

## The Gendered Landscape of Justice: Institutional Barriers to Women's Khula Rights in District Courts Peshawar, Khyber Pakhtunkhwa

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**Abstract:** Women seeking Khula (Islamic divorce) in Peshawar courts face systemic barriers deeply embedded within patriarchal structures and gender norms. This study critically examines the intersection of legal, social, and cultural constraints that shape women's experiences in family courts. Using a qualitative approach, the research highlights the pervasive influence of patriarchal ideologies, which manifest through familial pressure, societal stigmatization, and religious interpretations that discourage women from pursuing their legal rights. The findings reveal that the legal system itself, rather than being a neutral arbiter of justice, operates within a patriarchal framework that systematically disadvantages women. Structural barriers, including judicial biases, procedural delays, and socio-cultural intimidation, further impede women's access to justice, often compelling them to forgo legal recourse altogether. The study draws upon feminist theories of structural oppression to analyze the ways in which institutionalized patriarchy reinforces gendered disparities in legal proceedings. It argues for urgent policy interventions and legal reforms to dismantle these entrenched barriers and ensure a more equitable legal environment for women seeking Khula.

**Keywords:** Patriarchy, Legal System, Women's Rights, Gendered Justice, Khula (Islamic Divorce)

### Introduction

Seeking khula is a legal battle against the defiance of cultural taboos and deep-rooted patriarchal gatekeeping in societies where divorce is stigmatized; it is said that the very first retort that women come across is the societal and patriarchal responses that have a significant impact on women seeking khula. Some people blame women for *Khula* because of their economic empowerment (Zulqairmanin et al., 2022). Women are grown up with a typical mindset where they feel that marriage is a 'gamble', that one never knows what is in store, and that women were born to be subservient initially to their parents and subsequently to their husbands" (Qadir et al., 2007).

Nevertheless, Pakhtunkhwa is a male-controlled society where marriage plays a significant role in defining a woman's identity and social standing. Dissolution, unfortunately, is often alleged to be a woman's failure, resulting in shame for her and her family. Therefore, women considering khula often meet intense social pressure to sustain the marriage, even if it harms or abuses them. Similarly, in Peshawar courts, the process of seeking khula is complex and difficult for women due to patriarchal influence as some societies require women to provide a specific reason for seeking khula, such as physical abuse or infidelity, etc., and they are also required to produce evidence or witnesses to support their claim, but this thing does not happen in case of men. This situation creates challenges for women who may not have access to these resources or may fear retaliation from their husbands or families (Ahmad, 2002). This is one of the most pressing issues in the Khyber Pakhtunkhwa province of Pakistan, where a male-dominated society hinders women's will to leave an unwanted marriage. This is not a novel topic to study, but various scholars have studied it comprehensively. However, this study specifically looks into this matter to analyse how the patriarchal influence and typical gender norms impact the rights of women seeking Khula in Peshawar courts.

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In this way, this study explores how gender norms and patriarchal ideologies influenced the legal system established to interpret and apply the law to provide justice. Also, it highlights the patriarchal ideologies that influence or permeate the legal systems to impact their decision-making and ruling. In addition to this, this paper discusses the challenges women face while accessing the legal system for divorce in a male-dominated society. The work also employs structural oppression theory for analyzing the oppression created by male-dominated Society on women seeking khula in Peshawar courts. The purpose of this study is to discuss the multiple layers of structural violence in legal practices and policies of divorce or khula posed by patriarchal Society.

### Theoretical Framework

This research explores the structural oppression of women seeking *khula* rights with a feminist lens, which talks about women's oppression from a diverse perspective. The study initially employs Maeve McKeown's theory and explains three forms of structural injustices, such as 'pure structural injustice' where there is no identifiable perpetrator, and the injustice is the sum of multiple agents, non-blame worth action, which can be altered through collective efforts. 'Avoidable structural injustice' involves powerful agents with the power and ability to alter it, but they fail to do so. The other is the 'deliberate structural injustice' where agents are deliberately perpetuating unjust background conditions for their gain, and they have the power to change them (McKeown, 2021). Furthermore, Simone de Beauvoir, who is a radical feminist, also talks about women's oppression (1949). She believes that women must have the same kinds of projects and activities as men. Further, she demands equal treatment for women in comparison to men. In addition to that, she talked about the historical incidents which contributed to the defeat of women's sex. She argues that patriarchy treats women as 'others. However, Kamla Bhasin argued that feminism is not a war between men and women. Rather, it's a fight among binary ideologies. One that upraises men and gives them supremacy and power, and the other that advocates for equality (Bhasin, 1993).

The theories explain that women in Khyber Pakhtunkhwa are highly dependent on men due to the cultural values and norms that provide no space to make any independent decisions. The patriarchal structure generally favors men over women in all life decisions and has no exception in the case of Khula. The theory explains that patriarchal norms prevail in Khyber Pakhtunkhwa, constraining women from seeking *Khula*, and also explains the legal barriers rooted in patriarchy that influence women's right to seek Khula in the courts of Peshawar. This framework helps in understanding patriarchal resistance faced by women in family courts while seeking khula.

### Research Methodology

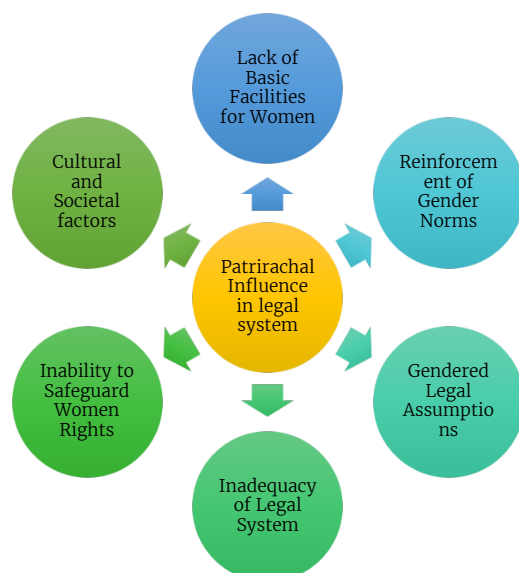
The study utilizes a qualitative interview-based approach to explore the patriarchal influence on the legal system in Peshawar courts for women seeking *Khula*. Additionally, the Qualitative method facilitates digging up many human actions tangled in the structural oppression of women seeking khula (Maxwell, 2012; Merriam & Grenier, 2019; Merriam & Tisdell, 2015). Based on the complexity of the topic, an explanatory approach was applied to analyze the study with a purposive sample technique. The researcher conducted interviews with 29 participants from four different groups, including 18 women who have filed khula cases in courts, with 9 of them being residing in *Dar-ul-Aman* (Shelter Home), five professional lawyers who have hands-on experience dealing with such cases in family court, three judges from family court, and three officials from *Dar-ul-Aman* and the Human Rights Departments. After conducting interviews, they were transcribed into meaningful form to identify various themes for data analysis.

### Discourses on Structural Oppression for Khula Seekers in Khyber Pakhtunkhwa

Understanding the patriarchy embedded within the legal structure is important in being able to explain how justice can be done in a warped way to disadvantage women when they are exercising their legal rights in marriage dissolution. The study identified several gender norms and patriarchal practices that influence the legal system in Figure 1 below:

**Figure 1**

Identified Themes from Data Collection



Source: (Author Self-made)

### Gendered Legal Assumptions

One of the other most apparent issues is gendered legal assumptions – the preference of the legal system in the eye of the law for patriarchal positions, which are reflected in the consideration of the gendered roles of spouses within the framework of the *Khula* case. Conventionally, the marital relationship defined and practised in most cultures encompasses a division of labour and duties that are based on male dominance. More specifically, it is customary for the man to always provide for the family and make all major decisions, while the woman knows her role is to be a natural caregiver and oversee domestic matters (Zankih, 2020). These gendered roles, ingrained in the social structure, also shape the mindset of legal professionals, members of the bench, and legislative policymakers. Thus, the process of decision-making in the *khula* cases exerts an influence towards the maintenance of male-dominant values and traditional male roles in marital decisions. A glaring esoteric that manifests itself through this bias is evident in how courts handle issues related to the distribution of marital properties. Where a woman wants to get a *Khula*, the courts may decide to relinquish the dower in favour of the man because the husband is the breadwinner of the family. In essence, this bias results in one disregarding the argument that even though wives are not financially contributing in the same manner as their husbands, they are contributing immensely to their marriages by catering to the children and managing the household.

A respondent said in this regard:

*At the first visit of my hearing, I was insulted by the police on the way, and they said that you are not even earning and performing house chores and took pleasure in 4,5 males, that's why you ask for khula because now you cannot get satisfaction from your husband. (Interviewee 5, Personal Communication, 2024)*

Hence, the legal system fails to see if this non-economic contribution is disregarded. This remains resonates with the awarding of the value of a man by how much money he brings to the table in comparison to women's worth being measured in the lack of financial independence they have.

### Cultural and Societal Factors

Moreover, there are cultural or rather societal factors that still have their origin in the patriarchy and have effects on the *khula* outcomes in Peshawar courts. In Khyber Pakhtunkhwa, women's divorce may come with social rejection, banishment, or compromised family honor in most societies. These cultural practices may seep into the legal sphere as the judges, as well as other legal actors, may hold biases influenced by the culture and act against the interest of women by discouraging them from maintaining *khula* or, in some

instances, awarding unfair terms of divorce that make women stay in the marriage. This is mostly done under the pretext of keeping the family integrity but instead supports males and undermines women's autonomy.

A respondent stated her brothers forced her to go back to her first husband:

*When I left the house and came here to Dar-ul-Aman, my brothers came to know about the real story. Now, they are forcing me to get a divorce from my second husband (Halala case) and go with them as my daughter and son are married. They have their families, so at this age, it will create a shameful situation for them in Society, so my brothers and their wives come on a daily basis to force me to take a khula and go with them. (Interviewee 10, Personal Communication, 2024)*

Even the treatment of women by the legal fraternity is coloured by patriarchal attitudes, especially regarding women seeking khula. Women who are involved in changing their conventional roles of marriage by being involved in initiating divorce are regarded as being disruptive to challenge the conventional gender order within the structure of the family. This perception does affect the legal process openly or veiled decision-making processes and punishes the woman for deviating from societal norms.

### **Reinforcement of Gender Norms**

Based on the legal analysis, the reinforcement of gender norms within legal precedents is a significant factor that sustains patriarchy within the legal context, particularly in matters of marital dissolution, such as khula. State decisions are the principles set forth by superior courts, which are used by inferior courts to arrive at their decisions while dealing with similar cases. As such, when these precedents are developed along the tenets of traditional gender norms, it becomes a vicious cycle where gender-skewed perceptions of law are perpetuated through narrow applications of the law. The use of law to enforce gender norms is perhaps most evidently seen in the way legal precedents perpetuate marriage laws and their interpretations around divorce and family. These precedents may also impact court admissibility for evidence and legal reasoning. Marriage laws in patriarchal countries demand women to prove damage or perversion to get a khula (Ijaz, 2015). They claim women are more emotional than men and provide them minority fewer justice possibilities. Courts perpetuate a non-women-friendly, non-transformational legal culture by continually presenting biased cases to its members. Legal issues also influence the gender roles expected of men and women in marriage. Legal choices in favour of one gender, particularly regarding leadership or economic privileges for men, set the tone for Society.

A respondent said:

*Some officers try to coerce me, and I feel helpless. Sometimes, I think coming to the court was my worst decision. Because I am very much blamed and characterized by the in-laws in front of the people, and it's taken as the truth by most of the officers. (Interviewee 7, Personal Communication, 2024)*

Hence, this inhibits women from confronting these conventions and seeking divorce or exercising their legal rights owing to the prejudice in the proceedings. In the last place, the reinforcement of such gender norms at a legal procedural level reiterates gender stereotyping in a cyclical manner to reproduce more negative impacts of the legal procedure when establishing gender equality. It does not permit legal alterations that would progress sexual justice and parity as the courts are constrained by such choices and orders.

### **Inability to Safeguard Women's Rights under the law**

The inability to adequately safeguard women's rights under the law remains a fundamental reason why Pashtun women lag males in complicated marital problems like khula. Legal constraints from patriarchal societies and attitudes towards women exercising their rights sometimes make these legal safeguards insufficient. Failure to recognize women's efforts in marriage, lack of space and aid in legal processes, and failure to uphold current legislation are examples. The marriage system's reluctance to recognize and reward women's non-monetary contributions to the marital business is another issue of inadequate women's rights in khula instances. All countries surveyed divide marital assets and liabilities upon divorce based on earned income and owned property. This approach ignores the significant work women put into

childbearing, child raising, cleaning, and other domestic responsibilities and emotional support. Since the law does not allow for the repayment of non-monetary/nullah/non-tangible profits, most women who go to court to receive a khula leave their marriage much poorer.

A respondent said:

*Most women in Pakistan are living a life of dependency, sometimes on their husbands or their fathers & brothers. After the divorce, no one wants to take on her responsibilities. Most of the time, their life hurdles increase with khula. When I pleaded for khula, it was granted. Later, I asked for financial assistance and help but could not get it from the court or my family. (Interviewee 19, Personal Communication, 2024)*

Hence, lack of credit not only perpetuates the gender stereotype that women are unimportant to the family and Society but also makes divorce financially difficult for women.

### **Inadequacy of Legal System**

Another facet of the idea of inadequate protection is the lack of a comprehensive legal and institutional framework to support women experiencing khula processes. Most women will testify that they experience social, familial, and financial constraints when it comes to the process of seeking a divorce, and the legal frameworks do not provide ways to address such hurdles. For example, there is commonly a scarcity of affordable legal representation for women in such situations. This is because women who seek khula are likely to be denied by legal representatives, legal procedures are complicated, and social repercussions may lead to stigmatization and exclusion.

A Respondent Posit that

*"I was unable to find a legal representative due to familial pressure and financial issues" (Interviewee 19, Personal Communication, 2024).*

Another respondent specifically emphasizing the inadequacy of legal systems said:

*In court, I feel victimized. Some officers are meeting with me, my in-laws, and my husband to do a patch-up. Most of the time, I feel that the officers are from my in-laws' family. They do not regard my safety; my opinions and views are not regarded. They take the allegation discussed by my in-laws as the ultimate truth, my in-laws do character assassination of me, they make up different stories of my love affairs, and the officers took it as the truth. And they tried to influence my decision to take Khula. One of the officers told me whether you are happy or sad, I should go with my husband, and I would reside with my in-laws. (Interviewee 7, Personal Communication, 2024)*

Furthermore, even if legal instruments offer specific protection to women, such as the right for women to seek khula without having to establish certain reasons, the implementation of these protections is usually halfhearted. The decisions made by the judiciary lack uniformity and are also tainted with prejudices related to gender and gender bias. Judicial officers might be inclined to uphold marriage instead of personal liberty. In other cases, a woman might be forced to provide unnecessary proof to be granted a divorce. The absence of compliance with these provisions negates the reasons behind women's enablement, making the legal system unstandardized and unbalanced. Besides, even the little protection of women's rights is not sufficient, and the problem is worsened by social rejection. These gender norms can manifest and perpetrate discrimination in the courtroom, such as belittlement of women, blame-shifting, or even a complete lack of understanding from lawyers and judges.

### **Lack of Basic Facilities for Women**

There is a lack of basic facilities for women in Peshawar courts as compared to men. The absence of seating arrangements for women in Peshawar's district and session courts is indicative of a larger problem with gender insensitivity in public institutions. The lack of dedicated areas or seats for women is frequently an issue of dignity and respect as much as practicality. Inequality is maintained, and women may be deterred from seeking justice by gender-insensitive actions, such as disregarding the requirements of female litigants and visitors. For example, the seating arrangements in a lot of courtrooms and waiting rooms are either not available for female users or not gender segregated.

A respondent, while discussing her case, told the researcher:

*I had to wait for hours outside the courtroom while standing due to a lack of seating or because there were no rooms specially designated for women to be utilized for this cause. The mixed gathering compels some women to stand outside the rooms to get rid of those staring gestures of males. (Interviewee 8, Personal Communication, 2024).*

Hence, women are frequently placed in uncomfortably crowded, cramped, or badly built environments that do not support their dignity or ability to function. This physical setting may inadvertently suggest that women are subordinate to the legal system and deterred from seeking justice or filing grievances if they do not feel respected or accepted in court.

### **Lack of Implementation of Legal Orders**

The inequity observed in the implementation of legal orders, much more so in cases where the law provides for khula, reveals a much bigger problem that cuts across legal regimes whose legal frameworks are crafted in patriarchal societies. Despite the women in the different legal systems receiving some recognition and certain measures of protection in their various rights, they can never attain their rights due to unfair treatment from the police, judges, and other lawyers. This bias manifests itself in ways like delay and non-compliance in the implementation of orders and decisions of the court, the selective application of the legal provisions that undermine women's rights to justice, and locks in gender inequality. Sometimes, female applicants can get the khula decreed, but the execution of other affiliated orders like the mahr, property, their protection, or even visiting rights for children can be partial or unfair. Some police officers or judiciary individuals guided by patriarchal tendencies may fail to protect women; they may not follow court orders in cases where women have granted rights by courts

A respondent stated:

*I feel powerless under this law because for divorce I must appear in court for so long for getting my granted rights, and there is no such restriction on males, there are no penalties for men when they deceive women. (Interviewee 6, Personal Communication, 2024).*

Furthermore, no legal enforcement of orders implies that Society does not give equal weight to women's claims as it does to men's. This can be evidenced in managing orders involving restraining or protective measures in situations where women experience harassment or violence from their former partners. There are legal provisions that exist with the aim of protecting women despite their failure to address such issues when enforcing orders.

A respondent shared that courts sometimes have no say in implementation:

*My husband divorced me, and still, I am compelled to take Khula from court. I do not believe that, in addition to that, this man is threatening me that you are my wife, not the wife of the judiciary, the court has no power to divorce it's my power. I am an illiterate woman; I don't know what is right and what is wrong. (Interviewee 8, Personal Communication, 2024)*

Furthermore, the bias in enforcement can also arise from a lack of adequate training and orientation of the law enforcement agencies on the rights of women and gender equality. Unfortunately, few legal systems provide adequate training programs to make officials knowledgeable and competent in dealing with gender-sensitive cases. Thus, prejudices—conscious or not—can influence law enforcement. Unofficial patriarchal practices in legal practice are promoted by a lack of training, while formal legislation protecting women is disregarded.

In a case where a respondent said

*"I was intimidated by the Judge and police officer they tried to send me back to my husband and forced me to change my decision. Once a judge said that your husband did wrong but think about your children. (Interviewee 4, Personal Communication, 2023)*

Another aspect of biased enforcement is procedural and administrative acts that prevent women from exercising their legal rights. Too frequently, even if one wishes to be in good faith and satisfy the court judgment, it passes through several levels of administration, which is time-consuming and expensive. Procedures add to the suffering of poor or socially pressured divorcees. Police and judges may slow things

down due to family-oriented attitudes rather than women's legal skills. The foregoing delay and obstacle may deter women from exercising their rights or push them to abandon lawsuits.

A respondent stated:

*Her brother's influence on the legal system, she stated that they (lawyers and judges) feel pressurized and used by my family to pressure me through them. (Interviewee 10, Personal Communication, 2024)*

Inequality in legal help clearly does not only skew the legal process but also contributes to the legal discrimination of women. Prejudices against khula-seeking women in Society and in culture may mean that such a woman will not seek professional legal assistance. Getting separated mainly by women is against culture and tradition in many patriarchal societies across the world. This societal bias follows female litigants in the legal profession, and Khula Lawyers end up fearing community backlash or not up to par with holding on to traditional gender roles. Cultural stereotyping supports the notion that women's legal demands should be considered less valid or should not be considered at all, thus contributing to their exclusion in the legal system.

A Respondent uttered:

*I don't think so court has the power to do justice to women in Khula cases they are powerless. (Interviewee 6, Personal Communication, 2024).*

Furthermore, there is still bias against female lawyers and clients at large diminishing the probability of women in accessing legal services. The female lawyers still stay subordinate to male lawyers and still possess limited authority and autonomy. This may affect the ability of the women to access good legal services. Bias is either realized or assumed when handling cases of clients that do not challenge stereotypic gender roles or any cases that have low chances of success given the legal institution bias may compromise the clients. So, as far as the modern problem is concerned, a respondent claims that:

*In many programs of legal aid such concerns as family law or the case of khula may not be considered, which means that patriarchal approaches that tend to diminish women's troubles in one way or another are still present. (Interviewee 26, Personal Communication, 2024).*

## Discussion

The analysis of patriarchal influence on the legal system reveals significant factors influencing women's oppression in the *khula* process, particularly under two major subpoints: the role of patriarchy in the system and the culture affecting the system. These factors work together to sustain a system that was inherently built to oppress women and uphold gender-based systems of oppression. The patriarchal nature of the legal system and its embodiment in family law result in an underdeveloped understanding of gender within judicial and administrative frameworks. The *khula* system portrays men as superior to women, restricting women's rights to full control over the dissolution of marriages. This means the presentation of family unity under legal structures. Working under a patriarchal framework tends to favor males. Judges and other legal systems that are working in societies and might have a patriarchal understanding within themselves may be biased in their decision-making, especially in the cases of *khula*. The judges overload women with other conditions, such as asking them to produce 'valid reasons' why they ought to be granted *khula* or why they do not want to reconcile with their husbands.

The findings of the study also align with the theoretical framework employed as the unfair competitive advantage women have in the legal system builds more credibility to McKeown's Assume principle's idea of avoidable structural injustice, whereby those who have the capacity to alter this state of affairs continue to do so, benefiting from the said inequality. This also concurs with Collins's concluding remarks that the 'family-nation' model assigns women to inferior status, which puts lots of restrictions as caretakers on the autonomy these women enjoy. However, McKeown, when explaining structural injustice, points out that these forms of oppression can be altered but are deliberately or inactively perpetuated. These prejudices can be shifted by legal actors, police, and patriarchal structures, but they often aren't, which sustains the structural violence against women. Deliberate structural injustice is well illustrated in this case by legal authorities who frustrate or deny women justice in *Khula* cases for fear of undermining male

power. The legal system of *Khula* cases is significantly influenced by the culture and traditions of Khyber Pakhtunkhwa, Pakistan. Such norms perpetuate patriarchal norms and enable gender bias when social norms are integrated into the legal and bureaucratic systems to inform and shape women's justice.

Further, Society devalues women and labels them as 'the other' thus putting their needs and rights on the periphery of those of their male counterparts legally and socially, hence, the finding support the theory of Simone de Beauvoir. These Sharia courts' bias toward patriarchal influence on the system and the culture affecting the legal system presented in the findings show how structural oppression is embedded in the *Khula* process for women. These results raise the question of system change that responds to the patriarchal legal framework and the culture that supports it.

## Conclusion

Patriarchal societies imply that legal actors and institutionalism function in a social context. This cultural carry-over constrains the pace of legal change and demands compliance with the legal profession and Society's legal perspectives. Such interactions make gender inequality prevail and structural violence where women who do not go back to the defined gender roles during *khula*. Cultural beliefs that regard marriage as holy and family honor still influence public pressure on legal institutions. The cultural factor affects judges, attorneys, and police officers who implement and enforce the law by holding people, often kids, for family stability. Judges and other legal professionals are also vulnerable to community action if it is based on a belief in marriage preservation at any cost. Therefore, the Society that does not allow a woman to divorce for a *khula* puts her under legal, bureaucratic, and cultural hardship. This opposition manifests in unfair rulings, *khula* denial, or legal procedure extension, showing how public opinion mediates judicial processes. This puts pressure on Society, which increases conservative legal procedures that hurt women.

## Recommendations

1. Women must have the same kinds of projects and activities as men and must demands equal treatment for women in comparison to men to defeat the connotation of women as 'others.'
2. There is a need to alter the culture/and or practices of the various institutions to guarantee women their fair trials and competent as well as effective representation. This is more than just enhancing funding of the programs that offer training and scholarships in the provision of free legal services to women. All these mechanisms need to be done away with for the judicial systems to be gender fair and balanced.
3. Moreover, training programs should be introduced for law enforcement organizations, legal practitioners, judges, and lawyers to promote gender-related awareness, to protect women's rights, and dignity in courts. The training programs should encourage a more empathetic understanding of these issues and reduce bias – while promoting fair and respectful treatment of women seeking *khula*.
4. Ethical code of conduct should be incorporated for judges, lawyers, and law enforcement officers. This includes respect, unbiasedness, responsibility, and duty of care. In case of violations, legal bodies can impose penalties on the violators for maintaining standards in *khula* cases and processes need to be incorporated which channelize the delaying tactics by clients and lawyers. Also, it will enhance the accountability of officials and maintain moral values in family courts.
5. Similarly, there should be enforcement of decrees in cases of *khula* to monitor compliance with alimony, child support, and asset settlements. In this regard, regular follow-ups should be taken by court officials to ensure women receive support in case of court orders.
6. There is a need to change laws and legal precedents, including not only advocating for correct legislation but also ensuring that the law is implemented fairly using principles of gender equity, human rights, and fairness, not elitist conventions in the process of law.
7. There is a need to increase women's legal rights, new legislative reforms, active use and protection of current laws, and reformation.

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