

THE IMAC

REVIEW

VOL. I ISSUE (2025)

DOI (Journal): 10.00000/imac
DOI (Volume): 10.00000/imac.2025(1)
DOI (Issue): 10.00000/imac.2025(1-1)

Double-blind Peer-review Research
Journal
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Gendering Land ADR: Designing Inclusive Mediation Mechanisms for Rural Women's Inheritance and Land Disputes in Pakistan

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Abstract

Despite the fact that progressive laws currently ensure that Muslim women have a right to inheritance, rural Pakistani society systematically denies the rural women a right to own land due to the socio cultural values and domination of the informal, male dominated, forums of dispute resolution. Albeit, the formal path offered by the Alternative Dispute Resolution Act 2017 and the court annexed mediation schemes, the design of the two mostly disregards the gendered power asymmetries. The paper is a critical discussion of the disjuncture between the official framework of mediation and the actual practice of land inheritance disputes among the rural women. It looks at how jirgas and panchayats bypass statutory law and how the primary barriers women face in accessing formal mediation are identified. The paper is based on comparative experiences in Bangladesh and Nepal and proposes a multi component institutional protocol to be followed by the Pakistani mediation centers, such as mobile women led mediation clinics, mandatory female co mediator panels, integration of inheritance law literacy and referral linkages with legal aid networks. The suggested model supports the access to justice and validity of the formal ADR in rural Pakistan.

Key words: Access to Justice, Alternative Dispute Resolution, Gender, Inheritance, Jirga, Land Rights, Mediation, Pakistan, Rural Women, Women's Rights

Introduction

Rural livelihoods are based on land in Pakistan, which is owned by women less than five percent of the total agricultural land despite constitutional protections of equality and explicit Islamic shares in inheritance (Gazdar 2014; Khan 2020). This large disparity is not merely a number; it represents the planned economic disempowerment of one-half of the rural populace. The land ownership in agrarian Pakistan is not just about the agricultural production but rather it is a determinant of social status, political voice, credit accessibility and bargaining power at home. Deprived women are deprived of a means of getting out of poverty and reliance (Agarwal 2003).

This methodical deprivation of women of land rights in the first instance is not a problem of inadequate legal provision - the Quranic shares, codified in the Muslim Personal Law (Shariat) Application Act 1962, and provincial land revenue acts, now transparent statutory structures. The highest court in Pakistan has been all along very supportive in giving credit to the right of women to inheritance, most notably in the landmark Supreme Court ruling *Ghulam Ali v. Ghulam Sarwar (PLD 1990 SC 1)*, which held that in the event of a conflict, the customs of the land that contradict the Islamic law of inheritance are invalid. The difference between what the courts say and what is on the ground is, however, enormous.

The outstanding gap is the one in dispute resolution. Most land and inheritance disputes involving women are resolved, or suppressed, outside of the formal legal system, through customary forums such as jirgas and panchayats, which regularly defer to local patriarchal norms statutory claims made by women (Shah 2016; Rubya 2021). A woman who claims her share of inheritance before a jirga risks not only losing her claim but also having to face social ostracism, violence, or can be declared a *kari* (blackened woman) whose actions bring dishonour to the family (Chaudhry 2021). The intimidation of these consequences means that most women do not even bother to bring up the issue as they are intimidated by the consequences.

With the emergence of formal alternative dispute resolution (ADR) mechanisms in Pakistan, particularly after the introduction of the Alternative Dispute Resolution Act 2017 as well as the introduction of



court-annexed mediation centres, there is the opportunity to redirect the inheritance disputes to a rights respecting framework. The Act, which is passed by the National Assembly, and later adopted with provincial revisions, constitutes a paradigm shift in the approach of civil justice in Pakistan. It acknowledges that the formal court system with a backlog of more than two million cases cannot solely deliver timely justice. With its focus on party autonomy, party confidentiality, and outcomes that are mutually acceptable, mediation theoretically provides an easier route.

Nonetheless, these formal structures of ADR are inundated with city, male, and procedurally inaccessible to rural women. They replicate many of the structural barriers that keep women out of formal courts: geographical distance, prohibitive costs, linguistic barriers and gendered cultural norms, and are also not as deeply embedded as to support informal forums. This forms a kind of double bind whereby, the rural women are alienated both by the customary and by the official system. The jirga de facto excludes them by means of denying them their rights; the formal mediation centre excludes them physically and culturally.

In this article, it is argued that without a consciously gender sensitive institutional redesign, formal mediation centers risk being left as another inaccessible layer to rural women – one of the reforms that will not benefit the most marginalized women. It suggests a useful, multi-component protocol that builds on the current ADR infrastructure within the Ministry of Law and Justice, informed by comparative innovations within Bangladesh and Nepal, to transform court annexed and community based mediation into an actually inclusive process.

The article continues in six other sections. Section 2 traces the statutory customary disconnection that brings about the land dispossession of women. Section 3 will examine the formal ADR architecture in Pakistan, along with its gender blind loopholes. Section 4 compares and contrasts lessons learned in Bangladesh and Nepal. Section 5 will outline the proposed multi component protocol. Section 6 envisages difficulties and measures to counter them. In Section 7, the conclusion includes a pilot implementation call.

Lessons of international legal systems on environmental dispute settlement (Ed.daran et al. 2025) also contribute to the enrichment of the analysis: lessons on this topic are observed in other countries, which is why this experience can be relevant to gender sensitive ADR. Also, the protocol is written with acute consideration of the necessity of culturally conscious dispute resolution in Asia as Baimoldayeva and Zia-Ud-Din (2022) argue. It is argued that there are no incompatible objectives to gender justice and cultural sensitivity; in fact, sustainable reform would mean a prudent integration of both.

Gendered Exclusion from Land Rights in Rural Pakistan: The Statutory-Customary Disconnect

To analyse dispute resolution mechanisms, first of all one has to map out the specific nature of women land rights and how they are systematically defeated. This part looks at the legal frame, the empirical fact, and the institutional processes that create the disjuncture between the two.

The Legal Framework: Rights on Paper

Under Islamic law, women receive a fixed share the exact fraction depends on the presence of other heirs, and in certain common cases a daughter's share is half that of a son. The Quranic injunction is clear: "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share" (Qur'an 4:7). These are supplemented by the Muslim Family Laws Ordinance 1961 and provincial legislation. Land revenue acts like the Punjab Land Revenue Act 1967 or the Sindh land revenue act 1967 do not discriminate on the basis of sex; they stipulate that mutation of land records needs to be made in the event of an inheritance. Section 42 of the Punjab Land Revenue Act specifically requires that revenue officers must capture the mutation between inheritance in a timely manner and properly.

These rights have been reiterated in Pakistani courts. In addition to the case of *Ghulam Ali v. Ghulam Sarwar*, it was held by the Supreme Court in the case of *Hakim Bibi v. Muhammad Siddique* (2001 SCMR

185) that any custom that denies a woman her share as stipulated in the Quran is void under Article 8 of the Constitution which declares as void any custom that denies a woman her share as stipulated in the Quran. The same Federal Shariat Court has reaffirmed that Islamic inheritance is a divine command and not a customary case.

The Empirical Reality: Rights Denied

However, the reality of life of rural women is in sharp contrast to the legal text. In the 2017 Pakistan Demographic and Health Survey, only 3.4 percent of women in Punjab and 1.1 percent of women in rural Sindh reported ownership of land (NIPS and ICF 2019, 329). In a 2014 study by the Land Rights Network, it was estimated that less than three percent of all agricultural land in Pakistan is owned by women, and that in many districts of southern Punjab and interior Sindh, the number of women owning agricultural land is approaching zero (Gazdar 2014).

In places where women have legal rights, mutations in their name are often not written at all or intentionally left unwritten or overturned later through coercive transactions. Typical practices are: forging the thumb impression of the woman on a relinquishment deed; putting the woman under duress to accept a nominal cash payment (*haq mahr* being confused with inheritance); threatening the woman with divorce or violence; and simply refusing to report the death of the male relative to the revenue authorities so no mutation occurs at all (Agarwal 2003; Gazdar 2014). In other areas, the pre-emptory transfer of land by brothers to their sons during their own lives, is done to ensure that sisters do not have a claim over a share of the land once the father has died.

The Institutional Mechanism: Jirga and Panchayats

The parallel customary legal order is the main mechanism which creates this gap between law and reality and is enforced by village based alternative dispute resolution the jirga or panchayat. These bodies, not having any de jure authority under the Constitution (Article 175 provides the exclusive adjudicatory power of the courts in respect of inheritance, marriage, and land disputes throughout rural Pakistan), have a de facto adjudicatory power over matters of inheritance, marriage and land disputes across rural Pakistan.

The jirga is usually a group of male elders of the predominant land owning caste or tribe. Its power is not based on statute, but rather on the social structure: control over land, kinship networks, and the threat of collective sanctions. Its rulings are arrived at by consensus of the elders and utilization of the customary norms (*rivaj*) and not statutory or Islamic law. In the issue of inheritance, these norms state that the land should not leave the patrilineage; daughters marrying outside the lineage should not carry the land with them. The jirga therefore becomes an institutional process of perpetuating patrilineal land concentration.

Their rulings regularly sell out the portions of the women land to save family honour, treat the inheritance of the daughters as discretionary charity, as well as to settle inter family feuds with the women being sold off as compensation (*vani/swara*) or waiving their claims over property (Chaudhry 2021; Rubya 2021). Since jirgas are part of the local power structures, their decisions are immediately followed, and they are often supported by the threat of social ostracism or violence. A woman who dares a jirga decision by going to the police or courts is severely punished – houses burned, women killed, and whole families boycotted.

In comparison, a legal solution by the civil courts is distant, costly, and time-consuming to a rural woman who lacks mobility, literacy, and independent income. The process of a civil suit on inheritance can take five to ten years to complete and in the process, the woman is exposed to pressure and retaliation. This court is housed in the district headquarters, a journey that costs money, time and male accompaniment; resources that women systematically lack. The fee charged by lawyers is prohibitive as a woman with no independent income cannot afford it. The civil litigation, which involves men speaking English or Urdu before a male judge and male lawyers, is procedurally complex to women who may have non-standard English or no English knowledge at all, and who have never entered a formal institutional space.

In this way, the informal system of dispute resolution that is de facto applied in rural areas to land claims by rural women is a patriarchal informal system that usurps the jurisdiction of formal courts as well as formal ADR. Any effort to enhance the formal mediation will have to grapple with this institutional rival. The jirga is not only an alternative forum, it is the dominant forum and formal mediation must provide something that is genuinely different to draw cases away.

The Formal ADR Landscape in Pakistan: Promise and Gaps for Women:

The Emerging ADR Architecture

The Alternative Dispute Resolution Act 2017 offered a court referred mediation of civil cases, and a number of provinces have modified their civil procedure codes accordingly. The 2002 amendment and the 2017 Act empower courts to direct a dispute to mediation, arbitration, or conciliation. The Act created ADR centres attached to district courts, manned by trained mediators who are attorneys in the legal field.

In Punjab, under the Punjab ADR Act 2019 and with the directive of the Lahore High Court, which handles family, rent, and civil litigation, court annexed ADR centres have been established. By 2023, Punjab had set up ADR centres in all 36 districts, with reported settlement rates in family cases exceeding sixty percent (Bhatti and Rizwan 2023). It has also set up mediation centres in Karachi and other districts, albeit more slowly in rural Sindh. The International Mediation and Arbitration Centre (IMAC), which is part of the Ministry of Law and Justice, has the vision to promote mediation standards in the country, to provide training, accreditation, and a model of institutional mediation beyond the court annexation.

The developments have potential implications in case of inheritance among women. Compared to litigation, the litigation process is viewed as more expensive, time consuming, and adversarial. Theoretically, a woman would have her claim to inheritance mediated in weeks as opposed to being litigated over years. The party driven, confidentiality of the mediation process may decrease the social spectacle of a publicly visible trial, and may thereby diminish the threat of retaliation.

Gender-Blind Structural Gaps

However, an analysis of practice shows that there is a sequence of gender blind structural vacuums that block the realization of this theoretical possibility to rural women:

Geographical centralization: The centers of court annexed mediation centers are found in district headquarters or urban courts. There are more than 130 districts in Pakistan yet the rural population is distributed in more than 45,000 villages. A woman in a village in interior Sindh or southern Punjab has to travel between twenty and fifty kilometers to the district ADR center, which in turn incurs transport costs that are often more than a day's wage, and requires a male escort or escort – the family member most often accompanying her – who in turn reinforces the dependency structure which perpetuates her dispossession. To most women, the trip cannot even be contemplated without the goodwill of the very family members that are depriving her of an inheritance.

Dominated by male's mediator panels: Practically all certified mediators are male attorneys or retired judges. A survey conducted in 2022 of ADR centers empaneled by the Lahore High Court revealed that less than five percent of empaneled mediators were women (Ashraf 2023). The cultural prohibition is culturally inappropriate and places her at a risk of re-victimization. She can be asked about personal family issues, whether she is married or not, how she gets along with her brothers – all before men who share the background and assumptions of the jirga elders with which she is attempting to circumvent. The lack of female mediators is not only a question of diversity, but it is a very fundamental barrier to the effective communication process, women are socialized in such a way that they are not expected to discuss property issues with non-related men (Shaheed 2010). The all-male mediation panel is a non-starter to many rural women due to the Purdah norms restricting the interaction of women with non-kin males.

Lack of legal empowerment: Court annexed mediation presupposes that parties know their rights and can formulate them. Rural women lack knowledge on the exact shares that they are entitled to, are unable to read land records and are also unaware of the mediation procedures. What many are not aware of is that

the law grants them a fixed share of Quran; they have internalized the traditional norm that daughters do not inherit. Even the mediation session itself does not provide any room to basic rights education; it is meant to provide disputants with the needed assistance in reaching agreement. Mediation is of no use to a woman who does not even know that she has a claim.

Process biases in favor of compromise: The pressure on a woman to waive in order to obtain a face saving compromise, the stress on voluntary settlement that mediation emphasizes, can pressure a woman to forfeit substantial legal rights to obtain a face saving compromise, a pattern that is also observed in informal jirgas. Mediators are not supposed to impose their rights, but they are supposed to help to agree. In the event of a woman being set against her brothers, who own the land, and the woman willingly agrees to less than her legal portion of the land, a settlement will all but inevitable result. Without some protection of the rights of the base, a partial renunciation of her portion of the inheritance, with the imprimatur of the state, may simply be legitimized.

Referral gap: Court annexed mediation relies on judicial referral, but very few rural women even file a civil suit to inherit property. The jirga is still their first (and many times their final) resort. Formal mediation requires proactive community based entry points, rather than passive court annexed facility waiting on cases that would never come. The referral model follows a court-to-mediation pipeline of litigants; in the case of rural women, there is no such pipeline.

All these gaps are equivalent to the fact that the formal ADR system is virtually recreating the exclusion that it is intended to address. It provides a door to justice, but that door is located too far, is guarded by men and inscribed with procedural requirements that presuppose literacy, mobility and an awareness of rights that rural women systematically lack. To transform formal mediation into a viable alternative that can be of value to rural women, it is necessary to reimagine its structure rather than simply increase it.

Comparative Insights: Bangladesh and Nepal

It can be helpful to explore how other jurisdictions in South Asia have tried to gender their ADR processes in relation to land and family disputes, before setting out a design proposal. Bangladesh and Nepal provide instructive examples precisely because they share socio cultural and legal characteristics with Pakistan Islamic inheritance law in Bangladesh, patrilineal landholding in Nepal, strong informal dispute resolution practices in both yet have made conscious institutional innovations to incorporate women.

Bangladesh: Village Courts and NGO-Mediated Legal Aid

The Village Courts Act 2006 (as amended in 2013) of Bangladesh allows the establishment of legally recognized village courts with jurisdiction over minor civil and family disputes, including those of inheritance below a particular monetary threshold. More importantly, the Act stipulates in Section 5 of the Act that at least one female member should be appointed to each village court panel that will adjudicate on family matters involving women. Although this statutory requirement was imperfectly realized, it has provided institutional space to women when it comes to their representation in decision making forums that were once exclusively male (Moinuddin 2019).

Practically the bridging role of the female member is often critical. She is able to talk individually with the female party, clarify her rights in a culturally relevant environment, and make sure that her voice is heard in the joint session. Male panel members who are aware of the presence of the female member, will moderate their language and are less apt to dismiss the claims of the woman flat out. This is a major lesson that can be taught to Pakistan, as the presence of even one woman altering the institutional culture is dynamic.

Parallel to this, non-governmental organizations like Ain o Salish Kendra (ASK) and BRAC have operated community based interventions, called shalish (informal mediation), which explicitly combines mediation and women rights education. The model of ASK is specifically worth noting: it puts into practice female community workers who are not only trained in mediation skills but also in the actual family and

inheritance law. They are mediation sessions held in village settings, legal literacy provided before and during the session and links to formal legal aid lawyers in case the case needs litigation. According to ASK, in more than three-quarters of the instances of inheritance which they mediate, women receive at least a partial portion, far more than the baseline of nearly zero in traditionally shalish (Siddiqi 2023).

There are two lessons of the Bangladesh experience. First, the existence of female mediators is not a luxury to the cases of women but is a necessity as their presence will change the process and the outcome. Second, the legal literacy that is integrated into the mediation process, not as a service but as a part of the very mediation session, will solve the information asymmetry in the claims of women in general. Not only does mediation become a settlement process but also an empowerment experience.

Nepal: Community Mediation with Mandatory Female Co-mediation

The Community Mediation Programme in Nepal, formalized by the Mediation Act 2011, incorporates government recognized community mediation centers at the level of village development committee (since restructured into rural municipalities). Section 9 of the law requires that at least one of the three mediators on any panel be a woman especially in cases involving women or children (Government of Nepal 2011). The programme is run using trained community mediators who are locally resident, speak the local language and are reflective of community diversity, including caste and ethnic diversity in addition to gender.

The innovation that Nepal has is the level of embedding that the community has. Mediators are not some lawyers or urban professionals who visit the villages; they are a part of the local population who have undergone coordinated training by the Ministry of Law and Justice and through accredited NGOs. They mediate in the local spaces, in community halls, temples, village squares, at times at the convenient time as that of a woman, and often at the convenient time, as that of a woman. Physical and cultural distance between disputant and forum is so reduced.

The presence of female mediators has been shown in evaluation studies by The Asia Foundation and others to greatly enhance the participation and satisfaction of women in land related disputes and in inheritance claims. Women said that they were less intimidated and they were more apt to say out their claims in their entirety. The proportion of women filing claims to inheritance rose significantly in comparison to the control districts, where community mediation was not active (Bhadra 2019). The Nepal model also connects community mediators to legal aid and district courts in such a way that mediated agreements can be registered and enforced in the same manner as any other contract.

The case of Nepal shows the relevance of physical proximity and familiarity with the cultures. Women employ mediation when it is availed in the community, by well-known and trusted mediators, in the local language and when it is female dominated. When it is distant, formal, and male, they do not.

Lessons for Pakistan

There are two universal principles which are invoked by the experience of Bangladesh and Nepal. To begin with, the fact that the representation of female representatives in mediation panels is mandatory directly influences the outcomes of the female representatives in mediation panels; it is not merely symbolic but transformative in nature. Second, the material proximity of mediation services, which is integrated into the community but that is connected to the formal systems, is essential to access. Both models also explicitly incorporate the legal literacy as part of the mediation process turning mediation as a simple settlement mechanism to an empowerment mechanism.

These South Asian experiences will be in harmony with the larger international knowledge. Like Ed.daran et al. (2025) in their comparative research on the legal frameworks that are applied to resolve a dispute involving marine pollution, effective dispute resolution will need institutional architectures both grounded in local contexts and tied to higher level enforcement mechanisms. A strictly international structure cannot take into account the local ecological context; a strictly local mechanism cannot access the

scientific and legal resources to use in complex conflicts. This can be applied in gender sensitive ADR: a pure top down model will not work without embedding it in the community, whereas a pure bottom up model may not offer as much protection of rights as formal law does.

The formal ADR system of Pakistan is able to incorporate these principles and adapt to the particular institutional environment of provincial mediation centers. More importantly, as Baimoldayeva and Zia-Ud-Din (2022) argue, it is necessary to produce an Asian model of dispute resolution considering the Asian traditions; just simply following the Western standards will be unlikely to accommodate the unique approach of the Asians to resolving conflicts, which often priorities harmony, face saving and community cohesion over individual assertion of property rights. The reform of the ADR infrastructure in Pakistan must thus be culturally aware and work with and not against the grain of the local social norms whilst respecting the statutory rights of women. The dilemma is to devise a mechanism that will be both culturally resonant and rights protective – a combination that the next protocol attempts to strike.

Proposed Protocol: A Multi-Component Model for Women-Sensitive Land ADR

This section suggests a model protocol that should be used in the ADR architecture of Pakistan. The protocol is not a wholesale structural reorganization, but is based on existing court annexed mediation centers and incorporates new community facing elements. Every component talks to one or more of the structural gaps in Section 3, and is informed by the comparative lessons of Section 4. The design is also informed by the culturally conscious approach promoted by Baimoldayeva and Zia-Ud-Din (2022), ensuring that formal mediation does not challenge the deeply rooted community structures, even as it alters them towards better gender equity.

Mobile Women-Led Mediation Clinics (MWLCs)

Mobile mediation clinics must be set up at tehsil and union council level in order to overcome geographical and mobility barriers. A mobile clinic would include a small group of people in the form of one legally trained female mediator, one female community facilitator (paralegal) and a driver/support staff to travel on set weekly schedules to the villages or accessible market centers. The team would drive a well-marked vehicle, which was visible and identifiable in the community.

Clients would be able to direct dispute to the mobile clinic without having to be in an ongoing court case; a crucial deviation of the current court annexed model. The clinic would operate as a first tier entry point: women could approach the team during its scheduled visit to the village and claim their inheritance verbally (with the paralegal recording it in writing) and receive an initial rights awareness session on the spot. Those cases which could be mediated such as non-violent inheritance dispute, land partition dispute, cases when the woman is not in immediate physical danger would be documented and a mediation session could be held immediately or scheduled to be held during the next visit.

Agreements arrived at would be written down in the local language, read aloud and explained to the woman in private, signed by all parties, witnessed by two members of the community and forwarded to the concerned civil court to endorse consent decree under Order XXIII Rule 3 of the Civil Procedure Code, and thus giving the agreement final legal enforceability. In case of no agreement, the mobile clinic team would refer to the legal aid or the court so that the woman would not go back to the same spot of isolation.

Mobile clinics ought to have administrative connection with the nearest court annexed mediation center which will offer supervisory oversight, record keeping, provide legal updates, and handle more complex cases that might require multiple sessions or forced enforcement.

Mandatory Female Co-mediator Requirement

Based on the statutory legislations in Nepal and Bangladesh, the protocol would stipulate that out of any mediation involving a claim of land or inheritance by a woman, one of the members of the mediation panel

must be a woman. Where the only opposing party is a woman the most usual case in claims to inheritance – a majority female panel (two women out of three mediators) should be the default, with the express permission of the woman party. This exceeds the Nepal and Bangladesh models, reflecting the especially harsh patriarchal restrictions in rural Pakistan.

To operationalize this, a district panel of trained female mediators needs to be established, based on the female lawyers, retired female government officers, law graduates, and female social workers with community standing and experienced female community workers of NGOs. The pool should contain women of various caste, classes and language groups so that the mediators can be matched to the community context of the disputants.

The provincial judicial academies, in consultation with mediation stakeholders, could design and deliver a standardized 40-hour training programme that covers mediation skills, Islamic and statutory inheritance law, land revenue records and mutation procedures, gender sensitive communication, trauma informed practice, and safety protocols. There should be courses on power imbalances, identification of coercion and understanding of when mediation is not appropriate. Accreditation would be required, and empanelment would be renewable after every three years with continuing professional development requirements.

Court-annexed Mediation Centre "Women's Inheritance Bench"

The existing court annexed mediation centers are supposed to devote one fixed day per week as women inheritance day whereby special trained panels (including female mediators) will hear only inheritance and land dispute cases brought by women. This designation has several functions: it concentrates expertise, creates a physical space which women know is theirs, and builds institutional memory and specialization amongst mediators handling inheritance cases.

On such days, the center would include basic support services to meet the higher needs of the woman disputants: a female only waiting area where women have privacy and comfort; a legal literacy desk with illustrated pamphlets in Urdu, Sindhi, Punjabi and other regional languages explaining what percentage of the inheritance will be given; a pro bono lawyer list available to consult; and a crèche or child minding facility since women with young children cannot attend mediation without taking care of their children.

The model does not require any new legislation the Administrative authority of the High Courts under their supervisory jurisdiction is sufficient to designate special benches and procedures. A pilot in the Lahore High Court or Sindh High Court might produce evidence to scale up immediately in the law.

Rights Education as a Component of the Mediation Session

Rather than thinking that a mediation is simply a settlement process, the protocol requires the mediator to spend the first 15-20 minutes of the initial meeting (before substantive negotiation) in a private right to know session with the female party, alone should she choose. The mediator would explain the legal portion of inheritance of the woman with references to the Quranic verses and the legal statutes, provide the woman with a copy of the revenue record (*fard*), illustrate how mutations work, and explain the process and binding potential of the mediation.

The most important criterion of the protocol is this rights awareness session because it deals with the underlying informational asymmetry that makes rural women structurally unequal at the negotiating table. A woman who is unaware that she is entitled to half or a quarter of the land owned by her father cannot negotiate in good faith about it. The session also serves as a screening mechanism: when the woman, after getting to know her rights, still wants to accept a smaller share in order to have family harmony, that is her informed decision; when she wants to insist on getting her full share, then the mediation process proceeds under a more equal footing.

This practice is supported by international frameworks (UN Women 2018) and has been piloted successfully by community mediation programmes in Bangladesh, where pre-mediation rights sessions

have been shown to significantly increase the substantive outcomes of women even where compromise is the final outcome.

Referral Linkages with Legal Aid and Shelters

Mediation is not applicable in all cases. In cases where there is a history of violence, credible threats or grossly unequal power relationship that cannot be mitigated by procedural controls, mediation may be contraindicated. The protocol should also contain a clear screening checklist, to be used during the initial intake, to identify cases requiring direct protective referral as opposed to mediation.

Memoranda of understanding, shared referral forms, designated liaison officers should be established with district legal aid committees (under the Legal Aid and Justice Authority Act 2020), the office of the provincial ombudsperson, women's shelters (Dar-ul-Aman), and police women protection cells. When a mediator sees a high risk case, they should be able to fast track the woman to legal representation, safe accommodation or protective orders without the woman having to go through various institutions on her own.

Interface with Informal Jirgas: "Gateway" Strategy

Realistically, rural women will still be faced with jirga. It is not possible and not desirable to have a complete disengagement between formal and informal systems, and it would leave women who find themselves before jirgas without a state backed alternative. Rather, the protocol imagines a "gateway" strategy: a small number of female mediators and community paralegals will be trained to enter the scene at the moment of a jirga on a dispute over an inheritance of a woman.

The intervention is non-confrontational. The female mediator or paralegal contacts the woman, not the jirga, and provides her with an alternative pathway, the formal mobile mediation clinic. She explains that the woman has a statutory right to inherit, the state offers free mediation service, and the woman can use that forum instead of the jirga. The choice is up to the woman, and for the first time she has a real choice.

This necessitates previous rights awareness campaigns at the community level, through radio, social media and community theatres, as well as reaching at least some male elders through Friday sermons, so that women and at least some male elders are aware of the state supported alternative and the Islamic basis of women's inheritance. Progressive religious scholars (ulema) should also be engaged to issue fatwas and deliver sermons affirming that denying women their Quranic shares is haram and that state mediation is a valid Islamic forum.

A similar "doorstep intervention" model has been replicated in Sindh, notably through the people's land rights tribunals convened by the Sindh Community Foundation and partner organizations, which brought mediation to the affected communities and successfully resolved several high profile women inheritance cases (Soomro 2021).

Institutional Ownership and Funding

The model should be piloted as a joint initiative of the provincial judicial academies and the ADR wing of the Ministry of Law and Justice, in collaboration with accredited mediation centers. Curriculum design, mediator accreditation and quality assurance would be assumed by the provincial judicial academies and the Ministry provides policy coordination and liaison with provincial governments.

Examples of sources of funding include a mix of government allocations (the line of ADR budget already exists under the development programme of the Ministry), donor programmes (such as the rule of law programme of the UNDP, the Huqooq e Pakistan human rights project by the European Union, and the access to justice initiatives of the Asian Development Bank), and pro bono contributions by the legal community. The price per mobile clinic is relatively low a car, a small group of three employees, fuel and maintenance, administration support - that makes the model affordable to the disadvantaged districts. It

could be introduced in three districts (a district each in Punjab, Sindh and Khyber Pakhtunkhwa) at a cost less than that of building one new courthouse.

Anticipating Challenges and Mitigation

Institutional reform proposals should be realistic in terms of challenges and resistance. The anticipated challenges, as well as mitigation measures, are given.

Opposition on the part of the local patriarchal systems: The mobile clinics and female mediators can be perceived as a threat to the traditional power and economic profit of the elders in Jirga, and the landed elites. The multi-pronged approach to engagement should involve: recruitment of supportive local influencers, such as progressive religious scholars who can explain the Islamic imperative of women being the inheritors; enlistment of moderate male elders who will see formal mediation as less threatening than women going to court; community dialogue which frames mediation as a service to the family harmony, rather than as an adversarial intervention; and ensuring that the mobile clinic staff is culturally competent and recognizable members of the local community. Family consultation, a type of neutral framing that is used in Bangladesh, has been demonstrated to reduce overt opposition (Siddique 2023). This culturally aware approach to dispute resolution design as described by Baimoldayeva and Zia-ud-Din (2022) provides a theoretical framework of such an engagement strategy with the focus on working with the cultural norms in this instance, it is the preference towards the use of a private and consensual family dispute resolution approach.

Women mediators and paralegals: Women workers living in remote and conservative areas are in real physical danger. Safe team travel procedures (never alone, always in teams of at least two women plus a trusted driver), community liaison (notifying local notables and police of the schedule of the team visit), emergency communication (mobile phones with pre-programmed emergency numbers, satellite phones in uncovered areas), and clear security protocols (including the ability to abort a visit should safety indicators be present) must be standard and strictly adhered to. The mobile clinic is to be conspicuously marked as a government service to discourage casual harassment and the district police is to be formally informed as to clinic schedules.

Quality control and sustainability: Without a rigorous training, supervision, and monitoring, the community level mediation may be prone to degenerate to the same power imbalance as jirgas, with the male dominated mediator taking over the role of the male elder. Regular supervision by the district mediation centre, random file audits, client satisfaction surveys three and six months' post mediation, as well as accreditation renewal requirements (including demonstrated continuing competence) will be required. An independent assessment of the pilot after the initial two years should be incorporated in the project design.

Deep-rooted prejudice of male mediators and judicial officials: The presence of female representatives does not necessarily transform the culture of the institutions. Male mediators and judges may not be willing to accept the female inheritance bench as a special privilege, or may quietly undermine the authority of the female mediators. An essential complementary step is a mandatory gender module in all general mediator accreditation courses. It is also important to have High Court leadership that publicly supports the women inheritance bench and makes it clear that the bench is not a peripheral project, but a key judicial priority.

Scalability and resource constraints: While the pilot model is relatively inexpensive per clinic, scaling to all 150+ districts would require significant resources. A phased approach is realistic: after an initial three-district pilot (Years 1–2), expand to the ten districts with the lowest female land ownership indicators (Years 3–4), and then to all districts over a decade (Years 5–10), with each phase subject to evaluation and course correction.

Conclusion

The institutional ADR system in Pakistan has now reached a level, which it can and must be consciously gendered. The network of court annexed mediation centers and the Alternative Dispute Resolution Act 2017 are a major success. However, the infrastructure containing only urban, male and literate disputants is not full. The statute gives women their rights of inheriting; the higher court of law has never questioned the right; and the only thing wanting is a dispute resolution mechanism, which will help transform the paper rights into lived reality of the rural woman, who has never seen a courtroom.

This paper has proposed that a multi-component protocol – mobile women-led mediation clinics, mandatory female co-mediation, dedicated inheritance benches, integration of rights education in the mediation process, referral linkages with legal aid and shelters, and a culturally sensitive jirga gateway strategy – can be used to bridge the gap between legal promise and social reality. Each component responds to a certain structural barrier that was identified through the analysis of the statutory-customary disconnect in Pakistan and the lessons drawn from Bangladesh and Nepal.

Only in a model like this can the informal jirga system be circumvented overnight – no institutional reform could bypass the informal jirga system. However, it does something different: a realistic, accessible, free, state-supported, rights-respecting alternative for rural women. A woman who would otherwise face dispossession would have a place to go which is as near her village as possible and run by women with whom she can discuss the issue, and to which the resultant agreement could be enforced.

The model is legitimized by two sources, which are generally seen to be conflicting but here are reconciled. Through Islamic rules of inheritance, a claim which demands women to get their ordained shares – a divine commandment that cannot be overruled by any cultural value. And through the law of the state, which provides the institutional apparatus to bring those principles to bear. With religious obligation and legal right aligned through the protocol, it provides a narrative that can appeal to the community and transform the outcomes for women.

The comparative study of Bangladesh and Nepal shows that integration of mediation into communities and its association with formal enforcement systems are both possible and effective. The culturally sensitive design of the proposed protocol ensures that it respects local cultural norms and traditions of dispute resolution while gradually enhancing women's substantive rights.

Implementation of such a protocol by provincial ADR systems in Pakistan would serve as a tangible commitment to access to justice in its fullest sense – not merely as the provision of mediation, but as accessibility to those who most need it and who have been excluded as the beneficiaries of mediation. It would make Pakistan's ADR infrastructure a regional leader in gender-responsive justice reform. It would also provide a rich evidence base for South Asian and global scholarship on whether and how formal mediation can be a tool of women's empowerment in a patriarchal society.

The proposed model provides clear avenues for future empirical studies: randomized controlled trials comparing the results in pilot and control districts; qualitative studies of the experience of mediation by women as compared to jirgas in pilot and control districts; cost-benefit analysis comparing mediation to litigation in cases involving inheritance claims; and comparative studies examining the transferability of the protocol to other South Asian and Muslim-majority jurisdictions.

The first step is a pilot in two or three districts that will create the evidence base needed to mainstream gender-responsive land ADR across Pakistan. The institutional structure is in place. The comparative models are on offer. The need is urgent. What remains is the political and institutional will to see Pakistan's mediation revolution trickle down to the most left-behind daughters.

References

- Agarwal, Bina. 2003. "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market." *Journal of Agrarian Change* 3 (1–2): 184–224.

- Ashraf, Zeeshan. 2023. "Possible Ways Forward for Achieving Greater Gender Diversity in Arbitration in Malaysia: Legal and AI-Powered System Approach." Available at SSRN 5217766.
- Baimoldayeva, Alina, and Malik Zia-Ud-Din. 2022. "Promoting Asian Economic Development By Designing Culturally Conscious Alternative Dispute Resolution (ADR)." *Journal of Legal Studies* 29 (43): 125–141. <https://doi.org/10.2478/jles-2022-0008>.
- Bhadra, Chandra. 2019. "Community Mediation in Nepal: 'A Hospital That Stitches Broken Hearts.'" Subnational Governance Program, The Asia Foundation, Nepal, February 13, 2019. <https://sngp.org/2019/02/13/community-mediation-in-nepal-a-hospital-that-stitches-broken-hearts/>.
- Bhatti, Muhammad Umer, and Mirza Shahid Rizwan. 2023. "Alternative Dispute Resolution in Criminal Justice System: A Case Study of the Punjab ADR Act 2019." *Pakistan Journal of Social Research* 5 (01): 181–195.
- Chaudhry, Sharmeen. 2021. "Jirga System and Women Rights." *Pakistan Today*, February 22, 2021. <https://www.pakistantoday.com.pk/2021/02/22/jirga-system-and-women-rights/>.
- Ed.daran, Driss, Malik Zia-ud-Din, Riad Al Ajlani, and Fatima Ezzohr Elhajraoui. 2025. "International Legal Frameworks for Regulating Land-Based Marine Pollution: A Comparative Study of Global and Regional Approaches, Disputes and Settlement Mechanisms." *Access to Justice in Eastern Europe* 8 (2): 254–292.
- Gazdar, Haris. 2014. *Women's Land Rights in Pakistan: A Review of the Evidence*. Islamabad: Land Rights Network.
- Government of Nepal. 2011. *Mediation Act, 2068 (2011)*. Kathmandu: Nepal Gazette.
- Khan, Ayesha. 2020. "SC Ruling Upholds Daughter, Widow's Right to Inheritance." *The Express Tribune*, December 10, 2020. <https://tribune.com.pk/story/2275354/sc-ruling-upholds-daughter-widows-right-to-inheritance>.
- Moinuddin, Sheikh. 2019. "Village Courts Disposed of 78pc Cases in Two Years." *The Daily Star*, September 29, 2019. <https://www.thedailystar.net/city/news/village-courts-disposed-78pc-cases-two-years-1807165>.
- NIPS (National Institute of Population Studies) and ICF. 2019. *Pakistan Demographic and Health Survey 2017–18*. Islamabad and Rockville: NIPS and ICF.
- Rubya, Tahira. 2021. "From FCR to ADR." *The News International*, June 18, 2021. <https://www.thenews.pk/print/851077-from-fcr-to-adr>.
- Shah, Nafisa. 2016. *Honour and Violence: Gender, Power and Law in Southern Pakistan*. New York: Berghahn Books.
- Shaheed, Farida. 2010. "Contested Identities: Gendered Politics, Gendered Religion in Pakistan." *Third World Quarterly* 31 (6): 851–867. <https://doi.org/10.1080/01436597.2010.502848>.
- Siddiqi, Dina M. 2023. "Modern Law, Traditional 'Shalish' and Civil Society Activism in Bangladesh." In *Legal Pluralism in Bangladesh*, edited by M. M. Rahman, 67–89. Cham: Springer. https://doi.org/10.1007/978-3-031-27188-5_4.
- Soomro, Abdul Hafeez. 2021. "Pakistan's First People's Land Rights Tribunal Held in Sindh." Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), June 23, 2021. <https://angoc.org/news/pakistans-first-peoples-land-rights-tribunal-held-in-sindh/>.
- UN Women. 2018. *A Practitioner's Toolkit on Women's Access to Justice Programming*. New York: UN Women. https://www.ohchr.org/sites/default/files/Documents/Publications/PractitionerToolkit/WA2J_Consolidated.pdf