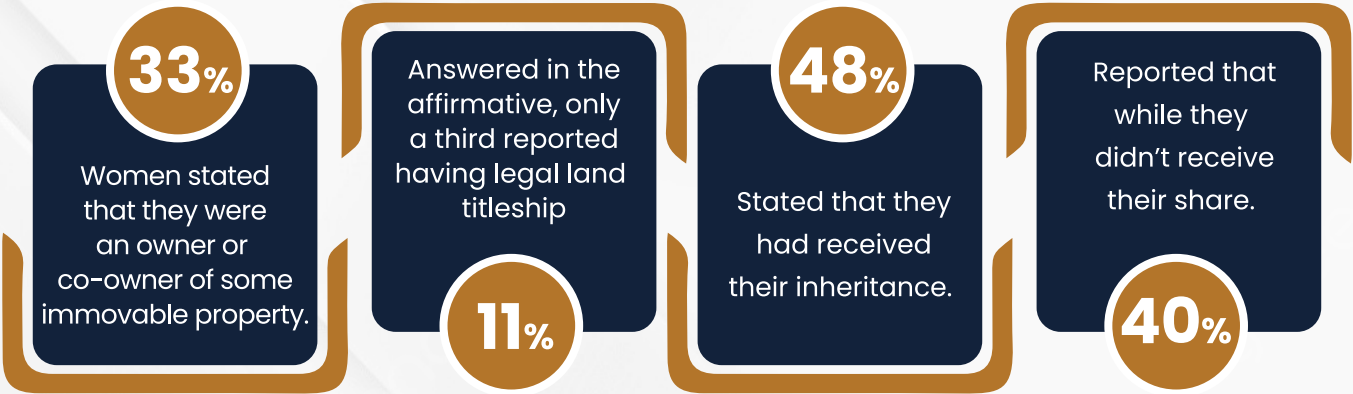
The primary data gathered and analyzed through household surveys revealed that property disputes and issues affect women in significant proportion and this combined with women's perceptions and attitudes about property ownership, legal documentation, and dynamics within the family, which creates hurdles for them to seek legal recourse in the formal justice system, thus preventing them from accessing their property rights. Evidently, **from January 2018 to November 2023, SLACC received over 22,033 queries related to property disputes** that fell within the subcategories of: Inheritance Shares (under Civil-Muhammadan Law) with 3051 queries, Share (under Civil-Partition Law) with 8166 queries, Recovery of Maintenance/Dower/Dower Articles/Bridal Gifts (under Civil-Family Law) with 8130 queries, and Letter of Administration/ Succession letter (under CVL-Succession Act) with 2686 queries in total. Clubbing these four categories together, it can be seen that **there are 19% more female callers in categories pertaining to property issues as compared to across all categories**. Notably, the percentage of female callers in these subcategories is significantly higher as compared to other unrelated subcategories, and in comparison to the overall percentage of female callers.



Upon analyzing the data, it is striking that **a significant proportion of male callers nearly half (49%) of the 2,940 queries categorized under "Women's Property" are seeing advice on behalf of female relatives.** This suggests that many women face substantial barriers, such as lack of phone access or reluctance to directly seek legal help. The current legal framework's gender insensitivity further hinders women from pursuing justice, compounded by their limited legal knowledge, inadequate resources, and the pervasive gender biases within both the family and legal systems. This systemic failure underscores the urgent need for a more inclusive and supportive approach to address women's property disputes effectively.

When it comes to women's own legal property ownership, LAS data indicates that there is an inflated perception of property ownership among women. **33%** women stated that they were an owner or co-owner of some immovable property, however, of this **33% who answered in the affirmative, only a third reported having legal land titleship.** This means that only **11% of women have legal ownership or co-ownership of property.** Additionally, when asked if their families had ever initiated inheritance proceedings for their property, **23%** of the women surveyed, answered in the affirmative. Of those respondents for whom the inheritance process had been initiated, **48% stated that they had received their inheritance. However, almost 40% also reported that while they didn't receive their share,** their male siblings did receive their share. This indicates a clear gendered dynamic in the receiving of inherited property, with male family members much more likely to receive their shares over their sisters and female relatives.

Not only that, women often encounter resistance from within their families when it comes to receiving their shares, with many recounting how family members such as fathers, brothers, and in-laws are actively not giving the woman her rightful share of the property, or hindering her attempts to receive it.¹¹



11. Sindh Legal Advisory Call Centre (2023). Data on query categories and caller demographics.

Furthermore, the survey results also indicate additional obstacles that women hoping to fight for their property rights have to face, including limited mobility and patriarchal household dynamics.¹² Our survey results indicate that **59% of women surveyed cited mobility restrictions even for leisurely visits outside the house, with 65% citing permission needed from the head of the household to go out.** A majority also needed to be accompanied by someone when leaving their homes. Mobility in Pakistan is a gendered experience that prevents women from accessing basic facilities and resources thus severely impacting their quality of life and agency.¹³ Arguably, these mobility and permission barriers will be even more severe when the purpose of leaving the home is to go to court to demand property ownership, a place that is culturally and socially not considered a place for women.

Alongside the barrier of mobility, socio-cultural attitudes may also **label women who demand their inheritance as greedy or dishonorable**, with women who attempt to take their cases to court facing condemnation or isolation from their families or communities. Rarely are women successfully able to negotiate for land rights. In most of these cases, the women lack autonomy and rely on male family members to pursue these cases, especially given the complexity of the legal procedures involved.¹⁴ Together, these factors contribute to making the justice system more difficult to navigate for women in Pakistan and are indicative of why many women do not prefer to go through the formal legal process for a property-related dispute.

Despite these challenges, there is a growing need and aspiration to resolve these property disputes. However, considering the socio-legal dynamics of the country, alternative means of resolution for property disputes could be effective in delivering justice and facilitating women's right to legal property in Pakistan. This is corroborated by our survey data, whereby a significant proportion of women expressed eagerness to explore alternative means to resolve property rights issues, as discussed below.

12. Wasim, Mashhood, and Aamir. (2023). Identifying gaps and challenges in women's acquisition and access to social security mechanisms and property Retrieved from <<https://las.org.pk/wp-content/uploads/2024/03/Social-Security-Mechanisms-Research-report.pdf>>

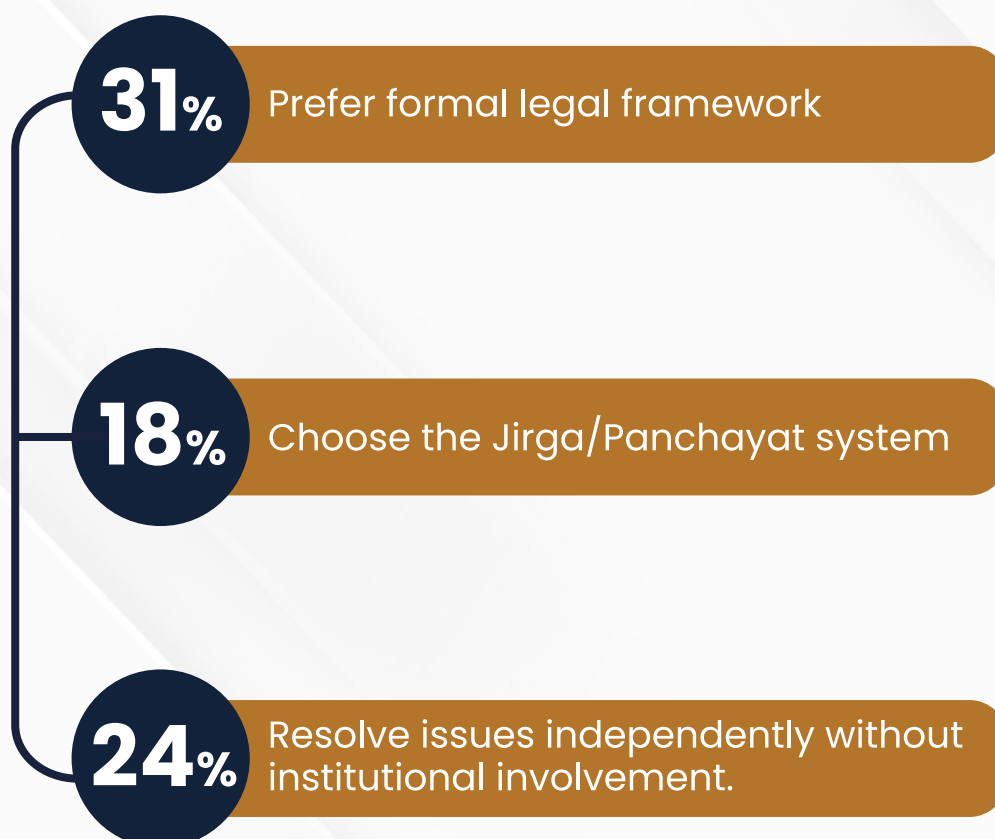
13. Adeel, M., Yeh, A.G. and Zhang, F. (2016) 'Gender inequality in mobility and mode choice in Pakistan', *Transportation*, 44(6), pp. 1519–1534. doi:10.1007/s11116-016-9712-8; and Mumtaz, Z. and Salway, S. (2005) 'I never go anywhere': Extricating the links between women's mobility and uptake of reproductive health services in Pakistan', *Social Science & Medicine*, 60(8), pp. 1751–1765. doi:10.1016/j.socscimed.2004.08.019.

14. Mumtaz, Z. K. and Noshirwani, M.M. (2013) *Women's Land Rights and Inheritance Rights in Pakistan*, Shirkat Gah. Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://shirkatgah.org/shirkat/wp-content/uploads/2017/01/Land-Rights-2nd-Special-Bulletin-2013-English.pdf> (Accessed: 2023).

Bright Spot

Preference for Alternative Dispute Resolution

The distinction between formal and informal justice systems highlights a crucial divergence: formal processes aim to “uncover the truth”, while informal systems focus on “reconciliation and practical solutions”. For many women, greater importance is placed on reconciliation in order to continue living in harmony and safety within their communities and families, leading them to favor informal mechanisms for justice. This preference is substantiated by LAS research, which reveals that a majority of women opt for resolving property disputes outside the formal legal framework. Specifically, **31% mediation or arbitration by community leaders prefer 18% choose the Jirga/Panchayat system, and 24% resolve issues independently without institutional involvement.**



This preference underscores the need for justice systems that align with women’s priorities for reconciliation and community cohesion.

Recommendations

Strengthening a formal women-responsive ADR system to settle women's property related matters

Alternate Dispute Resolution (ADR) offers a way to settle disputes outside formal litigation through methods like mediation, arbitration, or minitrials. This approach not only reduces costs and accelerates resolution but also eases the burden on the formal legal system while fostering community harmony. Women's preference for such informal mechanisms reflects their desire for quicker, more harmonious solutions. Therefore, formalizing an ADR system to support women's access to property rights could greatly enhance their ability to secure and exercise property ownership.

This can be done through the following steps:



1. Amendments in the law to mandate mediation in women's property cases



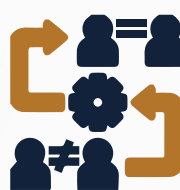
2. Establishment of Women-centric ADR committees



3. Formal Justice system directing cases to Mandatory Mediation under women-centric ADR



4. Mediation Accreditation and Gender Sensitive Training



5. Empowering Ombudsperson and Implementing Best Practices.

To begin with, ADR must be formalized and strengthened to resolve women's property cases. This would entail that provincial ADR laws are amended to mandate mediation in women's property cases with case diversion potential. Such systems have been successfully implemented in countries such as Ghana, which has made it mandatory for land disputants to go to ADR mechanisms before approaching the formal court system, under its Land Act (2020).¹⁶ Through this mandating of ADR, ADR committees are made an integral part of the land governance system of the country, taking on a complementary role to the formal justice system.¹⁷ This could be adopted in Pakistan, where ADR is yet to be strengthened to resolve civil matters such as property disputes in a gender and culturally-sensitive manner.

The Family Courts Act, 1964¹⁸, is designed to expedite the resolution of disputes related to marriage and family affairs. At the pre-trial stage, courts seek to identify contentious issues between parties and facilitate reconciliation, particularly in cases of divorce. To strengthen the law, it is proposed that mediation be mandated for all marital disputes, not just divorce cases. This should encompass issues like maintenance, child support, dower, dowry articles, and matrimonial property. Prolonged disputes over property division can escalate tensions, but mandatory mediation, based on the circumstances and context of the case, would provide a structured approach for couples to reach mutually agreeable solutions, reducing the likelihood of protracted legal battles and ensuring fair outcomes.

However, in cases involving domestic violence or cruel treatment- grounds for women seeking dissolution of marriage- mandatory mediation should be avoided, as it may be retraumatizing. Instead, the law should mandate counseling and psychosocial support for both spouses, with such cases prioritized by family courts to ensure swift resolution and protection for the women involved.

16. Ghana, Land Act Report (2020).

17. Ibrahim, A.-S. et al. (2022) 'Resolving land conflicts through alternative dispute resolution: Exploring the motivations and challenges in Ghana', Land Use Policy, 120, p. 106272. doi:10.1016/j.landusepol.2022.106272

18. The Family Courts Act, 1964 (Act XXXV of 1964), retrieved from http://punjablaws.gov.pk/laws/177.html#_ftn27

As the matter pertains to women and gendered dynamics within the society and family, women-specific and centric ADR committees will encourage women to seek such court-sanctioned and formalized mediation options. Therefore, including women within the structures of ADR mechanisms could address the prevailing cultural and gender sensitivities hindering access to property. Such women-centric mechanisms can be seen in India, which has several 'all-woman courts', consisting entirely of female mediators who ideally come from the same locality and have a similar social and cultural background to the female complainants. These mediators are even characterized as 'peer mediators'.¹⁹

Taking this structure into consideration, the following recommendations can be posited to make ADR mechanisms more directly targeted toward women:

- More diverse compositions of ADR committees.
- Appointment and training of more women mediators by government institutions.
- Involvement of women's groups and civil society representatives to
- Spread awareness of available resources for women and encourage them to use the mechanisms.

Such women-centric and community-centric measures would also encourage women to initiate complaint procedures independently, without requiring the support of male relatives to take their cases forward for them. Recruitment of mediators from within communities to align cultural values.

The ADR mechanisms in Pakistan, despite laws at provincial levels, are yet to be formalized and strengthened as a means to resort to disputes and seek justice. While amendments subsequent implementation may take time, one effective way of enhancing the ADR mechanism is to mandate that the formal justice system directs cases from court to currently available ADR options. This will have a significant impact on cases related to women's property cases, where they can seek expeditious dispensation of justice and avoid any inconveniences and societal disapproval that come with formal court cases.

Additionally, this would also mean that court-recommended lawyers are provided adequate accredited national and international mediation training opportunities, to ensure that lawyers are actively made a part of the ADR system and are equipped to represent clients. Under the Japanese legal system, there is a mediation system for non-criminal cases where the person acting as a mediator is specialized in a particular topic and has a background relevant to the issues being mediated. Therefore, they do not provide mediation on all matters but are trained in specific areas.²⁰ Furthermore, the Ministry of Women's Affairs in Cambodia developed guidelines in mediation for dealing with cases of violence against women (VAW).²¹

Taking reference from these, it would be prudent for Pakistan to provide specialized training, guidelines, and certifications to mediators for women's property issues. Such training would include:

- Knowledge of inheritance rights of women under the Pakistan constitution and Sharia law.
- Understanding of marital cases involving dower, dowry, and property division if stipulated in the Nikahnama.
- Awareness of gendered power dynamics in relation to women's inheritance. Awareness of gender equality.
- Principles of gender-sensitive, gender-responsive, and human-rights-centered mediation.
- Procedural guidelines that prioritize the safety of the complainants in property related cases- both legal and matrimonial.

With these guidelines, a certification program may be developed to ensure mediators are properly trained and have a clear understanding of the law, societal context, and their roles in relation to the complainant.

20. 'Gender Responsive Alternative Dispute Resolution 4-5 December 2017' (2018). Timor Leste: UN Women.

21. 'Gender Responsive Alternative Dispute Resolution 4-5 December 2017' (2018). Timor Leste: UN Women.

Another effective way to strengthen the ADR mechanism is to utilize and empower Ombudspersons to resolve property matters. The Khyber Pakhtunkhwa (KP) Enforcement of Women's Property Rights Act of 2019 provides for the protection of women's property rights through the office of the KP Ombudsperson, which has been established under the Protection Against Harassment of Women Workplace Act, 2010.²² With this Act, the Ombudsperson's office has been given additional jurisdiction to take on women's property complaints, conduct inquiries, and pass orders to the Deputy Commissioner, state authorities, or any private person in regard to the property in question. According to this jurisdiction, the police, revenue, and other relevant departments are all bound to carry out the orders of the ombudsperson. Similar jurisdiction is provided to the Federal Ombudsman Secretariat for Protection Against Harassment (FOSPAH) in the Islamabad Capital Territory, as well as to the Punjab Ombudsperson through the Punjab Enforcement of Women Property Rights Act, 2021. This model can be recreated and enforced in Sindh, by providing additional authority to the Sindh Ombudsperson to address grievances related to women's ownership of property, including matrimonial aspects such as dower, dowry, and property division. This would provide an alternative means of grievance redressal that is also enforceable and avoids the negative aspects associated with the formal judicial process.

Conclusion

Women's access to property ownership in Pakistan is hindered by social and gender dynamics, compounded by an inefficient and unfriendly legal system. Data from LAS highlights that women are disproportionately affected, often unable to rely on the formal justice system despite their desire to secure property rights. Consequently, Alternative Dispute Resolution (ADR) through informal channels is often preferred. To improve women's property rights in Sindh, Pakistan, ADR mechanisms should be formalized and strengthened. This requires amending the law to make mediation mandatory in women's property disputes, and courts should refer these cases to ADR before proceeding. Lastly, establishing women-centric ADR committees and training mediators and lawyers in gender sensitivity and relevant laws are crucial along with implementing best practices from around the country and the world like empowering Ombudsperson to handle such cases would further enhance access to property rights through ADR in Sindh.

References

Adeel, M., Yeh, A.G. and Zhang, F. (2016) 'Gender inequality in mobility and mode choice in Pakistan', *Transportation*, 44(6), pp. 1519–1534. doi:10.1007/s11116-016-9712-8.

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Bacha, U. (2022) 'Women's Right to Inheritance is Enshrined in Islam and the Law', *Prism*, 5 March. Available at: <https://www.dawn.com/news/1678231> (Accessed: 01 December 2024).

Ibrahim, A.-S. et al. (2022) 'Resolving land conflicts through alternative dispute resolution: Exploring the motivations and challenges in Ghana', *Land Use Policy*, 120, p. 106272. doi:10.1016/j.landusepol.2022.106272.

Imran, M. (2023) 'Widow, 91 fighting for inheritance rights for last 22 years', *The News*, 21 January. Available at: <https://www.thenews.com.pk/print/1032661-widow-91-fighting-for-inheritance-rights-for-last-22-years> (Accessed: 01 December 2023).

Mumtaz , K. and Noshirwani, M.M. (2013) Women's Land Rights and Inheritance Rights in Pakistan, *Shirkat Gah*. Available at: <https://www.thenews.com.pk/print/1032661-widow-91-fighting-for-inheritance-rights-for-last-22-years> (Accessed: 2023).

Mumtaz, Z. and Salway, S. (2005) "'I never go anywhere": Extricating the links between women's mobility and uptake of reproductive health services in Pakistan', *Social Science & Medicine*, 60(8), pp. 1751–1765. doi:10.1016/j.socscimed.2004.08.019.

Sahoutara, N. (2019) 'Inexpensive, speedy justice remains a dream for litigants in property cases', *Dawn*, 20 October. Available at: <https://www.dawn.com/news/1511795> (Accessed: 01 December 2023).

Vatuk, S. (2013) 'The "Women's Court" in India: An alternative dispute resolution body for women in Distress', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 76–103. doi:10.1080/07329113.2013.774836.

Women own less than 20% of the world's land. it's time to give them equal property rights (no date) World Economic Forum. Available at: <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/> (Accessed: 16 August 2024).

'Gender Responsive Alternative Dispute Resolution 4–5 December 2017' (2018). Timor Leste: UN Women.

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