

2. FAMILY LAW AND CUSTOM IN PAKISTAN

The Gender Gap between Policy and Practice

The State shall protect the marriage, the family, the mother and child.
–Article 35 of the Constitution of Pakistan

2.1 To understand the condition of women in a society, it is important to examine their status both within the domain of the family as well as within the larger cultural and sociopolitical context, which structures their opportunities and defines their capacity for action.

2.2 This chapter examines ways in which the rights of women are articulated in law and the manner in which customary practices interact with such legal provisions. A major focus of the chapter is on family law, since familial attachments and networks define many aspects of individual status and rights in much of Pakistan and the interaction between custom and law within the domain of the family essentially defines the *de facto* set of opportunities available to women as well as the barriers they confront in fulfilling even basic needs such as education and health. An important message of this chapter is that customary practices in Pakistan play a complex and not entirely detrimental role in the lives of women, so understanding these institutions and their interaction with the law is an essential first step to improving the status of women in Pakistan.

2.2. In the context of family law, the chapter examines legal rights around marriage and the intergenerational transmission of wealth to women. Even when laws are modified and passed by government, perceptions about these legal arrangements and their enforceability are likely to significantly impact the welfare of women and can tell us much about their options and choices in other spheres. It is also precisely in these areas that customary practices exert tremendous force. Many practices are flagrant violations of state as well as official Islamic law and are clearly detrimental to women's welfare. However, some cultural practices protect women in an environment where legal protections are either absent or unenforceable. This is well known in many other contexts where traditional institutions “step into the breach” left vacant by absent or unenforceable legal protections. We examine practices that appear to play this role in rural Pakistan. This is not to suggest that such customary practices yield optimal outcomes for women, but that given the lacunae in written laws and enforcement capacity some customary practices may actually enhance women's welfare.

2.3. The chapter is organized as follows. Section I reviews women's legal entitlements in family property and examines patterns of inheritance in the quantitative data and reviews alternative explanations for the patterns observed. Section II describes important customs in Pakistan's marital practices, providing an overview of women's rights in marriage and divorce. Both sections also review relevant developments in family law. Section III presents recommendations regarding legal reform and enforcement of legal provisions that have been suggested by civil society organizations (CSOs) and legal scholars in Pakistan and contextualizes these recommendations in terms of the chapter's broader themes.

2.4. The chapter relies on three broad sources of information: for law, publications of Pakistani experts, some of whom have written background papers for this Assessment; new survey data³⁶; and a qualitative study (described in Box 1.3) in five villages in rural Sindh and Punjab.³⁷ The survey includes

³⁶ The data used here are from the second round of the Pakistan Rural Household Survey (PRHS II), 2004. The survey covers 94 villages in Punjab and Sindh (the sample is broadly representative of the provinces) and was designed by Hanan Jacoby and Ghazala Mansuri of the World Bank's Development Research Group (DECRG). The Pakistan Institute of Development Economics, Islamabad collected the data, collaborating with DECRG. The chapter uses early results from Jacoby and Mansuri's ongoing work.

³⁷ The qualitative study was done as a collaborative piece of work with another ongoing study, an evaluation of a Community Driven Development Project in Rural Pakistan.

detailed modules on both marriage and inheritance customs, providing a novel view of cultural practices from a large, representative survey. Survey data on such topics—especially that with any claim to representativeness—have rarely, if ever, been collected in Pakistan. For the purposes of this chapter, the sample is divided into three regions: northern Punjab (districts Attock, Faisalabad, and Hafizabad), southern Punjab (districts Bahawalpur, Muzaffargarh, and Vehari), and Sindh (districts Badin, Larkana, Mirpurkhas, and Nawabshah). Southern Punjab is generally viewed as culturally and economically closer to Sindh, northern Punjab being on average richer and more developed. As will become apparent, there are striking contrasts in customary practices across these regions.

2.5. Legal scholars in Pakistan have frequently noted the lacunae in family law as it pertains to the rights of females and their position in the family.³⁸ These lacunae, often mistakenly attributed to the tenets of Islam, result in part from South Asia's history of neglecting to codify official personal law (Islamic and otherwise), a history with origins in British colonial rule as well as regional variations in customary practice. These scholars note that comprehensive legal reform has repeatedly and intentionally overlooked family law, allowing the entrenchment of ancient, region-specific tribal practices to avoid offending local interests. This precedent was set in 1772, when the Warren Hastings Plan established a British-style hierarchy of civil and criminal courts across South Asia, until then governed by Muslim law. In matters regarding family law (such as marriage and inheritance), however, the Hastings Plan adopted indigenous customary norms, an approach that scholars agree was designed to minimize the risk of local rebellion against British rule.

2.6. The British reapplied this approach to family law in the 19th century, simply compiling the local customs of South Asia's various regions rather than uniformly codifying family law for the entire subcontinent. Traditional practice was to hold sway in each region, effectively reinforcing the gap between local custom and official law regarding the rights of women and girls. Even courts were barred from applying formal statutes unless local custom lacked any rule in a particular case or situation. Some of the time, customary practices prevailed in ways that were deleterious to females, who tended to be defined solely by their family role in a patriarchal society—i.e., by their need to be protected and to remain in the private sphere. Though this gap has narrowed since partition (in 1947) with new legislation since then, the discrepancy between family law and customary practices has persisted to some degree, most obviously in the areas of inheritance and marriage law. In spite of legislation designed to codify and clarify females' liberties in Pakistan, cultural norms and religious beliefs routinely override statutory laws, often interfering with women's rights to family inheritance and to protection in marriage and divorce. According to Dr. Shaheen Sardar Ali, "Family law in Pakistan is a mixture of codified law and customary practices based on religious norms and administered in a secular, procedural framework of a modern day dispute resolution forum—the judiciary....Cultural norms and religious rules are just as potent a force, if not more, as legislative enactments."³⁹

³⁸ Ali (2000); Awan (2005); Mehdi (2002); Razvi (2004).

³⁹ Ali (2000: 139). Dr. Ali is former Minister for Health, Population, Welfare and Women's Development for the Government of Pakistan and Former Chairperson of Pakistan's National Commission on the Status of Women. She currently is Professor of Law at the University of Warwick, in the United Kingdom.

I. INHERITANCE

Women's Legal Entitlements to Inheritance

2.7. Women in Pakistan have the legal right to inherit family wealth, yet they rarely exercise this right. Rubya Mehdi, scholar of gender and property law in Pakistan, points out that although Islamic (*Shariah*) law and Pakistani state law both entitle women to inherit immovable and movable property (see Annex 1), under colonialism and independence alike, the rule in practice has been to deny women's control over their inheritance—of land in particular—and often their entire claim to it.⁴⁰ This is especially true in rural Pakistan, where the tribal nature of social organization undermines female inheritance rights. Rather than emphasizing the Islamic concept of immediate family, inheritance practices emphasize the importance of keeping property within the larger (tribal) family, which is always headed by men. Another explanation for the low incidence of female land inheritance is families' routine equation of dowry (money or property brought by a bride to her husband at marriage) with a share of inheritance, though this is not legal and has been decried by government officials, activists, and civil society organizations in Pakistan.⁴¹ Because few estates in rural Pakistan include any property other than land, and virtually none consist solely of non-land assets, only the intergenerational transmission of land is considered in the following review of inheritance law and subsequent discussion of analysis results.

2.8. To grasp the complexity of inheritance practices involving Pakistani women, one must be aware of the legally pluralistic nature of family law in Pakistan, as well as distinctions between Islamic (*Shariah*) law, customary law, and state law. Non-Islamic law will not be discussed in this chapter, as laws specifically targeting Hindus, Christians, and other non-Muslim minorities in Pakistan typically have fallen outside the scope of family law since independence.⁴² State law that has codified inheritance rules is based on *Shariah* law. Due to the powerful force of customary practice in the country, however, the inheritance rules most often followed are those based on custom, which can differ substantially by region and include those practiced by Muslims and non-Muslims. Because they typically supersede codified state law, these rules are accepted as 'customary law' on inheritance, according to Pakistani scholars of gender and Islamic law. Customary law tends to give much less recognition to women's rights than does state law, which in some cases tends to be less generous to women than does formal interpretation of *Shariah* law.⁴³

2.9. Based on Islamic law, state law stipulates the share of women's inheritance to be one-half that of men in similar relationships to them (e.g., a daughter would inherit one share for every two shares that a son inherits), due to the man's greater responsibility for supporting the family. *Shariah* law also has distinct provisions for inheritance based on the inheritor's relationship to the deceased: children who inherit along with parents are to receive a greater share than their parents, as a greater share of the child's life lies in the future than does his/her parent's; widows who have children or filial grandchildren are to receive one-quarter of the inheritance, while widows without any such descendants are to receive one-eighth; and a daughter is to receive one-half her father's property if she has no sisters, while two or more daughters are to receive two-thirds of all heritable property between them.

⁴⁰ Mehdi (2002: 25-41). See Annex 1 for a discussion on changes in state law on Muslim inheritance.

⁴¹ *The Dowry and Bridal Gifts (Restriction) Act* of 1976 was the Government of Pakistan's first attempt to constrain the practice of dowry, which is discussed further in Section 3 of this chapter. Please see Annex 2 for more information on civil society organization's efforts to restrict the practice of dowry.

⁴² Non-Muslims have no representation on Pakistan's Commission on Marriage and Family Laws, which thus tends not to make recommendations for modifying family law regarding non-Muslims, and dispute settlements typically rely on cultural and religious norms specific to the minority group—similar to the tradition of customary law practiced among Muslims. For more discussion on this topic, please see Government of Pakistan (1997: 20-21).

⁴³ Ali (2000); Mehdi (2002).

2.10. State and *Shariah* laws' clear designation of female inheritance rights notwithstanding, Pakistani women rarely receive their shares in immovable property, especially in rural areas.⁴⁴ This occurs in spite of high courts' attempts to give special consideration to women's interests when hearing disputes over land inheritance, often with the objective of relieving women from the sense of obligation to relinquish inheritance to male family members. In several contemporary cases, courts also have emphasized the duty of brothers to provide their unmarried sister with maintenance, whether she has never been married, widowed or divorced, *in addition* to any inheritance that is her due—*not* in exchange for it, as is the common practice.⁴⁵ According to experts, however, these cases are the rare exceptions: "...because of the barriers to women inheriting immovable property in traditionally patrilineal communities...[R]elatively a small number of cases come to the courts and moreover...the superior courts decisions and attitudes are very different from that of the lower courts, which are more flexible and compromising toward the customary normative orders."⁴⁶

Results from Quantitative Analysis

2.11. Analysis of the PRHS-II survey data corroborates findings from previous studies of inheritance patterns in Pakistan: when women do inherit property, it typically is controlled by male heirs due to general powers of attorney, gift deeds, or voluntary relinquishment of the property by the female to the male heirs.⁴⁷ Land remains controlled by male members regardless of family wealth. Although in principle the family is likely to recognize female members' *right* to inherit property, it is rarely the case that the female inheritor retains—that is, inherits and keeps or sells—the property. Women's tendency to retain family property does not vary by family wealth, moreover. The analysis of regional variation in inheritance patterns suggest that women in Punjab are three to four times more likely than women in Sindh to retain inherited land.

2.12. To ascertain general patterns of landholding in Pakistan, PRHS-II asked all ever married women age 15 and older a set of questions concerning inheritance from their father, mother, and/or husband, as applicable. Around 45 percent of women whose fathers had already died reported that their fathers had land or other significant property at time of death, whereas the deceased mothers of only 5 percent of women had left an estate. Given the paucity of maternal inheritance, we focus here on transfers from the paternal side. Even so, the sample of potential female heirs is rather selective, though more so in Sindh, with 36 percent of father's having heritable wealth, than in southern Punjab (45 percent) and the wealthier northern Punjab (58 percent). The median landholding amount of fathers at death is about eight acres in both Sindh and northern Punjab, but less than one-half this amount in southern Punjab. Since few estates in rural Pakistan include any property other than land and virtually none consist solely of non-land assets, only the intergenerational transmission of land is considered in what follows.

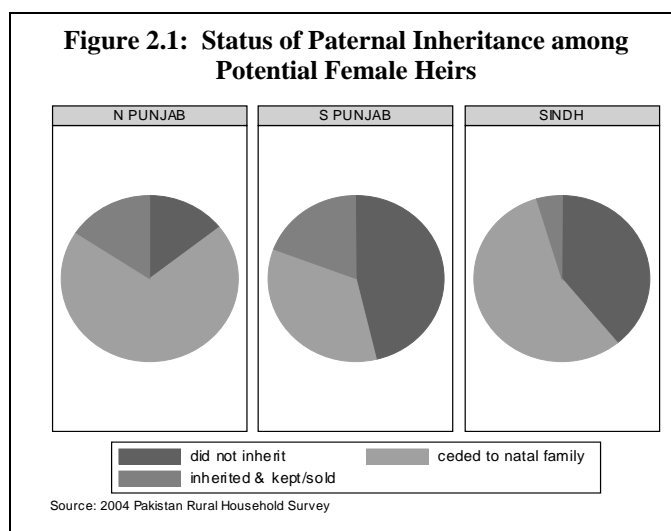
⁴⁴ Mehdi (2002) <http://pakistan.lead.org/media/report4jan04.htm>.

⁴⁵ A detailed description of the precedent-setting case of Ghulum Ali v. Ghulam Sarwar Naqvi and related cases can be found in Mehdi (2002: 34-40).

⁴⁶ Mehdi (2002: 40).

⁴⁷ Ali (2000); Mehdi (2002) <http://pakistan.lead.org/media/report4jan04.htm>.

2.13. Figure 2.1 divides potential female heirs into three categories: (1) those who had no recognized inheritance rights; (2) those who had inheritance rights but relinquished them (in the vast majority of cases to a brother), or retained them but later returned the land to their natal family; and (3) those who inherited and either kept the land or sold it. On one level, there is little conceptual difference between categories (1) and (2); a woman may nominally have the right to inherit a share of her father's land, but given her standing with regard to her brothers, she is under inexorable pressure to cede her rights to them or to other natal relatives. Looking, then, at category (3), there is a big difference across regions. Inherited land was retained by 16 and 19 percent of women in northern and southern Punjab, respectively, but by fewer than 5 percent of women in Sindh.



2.14. Multivariate regression analysis shows that the likelihood of inheriting and retaining land does not depend on the size of the father's estate.⁴⁸ The same result holds if we consider the share of heritable land received by the woman (which equals zero in most cases). These findings indicate that inheritance practices in rural Pakistan are invariant to family wealth.

2.15. Even once a woman has secured possession of land inherited from her father, the question remains of how much control she exercises over it. Among the 13 percent of women who were bona fide heirs, 13 percent of them subsequently sold their land. Of the remaining women, about 15 percent signed some form of *mukhtianaama*, a document granting a relative power-of-attorney over the land. Thus, of the few women hanging on to land inherited from their father most have managed to maintain operational control over it.

2.16. PRHS-II includes information on the extent of widow inheritance, but the samples are small. Broadly speaking, the situation of widows is similar to that of daughters; of the widows whose husbands had estates, only about 16 percent inherited and retained their husbands' land. In most cases where inheritance rights were relinquished, they were given to a son.

Explanations for the Gap between Policy and Practice in Female Inheritance

2.17. Why is land, by far the most important heritable asset in rural Pakistan, generally not transferred to women at the time of the father's (or husband's) death? One explanation, of course, is discrimination. Parents favor sons over daughters for many reasons, most of them culturally based. The practice of favoring sons over daughters when bequeathing land is rooted in patriarchal tribal traditions, which in the past did have a practical function; agricultural land was withheld from daughters to be "kept in the family," using the broader definition of family to signify the tribe or caste.⁴⁹ The high incidence of endogamous marriages—in which men and women from the same village are married, discussed later in this chapter—in contemporary Pakistan does not appear to daunt customary practices designed to keep

⁴⁸ Multivariate regression analysis also shows that while women's education has no significant effect, older women are more likely to inherit and subsequently retain land. Older women may be more likely to inherit because the property more often comes up for inheritance for women of higher ages than for younger women, whose fathers are more likely to still be living.

⁴⁹ Ali (2000: 114); Mehdi (2002: 35).

property under tribal control, preventing the possibility that female family members take land with them when they marry and must move into their in-laws' homes. Even though daughters are likely to remain in the village (and caste) when they marry, parents prefer sons over daughters because of deeply-ingrained beliefs that a son provides resources to family households, whereas a daughter absconds with them.

2.18. Botticini and Siow (2003) suggest an alternative explanation based on efficiency rather than parental preferences. In virilocal (by paternal descent) agrarian societies, sons invariably take over the father's farm and, consequently, need to be given the right incentives to maintain and invest in the farm's assets. If daughters were to share in agricultural land upon the father's death, then brothers would have lower incentives to work hard on the land until their father's death. Given that parents care about daughters' welfare, but prefer not to bequeath wealth to them in the form of land for this reason, the daughters' inheritance generally will take the form of dowry and will not include any land. Botticini and Siow present evidence (from medieval Italy) that, once dowry wealth is taken into account, daughters are not discriminated against in favor of sons in the disposition of parental property. Whether the same applies in rural Pakistan is an issue addressed later in this chapter.

Insights from the Qualitative Data

2.19. Interviews conducted in rural Pakistan (data is described in Box 1.3) indicate some proximate causes for Pakistani women not claiming their inheritance. A great majority of the 60 women interviewed expressed concerns that claiming their inheritance would violate custom and incur animosity from the natal family. They also tended to lack information about the exact share of heritable land to which the law entitles them.⁵⁰ Even those who had this information almost invariably gave—or said they would give—their share over to male family members (typically brothers) either because they felt they were abiding by a worthwhile cultural tradition, or because they feared the natal family's (especially brothers') reprisal if they took control of the share entitled them. None of the 60 women interviewed from the five sites in Sindh and Punjab (one of the three in Punjab, Lodhran, lies in southern Punjab) had claimed and retained the land that was their right to inherit. Only four women (6.7 percent) said they would claim it if they could, but these women either were unable to inherit land (two of the four were from families with no landholdings) or felt unable to actually obtain the property due to resistance from the natal family.

2.20. Table 2.1 displays percentages of women who had knowledge about their inheritance rights—among all 60 women, and among women interviewed per region and per site. Although almost all (95 percent) of the interview subjects were aware of their right to inherit land, a minority knew the amount to which they were entitled. Of the 24 women interviewed in the two Sindh sites (in Badeen and Mirpur districts), 23 knew of their inheritance right. Only five (22 percent) of these 23 had an idea of what amount was their due; moreover, of the two women in Badeen who knew the amount both were under the impression that they were entitled to one-fourth of the land, instead of the one-third (technically speaking, one-half of their brothers' share) assured them by law.

⁵⁰ http://sachet.org.pk/home/news_updates/news_14.asp

Table 2.1: Rural Women’s Knowledge and Perceptions of Their Inheritance Entitlements by Region
(percent)

Region	Aware of their legal right to inherit family property	Aware of what portion of the property they were entitled to inherit	Willing to relinquish inheritance to placate natal family/brothers	Total
Northern Punjab	100 (24)	45.8 (11)	62.5 (15)	100 (24)
Faisalabad	100 (12)	58.3 (7)	75 (9)	100 (12)
Talagang	100 (12)	33.3 (4)	50 (6)	100 (12)
Southern Punjab (Lodhran)	83.3 (10)	41.7 (5)	75 (9)	100 (12)
Sindh	95.8 (23)	20.8 (5)	79.2 (19)	100 (24)
Badeen	91.7 (11)	16.7 (2)	92 (11)	100 (12)
Mirpur	100 (12)	25 (3)	67 (8)	100 (12)
Average of All	95 (57)	35 (21)	71.7 (43)	100 (60)

Note: Statistics are percent of those interviewed; frequencies are in parentheses.

2.21. Among all 60 women, those in the two northern Punjab sites (in the Faisalabad and Talagang districts) tended to be most informed about their privileges. All 24 women interviewed from northern Punjab were aware of their right to inherit land, though only 11 of these 24 knew how much they were entitled to inherit (and only four of the 11 were from Talagang). In Lodhran district, southern Punjab, 10 of the 12 women interviewed knew of their inheritance privileges, but only five knew how much they were allowed to inherit. Interestingly, although no one interviewed in Lodhran had accepted or would accept their share—just like in the other four sites—two Lodhran women did mention the possibility of conditional acceptance, saying that women should accept their portion of land if their brothers are not taking proper care of them. Most women—nearly 72 percent—interviewed in all five sites, when reporting that they would not consider taking their share, expressed wanting to make their brothers happy and voiced explicit fears that taking their inheritance would damage their relationships with their natal family members, namely their brothers and fathers. A large majority of women expressed these sentiments in every site, with the exception of those in Talagang, where only one-half (though a large portion, but not a majority) reported voluntarily relinquishing their shares to brothers.

I think, I should not claim my share. I will not take it. My brother is dear to me. Brothers help in the hour of need...If I will claim my share, the warmth of our relationship will be affected. If even brothers do not dislike it, their wives and children would definitely feel that. They say that we have taken share from them. Although, it is our right and we should take it but the relationship is affected.

–Woman from northern Punjab (Faisalabad), Age 30

I have never asked for my share, nor have they ever given it to me. Even if there comes a tough time, I will not ask for my share. If I ask for my share, others will not say anything, but my father and brother will become angry with me.

–Woman from Sindh (Mirpur Khas), Age 24

The few women interviewed who wanted to take their share were denied it and felt they had no recourse in leveraging the law that entitled them to it.

I have asked my brother to give me my share....But he says that I am married and it is my husband's responsibility to feed me and take care of me. Here most of the women forego their share; they want to take it but they don't get it. They can't do anything when they don't get it; they remain silent about it.

–Woman from Sindh (Mirpur Khas), Age 22

If a daughter asks for her share, she is not considered decent and nice. My mother asked for her share so my mamoon (maternal uncle) and his family became very angry. They started fighting and we separated from each other.

–Woman from Sindh (Mirpur Khas), Age 40

II. MARRIAGE

2.22. Despite landmark laws enacted in the twentieth century to protect women's rights in marriage⁵¹ legal scholars and human rights organizations in Pakistan agree that girls and women continue to confront profound disadvantages in marriage and divorce.⁵² As with inheritance practices, cultural constraints on women's rights in marriage and divorce are grounded not so much in Islamic law itself as in region-based customs and/or idiosyncratic interpretations of Islamic law, according to these scholars. Customary practices that discriminate against women have thus been allowed to distort or overlook Muslim and state law on marriage and divorce. As this section will show, however, not all institutions of marriage currently practiced in Pakistan are necessarily harmful to women, let alone illegal.

2.23. The following paragraphs address marital customs that are widespread in Pakistan, including child marriage, different marriage types such as first-cousin and watta satta (where two different families trade their daughters for marriage), creation of the *nikahnama* (marriage contract), dowry, and endogamy, which has strong implications for women's decisionmaking within the household. Among these common customs only some have a tendency to impinge upon the rights of females. Two objectives of the analysis, below, are to (1) better understand which customs tend to disadvantage females; and (2) relay key recommendations—made by Pakistani scholars and civil society organizations—for remedying problems associated with these specific customs.

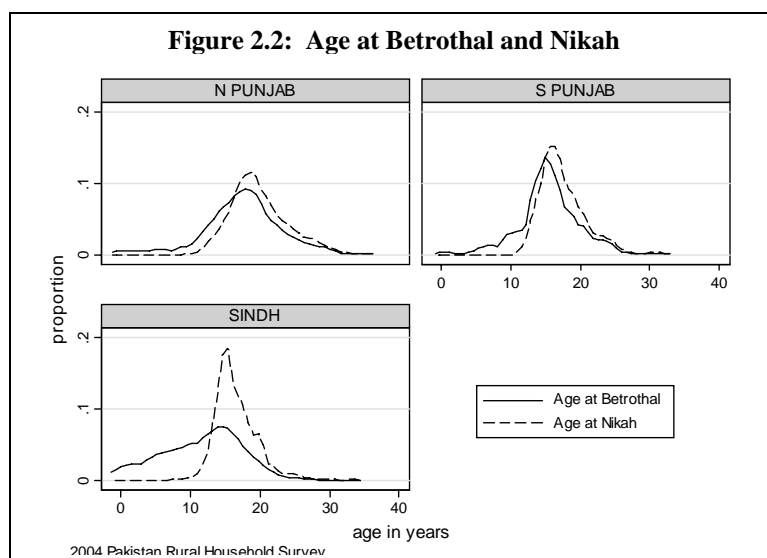
Age at Marriage

2.24. Since 1961, contracting marriage for any female under age 16 has been illegal in Pakistan. The problems associated with child marriage are well known to human development experts and human rights advocates in Pakistan (see Annex 2.2). A minimum age of 16 was established as part of a set of legal initiatives—collectively known as *The Muslim Family Law Ordinance* (MFLO) of 1961—to improve the status of women in Pakistan (please see Annex 2 for elaboration). The 16-year age minimum was higher than the previous age minimum of 14 for females and 16 for males, set in 1929 under the *Child Marriages Restraint Act* (CRMA), before which there had been no minimum age for marriage. The MFLO also requires the consent of both male and female parties before the marriage can occur, an attempt to offset traditional practices that promote early marrying-off of daughters by natal families. Of course, the definition of “consent” remains open to interpretation.

⁵¹ Please see Annex 2.2 for a list of laws cited in literature on family law and women's rights in Pakistan.

⁵² Ali (2000); Mehdi (2002).

2.25. Data from the PRHS-II are ideally suited to analyze issues of age at marriage and consent. Women were asked both for the age at which they were betrothed and the age at which the marriage ceremony, the *nikah*, took place. The overall the average age at *nikah* of 18 (median 17), and betrothal at age 14 (median 15) conceals considerable regional variation. In Sindh (see Figure 2.2), the average interval between betrothal and *nikah* is nearly five years (median three years), whereas in both northern and southern Punjab the average interval is about two years (median 1 year). By the time they reach age ten, nearly 40 percent of girls in Sindh have already been promised in marriage, while the comparative figure in Punjab is just over 10 percent and varies little between north and south. Moreover, a considerable proportion of girls in Sindh (about 5 percent) appear to have been promised in marriage at or before birth.



By the time they reach age ten, nearly 40 percent of girls in Sindh have already been promised in marriage, while the comparative figure in Punjab is just over 10 percent and varies little between north and south. Moreover, a considerable proportion of girls in Sindh (about 5 percent) appear to have been promised in marriage at or before birth.

2.26. Focusing strictly on prima facie violations of the MFLO, one finds that 31 percent of rural women were married before age 16 (10 percent in northern Punjab, 26 percent in southern Punjab, and 43 percent in Sindh). The proportion of women who were promised in marriage before age 16, however, is much higher—overall 57 percent (32 percent in northern Punjab, 50 percent in southern Punjab, and 73 percent in Sindh). Evidently, the law does not explicitly address child betrothals, since the girl presumably still lives in her natal home while she awaits marriage. As long as the marriage is ultimately “consensual,” the law is silent.

2.27. This brings us to the issue of consent. Practically no woman chooses her own husband in rural Pakistan. More precisely, 97 percent of women report that their parents or other members of their extended family choose for them, although the woman’s opinion was solicited in 12 percent of these cases. Here again we see a sharp regional contrast, in that the percentage of woman having had at least some input into the choice of husband is 27 percent in northern Punjab, 12 percent in southern Punjab, and only 8 percent in Sindh. Women who have a say in the matter tend to be older at the time of betrothal than those who have no say at all, with a median age of 17 versus 14. Interestingly, the small minority of women whose opinions were solicited at the time of their marriage tended to approve of their families’ choice of husband. There are practically no cases of outright disapproval, and most cases of lukewarm approval or no expressed preference occur when the husband is a blood relative (and thus presumably well-known to the bride in advance of marriage). Even so, just because a woman approved of her husband does not mean she necessarily wanted to get married.

2.28. More generally, consent is a slippery concept. Minimally, it requires that the woman express “no objection” to the identity of her husband and perhaps the timing and conditions of the marriage. In practice, however, there may be no alternative for a girl but to accept the marriage arranged by her parents; it is a “take-it-or-leave-it” offer in which leaving-it is simply unthinkable as she has few other

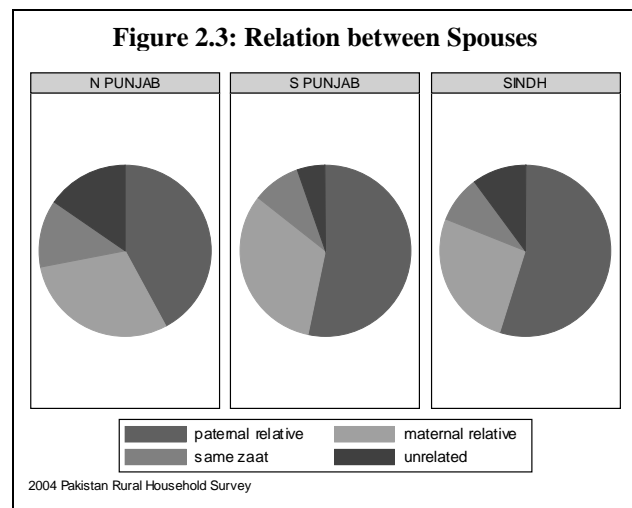
options. Thus, while the state can, at least in principle, ensure that minimum age requirements for marriage are met, consent is far more difficult, if not impossible, to verify and enforce.⁵³

2.29. In sum, legal protections regarding girls' marriages appear to have limited scope and effectiveness: girls and sometimes their families are ignorant of legal restrictions on child marriage; moreover, when their families do know of these legal restrictions, they can afford to flout them because enforcement is absent. Prominent civil society organizations, such as the Aurat Foundation, have in some cases pursued enforcement. Since its inception in 1986, the Aurat Foundation's Legislative Watch Programme has redrafted several Muslim laws to make them more sensitive to gender issues. Reiterating several recommendations made by the Commission on Marriage and Family Laws, the Legislative Watch Programme has suggested additions and amendments that would make the *Child Marriage Restraints Act* more effective.⁵⁴ Some of the more important suggestions include changing the definition of "child" to anyone under age 18 and effectively raising girls' marriage age minimum to 18 years; and increasing punishments for adult males who marry children, as well as for guardians who knowingly allow their children to marry. Of course, the key issue will remain the enforcement of these restrictions on the ground.

Types of Marriage

2.30. As has just been noted, marriages in rural Pakistan are almost universally arranged by parents and other relatives with little input from the bride.⁵⁵ Under these circumstances, the interests of the family take center stage in the formation of unions. Examining the types of customary marriage that exist in rural Pakistan may reveal something of the nature of these familial interests.

2.31. First of all, PRHS-II data indicate that a remarkable 78 percent of marriages involve blood relatives, both paternal and maternal, and another 10 percent involve fellow zaat/biradiri (caste/tribe) members, leaving fewer than 12 percent of married couples completely unrelated to each other. The patterns are broadly similar across regions, although the preference for paternal relations is notably lower in northern Punjab (Figure 2.3).



2.32. In the vast majority of cases where the spouses are blood relatives (93 percent), the woman knew her husband for a least a year before marriage and usually for all of her life. By contrast, 59 percent of women marrying an unrelated member of her own zaat met her husband for the first time on their wedding day. This figure rises to 87 percent for women marrying unrelated men outside their zaat. The interval between betrothal and *nikah* also tends to be larger for marriages among relatives; in Sindh, this gap exceeds five years on average, compared to just over three years for nonblood

⁵³ In fact, there appears to be little enforcement of MFLO of any kind. Often family members simply will falsify a girl's age on her marriage certificate to avoid any questions from authorities, who typically will not attempt to ensure the veracity of the information reported (Ali 2000).

⁵⁴ "Suggested Additions/Amendments in Muslim Family Laws: The Child Marriage Restraints Act, 1929 (XIX of 1929)." Aurat Foundation (various years).

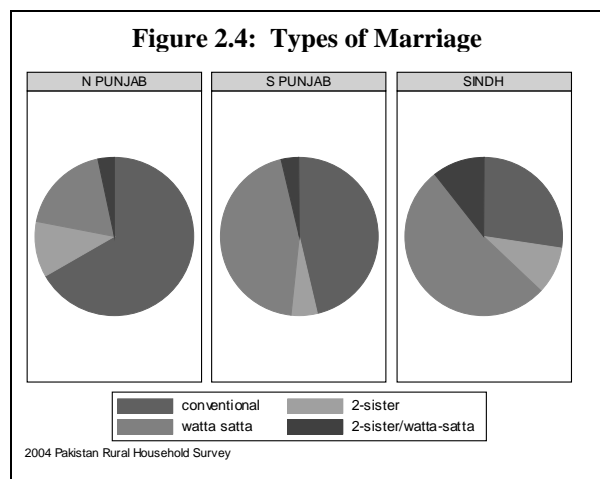
⁵⁵ What little input there could be in choice of spouse is constrained by restrictions on girls' mobility and, above all, on her association with members of the opposite sex. Please see Annex 2 for details.

relatives. Marriages between relatives thus are arranged further in advance of the wedding date than those between nonrelatives.

2.33. Marriage between paternal relatives is said to be a means of keeping heritable wealth, particularly land, in the paternal lineage. Yet, the mechanism needs clarification. As noted earlier, few women in rural Pakistan directly inherit any property from their father. While women do receive bequests in the form of dowry, these are typically small amounts relative to the inheritance that their brothers receive, at least for landed households (see below). To be sure, marrying a paternal cousin keeps a woman's assets within her paternal lineage, but this is not a substantial motivation considering the sums involved. More salient, given that families indeed care about dividing wealth among their sons and daughters, is that marrying a paternal cousin enables a woman (and her children) to benefit from her grandfather's estate without actually inheriting it herself; she benefits through her husband's inheritance. As already discussed, in a context where the bulk of wealth is tied up in land and in which sons take over their fathers' farms, inheritance may be channeled through sons rather than daughters for efficiency reasons.

2.34. Considerations of property devolution are not the sole, or even an important, explanation for consanguineous marriage in rural Pakistan. The rate of marriage to paternal relatives among women with landless fathers-in-law is also high. Indirect inheritance of land by daughters cannot be a motivation in such cases. Marriage among maternal relatives is quite prevalent as well. In the context of India, Dyson and Moore (1983) suggest that cross-cousin marriage, in general, enhances the status of women as compared to marriage into an unrelated household. Women may be better treated, for example, in their cousin's household. Married women in rural Pakistan, unlike their counterparts in much of India, typically remain in reasonably close contact with their natal families, which may attenuate this particular advantage of cross-cousin marriage.

2.35. More than one-half of marriages recorded in the PRHS-II data are village endogamous, which is to say that the husband and wife are from the same village. The rate of village endogamy is 59 percent in Sindh, 53 percent in southern Punjab, and 45 percent in northern Punjab. Not surprisingly, a strong relationship exists between village endogamy and consanguinity. Nearly two-thirds (63 percent) of marriages between relatives occur within the same village, compared to 31 percent of intra-zaat marriages and 19 percent of completely unrelated marriages. It is not clear, of course, whether the desire for consanguinity (or inter-marriage within the zaat for that matter) leads to village endogamy, village endogamy leads to consanguinity, or some third motivation leads to both village endogamy and consanguinity.



2.36. Two unusual forms of marriage in rural Pakistan are, in order of prominence, *watta satta* (*adlo badlo* in Sindhi) and two-sister marriage. *Watta satta* is an exchange marriage whereby a woman and her brother (or some other male relative) from one family wed a sister and brother from another family, usually around the same time. The second form involves two sisters marrying two brothers (or other male relatives) from another household. Often (in Sindh at least) these two forms overlap (Figure 2.4). Remarkably, only 31 percent of Sindhi marriages take the “conventional” form, compared to 51 percent of marriages in southern Punjab and 68 percent in northern Punjab. The majority of *watta satta* marriages occur between brother-sister pairs, though somewhat less so in Sindh (65 percent) than in southern and northern Punjab (73 and 80 percent, respectively). The second most popular *watta satta* arrangement, but

still much less prevalent than brother-sister (16 percent of *wattas* overall), is when at least one of the counterpart couples are uncle and niece. Various other combinations occur as well, but none is very common.

2.37. *Watta satta* may arise out of the strong preference for cross-cousin marriage, as just noted. If both brother-sister pairs involved share the same grandfather, then the *watta* effectively marries two sets of cousins. While the incidence of *watta satta* is lowest among women unrelated by blood to their husbands, the rate is still, in an absolute sense, quite high at 25 percent. *Watta satta* thus cannot solely be a mechanism for maximizing the number of marital links across related families. *Watta satta* may also be motivated by a desire to limit dowry (or bari) expenses, which normally must be paid up front. The advantage of marrying one's daughter into one's son's wife's family is that there may be no need to exchange dowries at all. This would be desirable when parents are severely cash constrained. We examine this hypothesis empirically below.

2.38. Women's own views provide insights into the roles of *watta satta* and two-sister marriage. When asked whether they would favor their own daughters marrying in a *watta satta* arrangement, 70 percent of current *watta satta* brides responded strongly in the affirmative, whereas 13 percent said they would strongly disfavor it. By contrast, only 27 percent of non-*watta satta* brides would strongly favor the institution for their own daughter, compared to the 44 percent who strongly disfavor. Opinion was less split regarding two-sister marriage, with 62 percent of women who are themselves in such an arrangement strongly favoring it for their own daughters, compared to 43 percent among remaining women. This suggests that women perceive advantages, but also associate a certain degree of stigma, to these marital institutions.

2.39. What might the advantages be? One way to approach the question is to ask how a woman's bargaining power is enhanced either by having her brother married to her husband's sister (*watta satta*) or by having her own sister as a sister-in-law (two-sister marriage). In the case of *watta satta*, qualitative data indicate that this arrangement normally involves a tacit agreement among the families for each husband to retaliate in-kind against his wife in case of the other husband's malfeasance. Thus, by maltreating his wife, a husband risks having his sister maltreated by her husband, a mutual deterrent which raises each wife's bargaining power within their respective marriages. Two-sister marriage may have a similar effect, but through a different mechanism. Two sisters living together in the same household as sisters-in-law are more likely to cooperate than two unrelated sisters-in-law living under the same roof. Thus, in case of disagreements with their husbands, each of the wives in the two-sister marriage has a stronger fallback position (i.e., cooperation with each other) than two unrelated wives. This gives them more bargaining power and may consequently lead to better treatment by their husbands and their husbands' families.

2.40. Are women in *watta satta* or two-sister marriages really better off than women in conventional marriages? This is a complicated question, both because of the difficulty in measuring women's welfare within marriage (see below) and due to the potential selection of women into these types of marriage. To the extent that women from poor families, or who are otherwise of low status, are more likely to enter into such arrangements, they may appear to be worse off; but this might just be a selection bias. The PRHS-II (2004) asks women several questions about the "quality" of their marriage, which can be used to construct an index of marriage quality.⁵⁶ Regression analysis shows no significant difference in quality of marriage across *watta satta*, two-sister, and conventional marriages after controlling for the women's age,

⁵⁶ The questions are: (1) "Does your husband usually spend his free time with you?" (2) "Does your husband show affection toward you?" (3) "Does your husband respect you and your wishes?" (4) "How happy are you with your overall relationship with your husband?" Questions (1)-(3) can be answered "frequently", "sometimes", or "never". Question (4) can be answered on a five-point scale.

schooling, region of residence, and husband's land ownership. While this analysis does not necessarily fully surmount the measurement and selection problems just mentioned, it does, at the very least, suggest that women in these exotic forms of marriage are not treated *worse* than those in conventional marriage, as some Pakistani commentators have implied.

2.41. While more research is needed to uncover the predominant rationale for these pervasive marriage customs, one intriguing possibility emerges from the discussion thus far. In rural Pakistan, a woman would have little, if any, legal recourse in the event of mistreatment by her husband. It would be practically unheard of to involve the police, for example, in a domestic abuse case. Perhaps the wife could temporarily return to her natal family, as explored later in this chapter, but this may entail stigma and shame of its own. Arrangements like *watta satta*, two-sister marriage, and even cross-cousin marriage may thus serve, at least partly, to fill a void left by the state. This argument, of course, presupposes that parents, in arranging their daughter's marriage, are also attentive to her interests—albeit, if only to avoid stains on family honor that might arise from a marital breakup.

The Marriage Contract (*Nikahnama*)

2.42. The institution of marriage (*nikah*) is central to Muslim family law. Scholars agree that the Islamic essence of marriage is a contract in which all parties involved are to honor multiple requisites that serve and protect the various parties.⁵⁷ In light of marital practices that were particularly harmful to females during colonial rule (occurring even in the face of subcontinentwide legislation to protect the rights of females in marriage), the Government of Pakistan has taken pains to incorporate protections for women and girls into marriage law (see Annex 2) by emphasizing the importance of the marriage contract (*nikahnama*) and abiding by its requirements. While these laws have absorbed the sanctity of the marriage contract emphasized by *Shariah*, many are applicable to all citizens of Pakistan, and not just specific communities or religious groups.⁵⁸

2.43. The *nikahnama* is the centerpiece of the *Muslim Family Law Ordinance* of 1961. By requiring the registration of a marriage contract and that it contain specific protections for both male and female parties, the MFLO attempted to make marital practices more transparent and accountable to the law. The specific protections of women's rights to be incorporated into the *nikahnama* are detailed in Annex to Chapter 2.

2.44. Although the MFLO's *nikahnama* contained unprecedented protections for females entering into marriage, these protections have failed to bring sweeping improvements in Pakistan's marital practices. There are two reasons for this. First, as with other aspects of family law, requirements of the *nikahnama*—not to mention of previous family laws (i.e., the *Dissolution of Muslim Marriages Act* (DMMA) of 1939 and MFLO of 1961)—often are not met by practicing parties, as they conflict with customary practice; moreover, authorities rarely hold parties accountable for fulfilling requirements. Second, according to women's rights advocates in Pakistan, the relevant provisions in the family laws and *nikahnama* are too weak—e.g., they are too vaguely worded or lack meaningful content—to effectively intervene in customary marital practices that discriminate against women. Civil society organizations and prominent legal scholars in Pakistan stress that the provisions most in need of change are those related to polygamy and divorce. Customary routines in both areas have undercut women's abilities to extricate themselves from marriages in which their basic needs and rights are not met.

2.45. In accordance with recommendations by the Commission on the Marriage and Family Laws, The Aurat Foundation's Legislative Watch Program has released several documents recommending changes

⁵⁷ Ali (2000); Mannan (1995).

⁵⁸ Government of Pakistan (1997, 19).

to marital laws and to the *nikahnama* form as originally conceived in 1961.⁵⁹ Many recommendations involve easing the requirements for a woman to rightfully seek a divorce.⁶⁰ Justice Majida Razvi, who chairs Pakistan’s National Commission on Women, also has urged that divorce law “...provide that a husband must intimate pronouncement of divorce to the competent authority within a limited period e.g., within a week from the date of pronouncement and violation must entail severe punishment than what is provided in law or a wife should be entitled to give the notice of *talaq* [divorce] where a husband fails to do so” because, so far, regarding divorce, “no period has been prescribed within which a husband must inform the competent authority that he has given divorce to his wife...”⁶¹

2.46. To further restrict the practice of polygamy, it also has been recommended that the bridegroom should have to disclose his marital status in the *nikahnama*, which before only required the bride to disclose her marital status. Justice Majida Razvi writes:

...the *Nikahnama* should have some additional clauses indicating if the bridegroom is already married, has never married or a widower or if marriage has been terminated through divorce in any form the same should be specified. Further if there is any existing wife that should also be mentioned. In such a case the particulars of the existing wife, the name and address should also be mentioned in the *Nikahnama*. Further in such cases if the bridegroom has taken permission from the first wife or the competent authority and a duly attested document to that effect be produced. Further if there are any children from the previous marriage, detailed information in regard to the said children and as to in whose custody children are and who is responsible to maintain them. The same particulars can be mentioned or asked about the wife also.⁶²

2.47. The Legislative Watch Programme also urges a looser definition of lack of “equitable treatment” in the DMMA’s clause granting women the right to divorce polygamous husbands; the original provision allows divorce only if the husband, who “has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur’an.”⁶³ It is important to note that polygamy is rare in rural Pakistan. Data from the PRHS-I 2001-02 indicates that fewer than 3 percent of rural households nationwide contain polygamous marriages, although these figures do not account for men who may have other wives living in different households.

2.48. The PRHS-II is a rich source of information on marital contracts. According to these data, three-quarters of married women do not have a *nikahnama* (or are not aware that they have one). There is, once again, a striking regional contrast: 69 percent of northern Punjabi women have a *nikahnama* and 25 percent of those in southern Punjab, but only 4 percent of Sindhis. In addition, 72 percent of those who report having a *nikahnama* have never read it or have never had it read to them. Given, then, that only 7 percent actually have a *nikahnama* and know what it stipulates, the scope of its protection seems severely limited. Indeed, practically no woman who had a *nikahnama* reports that it gives her the right of divorce, though nearly one-third do not have any idea one way or the another.

2.49. Who obtains a *nikahnama*? Multiple regression analysis shows that, aside from region, the only significant determinant of having a *nikahnama* is the woman’s education level (controlling for education

⁵⁹“Suggested Additions/Amendments in Muslim Family Laws: Nikahnama Form”; “Suggested Additions/Amendments in Muslim Family Laws: The Dissolution of Muslim Marriages Act, 1939 (VIII of 1939)”; Aurat Foundation; (various years).

⁶⁰ The Aurat Publication’s recommendations for looser grounds—compared to the DMMA’s (1939) originally-specified grounds for female-initiated divorce—are discussed in Annex 3.

⁶¹ Razvi (2004: 6).

⁶² Ibid., p. 7.

⁶³ “Suggested Additions/Amendments in Muslim Family Laws: The Dissolution of Muslim Marriages Act, 1939 (VIII of 1939),” Legislative Watch Programme, Aurat Publication and Information Service Foundation, Islamabad.

of her father and her spouse's father). Having a primary school education or less nearly doubles the likelihood of obtaining a *nikahnama*, and having above a primary school education nearly triples the likelihood. There are two ways of interpreting this result. First, it is possible that even minimally educated (i.e., literate) women are in a stronger position vis-à-vis their husbands' families to demand a *nikahnama*, compared to uneducated women. An alternative interpretation is that higher female educational attainment is merely capturing better treatment of girls more generally. That is, families who care more about their daughters will give them more education and, at the same time, will attach greater importance to the *nikahnama*. Under either interpretation, the *nikahnama* seems to have positive connotations for women.

2.50. One traditional element of the marital contract is the *haq meher*, a sort of severance clause whereby the husband agrees to pay a prespecified cash amount to the wife in the event that he initiates divorce. Here, again, we have a custom that appears, at least in principle, to fill a legal lacuna, namely enforcement of alimony. To this extent, *haq meher*, negotiated by the parents of the bride and groom, mitigates arbitrary divorce, or at least protects women against its costs.

2.51. Nominally, *haq meher* appears to be quite important in Sindh, where 53 percent of women report an amount according to the PRHS-II. This compares to 18 percent of women in northern Punjab and only 6 percent of women in southern Punjab. The amount of the *haq meher*, however, is often so low—500 rupees or less in 30 percent of cases—to render it a largely symbolic gesture. If we consider only *haq meher* in excess of the more respectable figure of 2,500 rupees, these regional differences are attenuated. Only about 20 percent of Sindhi women have been promised such a generous *haq meher*, compared to 9 percent in northern and 3 percent in southern Punjab. Nevertheless, these regional patterns seem to indicate that the *nikahnama* and *haq meher* may, to some extent, serve as substitutes for the law in protecting women's interests.

Dowry and other Marital Transfers

2.52. The role of dowry and other marital transfers is not well understood, in Pakistan or elsewhere, and remains an active area of economic research. Also lacking is basic empirical information, such as who actually controls dowry assets after the marriage. This is a crucial question because, in theory at least, dowry compensates the bride for receiving only one-half (if any) of her brothers' share of inheritance. A second important question is whether dowry demands, as in the case of India, lead to violence against women. According to some Pakistani experts:

The custom of a dowry puts a premium on the bride. Demands for a substantial dowry are often made before the marriage. Subsequently, the bride is often humiliated or tortured [by the in-laws] for not bringing the expected amount. At times the bride is subjected to extreme violence. The violence takes many forms like burning, hanging the woman or killing her.⁶⁴

2.53. Despite the absence of precise figures on the extent of dowry violence in Pakistan, views such as these have led to the enactment of the *Dowry and Bridal Gifts (Restriction) Act (1976)*, the *Dowry and Bridal Gifts (Restriction) Rules (1976)*, and the *Dowry and Bridal Gifts (Restriction) Amendment Ordinance (1980)*. The objective of these statutes is to restrict dowry and other marriage expenditures, even though such laws are practically impossible to enforce.⁶⁵

⁶⁴ Government of Pakistan (1997: 39).

⁶⁵ For a description of The *Dowry and Bridal Gifts (Restriction) Act, 1976*, please see Annex 2 of this chapter.

PRHS-II collects detailed information on transfers to the bride at the time of her marriage. Dowry, which comes from the bride's side, and bari, which comes from the groom's side are practically universal in rural Pakistan (at least in Punjab and Sindh). Both transfers are nominally intended to go to the bride, and the data indicate that, by and large, this is the case in reality. For each asset transferred, the survey asks women the extent to which it is exclusively hers to dispose of as she pleases. Tables 2.2 and 2.3 show the responses for what are by far the most commonly given dowry and bari assets, household goods (clothes, appliances, and utensils) and gold. In the case of dowry, only one-fifth of recipients report less than full control, about equally split between partial and no control. Interestingly, especially in light of earlier findings, Sindh seems to be the most "progressive" region in terms of security of property rights over dowry assets, whereas southern Punjab is the least secure by a wide margin. The story is similar for bari assets, although overall the extent of the wife's control is somewhat lower. This perhaps is due to the fact that bari comes from the family of the groom and the husband and his family feel more entitled to it. Practically no women in the PRHS-II sample report receiving land as part of her dowry (this is true of bari as well), a finding consistent with the theory of dowry outlined above.

Bequeathing wealth to daughters in the form of land creates a disincentive for virilocal sons to maintain and improve the land. According to the theory, a daughter's dowry should largely be in the form of cash or other assets (e.g., gold, clothes, utensils) whose value does not depend on the work effort of her brothers. In fact, the only productive asset to feature prominently in dowries is livestock. About 25 percent of dowries include livestock (buffaloes, most commonly), and they constitute about 9 percent of dowry value on average. But this exception actually proves the rule, as livestock production in rural Pakistan is principally the responsibility of women. Consequently, bequeathing wealth to women in the form of livestock has no negative incentive effects.

2.55. Given the generally high level of female control over dowry (and bari) assets just reported, how much wealth transfer to daughters does the typical dowry represent? PRHS-II data indicate the median dowry to have a total value of about 10,000 Rs.(Table 2.4)—almost twice as large as median bari. Dowry and bari values are both much higher in wealthier northern Punjab than in southern Punjab and Sindh. The comparison between the value of the woman's dowry and that of her brothers' inheritance (calculated by dividing the father's landholdings, valued at median land prices per acre, by the number of brothers) is revealing. Among women whose fathers had land, the median dowry is worth 15,000 Rps., whereas the median value of brothers' inheritance is worth 100,000 Rps., or more than six times as much.

Table 2.2: Extent of Wife's Control Over Dowry

<i>Region</i>	<i>Full</i>	<i>Partial</i>	<i>None</i>	<i>Total</i>
Household Goods				
N. Punjab	87.9	5.4	6.7	100
S. Punjab	60.4	19.3	20.3	100
Sindh	91.7	4.1	4.1	100
All	82.5	8.5	9.0	100
Gold				
N. Punjab	81.0	7.0	12.0	100
S. Punjab	55.6	19.5	24.9	100
Sindh	93.2	3.9	3.0	100
All	79.6	8.9	11.5	100

Table 2.3: Extent of Wife's Control Over Bari

<i>Region</i>	<i>Full</i>	<i>Partial</i>	<i>None</i>	<i>Total</i>
Household Goods				
N. Punjab	78.2	8.9	12.9	100
S. Punjab	51.8	22.3	25.9	100
Sindh	89.0	3.4	7.6	100
All	77.1	9.5	13.5	100
Gold				
N. Punjab	67.1	10.7	22.2	100
S. Punjab	46.7	15.9	37.4	100
Sindh	86.7	6.1	7.2	100
All	72.6	9.5	17.9	100

Taken along with the low incidence of direct inheritance by women, these figures indicate that women from landed households are strongly discriminated against in favor of their brothers when it comes to the disposition of the patrimony. The situation is different, however, for women whose fathers do not own land. In this case, while the median dowry is only worth 7,500 Rps., the brothers are not getting any inheritance (although they may be getting *inter vivos*⁶⁶ transfers in one form or another that are not captured in the data).

<i>Region</i>	<i>Median value (Rupees)</i>		
	<i>Dowry</i>	<i>Bari</i>	<i>Total</i>
N. Punjab	31,250	16,000	49,500
S. Punjab	12,000	5,000	18,500
Sindh	6,350	3,650	11,900
All	10,,200	5,400	17,950

2.56. Multiple regression analysis shows that dowry increases significantly (1) with father's landholdings, education, and whether he holds an important position; (2) with father-in-law's landholdings; (3) if the woman has no sister, but not if she has no brother; and (4) with woman's education, but only above the primary level. Thus, dowry depends strongly on the woman's family wealth relative to the number of sisters claiming dowry out of that wealth. This presents an interesting contrast to women's inheritance, the probability of which, as we have already seen, does not vary by father's wealth. In addition, higher dowries are associated with wealthier husbands, suggesting positive assortative mating on wealth. Finally, the *nominal* value of both dowry and bari at the time of marriage increase significantly with year of marriage, but the rate of increase is modest, on the order of 2-3 percent per annum. Thus, there is no evidence of dowry inflation, as in India, with its negative implications for the treatment of women.

2.57. Regarding marriage type, dowries are not significantly different across *watta satta* marriages and non-*watta satta* marriages.⁶⁷ Bari expenditures, on the other hand, are substantially lower in *watta satta* marriages, but given the typical size of bari this difference does not seem to provide a compelling explanation for the high incidence of exchange marriage in rural Pakistan.

2.58. Finally, there is the question of whether demands for dowry or other postmarital transfers are the source of violence against women. Recent evidence from India (Bloch and Rao 2002) suggests that husbands may use domestic abuse as a way to extort greater dowries from wives' natal families. According to PRHS-II data, however, only about 15 percent of women in rural Pakistan say that their natal families ever provided support to their husband's household. Far and away the most important occasion for such support was to assist in health expenditures, which could have been for the wife herself (with house construction or major repair a distant second). Moreover, only a small minority of respondents, less than 9 percent, report feeling even the mildest pressure to obtain financial support from their natal families. Virtually none said this pressure was intense. Given this evidence, and the high level of control women say they have over dowry assets, there does not appear to be wide scope for dowry-related violence in rural Pakistan.

2.59. Taken together, the findings suggest that laws restricting dowry and other marriage-related transfers, to the extent that they are enforceable, may be counterproductive in Pakistan. First, if we take seriously what women say about their ability to dispose of dowry assets, then dowry is the principal channel of female inheritance in rural Pakistan. It is not clear how cutting off this channel will benefit women. Second, in rural Pakistan there is little evidence of the kinds of negative consequences of dowry

⁶⁶ Between living persons

⁶⁷ Only *watta satta* marriages in which both counterpart couples are already married are included, since these cases are more likely to be motivated by a reduction in dowry or bari expenses.

that have arisen in India. In particular, dowry inflation is minimal and ex-post demands for financial assistance from the natal household are modest. Thus, stamping out high dowries will not obviously lead to better treatment of women.

Women's Welfare and Autonomy within Marriage

2.60. It is perhaps fitting to conclude this chapter with an analysis, limited as it is, of women's welfare within marriage. Implicit in the chapter thus far has been the crucial role of the natal family, especially after marriage. The discussion already has touched upon the high rate of village endogamy in rural Pakistan, but even those figures underestimate the proximity of natal households. According to PRHS-II data, among the 10 percent of women whose natal families live in a neighboring village, 77 percent report that they can be visited within the same day (roundtrip), whereas, among the 16 percent (20 percent) of women whose natal families live within (outside) the tehsil, 63 percent (36 percent) are within a one-day visit. All in all, then, 78 percent of married women have easy access to their natal families in this sense.

2.61. Of the women with easy access, more than one-half report meeting members of their natal family on a daily basis. Even for those 22 percent without easy access, the majority meet with natal family members several times a year; moreover, 79 percent of women with easy access to their natal homes say that their family would shelter them for a few nights if need be, a figure that drops off to 61 percent for women whose natal families are not within easy reach. These numbers suggest that married women are far from being cut off from their natal home, as is so often the case in India, where marriage is substantially less village endogamous than in Pakistan. The households least hospitable to their married daughters are found in Sindh, where only about two-thirds of women would be welcomed back home in the event of a marital crisis. Women's expectations of financial support from their natal families show broadly similar patterns.

2.62. When asked whether they had ever temporarily returned to live in their natal home due to an estrangement from their husband, 21 percent of women answered affirmatively. Perhaps not surprisingly, this percentage is nearly twice as high in Punjab, both north and south, than it is in Sindh. These stays are typically quite short, though, with the modal period being less than a month, and thus probably reflect short-term marital upheavals rather than long-term breaches (divorce and separation are exceedingly rare in rural Pakistan, with just over 1 percent of women reporting themselves as such). It would appear, then, that the natal family, both in expectation and in reality, is a safe haven from the tribulations of married life.

2.63. One important indicator of women's welfare within marriage is the degree to which she has a voice in family decisionmaking. The PRHS-II asks married women to rank their say in various family decisions according to whether their preferences/opinions were always, mostly, sometimes, rarely, or never taken into consideration. Table 2.5 displays the results for five important decisions. One thus sees that 71 percent of rural women always or mostly have a voice in decisions regarding their children's schooling, 59 percent on whether to have another child, 56 percent on major consumption expenditures, 26 percent on community participation, and just 24 percent on working for pay. Surprisingly, given some of the earlier findings, women in Sindh appear to have the greatest voice in all decisions, except for those regarding community and political participation, in which case Sindh is a distant second to northern Punjab.

Table 2.5: Extent to Which Wife's Opinion is Taken into Account in Family Decisions

<i>Region</i>	<i>Always</i>	<i>Mostly</i>	<i>Sometimes</i>	<i>Rarely</i>	<i>Never</i>	<i>Total</i>
1. Decisions regarding children's schooling						
N. Punjab	40.2	29.0	14.3	3.9	12.6	100.0
S. Punjab	42.8	20.6	17.9	1.9	16.8	100.0
Sindh	62.0	14.6	9.7	2.7	11.1	100.0
Total	51.4	19.7	13.2	2.7	13.1	100.0
2. Whether to have another child						
N. Punjab	34.1	17.2	11.9	9.1	27.8	100.0
S. Punjab	36.9	15.6	13.8	4.2	29.6	100.0
Sindh	50.8	15.6	7.3	4.5	21.9	100.0
Total	43.3	15.9	10.1	5.4	25.3	100.0
3. Major consumption expenditures						
N. Punjab	26.5	25.7	16.0	5.3	26.5	100.0
S. Punjab	26.4	10.8	17.0	2.4	43.4	100.0
Sindh	53.5	14.2	7.3	4.8	20.1	100.0
Total	40.2	15.9	11.9	4.3	27.7	100.0
4. Wife's participation in community/political activities						
N. Punjab	27.6	16.0	8.6	6.9	40.9	100.0
S. PUNJAB	5.5	7.2	6.2	2.0	79.2	100.0
Sindh	18.0	5.8	3.3	3.4	69.5	100.0
Total	16.9	8.8	5.4	3.9	65.0	100.0
5. Whether or not wife should work for an income						
N. Punjab	16.9	5.1	2.8	3.9	71.3	100.0
S. Punjab	16.6	5.1	3.2	1.5	73.7	100.0
Sindh	23.1	4.4	2.7	1.9	67.8	100.0
Total	19.6	4.8	2.9	2.3	70.4	100.0

2.64. Ordered probit regressions of the determinants of household decisionmaking authority show that the wife's education matters, but only above the primary level. Women with some education below the secondary level are no more likely to have their opinion taken into consideration in any of the five decisions in Table 4 than women with no education at all. The 7 percent of women with secondary-level schooling or above, on the other hand, have a significantly greater decisionmaking voice than do unschooled women in all five cases. Once again, however, one must be cautious about interpreting schooling effects in this context. Parents who treat their daughters better in general may provide them with both more education and a more considerate husband.

2.65. Two key findings emerge from this analysis. First, the strong tendency toward marital endogamy in rural Pakistan has positive implications for women’s welfare. Compared to India, married women in Pakistan are much more closely connected, geographically and otherwise, with their natal households. This means that, in the event of marital trouble, women have someone to turn to, or at least some place to go. As a consequence, one can surmise that Pakistani women have, *ceteris paribus*, higher marital bargaining power than their Indian counterparts. Second, the extent to which women in rural Pakistan take an active role in household decisionmaking depends strongly on the nature of the decisions. Women have much greater say in decisions internal to the household, such as those involving children, than they do in decisions on external matters, such as their participation in community activities and in the labor force. This finding confirms the overarching influence of *purdah* on the mobility and, ultimately, the autonomy of women in rural Pakistan.

III. DISCUSSION OF RESULTS AND IMPLICATIONS FOR POLICY INTERVENTIONS

2.66. According to research by highly reputable legal scholars in Pakistan—together with some of Pakistan’s most prominent civil society organizations and human rights activists—it is clear that the lacunae in Pakistan’s family law have considerable consequences for females. Using both quantitative and qualitative data, the analysis conducted for this Gender Assessment confirms distinct disadvantages to women and girls that result from certain marital and inheritance customs, many of which are filling gaps in related law and/or enforcement of the law.

Recommended Modifications of Family Law

2.67. The analysis corroborates Mehdi’s (2002) expert study of gender and inheritance law in Pakistan, which finds that women’s tendency to relinquish property inheritance to brothers stems from the expectation that brothers will continue to support sisters into adulthood and after marriage, as women traditionally have had few resources with which to support themselves and limited legislation with which to protect themselves. Fortunately, by enacting legislation that protects the rights of females in marriage and divorce—and now by focusing on increasing opportunities for female education, remunerated labor, and political participation, as the following chapters will show—the Government of Pakistan is laying groundwork for women’s self-empowerment, complementing efforts by prominent civil society organizations to educate the public and foster communities of support for women. This diminishes the traditional need for women to rely on male members of the natal family; it also should encourage greater enforcement of statutes that protect and empower women.

2.68. In terms of bolstering women’s rights to inherit family property, Justice Majida Razvi has recommended that inheritance law require families to document inheritance rights through the writing of wills, and that the state more strictly enforce adherence to legal documents:

In Section 4 of the Family Laws Ordinance, wherein an appeal is lying before the Shariat Appellate Bench of the Supreme Court, if the same is accepted, then amendment in the law will be needed to make it compulsory for every citizen to make a will in regard to his assets specifically where the issue of propositus children exists to provide for such children which is allowed under the Islamic laws. In different Islamic countries this mode has been adopted to overcome and solve the problems in regard to children of a propositus son/daughter. Such will, will not be subjected the limitations which exist under the inheritance law.⁶⁸

⁶⁸ Razvi (2004).

2.69. The empowerment of females in other family dynamics—such as choice in marriage, age of marriage, control over dowry, and household decisionmaking—also can be bolstered by targeted modifications of marriage law. These modifications (many of which have been discussed above) primarily address the three marital customs determined to impinge most on the welfare of women and girls in Pakistan: child marriage, polygamy, and overly stringent requirements for females to initiate the dissolution of a marriage. Justice Majida Razvi, The Aurat Foundation’s Legislative Watch Programme, and other prominent advocates for women’s rights in Pakistan have called for increased legal protections on women’s rights in marriage and divorce by amending provisions regarding marriage and divorce in particular family laws. Suggested amendments that would make the *Child Marriage Restraints Act* more effective include: changing the definition of “child” or “minor” to anyone who is under 18 years of age, thus raising the minimum marriage age for girls to 18; increasing the punishment for adult males (18 years and over) who marry a child from a maximum of one month’s imprisonment and/or a fine of 1,000 rupees (1929 provision) to a maximum of three years’ imprisonment and/or a fine of 15,000 rupees if the bride is between 16 and 18 years of age, and a maximum of five years’ imprisonment and/or fine of 25,000 rupees if the bride is under age 16; and increasing the punishment for guardians involved in a child marriage and for whomever knowingly conducts, performs, or directs any child marriage from the 1929 maximum (one month’s imprisonment and/or 1,000 rupees) to the recommended punishment for adult males who marry the child (above).⁶⁹

2.70. Other Aurat Publications have suggested specific changes to the DMMA (1939) and to the *nikahnama* form as originally conceived in 1961 in order to ease restrictions on women’s rights to divorce. The recommendations primarily involve broadening the grounds on which a woman can rightfully seek and obtain a divorce. The specific recommendations can be found in Annex 3 of this chapter. Finally, the collective changes recommended by the Legislative Watch Programme and Justice Majida Razvi (2004) to improve legal clauses pertain to polygamy—though it is atypical of rural Pakistan—and include changes to the *nikahnama* form as well as to DMMA provisions (please see Annex 2.3).

Building the Infrastructure to Encourage Women’s Pursuit of their Rights

2.71. While modifications to family law constitute clear policy levers for improving the status of women in the family, activists and legal scholars in Pakistan stress the need to reinforce statutory measures by building a community- and law-enforcement infrastructure to allow women to take advantage of legal protections.

Enforce Strict Record-keeping

2.72. Better record-keeping of family events such as marriage, divorce, birth and death is crucial to helping women seek legal aid and protection. State enforcement therefore must underscore legal recommendations for better record-keeping, such as Razvi’s suggestion that “Sub-Section 3 of Section 5 of the *Muslim Family Law Ordinance* must be amended to provide that a marriage not solemnized by the Nikah Registrar shall be reported by the person who has solemnized such marriage within specified time.”⁷⁰

2.73. Legal activist Zia Ahmed Awan, of the Lawyers for Human Rights and Legal Aid (LHRLA), emphasizes the importance of enforcing legal protections for women at all levels, remarking that the

⁶⁹ “Suggested Additions/Amendments in Muslim Family Laws: The Child Marriage Restraints Act, 1929 (XIX of 1929)”; “Suggested Additions/Amendments in Muslim Family Laws: Nikahnama Form”; “Suggested Additions/Amendments in Muslim Family Laws: The Dissolution of Muslim Marriages Act, 1939 (VIII of 1939)”; Aurat Foundation (various years).

⁷⁰ Razvi (2004).

“...law ministry should review the pending assignments of law commission and take immediate action on those that are linked with the protection and promotion of human rights in the country” and that the government should create mechanisms for strict implementation of United Nations/International/Regional Protocols & Conventions being ratified by the country. Pakistan’s Supreme Court, as well, “should take up the issue of women protection and monitor [the] government’s action in this regard.... A Lady Ombudsman should be appointed to check the violence against women and redress their problems with independent judicial powers.” At the police level, the police department “should establish monitoring cells at city and provincial level to check the reported cases of violence against women... [T]he process of the investigation of cases has become outdated and the police department should take measures to adopt latest trends of investigation and develop a separate team to investigate the matter relating with the crime against women and children.” Regarding record-keeping, Awan suggests, “Police should collect national statistics to create a profile of the women victims of violence and also the perpetrators.”⁷¹

Educate Women about Their Rights and Protections

2.74. How to educate girls and women about their rights and sources of protection is a critical question in light of low rates of girls’ schooling and *purdah*-based restrictions on women’s mobility. CSOs such as the Aurat Foundation and Pakistan’s Society for the Advancement of Community, Health, Education and Training (SACHET) have been making critical contributions in this area, using media and community outreach efforts to mount campaigns that disseminate information about female rights regarding child marriage, dowry, and divorce. The beneficial effects of such information campaigns are inestimable, as evidenced by comments of one southern Punjabi woman (interviewed for the qualitative study), who had left a situation of domestic violence and then returned to change it for the better after being informed of her rights in marriage and divorce (see her interview in Box 2.1; her comments are in italics, and the interviewer’s are in regular type).

⁷¹ Awan (2005: 20).

Box 2.1: Exposure to Media Information on Women’s Legal Rights Makes a Difference

How long has it been since you are back? *Two months.*

How are things this time? *I said that if you hit me now, I will go into court and say he hits me. And if you fight with me I will go to court. He said that your family will not let you go and I said I will go alone. It’s my right to go.*

Who told you this? *I saw it on the television.*

You have one? *No, I go to my mother’s house and see it there. They show this on it, say that it’s a right of women to do this.*

How long have you been watching television? *For four-five years.*

Ok, in the CO [local community organization for women], are things like women’s right to divorce discussed? *Yes. These things are talked about in the CO. [The Social Organizer] came and told us what rights we have. She says ask for your rights. She says it is your choice whether you want to go or not. No one can ever force you.*

This social organizer of the CO, did you find out more from her or the television? *That program on TV.*

Which one? *One is that khawateen time, there is this other one, I can’t remember its name.*

Doesn’t matter. Does it come in the morning or evening? *It comes in the mornings. It says in that women have a right to divorce. They ask for more dowry, those sorts of programs.*

You didn’t have a problem that the dowry is too little did you? *In our family there is no problem of dowry. We give dowry even when we are poor. They think that it’s our daughter, give as much as we can.*

Now you are happy with him, you want to stay with him? *Yes.*

~Female CO member, Age: 23; Lodhran

2.75. In order to continue progress made with public education initiatives, Zia recommends further action by CSOs, such as launching awareness campaigns—particularly in rural areas—on laws that protect women, addressing gender-based discrimination at grass roots levels, and moving “from a paradigm of reintegration and rehabilitation to an approach that protects and promotes the human rights of women in the country.”⁷²

Provide Safe Havens, Free Legal Aid, and other Encouragements to Women to Seek Justice

2.76. A major recommendation of women’s rights advocates is that the government address the lack of means by which females can access legal support and safety when they boldly go against convention—and often their families—to claim these rights. Zia recommends that a substantial amount of the budget “be allocated for the development of women,” which would include increasing their access to information and providing free legal aid at the district level for cases regarding the rights of women and girls.⁷³ It also includes granting judicial powers and allocating sufficient resources to Pakistan’s National Commission on the Status of Women. Law enforcement officials also need to be trained about the sensitivities of gender issues in law, which would be most effective if there were a greater number of female police

⁷² Awan (2005: 22).

⁷³ Awan (2005: 21).

officers: “Proper and trained women staff should be appointed at all women police stations to provide community friendly services. Women police station staff should undergo regular sensitization training to deal with the victims as well as general public. The number of female police staff should be increased.”⁷⁴

2.77. Once women utilize information about their rights and free legal aid, they need to be assured protection against retaliation, such as physical and/or mental abuse by disgruntled husbands, in-laws, or natal family members. According to Awan, “There is a dire need of support systems for women victims of violence and government should immediately establish crisis centers/shelters for them.”⁷⁵ Government also should help CSOs develop “unconventional shelters.” CSO’s also should engage in “strong networking with all service-providing GOs [government organizations] and NGOs [non-government organizations] to help the victims and survivors of violence” and, to further ensure adequate protection of rights, “CSOs should form watch groups to monitor the role of police and judiciary, especially cases pertinent to violence against women.”⁷⁶ With increased availability of safe houses, crisis centers, and more responsive police protection, women no doubt will feel more assured that pursuing their rights is worth the potential risks.

2.78. As discussed in this chapter, lacunae in the law and their attendant customary practices powerfully shape the landscape of opportunities for women and girls in Pakistan. The same types of constraints that deter women from claiming their rights and legal entitlements—such as heritable land, the freedom to not enter or to leave a marriage that is detrimental to their physical and mental well-being, and protection from self-sacrifice in order to protect their family’s honor—also inhibit their progress in other dimensions of society. As the following chapters will show, female opportunities for education, health care, labor force participation, and involvement in the public sphere all have the common quality of being curtailed by limitations that women face in Pakistan. These limitations include restrictions on female mobility, low access to information, and a lack of leverage in decision-making both within the household and outside it, e.g., in the political arena.

⁷⁴ Awan (2005: 21).

⁷⁵ Ibid.

⁷⁶ Awan (2005: 22).