

Journal of Sociology & Cultural Research Review (JSCRR)

Available Online: <https://jscrr.edu.com.pk>

Print ISSN: [3007-3103](#) Online ISSN: [3007-3111](#)

Platform & Workflow by: [Open Journal Systems](#)

BARRIERS TO TRIBAL WOMEN'S ACCESS TO FORMAL JUSTICE SYSTEM IN THE NEWLY MERGED TRIBAL DISTRICTS OF THE KHYBER PAKHTUNKHWA, PAKISTAN

Sharif Khan

PhD scholar, Department of Sociology, University of Peshawar, Pakistan

Noor Sanauddin

Associate Professor, Department of Sociology, University of Peshawar, Pakistan

Muhammad Hussain

PhD scholar, Department of Sociology, University of Peshawar, Pakistan

ABSTRACT

The semi-autonomous tribal areas of Pakistan were recently merged into Khyber Pakhtunkhwa Province through a constitutional amendment in 2018 to mainstream these tribal societies for promoting development and good governance. The extension of the state's constitution, formal law, and judiciary to the tribal district was expected to guarantee women's rights by ensuring their access to formal justice. However, women in the tribal districts continue to face cultural discrimination and legal barriers to accessing justice. This study explores the complex challenges tribal women face in accessing and exercising their legal rights within Pakistan's patriarchal socio-cultural and legal framework, with a specific focus on the customs and legal limitations that impact their autonomy. Employing a qualitative case study approach, data was collected from 54 participants through in-depth interviews and focus group discussions, capturing insights from judicial officers, police officers, public prosecutors, lawyers, local community leaders (Maliks) and ordinary residents of District Kurram. Thematic analysis revealed deeply rooted cultural practices and societal barriers that prevent women from fully participating in legal processes, particularly in matters of marriages, divorce, inheritances of property, and accessibility of courts due to a lack of sufficient legal infrastructure. The study recommends community awareness programs to improve women's access to justice and address restrictive societal norms, aiming to reduce gender inequality and support targeted policy interventions.

Keywords: Tribal women, access to justice, customs, formal justice, patriarchal norms, inheritance rights, forced marriage, Khula

Introduction

Justice is considered the foundation of equality, which enables people to protect their basic and legal rights (Young, 2011). Generally, access to the state legal justice system is critical for promoting human rights and ensuring social equality and development. An effective justice system can help to protect citizens from exploitation, uphold the rule of law, and guarantee the equitable distribution of rights regardless of gender, race and socio-economic status (Gramatikov & Singh, 2019). However, in most tribal societies of the world, the traditional customs and patriarchal norms result

in many challenges for women to seek justice. Additionally, the weak or absence of state legal institutions further exacerbates the challenges for women in the tribal societies of developing or post-colonial states of the world (Langford & Brysk, 2012).

This situation is more challenging in the former Federally Administered Tribal Areas (FATA) of Pakistan where customary laws and patriarchal social structure have long overshadowed the formal justice system. The erstwhile FATA or tribal districts, adjacent to Afghanistan, have long been governed by the colonial era's law known as the Frontier Crimes Regulation (FCR). Rather than ensuring justice at large, the FCR acted more as a tool of the British Raj to control the 'unruly' tribal men who are rather infamous for their free nature and who have a history of violent revolt against the British (and then Pakistani) government. In addition to FCR, the tribal people of former FATA have been following their own centuries-old customary law known as Pashtunwali in which a Jirga (councils of tribal elders) functions as an informal court to dispense justice among tribal people. As we will explain later in this article, both of these legal institutions exclude women from participating in the justice process (Khawar & Sheikh, 2018) and both of them are responsible for ongoing discrimination against women in tribal societies of Pakistan.

The erstwhile FATA was recently merged into Khyber Pakhtunkhwa Province through the 25th constitutional amendment in 2018. Although the merger of the former FATA into Khyber Pakhtunkhwa extended the constitution and formal laws of the country to the tribal areas, women in tribal districts continue to face significant challenges in accessing the formal justice system (Ahmed & Yousaf, 2018). These challenges in the post-merger setup are not only cultural but also structural. For example; several years have passed since the erstwhile FATA merged into Khyber Pakhtunkhwa, but still, the government did not establish courts and other legal institutions of the state in certain tribal districts. As a result, women face many issues in accessing legal courts to seek justice (Aftab & Yousafzai, 2020).

Moreover, purdah (veiling and seclusion of women) and other patriarchal values significantly restrict women's mobility and public participation in social and legal affairs. Women often rely on males to represent them in legal issues (Sattar & Rafiq, 2020). Additionally, the Jirga system makes it nearly impossible for women to seek justice as it is traditionally a male-dominated institution (Sanauddin, et. al., 2015). The Jirga often settle disputes according to tribal customs, which frequently violate women's legal rights, particularly in cases related to inheritance, consent marriage and divorce (Hassan & Khan, 2020). It is significant to mention that women in erstwhile FATA face discrimination in accessing inheritance rights, as customary practices override formal laws that guarantee women legal

entitlements. The deeply entrenched patriarchal norms, combined with social stigma, discourage women from taking their cases to courts, as doing so is seen as a violation of family honour. Women lack of awareness about their legal rights is also one of the major reasons of their legal rights exploitation (Asghar, 2024). Besides this, Niazi (2022) argue that cultural and familial pressures in the tribal districts of Khyber Pakhtunkhwa exerted a profound influence on women's marital status, often coercing them into marriages that align with traditional norms rather than personal choice. As a result, these pressures undermined women's autonomy and reinforced patriarchal control over marital decisions in tribal districts of Khyber Pakhtunkhwa.

Additionally, structural challenges in tribal districts, such as the lack of nearby state courts and other institutions also remain a significant issue for women to access justice. Women who challenge the patriarchal structure of tribal societies face significant social repercussions (Zafar & Haider, 2019). Besides this, most of the women who live in the remote rural areas of tribal districts are unaware of their legal rights due to low literacy rates and lack of legal knowledge. Without knowledge of their rights or procedures of the legal justice system, women frequently face exploitation and have little recourse to challenge the injustice they face (Ali & Rizwan, 2021). Ghag which was a common practice in tribal societies became an illegal act after the judicial transition in tribal districts of Khyber Pakhtunkhwa. However, still in certain parts of tribal areas, the custom of Ghag is under the practice, which significantly violates the legal rights of women (Afridi, 2021). There are several tribal women, who are the victims of Ghag, live unmarried live (Rehman & Wazir, 2019).

Women faced several socio-cultural and legal issues to access the legal justice system of the state in tribal districts. The study of Tanveer & Ali (2023) shows that women in urban areas can demand their legal rights, as formal courts are available in city areas. Men can no longer use the force of patriarchy to restrict women's access to state institutions. Nevertheless, women living in rural areas with low literacy rates lack legal knowledge, and the control of men over women's legal issues restricts women's access to the legal justice system. The right to land property is legally sanctioned to women, but due to traditional practices, women are deprived of this basic and constitutional right. As the study of Baloch & Khan (2018) discuss the practice of patriarchy in the tribal districts created substantial obstacles for women claiming their land property rights. Traditionally, the patriarchal norms reinforced male dominance over land ownership which, impeded women's legal entitlements provided by the state laws. Even if courts in tribal districts decide the land property cases in favor of women, it becomes difficult to implement such decisions due to a lack of support from the community and weak implementation of state laws.

Furthermore, due to a lack of education and strict tribal customs in tribal districts of Khyber Pakhtunkhwa, there is a shortage of female lawyers, which further leads to the marginalization of women. Tribal districts lack basic legal infrastructure which makes it difficult for women to travel to courts that are located far from residence (Afridi & Niaz, 2018). Besides this, tribal women also fear retribution from their families and communities if they attempt to bypass the informal justice system, as it is considered dishonorable for women to take their grievances to the legal institutions of the state (Zahir, 2021).

The pattern seems almost identical in other tribal societies across the world. For example, tribal communities in Afghanistan usually settle their disputes through shura (council of elders), an informal institution which tends to prioritize community harmony over individual rights, and in many cases, women are used as bargaining tools in tribal disputes, such as in the case of settlement of disputes/enmity, where girls are exchanged to settle conflicts between families (Karokhail, 2021). The social and community pressures in Afghanistan significantly impacted women's consent to marriage and Khula, frequently dominated individual autonomy. Women who seek choice marriage or Khula in tribal societies of Afghanistan are considered as social stigma and black spot for the family (Shah, & Hussain, 2019).

Literature shows that in Mozambique, patriarchal norms, customary laws, and inadequate legal frameworks restrict women's access to the state's formal justice system. Many communities in rural areas of Mozambique rely on customary courts, which are deeply patriarchal and seldom consider women's legal rights as outlined in the national legal justice system (Langa & Mussa, 2021). Women are often excluded from the decision-making process, and their grievances are typically addressed through an informal justice system that prioritizes tribal customs over the statutory laws of the state (Bala & Chissano, 2020). In Tanzania, customary practices around land ownership disproportionately affect women, who, despite legal guarantees of land rights, find it difficult to claim ownership due to entrenched cultural beliefs that land belongs to men (Mushi, 2021). Even though the constitution of Tanzania protects women's rights to property and inheritance, customary courts continue to dominate rural areas, effectively sidelining women's claims. Women in the rural areas of Tanzania often lack legal awareness and are discouraged by their families from challenging customary practices in the formal courts of the state (Makubi, 2020). Moreover, in Indian tribal communities, the patriarchal norms and minimal knowledge of women about their legal rights severely hamper their capacity to engage with the formal justice system. Males apprehend that the access of women to courts will threaten their authority with the families' matters (Maharatna, 2021).

Similarly, in Yemen, where the legal system is weak due to locals' preferences for the traditional justice system, the tribal courts - informal courts headed by tribal chiefs in Yemen tribal society - play a dominant role in dispute resolution and other justice-related matters. Yemeni women face significant barriers to accessing the formal legal justice system, particularly in cases related to sexual violence, inheritance and disputes (Al-Mikhlaifi, 2022). According to Ezzat (2018), customary courts in Yemen tend to prioritize clan interests over individual rights, often subjecting women to harsh and discriminatory rulings. Women, who attempt to bypass the tribal courts system, face social pressures, as traditional norms discourage them from seeking justice through the legal courts of the state.

The merger of FATA into Khyber Pakhtunkhwa was aimed at mainstreaming the tribal society, particularly in terms of social justice, governance, and development. However, women of tribal districts continue to face barriers in getting access to the formal justice system of the state. This article explores the various ways in which women's rights are being violated and the personal, cultural and legal barriers which restrict women's access to justice in the newly merged tribal districts of Khyber Pakhtunkhwa, Pakistan.

Methods of the study

This study has employed a qualitative research design to explore different challenges to women's access to the formal legal justice system of the state in tribal districts of Pakistan. A case study method was used in this research in which one tribal district – District Kurram- was selected to explore the different challenges faced by women in accessing the legal justice system. The field data was collected from a total of 54 study participants, which included judicial officers, police officers, public prosecutors, lawyers, Maliks (tribal elders), and local residents. Purposive sampling was used to select the most relevant study participants from all the three tehsils of District Kurram. In-depth interviews and focus group discussions were used as tools for data collection. Separate topic guides were prepared for the different categories of participants which were also translated into the local language. In the context of government officers/officials and lawyers, the researchers selected those participants who had at least one year of professional experience in District Kurram. Regarding local tribals and Maliks, researchers selected only those participants who had a local domicile of District Kurram and registered their cases in the legal courts. Whereas; for the collection of field data from female participants, the researchers hired female research assistants, who have master's degrees in social sciences and experience in data collection as due to strict tribal customs and cultural norms, women were not allowed to talk with male researchers. During the field study, researchers strictly observed all the ethical guidelines of social research, including informed consent,

anonymity, and confidentiality of the participants. One of the researchers (SK) himself belongs to District Kurram and his personal links in the study area greatly helped in the collection of data. The data was analyzed by using thematic analysis which is the most followed technique in qualitative research. Various themes and sub-themes were identified in the data. Only the themes which are related to tribal women's lack of access to justice in the post-merger scenario are discussed in this article.

Findings of the study

The thematic analysis of the qualitative data reveals that in the tribal districts of Pakistan, women's access to the formal justice system is hindered by deeply entrenched socio-cultural norms and institutional barriers. The patriarchal structure in tribal areas limits women's legal rights and often forces them to resort to the traditional Jirga system, where male-dominated decisions can disregard women's voices and needs. Moreover, the inadequate infrastructure, lack of awareness and societal stigma further impede women's ability to seek justice. The following sections discuss the findings of the study regarding the various challenges faced by women in tribal districts while seeking justice.

- **Patriarchal norms and lack of awareness**

In the erstwhile FATA, the patriarchal structure dictates that women's issues are to be resolved within the family, rather than in formal legal settings. Men in tribal districts fear that the contact of women with the formal justice system will challenge their patriarchy and cultural dominance. Similarly, due to the low literacy rate, women have a lack of awareness about their legal rights, resulting in their lack of access to their legal rights. In addition, the formal judicial system has introduced new legal concepts that women often find difficult to grasp without proper guidance. As a result, their ability to navigate the legal system is severely hampered, leaving them vulnerable to continued legal rights violations and reinforcing the cycle of marginalization. In this regard, Arifa, a study participant, shared her thoughts:

"In tribal districts, the female education ratio is very low, which results in a lack of awareness and understanding of the formal justice system. Therefore, women do not know what their legal rights are." (Arifa, local tribal, 46)

As compared to other settled districts of Khyber Pakhtunkhwa, the women's literacy ratio is very low in tribal districts which results in their lack of legal knowledge about their constitutional rights and awareness about the state justice system. During the discussion, Muzamil Hussain, a study participant stated:

"Since the merger of former FATA and judicial transition, there has been very lack of seminars and workshops on women's legal rights awareness. There is an intense need to create awareness among the tribal women about

their legal rights to improve their legal status." (Muzamil Hussain, local tribal, 38)

Creating awareness through social media and other sources can help to bring positive changes in the legal status of women. In tribal districts, patriarchy serves as a formidable barrier to women's access to the legal justice system. Men, as decision-makers within families, often restrict women's movement and autonomy, preventing them from seeking justice in the courts or other state institutions. This control perpetuates a cycle of dependency, silencing women's voices and reinforcing systematic inequalities within the legal framework. To continue the discussion, another study participant said that:

"Patriarchy is one of the major hurdles in the way of women's access to state legal justice system in the tribal districts. Males as controllers and decision-makers of family issues, do not allow women to step out from home to seek justice through courts or any other state institutions." (Shehla, local tribal woman, 30)

It can be safely said that the patriarchal norms and socio-cultural barriers in the tribal districts of Khyber Pakhtunkhwa significantly hindered women's ability to assert their legal rights. The tribal norms often position men as the primary decision-makers regarding women's legal matters, and marginalized women's voices. Additionally, societal expectations stigmatized women who attempted to engage with formal legal systems and portrayed them as disruptive to familial harmony. Moreover, in the tribal districts, the lack of legal awareness among women severely undermines their ability to defend their rights. Without knowledge of the laws designed to protect them, women remain vulnerable to exploitation. This ignorance fosters dependence on male decision-makers, who prioritize traditional customs over legal frameworks.

- **Women's marriage with their consent and difficulties in seeking Khula**

In the tribal districts of Pakistan, women's right to consent to marriage and seeking Khula (divorce initiated by women) is often limited by societal norms and legal constraints. Cultural, legal, and social factors influence women's choice in marriage. Arranged marriages and familial pressure often dominate personal consent, limiting women's ability to choose their life partners freely. Additionally, the process of obtaining Khula, while legally sanctioned, can be fraught with challenges, including social stigma and legal hurdles. The tribal customs are deeply embedded in the social fabric of the regions and are often seen as more legitimate than state institutions. In this regard, Amina Bibi, a study participant, said that:

"In our tribal society, it is the power of the elder males in the family to decide whom their daughters, sisters, and other women have to marry. Culturally, women are bound to accept the decision of male elders, which

often has a significant impact on their post-marital life." (Amina Bibi, local tribal, 33)

Traditionally, women have no say regarding decisions about their marital status, and they have to accept whatever decisions their fathers, brothers and other males of the family make. This not only perpetuates the traditional practices but also violates women's legal rights of consent marriage. As Mushahid Paracha, a study participant shared his views in the following words:

"Women are expected to accept the decisions of male members of the family. Women, who do not accept the decisions of male members of the family face problems and are criticized by the family and society." (Mushahid Paracha, local tribal, 36)

In tribal societies, cultural practices, familial expectations and social pressures compel women to sacrifice their marital lives and accept the decisions of male family members, which often have a significant impact on their lives.

Furthermore, Khula, a type of divorce in Muslim Law which is initiated by women, is provided by Islam and the formal law of Pakistan to women. However, seeking Khula is extremely difficult for women, partly due to complex legal procedures and partly due to the severe stigma attached to the demand for divorce by women. Despite Khula being legally available to women, the process is often cumbersome, requiring extensive documentation and proof of grounds for legal proceedings in the courts. It is believed that the social stigma and familial resistance further complicate women's pursuit of Khula, discouraging many women from seeking their legal right to Khula. Saqib Ali, another study participant, explained his thoughts about the issue of Khula in the following words:

"The process of Khula is very complex, and it needs several legal documents to prove a ground for Khula in courts. Most tribal women do not have that much exposure and required knowledge about the process of obtaining Khula, which impedes them from seeking Khula in the courts." (Saqib Ali, local tribal, 49)

Divorce is usually a male domain in the Pashtun (and Muslim) culture. Women rarely initiate divorce which is called Khula. Generally, in Pakistan, the process of obtaining Khula is very difficult due to the prevailing cultural practices and legal uncertainties. It takes many years to collect all the legal evidence for court proceedings, resulting in several women's social and psychological issues.

In short, familial expectations shape women's marital lives, often dictating their roles within the household. Women are frequently pressured to conform to traditional norms regarding obedience and subservience, limiting their autonomy in marriage-related matters. These expectations

resulted in women prioritizing family honor and harmony over personal desires in marriage.

- **The custom of Ghag (forced marriages) in tribal societies**

The custom of Ghag is one of the discriminatory practices in the erstwhile FATA, through which a person forcefully demands the hand of a woman without her or her parent's consent. The Pashto word Ghag roughly translates to a call, proclamation, or announcement made by a male to invoke a marriage claim on young girls and women. This centuries-old custom has continually contravened the rights of women that existed in tribal regions. Ghag can ruin the life of the girl because it renders the girl unavailable to other marriage proposals and bars her from marrying another man unless she is freed from the bag by the man. In addition, Ghag also subjects the girl to a lifelong stigma. If the family refuses to marry the girl to the man, the girl will remain without marriage for her life. There are several reasons why tribal men propose to women in this way; however, among them, the beauty, education, and relations of the girls' families with the accused family are the root causes of this custom. In many cases, the rivalry or conflicts among the families also lead the men to 'do Ghag' on the women of their enemies and rivals as an act of revenge.

After the merger of the erstwhile FATA, the custom of Ghag became an illegal act under the formal laws of the state, and it is against the formal and Islamic Sharia Laws of Pakistan. The formal laws protect the women from Ghag and other such practices that violate the principle of consent before marriage. The courts usually take stern action against forced marriages if and when reported. Women are legally free to marry persons of their choice. However, it is rarely practiced in tribal areas where marriages are usually arranged without the consent of women or their legal guardians. In this regard, Rehman Ullah, a study participant, shared his opinions:

"Under the formal justice system of the state, the custom of Ghag is considered an offence. The formal courts and police need to protect the legal rights of women, and persons who violate women's legal rights should be punished accordingly." (Rehman Ullah, local tribal, 40)

In the post-merger scenario, the custom of Ghag is considered an offence under the Khyber Pakhtunkhwa Ghag Act, of 2012. Despite this, it is still practiced. During the discussion, Aqil Hussain, another study participant, said:

"I have observed that some of the people in our tribal districts do not like to report the issue of Ghag to the formal courts and police stations due to their strict tribal customs. In such cases, the police need to investigate the illegal practices of Ghag and report the cases to courts to punish the culprits." (Aqil Hussain, local tribal, 27)

In tribal districts, traditional practices still dominate the state legal laws, where people do not report the custom of Ghag to police stations. Local

tribals think that reporting women's issues to the police and courts is against tribal customs. Therefore, they believe that to safeguard family honour, women's issues should be resolved within the family or they should remain silent over such issues.

Thousands of women have become victims of the custom of Ghag in the presence of formal laws of the state. The root causes of this custom are deeply entrenched tribal customs and a lack of awareness among tribals about the significance of the state legal justice system. That is why women in certain parts of districts continually face this issue. It is significant to mention here that the victim women of Ghag often face mental illness and many other psychological problems. In many cases, girls who face the Ghag cannot marry to accused person or any other, which compelled them to take an extreme step of committing suicide.

- **Limited availability and accessibility and formal justice**

It is significant to mention that women in tribal districts do not have equal access to the state legal justice system. Most of the study participants said that women living in the city areas of tribal districts have relatively easy access to the courts and other state institutions due to the availability of institutions and the high literacy rate of women. Whereas, most of the women who live in remote rural areas of tribal districts do not have easy access to the state legal institutions due to a lack of familiarity with the legal system, lack of women's awareness about their legal and constitutional rights, and lack of education and exposure among the tribal women.

In addition to this, the lack of legal infrastructure is also one of the major hurdles in the way of women's access to justice in tribal districts. The government has not yet established courts in certain tribal districts, although many years have passed since the government merged the erstwhile FATA into Khyber Pakhtunkhwa. As a result, women do not have access to formal justice in tribal districts. In this regard, Nazem Paracha, a study participant, shared his views:

"Majority of the women living in the rural areas of tribal districts do not have access to the formal justice system. They are neither aware of their legal rights nor have exposure to contact with the formal courts and police stations in case of violation of their legal rights." (Nazem Paracha, local tribal, 31)

The access of women to the legal justice system depends on easy access to the state institutions, legal awareness and exposure to the external world. To address the issues, the government needs to create legal awareness among the tribals and provide legal services without any threats to women. In this regard, Asma, as a study participant, shared her opinions:

"Being a female and local resident of District Kurram, I observe that tribal men have antagonistic attitudes towards women's legal rights. Mostly, men threaten women and treat them harshly, due to which they cannot courage

to contact the formal courts and police stations to seek justice." (Asma, local tribal woman, 34)

In the erstwhile FATA, due to the stronghold of men, women cannot easily courage to assert their legal rights through courts or any other state institutions. They need the permission of male before filing their cases in the legal courts or other state institutions. To continue the discussion, Najma, a study participant explained:

"In some tribal districts, females have to travel to other districts or far-flung areas to seek justice. In such cases, access of women to the formal courts for seeking justice is difficult." (Najma, local tribal woman, 24)

In short, the formal justice system of the state treats all the local tribals equally, irrespective of gender, class, caste, etc. However, women living in some remote areas of tribal districts cannot easily access the courts and police stations, which is a clear discrimination against women's legal and constitutional rights.

It is clear that in some tribal districts where the government has established courts in the old buildings of government institutions, women living in city areas have easy access to justice due to the availability of institutions. Urban infrastructure facilitates quicker and more direct engagement with legal authorities that allows women to pursue their rights more effectively. Additionally, women in city areas have legal awareness about their legal and constitutional rights due to which they can access to courts and other state institutions. However, women from remote and hard areas faced significant challenges, such as difficult geography, lack of transportation, and cultural barriers. The access of women to courts is extremely difficult, in cases, where the courts of tribal districts have been established in the adjacent settled districts due to lack of infrastructure and security issues in tribal regions. Therefore, these obstacles reinforce gender inequality in terms of justice in the tribal districts.

- **Barriers to women's rights of Inheritance in landed property**

Tribal women's rights to property and inheritance face significant challenges rooted in deeply entrenched socio-cultural norms and legal ambiguities. Traditionally, the patriarchal structure of tribal districts prioritizes male ownership of land, rendering women's claims to property tenuous at best. Despite legal provisions, these rights are often overshadowed by customary practices favoring male heirs, leaving women marginalized in land property ownership. The persistence of informal justice systems, such as Jirga, further complicates the situation by enforcing male-dominated decisions, thereby perpetuating gender disparities in land ownership. In this regard, Rifat, as a study participant said:

"In the erstwhile FATA, it is considered against the tribal customs to give a share to women in the collective land property of the family. Therefore,

after the merger, most of the tribals are still reluctant to give land property inheritances to women." (Rifat, local tribal, 52)

By tradition, land property is owned by males and it is only shared among the sons or male heirs, and women were neglected. In certain tribal areas, due to a lack of knowledge about the state laws and religion Islam, some tribals think that women have nothing to do with the family collective land property, which poses serious threats to the state institution in the areas. In this context, Farzana, a woman participant in the study stated:

"The formal justice system of the state ensures the provision of the legal right of land property to women in collective property of the family. However, implementing these state laws is one of the major issues in tribal districts to protect the land property right of women." (Farzana, local tribal, 40)

In some cases, when a formal court decides a case of land property in favor of women, enforcing these decisions remains a serious issue. In short, the legal landscape regarding women's land property rights in tribal districts is fraught with ambiguities and weak enforcement, which significantly hinders women's ability to claim their rightful inheritance. The legal framework provides for women's right to inherit land property, implementing these laws in tribal areas is somewhat inconsistent. The coexistence of formal and informal justice systems creates a complex environment where customary practices often take precedence over statutory law. Jirga, the primary mode of dispute resolution in these areas, tend to favor male inheritance, often bypassing the legal provisions. Additionally, the lack of legal literacy among women and the inaccessibility of formal legal institutions make it challenging for women to pursue their property claims through the courts.

Discussion

Patriarchy in tribal districts often restricts women's access to the justice system by enforcing norms that limit their autonomy and confine them to traditional roles, thereby marginalizing their participation in the formal legal justice process. In addition, women have lack of knowledge about the legal rights provided by the constitution and formal law of the state. As the study of Sattar and Rafiq (2020) explores, patriarchy in erstwhile FATA dominates women in both families and societal matters. Almost all kinds of issues related to women are decided by men without women's interference. Likewise, the study by Asghar (2024) reveals that the lack of awareness among women in tribal districts of Khyber Pakhtunkhwa about their legal rights perpetuates their ongoing marginalization and weakens the enforcement of their legal entitlements under formal laws of the state. Moreover, in Indian tribal communities, the patriarchal norms and minimal knowledge of women about their legal rights severely hamper their capacity to engage with the formal justice system. Males apprehend that the access

of women to courts will threaten their authority with the families' matters (Maharatna, 2021).

Unlike the Law of FCR in former FATA, women in newly merged districts have the legal rights of consent in marriage and Khula in tribal districts, but frequently due to the combination of socio-cultural practices and legal uncertainties, such rights of women are violated. In this regard, Hassan and Khan (2020) argue that cultural and familial pressures in the tribal districts of Khyber Pakhtunkhwa exerted a profound influence on women's marital status, often coercing them into marriages that align with traditional norms rather than personal choice. As a result, these pressures undermined women's autonomy and reinforced patriarchal control over marital decisions. Besides this, women cannot obtain Khula easily through courts which are lengthy and complex processes. Seeking Khula in tribal culture is also considered a threat to tribal customs and family honour. Therefore, to secure the honour of families, women usually do not demand Khula and prefer to live an abusive and unhappy marriage. This finding of the study also resonates with another study which shows that social and community pressures in Afghanistan significantly impacted women's consent to marriage and Khula, frequently dominated individual autonomy. Women who seek choice marriage or Khula in tribal societies of Afghanistan are considered as social stigma and black spot for the family (Shah, & Hussain, 2019).

Ghag which was a common practice in tribal societies became an illegal act after the judicial transition in tribal districts of Khyber Pakhtunkhwa. However, still in certain parts of tribal areas, the custom of Ghag is under the practice, which significantly violates the legal rights of women (Afridi (2021). Ghag was an un-Islamic, anti-social and illegal act in tribal districts. Many innocent women, who are the victims of Ghag, live unmarried lives. A significant change can be observed in Ghag's since the merger of the former FATA. The state laws give legal protection to women's consent to marriage. However, there are some tribals, who restrict women from reporting Ghag to the police, courts and any other state institutions (Rehman & Wazir, 2019).

Women faced several socio-cultural and legal issues to access the legal justice system of the state in tribal districts. The study of Tanveer and Ali (2023) show that women in urban areas can demand their legal rights as formal courts are available in city areas. Men can no longer use the force of patriarchy to restrict women's access to state institutions. Nevertheless, women living in rural areas with low literacy rates lack legal knowledge, and the control of men over women's legal issues restricts women's access to the legal justice system. The right to land property is legally sanctioned to women, but due to traditional practices, women are deprived of this basic

and constitutional right. As the study of Baloch and Khan (2018) discuss the practice of patriarchy in the tribal districts created substantial obstacles for women claiming their land property rights. Traditionally, the patriarchal norms reinforced male dominance over land ownership which, impeded women's legal entitlements provided by the state laws. Even if courts in tribal districts decide the land property cases in favor of women, it becomes difficult to implement such decisions due to a lack of support from the community and weak implementation of state laws.

Conclusion

This study has highlighted the multifaceted challenges that women in tribal districts of Pakistan face in asserting their rights and accessing state legal justice, particularly within the framework of patriarchal norms and longstanding cultural norms. The entrenched patriarchal system restricts women's autonomy, impacting their rights in areas such as inheritance and marriage. The lack of awareness about legal rights aggravates this situation, leaving many women unable to claim land ownership or to exercise control over personal decisions like consent marriage and the right to Khula (judicial divorce). Additionally, traditional customs such as Ghag, a practice that places undue restrictions on women's marriage choices, further hinder the advancement of women's rights.

Access to the state legal justice system varies significantly between urban and rural settings, with women in rural areas often facing additional barriers due to limited resources and societal expectations that favor the traditional justice system over the formal legal justice system. These disparities underscore the need for targeted interventions, including legal reforms, awareness campaigns, and enhanced support services to ensure that all women, regardless of their location, have equal access to their legal rights.

References

- Afridi, M. K. (2021). Social and legal challenges of the Ghag custom: A case study of merged tribal districts. *Journal of Law and Society*, 50(3), 216-229.
- Afridi, S., & Niaz, K. (2018). Representation of women in the legal profession in Pakistan: A focus on FATA and Khyber Pakhtunkhwa. *Pakistan Journal of Law*, 34(3), 160-182.
- Aftab, S., & Yousafzai, Z. (2020). Patriarchal structures and women's access to justice in Pakistan's tribal areas. *Gender, Technology and Development*, 24(3), 304-321.
- Ahmed, I., & Yousaf, F. (2018). The FATA merger into Khyber Pakhtunkhwa: Prospects and challenges. *Pakistan Journal of International Affairs*, 2(1), 23-36.
- Ali, S., & Rizwan, M. (2021). Cultural and religious restrictions on women in Pakistan: A socio-legal analysis. *Pakistan Journal of Gender Studies*, 20(1), 77-91.

- Al-Mikhlaifi, A. (2022). Gender inequality and access to justice in Yemen: Challenges and prospects. *Journal of Middle Eastern Politics*, 15(2), 112-130.
- Asghar, W. (2024). FATA Merger: Impacts on Status of Tribal Women. *Journal of Development and Social Sciences*, 5(2), 386-395.
- Bala, M. & Chissano, M. (2020). Legal barriers to gender equality in Mozambique: Women's access to justice. *Journal of Southern African Studies*, 46(4), 413-427.
- Baloch, M. A., & Khan, I. (2018). Challenges to women's access to justice in Pakistan: A case study of tribal areas in Khyber Pakhtunkhwa. *Asian Journal of Law and Society*, 5(1), 79-96.
- Ezzat, A. (2018). Barriers to justice for women in Yemen: A case study. *Journal of Middle Eastern Politics and Society*, 5(2), 215-230.
- Gramatikov, M., & Singh, S. (2019). Access to justice and legal needs: The case of developing countries. The Hague, Netherlands: The Hague Institute for Innovation of Law.
- Hassan, R., & Khan, A. (2020). The Intersection of Gender and Justice: Informal Dispute Resolution in Pakistan's Tribal Areas. *Journal of Gender Studies*, 33(1), 110-129
- Karokhail, M. (2021). Barriers to justice: Women's struggle for legal recognition in Afghanistan. *Journal of Human Rights and Justice*, 12(3), 185-202.
- Khawar, M., & Sheikh, Z. (2018). Access to justice for women in Pakistan's tribal areas: Challenges and opportunities. *Asian Journal of Women's Studies*, 24(1), 82-98.
- Langa, M. & Mussa, T. (2021). Gender inequality and access to justice in Mozambique: The role of legal reforms and societal attitudes. *International Journal of Law and Policy*, 15(3), 55-70.
- Langford, M., & Brysk, A. (2012). Justice and human rights in the global south: The politics of empowerment. Cambridge, UK: Cambridge University Press.
- Maharatna, A. (2021). Patriarchy, gender inequality, and tribal women in India: Some observations. *Social Change*, 51(1), 94-108.
- Makubi, H. S. (2020). Gender-based violence and the legal system in Tanzania: An examination of women's access to justice. *Tanzanian Journal of Law and Social Sciences*, 9(1), 15-29.
- Mushi, R. D. (2021). Access to justice for women in Tanzania: Challenges and opportunities in a patriarchal society. *Journal of African Law*, 65(3), 33-51.
- Niazi, A. S. (2022). Barriers to women's legal rights and access to justice in the merged tribal districts of Khyber Pakhtunkhwa. *Pakistan Journal of Social Sciences*, 42(4), 561-575.

- Rehman, Z. U., & Wazir, S. (2019). The socio-cultural roots of Ghag and its impact on women's lives in tribal areas of Khyber Pakhtunkhwa. *Journal of South Asian Studies*, 32(3), 119-135.
- Sanauddin, N., Khan, Z., Ahmad, S. & Khurshaid. (2015). Women and armed conflict: Cultural obstacles to Pashtun women's participation in peace building. *Pakistan Journal of Criminology*, 7(4), 141-154
- Sattar, M., & Rafiq, M. (2020). Gender inequality in Pakistan: Causes and impacts on women's access to justice. *Pakistan Journal of Criminology*, 12 (3), 99-111.
- Shah, M. H., & Hussain, F. (2019). The impact of socio-cultural barriers on women's access to justice in the tribal districts of Khyber Pakhtunkhwa, Pakistan. *International Journal of Law, Crime and Justice*, 8(11), 27-41.
- Tanveer, R., & Ali, M. (2023). Assessing the challenges to women's access to formal courts in the merged districts of Khyber Pakhtunkhwa. *Journal of Law and Social Policy*, 9(1), 45-63.
- Young, I. M. (2011). *Justice and the Politics of Difference*. Princeton, USA: Princeton University Press.
- Zafar, H. M., & Haider, M. M. (2019). Impact of patriarchy and purdah on women's access to justice in Pakistan. *Journal of South Asian Development*, 14(2), 157-178.
- Zahir, S. (2021). Gender inequality in Afghanistan's justice system: Exploring legal access for women. *Journal of Gender Studies*, 23(1), 11-25.