

## Financial Rights of a Divorced Woman: From the Perspective of Islamic Jurisprudence and Afghan Civil Law

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**Abstract:** The study aims to know the financial rights of divorced women, exploring the perspectives of Islamic jurisprudence and Afghan civil law. In the Islamic context, divorced women, who have ended their marriage, are granted specific rights such as financial support during the iddah period, the return of dowry, and the opportunity to remarry, highlighting the necessity of treating them with dignity and fairness. Post-divorce, these women often find themselves devoid of financial support, becoming a societal burden, particularly on the paternal family. This research aims to elucidate the financial entitlements of divorced women, fostering a societal understanding that financial support should be extended to them post-divorce. Objectives include delineating the financial rights of divorced women, examining the stance of Islamic jurisprudence and Afghan civil law on this matter, and drawing comparisons and contrasts between the two legal systems. Data collected from reputable sources like books, periodicals, and online platforms will be referenced to substantiate the findings. In conclusion Islamic jurisprudence and Afghan civil law delineate several rights for divorced women, encompassing provisions for sustenance, shelter, and clothing. Differentiating between scenarios, such as pre- or post-consummation divorce, these laws outline specific financial obligations, inheritance rights, and provisions for foster care and custody fees, aiming to provide clarity on the legal standing of divorced women in both Islamic and Afghan legal frameworks.

**Keywords:** Divorced women, Financial Rights, perspective of Islamic Jurisprudence, Afghan Civil law

### Introduction:

The financial rights of a divorced woman, as viewed through the lenses of Islamic jurisprudence and Afghan civil law, represent a pivotal intersection of legal and cultural norms shaping the post-divorce landscape for women in these contexts. In Islamic tradition, the dissolution of a marriage triggers a series of entitlements for the divorced woman, including provisions for financial support during the iddah period, the return of dowry, and the right to remarry. Conversely, Afghan civil law offers its own set of regulations governing the financial obligations towards divorced women. This exploration delves into the intricate tapestry of rights and responsibilities outlined by Islamic jurisprudence and Afghan civil law, shedding light on the nuanced approaches towards financial security and social welfare for divorced women in these legal frameworks. By juxtaposing these two perspectives, this study aims to unveil the intricacies of financial rights accorded to divorced women, reflecting the dynamic interplay between religious principles and contemporary legal structures in safeguarding the economic well-being and social standing of women post-divorce. Islamic jurisprudence and the civil law of Afghanistan have considered a number of rights for the divorced woman. It includes food, clothing and a place to live. The second Mutah is obligatory on the husband when the separation is done by the husband's side before sexual intercourse and the right seclusion. If it happens earlier, then half-mehr is required, And if they are not married and the separation happens before intercourse or seclusion, according to the opinion of the jurists, the entire dowry is forfeited and Mutah is required for the wife, but from the point of view of the civil law, if it was not married, half of the dowry is required. From the point of view of Islamic jurisprudence and civil law, if a woman has been divorced by reji or minor talaq and her husband dies before the end of the period, she is considered entitled to inheritance, and if she has been divorced by triple talaq, she is not considered entitled, Fifth, foster care and custody fees, both jurisprudence and law make the child's mother entitled to foster care and custody fees when the husband is not in the process of marriage imprisonment or retroactive divorce.

### Problem Statement:

In fact, divorce occurs and exists in the society, but after the divorce, the divorced woman remains helpless in the society and is a burden on the shoulders of the society. The only reason is that the people of the society

are not aware of it. Even after divorce, a divorced woman has a number of financial rights to her husband, so this research will put an end to this problem, and people will be informed based on it that a divorced woman has a number of rights even after divorce, which is Islamic. Jurisprudence and Afghan civil law have considered the owner as required and obliged to respect and pay it.

#### **Significance of the Research:**

Divorce is a prevalent occurrence in our society, often leaving divorced women without financial support. Islamic Sharia and Afghanistan Civil Law may indeed stipulate financial rights for divorced women, yet these entitlements are frequently overlooked or disregarded, leaving these women unsupported. Consequently, divorced women can become societal burdens, particularly within the family structure. The reluctance to fulfill these financial obligations stems from a lack of awareness regarding the post-divorce rights of women and the social stigma attached to divorce within certain communities like the Pashtuns, despite Sharia law emphasizing the necessity and obligation to provide for divorced women. This study aims to address these misconceptions and societal attitudes, advocating for a shift in mindset that encourages timely and respectful provision of financial rights to divorced wives in accordance with legal and moral responsibilities.

#### **Research Objectives:**

- To delineate and comprehend the financial entitlements of divorced women.
- To elucidate the stance of Islamic jurisprudence on the financial rights of divorced women.
- To expound upon the perspective of Afghan civil law concerning the financial entitlements of divorced women.
- To highlight and analyze the similarities and disparities between Islamic jurisprudence and Afghan civil law concerning the financial rights of divorced women.

#### **Research Questions:**

- What are the financial entitlements that a divorced woman possesses from her husband post-divorce?
- How does Islamic Sharia define and address the financial rights of divorced women?
- How does Afghanistan's civil law delineate the financial rights of divorced women?
- What similarities and distinctions exist between Islamic jurisprudence and Afghan civil law concerning the financial rights of divorced women?

#### **Literature Review:**

The study in Kuala Terengganu examined the psychological adjustment of divorced women, interviewing five respondents aged 20 to 40 from 'Persatuan Kebajikan Ibu-Ibu & Ibu Tunggal Terengganu' (PERKIBUT) who had been divorced for over two years. Utilizing Nvivo 12, the research highlighted the impact of a strong social support system on women's ability to adapt post-divorce, emphasizing the importance of enhancing psychological well-being through effective coping strategies and robust social support networks for women's empowerment and family harmony. Mezalan, N.E., & Mohd Juaini, N.J. (2023).

This study in Jordan highlights the challenges faced by divorced women, including societal stigma, economic struggles, and psychological distress. Significant variations were noted based on income, education, and age. Recommendations include enhancing support systems, providing rehabilitation programs, and promoting awareness to preserve marital stability. Specialized interventions by labor institutions and social workers are advised to assist divorced women effectively. Khataybeh, Y.D. (2022).

Marriage, a foundational contract between a man and a woman, is governed by Law Number 1 of 1974, requiring adherence to religious provisions and formal registration for validity. However, challenges arise for women divorced outside religious courts, lacking marriage or divorce certificates. This discrepancy prompts the need for a marriage to legitimize subsequent marriages for those without proper documentation. Sujono, I. (2022).

In Pakistan, rising divorce rates are negatively impacting women and children's well-being. This study explores the experiences of six divorced women, revealing reasons for divorce, its consequences, and adaptation challenges. Findings highlight issues like in-law interference, financial exploitation, and social stigma post-divorce. Insights into coping mechanisms such as divine accountability and children's support are discussed. The study's implications are beneficial for family counselors and social welfare organizations in Pakistan. Qamar, A.H., & Faizan, H.F. (2021).

In Iran, where post-divorce relationships for women are discouraged, loneliness and ineffective emotional regulation can contribute to mental health issues. This study focused on the impact of Acceptance and Commitment Therapy (ACT) on divorced women's emotional regulation and loneliness. Through a controlled

study involving 30 participants, those receiving ACT showed improvements in emotional regulation and reduced loneliness. The findings suggest that ACT interventions can effectively enhance emotional well-being and alleviate loneliness in divorced Iranian women. Mahmoudpour, A., Rayesh, N., Ghanbarian, E., & Rezaee, M. (2021).

In Tehran, a study found that Acceptance and Commitment Therapy (ACT) effectively reduced hypochondriasis and improved psychosocial adjustment in divorced women. This intervention shows promise in alleviating anxiety and enhancing well-being in this population. Iri, H., Makvandi, B., Bakhtiarpoor, S., & Hafezi, F. (2021).

A study in Kashmir explored the experiences of divorced women using a phenomenological approach. Through interviews with 20 participants, reasons for divorce such as violence, infidelity, and challenges post-divorce were revealed. Divorce led to various social, economic, cultural, and psychological difficulties, met with resilience and coping strategies by the women. Khan, T.A., & Hamid, W. (2020).

A study on divorced women who experienced domestic violence reveals their post-divorce empowerment and coping strategies. Themes include seeking help, the cycle of violence, family oppression, coping methods, and increased awareness. The research highlights ongoing partner violence post-divorce, providing insights into women's experiences in these situations. Kelebek-Küçükarslan, G., & Cankurtaran, Ö. (2020).

A study in Arak, Iran, found that the Rebuilding Seminar positively influenced post-divorce adjustment and general health in divorced women. The 10-week group intervention showed improvements in adjustment and health, highlighting the need for tailored interventions for divorced women facing life changes and divorce-related stress. Asanjarani, F., Jazayeri, R., Fatehizade, M., Etemadi, O., & De Mol, J. (2018).

A study in Kermanshah, Iran, found that social support and resilience significantly predict suicidal ideation symptoms in divorced women. These factors play a key role in understanding and addressing mental health challenges in this population. Ariapooran, S., & Khezeli, M. (2018).

A study in Kota Metro, Indonesia, explores divorce causes and custody issues in Islamic context. Factors like adultery, economics, and differing perspectives contribute to divorces. Women prioritize their children's well-being post-divorce, focusing on maintaining the child's bond with the father amidst household challenges. Nurjanah, S. (2022).

The paper discusses women working during the iddah period in Islam, emphasizing that professional women can work without breaching iddah rules. It highlights the compatibility of modern professionalism with Islamic principles, offering protection for active women within ethical boundaries. Khoiri, A., & Muala, A. (2020).

This article delves into Islamic law perspectives on divorce during election periods, emphasizing that political differences do not warrant divorce in Islam. It aims to provide a legal Islamic viewpoint on these events and guide families through disagreements over political candidates during elections. Setiyawan, D., Tuasikal, H., & Karana, H.A. (2024).

This article examines gender equality in Islamic family law, focusing on the iddah period for men after divorce. It discusses the impact of a circular requiring husbands to wait until their wives' iddah period ends before remarrying. The study employs a qualitative descriptive methodology, utilizing normative juridical and philosophical approaches. Findings reveal a circular restricting men from remarrying during their wives' iddah period. It argues that the iddah imposition on wives alone creates social injustice, as men can remarry freely, potentially leading to psychological abuse against women. SUNUWATI, S.I. (2023).

This study explores the identity challenges faced by Iranian divorced women, highlighting stigmatization, separation shock, and the remarriage paradox. The findings emphasize the threat to identity post-divorce and the need for tailored interventions to support these women effectively. Zaré, S.M., Aguilar-Vafaie, M.E., & Ahmadi, F. (2017).

This study examines the impact of divorce on the subjective well-being of Hindu and Muslim women in India. It highlights the psychological distress experienced by divorced women, emphasizing dissatisfaction in social, emotional, financial, and health aspects. The findings suggest the need for tailored policies and programs to support the welfare of women, especially those who have gone through divorce. Kaneez, S. (2016).

This study assesses the effectiveness of group therapy based on acceptance and commitment for divorced women in Yazd City supported by the Welfare Organization. Results show a decrease in social avoidance scores post-therapy, indicating improved self-efficacy. Shaker, M., Rahimi, M., & Zare, M. (2016).

This study examines the impact of metaphorical cognitive and behavioral therapy on depression in divorced women under 45 in Myanah City. Results show a significant reduction in depression scores post-treatment. While resilience was not significantly affected, the therapy proves effective for addressing depression in this group. Kivi, H.G., Sharif, A.R., & Valoii, F.E. (2016).

This study investigates marital quality trajectories leading to divorce among women. Despite demographic factors having limited predictive power, most divorced women reported high happiness and communication levels alongside low or moderate conflict. Future research could delve into personality and interactional patterns for deeper insights. James, S.L. (2015).

This study delves into trajectories of marital quality as divorce approaches for women. Using latent class growth analyses on national longitudinal data, it identifies distinct patterns. While demographic and socioeconomic factors didn't strongly predict trajectories, a significant portion of divorced women reported high levels of happiness and communication alongside low or moderate conflict. Future research incorporating personality traits or interactional patterns may offer deeper insights into marital quality dynamics preceding divorce. James, S.L. (2015).

### **Research Methodology:**

The methodology of this research which collected primary and secondary data are, Literature review, document analysis, Expert interviews, Case studies, then data analyzed through thematic analysis which mentioned below with details:

#### **Data Collection Methods:**

##### **Literature Review:**

Research articles, books, journals, and legal documents related to Islamic jurisprudence and Afghan civil law were reviewed to gather theoretical insights and legal provisions concerning the financial rights of divorced women.

##### **Document Analysis:**

Legal texts, statutes, and relevant documents from Islamic jurisprudence and Afghan civil law were analyzed to understand the specific laws and regulations governing the financial rights of divorced women.

##### **Expert Interviews:**

Interviews with legal experts, scholars in Islamic law, and professionals well-versed in Afghan civil law were conducted to gain nuanced perspectives and insights on the financial rights of divorced women within the legal frameworks.

##### **Case Studies:**

Analysis of real-life cases and scenarios involving divorced women to provide practical examples and illustrate how financial rights are implemented in accordance with Islamic jurisprudence and Afghan civil law.

### **Data Analysis:**

#### **Thematic Analysis:**

Thematic analysis of the gathered data from literature, documents, interviews, and case studies to identify key themes, patterns, and divergences in the financial rights of divorced women within Islamic jurisprudence and Afghan civil law.

#### **Ethical Considerations:**

Ensuring confidentiality and anonymity of interview participants.

Adhering to academic integrity by properly citing and referencing sources.

Respecting cultural sensitivities and legal boundaries in the discussion of Islamic jurisprudence and Afghan civil law.

### **Results:**

#### **Financial Rights of Divorced Women:**

##### **First Right Mehr:**

Dowry is the financial right of a woman, which Allah (Glorified and Exalted be) specified in the Holy Qur'an as follows: (وَأَنَّ لِكُلِّ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْسِنِينَ ) Translation: And all women are lawful for you, except those mentioned, on the condition that you want them in exchange for their property, to bring them into marriage, not for adultery. And in another verse, Allah, the Most High, has said so : ( وَأَنُوا النِّسَاءَ صَدَقَاتِهِنَّ ) (نَحْنُ نَخْلُقُهُنَّ ) Translation: and give their Mehr to the women willingly. Imam Qurtubi (may God have mercy on him) says: This verse indicates the obligation of giving dowry to women, and all jurists agree on this matter.

The obligation of dowry stems from being an integral part of the valid marriage contract. Consequently, it is incumbent upon the man to pay the specified mahr upon the completion of the valid marriage contract. Even

if the mahr is unspecified, it remains obligatory. However, jurists have highlighted additional reasons for the obligatory nature of dowry.

- 1- Intercourse with a woman: All the scholars agree that all dowry is required on a man by intercourse.
- 2- The death of the wife or husband in Masma Mehr: There is a consensus among the scholars that when the mahr becomes Masma and one of the spouses dies, Mehr is required.
- 3- Mehr is obligatory in the situation of appropriate seclusion with the woman. As per the civil law of Afghanistan: If separation takes place after intimacy or genuine seclusion, half of the dowry is required if it was stipulated; if not, half of the dowry is still mandatory.

#### **The second right: Mutah:**

From the point of view of Hanafi jurists, Mutah means: several pairs of clothes or clothes that are given by the husband's side under certain conditions as mandatory or mustahabb to the woman who has separated from her husband before intercourse or marriage.

According to Shafi'i jurists, it is the property that is given by the husband's side to the woman who has been separated from her husband before marriage and no designated dowry or dowry has been determined for her.

From the above definitions, it is clear that Mutah is required in two ways, one is called Mandatory Mutah. And the named Mahr or Mehr-like is newly assigned or an unknown Mahr is assigned, in this case the Mahr is not required but Mutah is given.

And the second one is mustahab mutah, there are scholars Sayings about the following this mutah.

- 1- The Hanafi jurists are of the opinion that any Clothes that is given to a woman after sexual intercourse is mustahab.
- 2- Hanabila also did not object to giving clothes to women after sexual intercourse due to the reason that she explained the reasons why clothes are obligatory.
- 3- The civil law has also stated the obligatory mutah and the mustahab mutah according to the opinions of the jurists, which are explained as follows in (107).

(If the separation between the spouses takes place according to penetration or correct seclusion, Mutah for the wife, which consists of ordinary clothes and similar things, is required. (The price cannot exceed half a mahr).

#### **The second right: Nafqa:**

Nafqa is one of the financial rights of a woman, which is obligatory on her husband. The source of obligatory, Nafqa is in the Holy Qur'an, the Sunnah of the Prophet, and consensus. Regarding Nafqa, God, has said in the Holy Qur'an: (وَإِذْرُفُوهُمْ فِيهَا وَأَكْسُوْهُمْ وَقُولُوا لَهُمْ قُوْلًا مَغْرُوفًا ) Translation: Give them food and clothing and talk to them in a good manner, means talk to them in a respect and kind manners. Imam Qurtubi says: This verse obliges the husband to pay Nafqa to the wife. According to the civil law stated that nafqa is obligatory on husband to provide to his wife which include food, clothes, shelter and medicine for treatment according to the financial position of her husband. In below section themes are explained the table form.

**Financial Entitlements of a Divorced Woman from Her Husband Post-Divorce**  
**Table 01**

Serial No.	Main Themes	Sub-Theme	Details
1	Mahr or Dowry	-	If specified in the marriage contract, the woman is entitled to receive the mahr (dowry) from her husband post-divorce.
2	Alimony or Maintenance	-	Divorced women are entitled to receive alimony or maintenance payments from their ex-husbands to maintain a similar standard of living post-divorce.
3	Property Division	-	The woman may be entitled to a share of marital assets acquired during the marriage, including real estate, investments, savings, and other shared property.
4	Child Support	-	If there are children, the woman may be entitled to child support payments to assist with their expenses, separate from

			alimony or maintenance.
5	Health Insurance	-	Divorced women may be entitled to continued health insurance coverage under the ex-husband's policy for a certain period post-divorce.
6	Retirement Benefits	-	The woman may be entitled to a portion of retirement savings or benefits accumulated during the marriage, such as pensions, 401(k) accounts, or other retirement funds.

According to the above table, It is essential for divorced women to understand their financial entitlements post-divorce and seek legal advice to ensure that they receive the support and assets to which they are entitled. Consulting with a family law attorney can help clarify rights and navigate the legal process to secure financial stability after divorce.

#### **Financial Rights of Divorced Women in Islamic Sharia**

**Table 02**

<b>Serial No.</b>	<b>Main Themes</b>	<b>Sub-Theme</b>	<b>Details</b>
1	Mahr or Dowry	-	The payment of mahr as a financial gift to the wife in the marriage contract. Entitlement to receive the specified mahr upon divorce for financial security.
2	Maintenance (Nafaqah)	-	Nafaqah: Financial support for the wife's basic needs. Obligation for the ex-husband to provide maintenance post-divorce, ensuring financial stability for the ex-wife.
3	Property Rights	-	Recognition of a woman's right to own and inherit property. Entitlement to a share of marital assets or property acquired during the marriage for financial protection and independence.
4	Child Support (Nafaqat al-Awlad)	-	Financial responsibility of parents towards their children. Obligation for the father to provide child support for the upbringing and welfare of the children post-divorce.
5	Welfare and Social Security	-	Emphasis on community support for those in need. Encouragement for the community to provide assistance and support to divorced women facing financial hardship, ensuring their well-being.

According to the above table, Islamic Sharia, through its teachings and principles, aims to uphold the financial rights of divorced women, ensuring their dignity, protection, and financial security during and after divorce. These provisions reflect the overall emphasis on justice, compassion, and equity within Islamic jurisprudence.

#### **Financial Rights of Divorced Women in Afghanistan's Civil Law**

**Table 03**

<b>Serial No.</b>	<b>Main Themes</b>	<b>Sub-Theme</b>	<b>Details</b>
1	Mahr or Dowry	-	Recognition of mahr as part of marriage contracts. Entitlement to receive the specified mahr post-divorce for financial security according to Afghanistan's civil law.

2	Alimony or Maintenance	-	Provisions for alimony or maintenance payments after divorce. Divorced women's right to seek financial support from ex-husbands for maintaining their standard of living as outlined in civil law.
3	Property Division	-	Addressing the distribution of marital assets in civil law post-divorce. Entitlement of women to a share of assets acquired during marriage for financial protection and independence in Afghanistan.
4	Child Support	-	Legal obligations regarding child support in Afghanistan's civil law. Rights of divorced women to seek child support for expenses related to raising and caring for children post-divorce.
5	Health Insurance and Other Benefits	-	Coverage of health insurance and benefits post-divorce in civil law. Ensuring rights of divorced women to continued health insurance coverage and other benefits for essential services and support.

In the Above table the Financial Rights of Divorced Women: A Comparison between Islamic Jurisprudence and Afghan Civil Law, the Afghanistan's civil law plays a crucial role in safeguarding the financial rights of divorced women, providing legal mechanisms to ensure their financial stability and well-being in the aftermath of divorce. These provisions reflect the country's efforts to promote gender equality and protect the rights of women within the legal framework.

Table 04

Serial No.	Main Themes	Sub-Theme	Details
1	Mahr or Dowry	-	<b>Islamic Jurisprudence:</b> Recognition of mahr as a dowry for financial security. <b>Afghan Civil Law:</b> Acknowledgment of mahr and entitlement of divorced women to receive the specified amount for financial support.
2	Maintenance and Alimony	-	<b>Islamic Jurisprudence:</b> Obligation of the husband for nafaqah. <b>Afghan Civil Law:</b> Provisions for alimony or maintenance payments post-divorce to help women maintain their standard of living.
3	Legal Framework	-	<b>Islamic Jurisprudence:</b> Rooted in Quranic principles. <b>Afghan Civil Law:</b> Blend of Islamic traditions with modern legal norms, reflecting a more secular approach.
4	Property Rights	-	<b>Islamic Jurisprudence:</b> Recognition of women's property rights. <b>Afghan Civil Law:</b> Division of marital property post-divorce, ensuring women's entitlement to a share of assets acquired during marriage.
5	Child Support	-	<b>Islamic Jurisprudence:</b> Emphasis on the father's financial responsibility for children. <b>Afghan Civil Law:</b> Outlines legal obligations for child support, ensuring financial assistance for children post-divorce.
6	Health	-	<b>Islamic Jurisprudence:</b> May not address modern concepts

	Insurance and Benefits		like health insurance. <b>Afghan Civil Law:</b> Likely includes provisions for health insurance and benefits post-divorce, ensuring continued coverage for divorced women.
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This table highlights both the similarities and distinctions between Islamic jurisprudence and Afghan civil law concerning the financial rights of divorced women.

While both Islamic jurisprudence and Afghan civil law aim to safeguard the financial rights of divorced women, Islamic jurisprudence is rooted in religious principles, whereas Afghan civil law blends Islamic traditions with contemporary legal norms. These systems share common objectives in ensuring financial protection for divorced women but may vary in their specific provisions and implementation strategies.

### Conclusion:

Upon thorough investigation, the following significant conclusions have been drawn from this study:

Islamic jurisprudence and the civil law of Afghanistan collectively recognize and uphold a range of fundamental rights for divorced women. These encompass essential provisions such as dowry, Mutah, Nafaqa (financial support), inheritance entitlements, ongoing maintenance, and responsibilities related to custody.

Noteworthy is the acknowledgment within Islamic jurisprudence and Afghan civil law of the divorced woman's entitlement to financial support from her former husband during the period of iddah. This underscores the legal and ethical obligation to ensure the well-being and sustenance of women in this transitional phase.

In essence, this research underscores the comprehensive legal protections and rights afforded to divorced women within the frameworks of Islamic jurisprudence and the civil law of Afghanistan. These provisions aim to safeguard the financial security, dignity, and welfare of divorced women, reflecting a commitment to justice and equity in matters of divorce and post-marital support.

In conclusion, Islamic jurisprudence and Afghan civil law establish a comprehensive framework outlining the financial rights of divorced women. These rights encompass provisions for sustenance, shelter, and clothing, reflecting a commitment to uphold the dignity and well-being of divorced women. The legal systems differentiate between various scenarios, including pre- or post-consummation divorce, to delineate specific financial obligations, inheritance rights, and provisions for foster care and custody fees. By shedding light on the legal standing of divorced women, these laws aim to provide clarity and ensure fairness within both Islamic and Afghan legal contexts. It is imperative to recognize and uphold these financial entitlements to support the post-divorce well-being of women and alleviate the burden they may face, fostering a more equitable and just society.

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