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Foreword

National Commission on the Status of Women is a statutory body with a mandate to review the laws, rules and regulations adversely affecting the status and rights of women in Pakistan, and to recommend to the Government of Pakistan appropriate policy reforms.

Women in Pakistan generally face problems in getting their due rights as promised by their religions and as guaranteed by the Constitution of Pakistan. The international commitments of the government to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Child (CRC), further strengthen their cause. The divorced women are among the worst affected in this regard and hence this issue deserves serious attention. These problems are due to the gaps and lacunae in the prevailing policy, laws, their implementation mechanisms and traditional social customs. Inadequate institutional support for the destitute women and their children adds to their misery. To address this vital issue the Commission initiated an in-depth research study on this subject in 2005. The research was widely disseminated across the country for a thorough discussion and debate with experts at provincial and national levels. In this process experts from legal, religious and political sections, and civil society members were actively involved. This cross section dialogue enabled the research to be objective and wider in scope.

This important research '*The Impact of Family Laws on the Rights of Divorced Women in Pakistan*' was possible under a UNDP project for the institutional strengthening of NCSW. National Commission on the Status of Women is obliged for this support. Syeda Viquar-un-nisa Hashmi, as Policy Research Officer of this project, conducted this research with care, caution and commitment.

It is hoped that these policy recommendations will create public awareness as well as assist the Government of Pakistan, in bringing about the necessary policy reforms, that will help in eliminating all forms of discrimination against women.

Dr. Arfa Sayeda Zehra
Chairperson

Acronyms and Abbreviations

AJK	Azad Jammu and Kashmir
AIR	All India Report
CEDAW	The Convention on the Elimination of All forms of Discrimination Against Women
CRC	Convention on Rights of Child
CLC	Civil Law Cases
Cr. P.C	Criminal Procedure Code
CIW	Commission of Inquiry for Women
CSW	Commission on the Status of Women
CPC	Civil Procedure Code
CSO	Civil Society Organizations
FANA	Federally Administered Northern Area
ILR	Indian Law Report
KLR	Karachi Law Report
LRC	Law Reform Commission
MLD	Monthly Law Digest
MFLO	Muslim Family Laws Ordinance, 1961
MLR	Monthly Law Review
NCSW	National Commission on the Status of Women
NLR	National Law Report
PLJ	Pakistan Law Journal
PLD	Pakistan Law Digest
SCMR	Supreme Court Monthly Report
SC	Supreme Court
SACH	Struggle for Change
YLR	Yearly Law Report
UNDP	United Nation Development Programme

Executive Summary

A woman, irrespective of her marital status has a right to the dignified life. Though there is no dearth of laws, addressing family issues but unfortunately the prevailing policies and their implementation in Pakistan are not very clear about the rights of the divorced women. Therefore, this study is an attempt to review the relevant prevailing policy and family laws that have a direct bearing on the rights of divorced women. Since the family laws in Pakistan are based on the personal laws relating to specific religions, and the Muslim personal laws are based on the primary sources of law vis-à-vis., Holy Qur'an and Sunnah hence in this study initially the rights of divorced women as provided in the personal laws were clearly identified and discussed in detail, then the prevailing family laws were analyzed. In the case of Muslims personal laws, the criteria for analysis was the primary sources of laws besides the constitutional guarantees, International commitments of Pakistan by virtue of being signatory to Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of Child (CRC) and the recommendations of the previous Commissions and Committees on the Status of Women, which hold valid for non-Muslim citizens of Pakistan as well.

It was revealed that there are about 51 prevailing family laws, out of which seven including Dissolution of Muslim Marriages Act, 1939, Muslim Family Laws Ordinance, 1961, Family Courts Act, 1964, The Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, Dowry and Bridal Gifts (Restriction) Act, 1976 and Guardian and Wards Act 1890, directly and indirectly dealing with the rights of divorced women are almost completely silent on the subject. Though in the case of Muslims, the divorced women have the right to dower, even if the marriage has not been consummated, maintenance for the period of iddat and lactation period, past maintenance (in case she was not maintained during the subsistence of marriage), mat'a i.e. a token money to be paid to wife in case of dissolution of marriage, right to custody and guardianship of child(ren) and right to remarriage. The CEDAW and CRC also clearly spell out the equality of the status of both the parents in upbringing of their child, irrespective of their marital status.

The problems of the divorced women were found to be aggravated on account of gaps in the judicial set up. For instance, the low percentage of family judicial officers, particularly female, multiple jurisdiction of family courts besides their inadequacy in number, lack of jurisdiction of family courts to entertain applications on the harassment of women victims of domestic violence, lengthy procedures, complications in the execution of the judgment, lack of a conducive environment, ineffective arbitration councils, corruption, lack of facilities in the subordinate courts, lack of technical assistance to subordinate judiciary, lack of thorough computerization of case law, lack of mechanism for the monitoring and analysis of judicial set-up, its output and impact, expensive litigation and a lengthy and cumbersome process.

The family laws have not been extended to 'Federally Administered Northern Areas' (FANA), as a result there are no family courts; the number of female judicial officers and lawyers is also negligible hence it's difficult for women to have access to justice.

In view of the gaps in the prevailing laws and their enforcement mechanisms/ recommendations are made for the policy reforms on the following themes:

Muslim Family Laws Ordinance, 1961

The amendments are suggested with reference to the following rights of divorced women:

- Dower
- Maintenance during the period of iddat, lactation period and for the period of marital life when she is not maintained by the husband
- Mata'
- The wife's right to notify the dissolution of marriage be made specifically
- The wife/husband's right to get registered the deed for the dissolution of marriage of her/his spouse's earlier marriage
- Damages to wife for giving divorce without her fault

Recommendations were also made in respect of the matters of khul'a, mubarat & li'an.

Guardian and Wards Act, 1890

The suggested amendments are with reference to the following rights:

- Divorced women's right to guardianship of her children
- Father's responsibility for the maintenance of his children. The criterion for quantum of maintenance of children was also devised

Dowry and Bridal Gifts (Restriction) Act, 1976

It is suggested that with reference to dowry /gifts, the law must explicitly provide that 'the dowry shall not constitute or form a part of consideration for khul'a' and the limitation of Rs.5000/= on the value of dowry must be removed.

Succession Act, 1925

The amendment is in respect of divorced women's right to inheritance in case, her husband dies during her iddat period. It is further suggested that if the intention of divorce was just to deprive her from inheritance then such talaq should be held as illegal and void.

Recommendations are also made for divorced women's share in home-making and other related issues including:

Strengthening of Support System

In this context establishment of shelter homes for destitute women free legal aid and counselling & baby day care centres for rearing up of child(ren), were suggested at each Union Council to help the parents or guardians.

Education and Awareness Campaigns

Administrative Measures

This include

Strengthening of monitoring mechanism for efficient judicial process
Extension of family laws to FANA

Chapter 1

Background of the Study

1.1. Introduction

All human beings on this earth are entitled to live with dignity as recognized by universal declaration and guaranteed by the respective constitutions. The Constitution of Pakistan 1973 also guarantees inviolability of dignity of man. A divorced woman,¹ (irrespective of her religion) like all other citizens of Pakistan, by virtue of constitutional guarantees, has the right to a dignified life² and is fully secured against any sort of oppression³ and discrimination.⁴

The prevailing family laws in Pakistan are mostly silent on the rights of divorced women. The only rights that are explicitly provided under the said laws include the right to re-marriage of Parsi divorced women⁵ and of a Muslim woman whose marriage has been terminated by talaq (divorce) effective under the law from remarrying the same husband without an intervening marriage with a third person unless such termination is for the third time so effective,⁶ beside Muslim women's right to dower⁷ and dowry (jahez).⁸

The Islamic law (Shar'iah), as enshrined in the holy Qur'an and Sunnah, on which Muslim family laws are based, is very explicit on the subject. By virtue of Islamic injunctions, divorced women are vested with the right to dower (mehr) if unpaid, maintenance for herself as well as for her child(ren) (if any) and their guardianship/custody, etc., apart from the above rights.

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and Convention on Rights of Child (CRC), to which the Government of Pakistan is committed also provide for equality of status of both the parents in upbringing of their child, irrespective of their marital status.

Despite the above rights, most divorced women face multiple challenges in getting their due rights owing to the inadequate legal safeguards, ambiguities and lacunae in the prevailing legal framework, incorrect and biased interpretation of legal provisions and Islamic injunctions, a corrupt law-enforcement mechanism, non-implementation, inefficient judicial set-up and an expensive, cumbersome and lengthy litigation process.

¹ Divorced here means a woman whose marriage has been dissolved, at the instance of either husband, herself or by any other reason. Details are on page 6-7

² Constitution of the Islamic Republic of Pakistan, 1973 Article 10

³ *ibid*, Article 9

⁴ *ibid*, Article 25

⁵ Parsi Marriage and Divorce Act, 1936, Section 48

⁶ Muslim Family Laws Ordinance, 1961, Section 7

⁷ Dissolution of Muslim Marriage Act, 1939, Section 5

⁸ Dowry and Bridal Gifts (Restriction) Act, 1976

The situation is further aggravated due to the discriminatory socio-cultural and economic customary practices, social taboos, and the absence of a monitoring mechanism to check such mishaps and provide solutions thereof. Unfortunately such issues and implications thereof have also not been adequately analyzed and discussed.

The Islamic welfare state is under an obligation to establish a society, which is free from exploitation wherein social and economic justice is guaranteed to its citizens.⁹ In an attempt to change the status quo, the Commission initiated this research study with a view to identifying the lacunae in the prevailing policy/laws as well as the discriminatory social practices keeping in consideration the perspectives of Islamic laws and the international commitments of the Government of Pakistan to develop a policy approach towards addressing the issues faced by divorced women in Pakistan, irrespective of their caste, creed, colour, culture and religion.

1.2. Objectives

The main objective of this research study is to assess the level of adequacy and effectiveness of prevailing family laws in terms of their impact on the status and rights of divorced women in Pakistan and to formulate policy recommendations to assist the Government of Pakistan in initiating policy reforms in the context of divorced women.

1.3. Methodology

This is a qualitative research involving the following five-step methodology:

Phase – I Conceptualization of Research

This was done after preliminary review of literature. The concept paper had been shared with national and international experts including religious scholars, judges, lawyers, concerned public/private sector officials, civil society and academicians whose feedback was obtained.

Phase – II In-depth Study of the Available Literature

The literature consulted includes the prevailing policy and legal documents, provisions in the holy Qur'an and Sunnah and their interpretation. Muslim family laws of other countries, relevant international conventions ratified by Pakistan, research studies / surveys and other literature, judgments (since the promulgation of the relevant laws to date), etc.

Phase – III Situation Analysis of Divorced Women

This phase was conducted by employing qualitative research methodology involving unstructured interviews with the stakeholders including divorced women, concerned government officials, representatives of civil society organizations, judges, lawyers, etc.

⁹ Ikran Bari & 524 others v. National Bank of Pakistan through President and others: 2005 SCMR 100

Phase –IV Welfare Measures for Divorced Women

This phase involved a systematic analysis of Pakistan’s policies and legislation with focus on divorced women within the helpful framework provided by the Constitution of Pakistan and conventions. The analysis emerging from this phase was employed in proposing specific policy recommendations in respect of divorced women.

Phase –V Consultation on Draft Report

The final phase involved consultation with the key stakeholders (mentioned above) at national and provincial level. This process also includes national consultation exclusively with the representatives of minorities in Pakistan.

1.4. Scope of Study

The scope of the study is limited to the rights of divorced women in Pakistan and to explore answers to the following issues:

1. What are the rights of divorced women (Muslim and non-Muslim), under the prevailing family laws in Pakistan?
2. What are the gaps in the prevailing legal system and impact thereof?
3. What is the scope of the rights of divorced women in the following:
 - a. under Islamic law, as enshrined in the holy Qur’an, Sunnah and the consensus of the Islamic jurists and the international commitments of Pakistan (for Muslims);
 - b. in the international conventions ratified by Pakistan (for Muslims as well as non-Muslims) and prevailing laws in the other countries
4. How could the divorced women in Pakistan be ensured of their due status and rights?

Chapter 2

Family Laws in Pakistan

2.1. An Overview

Family laws in Pakistan are a blend of codified law and customary law based on religious norms, also termed as 'Personal Law'.

Presently about fifty one (51) family laws are enforceable in Pakistan, out of which thirty seven (37) laws are federal, while the remaining are provincial. (The list of the said statutes, as given under the Manual of family Laws is attached as appendix 'A'.)

About sixteen (16)¹⁰ family laws deal specifically with family matters relating to Muslims, three (3)¹¹ with Christians, eleven (11)¹² with Hindus, one (1) federal law each with Sikhs and Parsis, while about nineteen (19) are applicable across the board to all citizens of Pakistan, with a few exceptions. The Married Women's Property Act (III of 1874) is applicable to all non-Muslims except a woman who at the time of marriage professed the Hindu, Mohammedan, Buddhist, Sikh or Jaina religion or whose husband, at the time of such marriage, professed any of those religions.¹³ A list of said statutes is attached as appendix 'A'.

Out of the aforementioned laws, following seven (7) deal with the rights of divorced women, either directly or indirectly:

Law	Application target group
Dissolution of Muslim Marriages Act, 1939	Muslim
Muslim Family Laws Ordinance, 1961	Muslim
Family Courts Act, 1964	Muslim
The Divorce Act, 1869 (IV of 1869)	Christian
Parsi Marriage and Divorce Act, 1936	Parsi
Dowry and Bridal Gifts (Restriction) Act, 1976	All citizens of Pakistan
Guardians and Wards Act (VIII of 1890)	Though applicable to all citizens of Pakistan but the communities may follow their own personal law instead

¹⁰ Nine(9) Federal laws and eight (8) Provincial laws

¹¹ All Federal laws

¹² Ten (10) Federal laws and one (1) Provincial law

¹³ Sec. 2

A list of the relevant provisions of the aforesaid laws is attached as appendix 'B'. Before we start discussion on the subject, it would be pertinent to understand the basic concept of marriage and its dissolution.

2.2. Concepts

2.2.1. Marriage

It is the legal union of a man and a woman as husband and wife with mutual consent. Under Muslim Personal Law, 'marriage or nikah (nuptiae) is a religious legal contract that regularizes the sexual relationship between man and woman, establishes the lineage of their progeny and creates civil rights and obligations between them.¹⁴ The marriage contract is constituted by the proposal and acceptance in consideration of dower (mehar) to be paid to the wife, in the presence of witnesses, of a man and a woman intending to marry each other.

Dr. Tanzil-ur-Rehman¹⁵ writes that 'Islamic law holds that the institution of marriage is comprised of both the 'ibadat' (worship) and the 'mu'amalat' (worldly affairs). In its constitution, marriage is a civil contract in which the free consent of both parties is essential for its accomplishment, however, the relationship of both the contracting parties is not determined as that of a pure civil contract, but is determined in combination with its religious connotation' while the common law regards marriage as a civil contract with the following conditions:

1. parties are legally capable of contracting marriage
2. mutual consent or agreement
3. an actual contracting in the form prescribed by law

Unlike Muslim Personal Law, the consideration for marriage is not required under common law.

2.2.2. Dissolution of Marriage

It results in the separation of husband and wife and abolition of marital rights and obligation and creation of certain other rights and reciprocal obligations on both the parties. In Islam such rights and obligations are clearly ordained, as for instance in the following verse of the holy Qur'an:

¹⁴ Section 4, Code of Muslim Personal Law, Dr. Tanzil-ur-Rehman, Hamdard Academy, Pakistan

¹⁵ Dr. Tanzil-ur-Rehman, Code of Muslim Personal Law, Hamdard Academy, Pakistan

۲۳۱- وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِيَتَّعْتِدُوا
 وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ
 مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْظَمَ عَلَيْكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ۝

When ye divorce Women, and they fulfil either the term of their (iddah), either take them back on equitable terms or set them free on equitable term; But do not take them back to injure them, (or) to take undue advantage. If anyone does that, He wrongs his soul. Do not treat Allah's sign as a jest.¹⁶

Under Muslim personal law,¹⁷ the rights of divorced women involve the rights to dower (Mehr), return of dowry, gifts, maintenance, custody of child (ren), re-marriage, transfer of property and shares if any etc., with reciprocal obligations on the ex-husband.

2.2.2.1. Muslim Marriage

The Muslim Family Laws Ordinance, 1961, deals with inter alia., the modes for the dissolution of Muslim marriage, maintenance and dower. The Dissolution of Muslim Marriage Act, 1939 provides grounds for the dissolution of marriage at the instance of the wife under specified conditions, beside the right of the wife to apply to the court. Under section 8 of the Muslim Family Laws Ordinance,¹⁸ the wife can pronounce divorce on herself if so delegated in the nikah nama (marriage contract form). The Bridal Gifts (Restriction) Act 1976 declares her exclusive right over dowry. And the Family Courts Act, 1964 provides a procedure for the enforcement of the said rights.

Following modes have been recognized for the dissolution of Muslim marriages under Muslim Family Laws Ordinance 1961:

- *talaq*¹⁹ (divorce pronounced by husband). If this right is delegated to someone else then it is termed as '*talaq-e-Tafviz*'
- *Any other mode* to dissolve marriage otherwise than by *talaq*.²⁰

However, irrespective of mode for the dissolution of marriage a woman whose marriage has been dissolved is always termed a 'divorcee'. The reason being that though initially Muslim Personal Law (Shari' at) Application Act, 1937, which was applicable in undivided India, provided various terms for the dissolution of marriage but unfortunately on repeal of the said enactment by West Pakistan Muslim Personal Law (Shari'at)

¹⁶ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Baqrah, (2:231)

¹⁷ Muslim Personal Law is not binding though it is of persuasive value

¹⁸ Section 8

¹⁹ Section 7

²⁰ This mostly includes khul'a or judicial divorce at the instance of the wife

Application Act, 1961, so far as its application to West Pakistan (now Pakistan) is concerned, the said terms were replaced by a single word “divorce”.

It may be deduced from this amendment that all the modes for the dissolution of marriage fall within the ambit of the term ‘divorce’. Even otherwise we didn’t come across any other term than ‘divorcee’ for a woman whose marriage had been dissolved by any mode other than divorce (talaq).

Since, the basis of Muslim family laws is Islamic law hence, it is pertinent to initially understand the concept of the dissolution of Muslim marriage under the Islamic law (Shar’iah).

Shar’iah recognizes five (5) modes for the dissolution of Muslim marriage viz. Talaq, Khul’a, Zihar, Li’an and Ila. These are discussed below:

2.2.2.1.1. Talaq

This takes place at the instance of the husband. Among ancient nations the power of divorce was regarded as a corollary to the marital right and this right was exclusively and solely vested in the husband.²¹

This power of the husband is considered technically absolute and any Muslim male of sound mind, who has attained puberty, may divorce his wife whenever he desires without assigning any reason. However, in view of Syed Ameer Ali, the Hanafis, the Malikis, the Shafi, of Sunni sect and the Shi’as hold that talaq is mubah or permitted though they regard the exercise of this power without any cause to be morally and religiously abominable. It is also said, talaq is permitted only when the wife by her conduct or her words causes injury to the husband or happens to be impious. It is wajib (obligatory) for the husband to divorce the wife if he cannot fulfil his duties, i.e. if he is impotent or a eunuch.²²

According to Hedaya, “the divorce of every husband is effective if he be of sound understanding and mature age.”²³

Further, “if the words of divorce used by the husband are “explicit”, the divorce is valid even if it was pronounced under compulsion, or in a state of voluntary intoxication, or to satisfy his father or someone else’.²⁴

Though Islam has given the husband the right to divorce but talaq is considered the most detestable of all permitted things before the Almighty God for it prevents conjugal happiness and interferes with the proper upbringing of children.²⁵

²¹ Syed Ameer Ali, Mohammedan Law, vol. II, Fifth Edition, pp. 471-472

²² Syed Ameer Ali, Mohammedan Law, vol. II, Fifth Edition, pp. 471-473. See also Radd-al-Muhtar, vol. II, p.683

²³ Hamilton, hidaya, p. 210.

²⁴ D.F. Mulla, principles of Mohammedan Law, Eighteenth Edition, Section 315, p. 335

Recognized Categories of Talaq

Various Muslim sects have recognized the following categories of talaq:

- **Ahsan**, or most laudable;²⁶
- **Hasan**, or laudable;²⁷ &
- **Bid'i** or irregular²⁸

Under Sunni law, the above forms of talaq are the accepted modes of divorce from the husband. Shi'as, however, reject talaq-al-bid'i and accept the first two forms of talaq-al-Sunnat. Unlike Sunnis, they regard talaq pronounced under compulsion, obtained by fraud or given under undue influence as invalid.

Talaq-al-sunnat is also designated as either Ahsan or very proper and Hasan or proper and Talaq-al-bid'a as the heretical or irregular mode of divorce.

However, talaq pronounced on the death bed or to a minor or insane wife or where wife had been delegated the right to divorce herself, have the following effects which are different from talaq given in other situations:

Talaq-al-mariz (Divorce by the Sick)

In many cases it may happen that the husband during illness before his death exercises the power of talaq with a view to preventing his wife from succeeding to his estate. A person divorcing his wife in such a condition is called a farr, an evader. In order to prevent the mischief attached to such a divorce certain conditions are attached to it, although under both Shi'a and Sunni laws such a talaq is legally effective.

Talaq Against a Minor or Insane Wife

Both the Sunni and the Shi'a schools of thought insist that the formula by which talaq is pronounced should, in every case, be understood by the wife. As such, it follows that when the wife is of such tender age as to be unable to understand its implication, a valid

²⁵ Syed Ameer Ali, *Mohammaden Law*, vol. II, Fifth Edition, pp. 472

²⁶ Talaq al-Sunnah: It is a talaq according to rules of traditions which is pronounced in the manner approved by the Holy Prophet (). Pronouncing such talaq, however, does not mean that it is an act of piety and that it will entitle one to reward to a virtuous act. It only means that talaq pronounced by that procedure has the approval of the Holy Prophet () and his companions and the pronouncing of talaq contrary to that manner is disapproved and sinful.

²⁷ It is the second approved form of divorce by a husband who has consummated the marriage, pronounces one divorce during each of the three successive periods in which the wife, free of menstruation, has not been cohabited with. There is, however, disagreement whether it is in accordance with the rules laid down in the tradition of the Prophet.

²⁸ Talaq Al-Bid'at: It is an innovated form which is also called impious divorce. The innovation or impiety lies in two ways (a) as regards time; and (b) as regards number. Pronouncement of such divorce is sinful.

talaq cannot be effective against her. Thus a talaq pronounced against a wife who is insane is also invalid.

Talaq-e-tafviz: (Delegation of the Power of Talaq)

Both the Sunni and the Shi'a schools of thought allow the husband to delegate his power of divorce to a third person or to his wife. The delegation may be unconditional or conditional and may also be either for a particular period or permanent. An agreement between the husband and wife may be made either before or after the marriage, providing the wife liberty to pronounce divorce on herself in a specified manner, which will be effective as if the husband has pronounced the divorce.

The contingencies are valid, if the conditions are of a reasonable nature and are not opposed to the policy of Muslim law. When such an agreement is made, the wife may, at any time after the happening of any of the contingencies, repudiate herself in exercise of the power,²⁹ so delegated to her.

Section 7 provides for post-divorce reconciliation proceedings. Under the same section the husband, after pronouncing talaq must intimate his having done so to the chairman Union Council (competent authority under the current law). The chairman will within 30 days of the notice, constitute an arbitration council for proceedings. If the proceedings fail, the talaq will become final after 90 days of the receipt of such notice. But, in majority of the cases studied, the husbands pronounce divorce in haste and even give talaq-e-salasa (pronouncement of divorce three times in one go), verbally or even in writing but do not register the document, at times purposely. After the completion of iddah they re-unite on the pretext that the document was not registered and legally there was no divorce. This leads to many complications at times and prejudices the status and rights of the second wife of the husband who had been given understanding that her proposed husband did not have an existing wife, besides other social evils. In Islam the divorce is not necessarily required to be registered, as pronouncement and intention is enough.

²⁹ D. F. Mullah, principles of Mohammedan law, Eighteen Edition, Section 314, p.332-333.

“My husband knocked me out of the house and sent me the divorce deed. After fifteen days he took me back by stating that ‘you are still my legal wife because I didn’t register the divorced deed.’”

About fifteen days after the re-union he again knocked me out of my home. When my family and I tried reconciliation he refused and said that he had already divorced me so no reconciliation.

In order to clear my legal status I have filed proceedings for khul’a and now he is pressurizing me to withdraw the case.”

“Prior to my marriage, my husband gave me and my family a clear understanding that he had given talaq-e-ahsan to his earlier wife about four years back and showed us the divorce deed which was not registered but duly acknowledged by his former wife. His family too endorsed that document. In my nikhahnama he explicitly stated that he did not have any existing wife.

Shortly after my marriage his former wife started visiting my home in my absence on multiple pretexts. They even used to stay together for days and when I raised objection my husband started torturing me psychologically and physically.

Being a legal wife I sent the divorce deed to the arbitration council for registration to clarify the status of my husband’s former wife. The application was registered with great difficulty as the law is not clear on the point. My husband and his former wife did not appear before the council hence my application was dismissed. Later, my husband divorced me and now he is co-habiting with his former wife. Even the law could not provide security to me.”

A divorced interviewee.

2.2.2.1.2. Khul'a

Khula is defined as 'the release secured by the wife from the husband from the marriage-tie, at her instance, on paying or consenting to pay compensation to him.'³⁰ Thus if the wife has developed such dislike or aversion towards the husband that it is difficult for her to live within the limits ordained by Allah then she may seek khul'a and if need be pay compensation to the husband.

The term 'khula' is derived from the word (khal'un) which literally means extracting out one thing from another. Technically, the word "khala'a", "khala'a al-thawb, means "he took off the clothes". In Shari'ah, khul'a means that a husband after accepting a compensation from his wife renounces his rights over her under the marriage contract. The basis and the origin of the legality of khul'a is the following Qur'anic verse:

الظَّلَاقُ مَرَّتَيْنِ ۖ فَاِمْسَاكٌۢ بِمَعْرُوفٍ ۙ اَوْ تَسْرِيحٌۢ بِاِحْسَانٍ ۗ وَلَا يَجِدُ لَكُمْ اَنْ تَاْخُذُوْا مِمَّا اٰتَيْتُمُوْهُنَّ شَيْئًا اِلَّا اَنْ يَخَافَا۟ اَلَّا يَقِيْمَا حُدُوْدَ اللّٰهِ فَاِنْ خِفْتُمْ اَلَّا يَقِيْمَا حُدُوْدَ اللّٰهِ فَكُلَا جُنَاحًا عَلَيْهِمَا فِيمَا افْتَدَتْ بِهٖ تِلْكَ حُدُوْدُ اللّٰهِ فَلَا تَعْتَدُوْهَا ۗ وَمَنْ يَتَعَدَّ حُدُوْدَ اللّٰهِ فَاِنَّ لِكُلِّ ظَالِمٍۭ اِلٰهًا ۙ

A divorce is only permissible twice, after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you (men) to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah, so do not transgress them³¹

Abu Hanifah holds the opinion that the dissolution of marriage for consideration with the consent of the wife is called "khul'a".³² Malik b. Anas further states that mention of word 'khul'a' is not a condition. In other words, Malik does not recognize any distinction between khul'a and talaq bil mal (divorce in consideration of property).

Al-Shafi'i expresses a similar opinion by stating that every word which brings about a separation between the spouses for a consideration is called "khul'a".³³ In this context, there are two versions of Ahmad b. Hanbal's views. According to one, khul'a is a

³⁰ Section 132, A Code of Muslim Personal Law, Dr. Tanzil-ur-Rahman, vol.1, Hamdard Academy, 1978, p. 513

³¹ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Baqrah (2:229)

³² Fatawa 'Alamgiriyyah, Kanpur, 1349 A.H., vol.ii, p.118: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Rahman, vol.I, Karachi, Hamdard Academy.

³³ Ibn Qudamah: Al Mughni, Cairo, 1367 A.H. vol.ii, pp.56-57: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Rahman, vol.I, Karachi, Hamdard Academy.

separation of spouses in lieu of consideration realized by the husband from his wife while the other version is that khul'a is a divorce.³⁴

According to Al Jassas, the limits prescribed by Allah in this verse means the directions regarding a happy marital life. If the couple fails to maintain that, the spouses may dissolve the marriage with mutual consent. If the dissolution is at the instance of the wife she may end up by paying compensation to her husband and thus relieve herself of the bonds of marriage.

However, as is clear from the Qur'anic verse, the payment of consideration by the wife is not the condition precedent to khula. It is the discretion of the wife, as in view of translation by Abdullah Yousuf, the holy Qur'an explicitly provides "...if she gives something for her freedom"

Similar version has been observed in the translation by Muhammad Asad ..."*there shall be no sin upon either of them for what the wife may give up [to her husband] in order to free herself.*"

In the light of the above verse, following conditions must be fulfilled for the due application of the rule:

1. apprehension of the husband and the wife that they cannot live within the limits of Allah.
2. it is the wife who seeks separation from the husband of her free will..
3. it must be she who may pay the consideration

The Issue of the Payment of Consideration in Case of Khul'a

Al-Kasani has in his book, Bada'i al Sana'i³⁵ said that khul'a is of two kinds i.e. **one without compensation** and the other **with compensation**. In this context Ahadith have been reported in Sahih Muslim, Sunan Ibn-e-Majah Sharief, Sunan Abu Dawud, and Sahih Al Bukhari which will be discussed in detail in the following Chapter.

By virtue of section 135 of 'A Code of Muslim Personal Law', if the husband effects khul'a without mentioning compensation, the wife's right to dower shall not lapse. Justice Tanzil-ur-Rehman while explaining this provision states that according to Zahir al-riwayat also, the wife's right to dower shall not lapse. However, whatever dower the wife had realized till then shall be hers and the part of the dower that has remained unrealized from the husband shall lapse.

³⁴ Ibn Qudamah: Al Mughni, Cairo, 1367 A.H. vol.ii, pp.56-57: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

³⁵ Al-Kasani: Bada'i' al-Sana'I, Cairo, 1356 A.H.vol.iii, p.152: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

Under Shia'I law, khula must preferably be pronounced in Arabic and the word khul'a must be followed by the talaq (divorce). The khul'a must be effected in the presence of two just witnesses.

According to jurists' opinion, declared in "Al Hidayah," if cruelty is from the side of the husband, then his realizing any financial compensation from the wife for completing the khul'a is disapproved of. If the cause of khul'a is the insubordination of the wife, then the husband may take back only the property given to her by him. His taking more is equally disapproved."

Under Maliki law, a husband has to return the consideration received by him if his wife proves that she was forced to ask for khul'a on account of her husband's ill-treatment or on account of his being tainted with a defect that would entitle her to get separated from him.

Further, free consent presupposes that the wife's consent to a khul'a has not been obtained by force, fraud or deceit. Thus, under the circumstances of force, fraud and deceit, according to Shafa'i and Hanafi laws, the wife is not under an obligation to pay the consideration, even if she has agreed to do so earlier.

By virtue of Hanbali law, if a person ill-treats his wife in order to force her to seek a khul'a then no khul'a shall be effected and the wife shall be entitled to the return of the consideration paid by her. If the husband is guilty of ill-treatment but with no intention to coerce her to seek a khul'a and a khul'a is given then a divorce shall be effected but payment of consideration shall not be valid.

However, in fatawa 'Alamgiri, if the husband without mentioning any compensation, effects a khul'a to his wife, the spouses shall stand exonerated from the rights and obligations to each other. If the wife has already received the dower she shall have to return that to the husband as the very pronouncement of khul'a is commonly considered to carry with it the sense of the payment of compensation.

Effect of Non-payment of Consideration of Khul'a

Under all schools of thought, the failure of the wife to pay the stipulated consideration does not invalidate the khul'a. Though according to Abu Hanifah, the wife shall have to return the dower if she has realized it, if not, then it shall be extinguished. According to Abu Yusuf and Muhammad, she shall have to pay the stipulated consideration or its equivalent.

The discussion on the Qur'anic injunction, their interpretation and effect of the non-payment of consideration for Khul'a leads us to the conclusion that this is the dissolution of marriage at the instance of the wife, with her free consent and if she pays some compensation out of the benefits she received from her husband during the 'time' of the marriage, there will be no blame on either of the spouses. However, if the husband had created the situation forcing her to get out of the marital relationship, then no payment

will be made. Even otherwise, the non-payment of compensation will not invalidate khul'a effected by the husband.

2.2.2.1.3. Mubarat

The literal meaning of the word Mubarat is '*obtaining release from each other.*' It is said to take place when the husband and wife, with mutual consent and desire, obtain release and freedom from their married state. The offer for separation in mubarat may proceed either from the wife or from the husband and as soon as it is accepted dissolution is complete. It takes effect as one irrevocable divorce without the aid of the court.³⁶ Under Hanafi law, mubarat is equivalent to one irrevocable pronouncement of talaq, making it necessary for the parties to contract a fresh marriage with each other if they wish to resume a marital relationship.³⁷ However, in view of the judgement in Muhammad Shahbaz case,³⁸ talaq in nature of mubarat becomes irrevocable from the date of its execution.

The basis of mubarat is Surah Al-Baqrah,³⁹ quoted herein above, which also provides the basis for khul'a. While interpreting the said verse, Abdullah Yusuf Ali writes "that there is danger in mubarat, just as with all forms of divorce, that the parties might act hastily, then repent, and again wish to separate. To prevent such capricious action repeatedly, a limit is prescribed. Two divorces (with attempted reconciliation in between) are allowed. After that the parties must definitely make up their minds, either to dissolve their union permanently or to live together in mutual love and forbearance".⁴⁰

If the husband is the one who makes the initial offer of a mubarat, his offer may not be retracted. It is up to the wife, then, to either accept or reject this offer. This is primarily because this offer by the husband is deemed equivalent to an oath of repudiation, which becomes effective immediately when the wife signifies her acceptance of the offer. On the other hand, if the wife makes the initial offer of a mubarat, she may retract her offer at any time before acceptance by the husband. Since mubarat requires consent of both parties to the marriage contract, the agreement to divorce may be voidable if either or both the parties lacked the necessary intent or have been induced into acceptance by fraud or duress.⁴¹

Difference of Mubarat under Sunni and Shi'a Law

Under Sunni law, 'mubarat, as a matter of fact, is a mutual agreement of the husband and wife to dissolve the marriage that becomes effective upon the consent of the parties and

³⁶ Section 139, A Code of Muslim Personal Law

³⁷ *Ibid.*

³⁸ Muhammad Shahbaz Ahmad v. Sher Muhammad & another: PLJ 1987 Cr.C.331

³⁹ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al-Baqrah (2:229)

⁴⁰ *Ibid*, page 92

⁴¹ Pearl & Menski; p. 284.

like khul'a, it is an irrevocable divorce.⁴² While in Shi'i law, it is similar to a khul'a, the only difference is that in khul'a it is only the wife who bears aversion for the husband but in mubarat the aversion is mutual. However, it is necessary in this case to indicate a separation between the two by use of some words which indicate divorce.

Khul'a and Mubar'at Under Muslim Family Laws in Pakistan

The Muslim Family Laws Ordinance, 1961, clearly provides for the dissolution of marriage at the instance of the wife or by mutual consent. However, since the words 'khul'a' and 'mubarat' have not been used, therefore at times the Court disapproves of both, khul'a and mubarat. As a result women often do not find a way out of a hateful marital relationship, which is against the main beliefs of the Islamic justice system.

2.2.2.1.4. Li'an

It is defined as 'making the husband and wife a charge of adultery with both under oath and invoking the curse and wrath of God by each on oneself if swearing falsely.'

According to Dr. Tanzil-ur-Rehman, the word 'lian' is derived from la', the literal meaning of which is "to put away," because one who is subjected to li'an is put away from the all-pervading mercy of God. With reference to li'an it is laid down in the holy Qur'an:

۱- وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ
 أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ۝

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth;⁴³

۴- وَالْخَامِسَةُ أَنْ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ۝

And fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.⁴⁴

۸- وَيَذَرُوا عَنْهَا الْعَذَابَ إِنْ تَشْهَدَ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ۝

But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie;⁴⁵

۹- وَالْخَامِسَةُ أَنْ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ۝

⁴² Ibn Nujaym: Bahr al-Ra'iq, Dar al-Kutub Al-Arabiyyah, Cairo, vol.iv, p.71: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Rushman, vol.I, Karachi, Hamdard Academy.

⁴³ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Nur (24:6)

⁴⁴ Ibid, (24:7),

⁴⁵ Ibid, (24:8)

And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.⁴⁶

Thus, if a husband, before a competent court solemnly swears four times to the fact, and in addition invokes a curse on himself if he lies, is prima facie evidence against the wife. But if the wife swears similarly four times and similarly invokes a curse on her own self, she will be acquitted of the guilt. If she refuses to take such an oath, the charge is held proved and the punishment follows. In case both take the oath the marriage is dissolved by the court. Accordingly, as per traditions attributed to Hazrat Asim bin Adi,⁴⁷ Hazrat Ibn-e-Abbas⁴⁸ and Hazrat Hasham⁴⁹, Prophet Muhammad, ﷺ directed the dissolution of marriage of the couple in such circumstances on the ground of Li'an. Sunni law of li'an is practically the same as Shi'i law. However, there can be no li'an with respect to a woman married by a Muta'h (temporary marriage).

According to Hanafi law, when the husband and wife both have contracted li'an, the qadi shall get separation effected between the two and even li'an shall fall in the order of an irrevocable divorce while, according to the other three schools of thought (A'immah), it shall come under the order of dissolution of marriage. The observance of the term of probation shall be incumbent upon the wife and she shall be entitled to maintenance and separate residence.⁵⁰

Under Shi'i law, however, the mandate relating to li'an is established by li'an itself. The marriage gets dissolved ipso facto after the parties have taken the oaths. Thus the separation on account of li'an is faskh⁵¹ and not a divorce.⁵²

2.2.2.1.5. Zihar

This term is derived from word 'zahr' which means "back" of man, animal or thing. Thus according to Al Hidayah, "If the husband tells his wife that she is to him like the back of his mother the wife becomes forbidden to him" until the husband has performed penance (that is a punishment assessed by an ecclesiastical court for some spiritual offence)⁵³.

⁴⁶ Ibid, (24:9)

⁴⁷ 3499, Chapter – 1734, Sunan Nisai, Translation by Moulana Fazal Ahmed Sahib, Vol. II, Darul Ishaat, Karachi-Pakistan, p.393

⁴⁸ 3500, ibid

⁴⁹ 3510, ibid, p.394

⁵⁰ Al-Shirani, vol.ii, p.127; Al Qur'an, Surah, al-Munafiqun (The Hypocrites) LXIII:1, : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy, p.507

⁵¹ Faskh is a fault-based dissolution of marriage resulting from an irregularity in the marriage contract (for example, a physical condition which impairs sexual relations in the marriage), or upon the violation of a contractual clause, or upon failure of one spouse to fulfil certain marital responsibilities. It is also termed as "tafriq"): WLUML; p. 281: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

⁵² Al-Hillli: Shara'I al-Islam, Tehran, pp. 231-32; Beirut, vol. ii, pp.81 and 91: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

⁵³ Garner, Black's Law Dictionary, 7th ed., West group, 1999

Thus, until then, the wife cannot demand conjugal rights from her husband, but at the same time, is not free from his control, cannot leave his home and can not contract another marriage.

This practice is vehemently disapproved in Surah Al Ahzab⁵⁴ and Surah Al-Mujadilah⁵⁵ therefore, forbidden by the Prophet ﷺ, in view of these Quranic directions. The penalty thereof as provided under Surah Mujadilah⁵⁶ and the traditions attributed to Salamah b. Sakhr al-Bayadi⁵⁷ and Khuwailah, daughter of Malik b. Tha'labah⁵⁸ is to fast for two months consecutively before they touch each other. But if anyone is unable to do so, he should feed sixty indigent ones. Under Muslim Personal Law, in default of penance the wife becomes entitled to a judicial divorce.⁵⁹

The doctrine of zihar is applicable to Muslims in Pakistan and India by virtue of section 2 of the Muslim Personal Law (Shari'at) Application Act, 1937 and sub-section IX of section 2 of the Dissolution of Muslim Marriages Act, 1939, as held in Saeeda Khanam case,⁶⁰ But the practice of this doctrine is bare as there is no case law available on the subject.

2.2.2.1.6. Ila

The literal meaning of the word 'Ila' is "to vow not to have sexual intercourse with one's wife for a period of four months or more. In this context, the holy Qur'an ordains:

۲۲۶- لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ ۚ فَإِنْ فَاءُوا

فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ۝ ۲۲۷- وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ ۝

"For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, Allah is oft-forgiving, most merciful. But if their intention is firm for divorce, Allah heareth and knoweth all things."⁶¹

The instances of Ila are reported in the tradition attributed to Hazrat Ayesha .⁶² According to Hanafis in case of 'Ila' divorce gets affected without the intervention of a qadi, upon the expiry of the prescribed period.

⁵⁴ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Ahzab (33:3)

⁵⁵ Ibid, Surah Al-Mujadilah, 58:2

⁵⁶ Ibid, 58:4

⁵⁷ 2207, Chapter 733, Sunan Abu Dawud, English Translation with Explanatory Notes by Prof. Ahmad Hasan, Vol II, Sh. Muhammad Ashraf Publisher & Bookseller, Lahore-Pakistan, 597

⁵⁸ 2208, Chapter 733, Sunan Abu Dawud, English Translation with Explanatory Notes by Prof. Ahmad Hasan, Vol II, Sh. Muhammad Ashraf Publisher & Bookseller, Lahore-Pakistan, 598

⁵⁹ D. F. Mulla, principles of Mohammedan law, Eighteen Edition, Section 318, p. 336.

⁶⁰ Saeeda Khanam vs. Muhammad Sami, PLD 1952, Lahore 113

⁶¹ Ibid, Surah Al Baqrah, (2:226, 227)

⁶² 2072, Chapter-28, Sunan Ibn-e-Majah Sharief, Translation by Imam Aby Ubaida, Vol. II, Mehtab Co., Lahore-Pakistan, p.138

The assertions of ‘Uthman, ‘Ali, Abdullah b. Mas’ud, Zayd b. Thabit, ‘Abdullah b. Abbas and ‘Abdullah b. ‘Umar are in line with the Hanafis.⁶³

However, in view of Maliki, Shafi’i and Hanbali laws intervention of the qadi (judge) is a must. Thus, the qadi must ask the husband to have recourse to his wife and if he refuses or fails to comply with the qadi’s order, the qadi shall himself dissolve the marriage.

Under Shia law, there can be no Ila in respect of a woman married in mut’ah as ila cannot be conditional.

Though ila is uncommon, it was enforceable in Pakistan and India and a wife could seek dissolution of marriage on the ground of Ila under section 2 of the Muslim Personal Law (Shari’at) Application Act, 1937 (until repealed). clause ix of section 2 of the Dissolution of Muslim Marriages Act, 1939, also provides that a wife can seek the dissolution of her marriage on any ground which is recognized as valid for the dissolution of a marriage under Muslim law.

By virtue of a code of Muslim Personal Law, the divorce shall become effective on the expiry of the term except when the husband has recourse to his wife either by words and if possessing power by acts.

However, according to Shafi’i, the fulfilment of such a vow does not *ipso facto* (by the fact itself or by the very nature of the situation) operate as divorce but gives the right to demand a judicial divorce.⁶⁴

2.2.2.2. Christian Marriage and Divorce

There has been negligible development since colonial times of the personal laws relating to the Christian community in Pakistan. Currently, issues concerning dissolution of marriage amongst Christians are dealt under the Divorce Act, 1869.

The primary concept of dissolution of marriage in Christianity is through the death of one of the spouses. Divorce during the spouses’ lifetime is permitted only on very restricted grounds for both husband and wife through court intervention. However, there is no concept of unilateral divorce.

Based on the difference of grounds, the law provides the following modes in this context:

2.2.2.2.1. Dissolution of marriage

2.2.2.2.2. Nullity of marriage

⁶³ Al-Marghinani (d.593 A.H.): Al-Hidayah, Karachi vol.ii, p.401; Rahmat al-Ummah fi Ikhtilaf al-A’immah, Cairo, 1300 A.H., p.115: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

⁶⁴ D. F. Mulla, principles of Mohammedan law, Eighteen Edition, Section 317, p. 336.

2.2.2.2.1. Dissolution of Marriage

The main ground available to Christian spouses under the Divorce Act, 1869⁶⁵ for dissolution at the instance of both husband and wife is adultery. Besides the aforesaid ground the wife may also apply for the dissolution of marriage by presenting a petition in the District Court or High Court, on the following grounds:

- i) since solemnization of marriage husband has converted to another religion
- ii) husband is guilty of incestuous adultery
- iii) husband is guilty of bigamy with adultery
- iv) husband is guilty of marriage with another woman with adultery
- v) husband is guilty of rape, sodomy or bestiality, of adultery coupled with such cruelty as without adultery would have entitled her to divorce a mensa et toro,⁶⁶ or of adultery coupled with desertion, without reasonable excuse for two years or upwards.

2.2.2.2.2. Nullity of Marriage

Any of the spouses may apply to Civil Court for declaring their marriage null and void,⁶⁷ on any of the following grounds:⁶⁸

1. the husband (against whom the suit is filed) was impotent at the time of marriage as well as at the time of filing of suit.
2. the spouses are within the prohibited decrees of consanguinity (whether natural or legal) or affinity
3. that either party was lunatic or idiot at the time of marriage;
4. the marriage was contracted at the time of the subsistence of former marriage of either of the spouse
5. the consent of either of the spouse was obtained by force or fraud

2.2.2.3. Hindu Marriage

There is no right of divorce and right to second marriage under Hindu religion. ⁶⁹ The prevailing Hindu personal laws in Pakistan are inadequate in contrast to the laws in India that provide these rights.

⁶⁵ the Divorce Act, 1869, section 10

⁶⁶ Mensa et toro is latin. It is a Latin term used for 'divorce', which means separation from bed and board. It is a partial or qualified divorce by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself: Brayn A. Garner, Black's Law Dictionary, 7th ed., West Group.

⁶⁷ The Divorce Act, 1869, section 18

⁶⁸ ibid, section 19

⁶⁹ Jai Jai Veshno, Mange Ram, Advocate, Ex-Additional Advocate General High Court of Sindh, participant of the NCSW Consultative Meeting exclusively with Minorities, dated 30th September 2006

Unlike India, the family matters amongst the Hindu community in Pakistan are governed largely by customs. The essentials of a valid custom are that it should be ancient, certain, reasonable and not opposed to public policy. Thus, very few family matters amongst the Hindu community go to the family courts and most issues are settled through community forums.

2.2.2.3. Parsi Marriage

Like Christian and Hindu laws pertaining to dissolution of marriage in Pakistan, there has been no development in Parsi law since colonial times. In Parsi law, including the Parsi Marriage and Divorce Act, 1936, any of the spouses can have the marriage dissolved by the following three modes, though there appears a little distinction between the rights of husband and wife in this respect:

2.2.2.4.1. Suit for nullity

2.2.2.4.2. Suit for dissolution of marriage

2.2.2.4.3. Suit for divorce

2.2.2.4.1. Suit for Nullity

The ground of this right is the impossibility of the consummation of marriage due to natural causes.

2.2.2.4.2. Suit for Dissolution

The basis for this suit is continuous absence of spouse for seven (7) years, during which period the missing spouse is not heard of by his/her relatives who would ordinarily know about him/her in the event of his/her being alive.

2.2.2.4.3. Suit for Divorce

The suit for divorce can be filed on any one of the following grounds:

- (a) Marriage has not been consummated for one (1) year after marriage because of wilful refusal by spouse
- (b) Spouse was of unsound mind and has been habitually so up to the date of the suit.

However, the spouse is debarred from divorce on this ground except in the following circumstances:

1. the spouse seeking divorce was ignorant of the fact at the time of the marriage
2. the suit has been filed within three years from the date of the marriage

- (c) The wife, (in case the suit is filed by husband) was pregnant by some person other than the plaintiff. Divorce cannot be granted on this ground unless the following conditions have been fulfilled:
1. The suit has been filed within two years of the date of marriage.
 2. Marital intercourse has not taken place after the plaintiff came to know of the fact.
- (d) That the spouse against whom divorce is sought has, since the marriage, committed adultery, fornication, bigamy or rape or an unnatural offence. For this ground the suit should be filed within two years.
- (e) That the defendant has, since the marriage, voluntarily caused venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution. In order to seek relief on this ground, the suit must have been filed within two years after the following:
1. infliction of the grievous hurt
 2. plaintiff came to know of the infection
 3. last act of compulsory prostitution
- (f) In case of defendant's imprisonment for seven years or more for an offence as defined in Pakistan Penal Code. In order to avail of the said ground the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period.
- (g) Desertion of the plaintiff by the defendant for at least three years
- (h) Judicial separation has been passed against the defendant and the spouses had no marital intercourse for three years or more since such order
- (i) The defendant failed to comply with a judicial order for the restitution of conjugal rights for a year or more
- (j) The defendant has changed his/her faith. In order to seek divorce on this ground the suit must be filed within two years on having knowledge of this fact

Besides, explicitly providing for divorced woman's right to remarriage, the law is completely silent on the rights of a divorced woman.

Chapter 3

Rights of Divorced Women

In this chapter rights of divorced women, as envisaged in the law and interpretations thereof have been discussed. An attempt is also made to assess and analyze their impact on divorced women through the following two methods:

- Review of the judgments delivered by the superior courts
- In-depth interviews with the divorced women. As initially designed, a countrywide survey could not be conducted owing to administrative constraints but even then six (6) divorced women have been interviewed in Rawalpindi / Islamabad to explore the ground realities in this context.

Since the basis of Muslim personal law is Shar'ia (Islamic Law) as envisaged in the Holy Qur'an and Sunnah and interpreted by the jurists, appropriate amendments have been proposed in the above prospective. Guidance has also been sought from the recommendations made by previous commissions of Pakistan and the manner in which Islamic rights have been translated in the prevailing laws of other countries.

With reference to the non-Muslim citizens of Pakistan, the rights of divorced women as provided under the law have been discussed and guidelines for reform therein have been sought from prevailing laws in the other countries.

3.1. Rights of Muslim Divorced Women

Under the Islamic law, divorced women are entitled to claim from the husband the following rights:

- 3.2.1. Dower
- 3.2.2. Maintenance
- 3.2.3. Maintenance for child(ren), if any
- 3.2.4. Guardianship & Custody of Children
- 3.2.5. Return of Dowry /Gifts
- 3.2.6. Remarriage
- 3.2.7. Decent and kind treatment
- 3.2.8. Share in inheritance, in the case of Talaq-al-mariz

The divorced women mostly face problems in getting their due claim / implementation of their rights mainly due to ambiguity and lacunae in the laws and non implementation, beside the socio-cultural and economic set up which either leads them to suffer in silence or indulge into unnecessary litigation. The detailed discussion on divorced women's rights, relevant legal provision, their interpretation and impact on women in Pakistan is as under:

3.1.1.Dower

The word ‘dower’ (mehr) in common parlance means a sum of money, or other property moveable or immovable, payable by a man to a woman on or after her marriage with him, as a consideration for agreeing to marry him. It is obligatory on husband, unlike *donation proper nuptias* of the Romans, which was purely voluntary.

The word ‘mehr’ has been borrowed from the Hebrew, where the idea is one of a settlement on marriage. This custom originated in ancient times with the payment which husbands often made to their wives as a means of support in their old age or when turned out by time.⁷⁰

3.1.1.1. Prevalent Legal Provisions

The term dower has not been defined in the family laws. However, according to one of the judicial interpretations, it is a denomination of property, consideration or “maal” which is paid, fixed or prescribed or undertaken to be paid to wife by husband at the time of marriage. It was also decided in Asia case⁷¹ that “dower” as mentioned in Schedule to West Pakistan Family Court Acts, 1964, can be in cash, in kind and also in the shape of property moveable or immovable.

Section 5 of the Dissolution of Muslim Marriages Act 1939, gives divorced women a right to claim dower, irrespective of the mode opted for the dissolution of marriage as it explicitly provides that ‘nothing contained in this act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.’ And the family courts have jurisdiction to try the suit for the recovery of dower.⁷² Contrary to the above, proviso added to section 10(4)⁷³ adversely affects women’s right to dower in case of failure in re-conciliation, irrespective of the ground for dissolution of marriage, as the relevant part of the law reads:

“Provided that notwithstanding any decision or judgment of any court or tribunal, the family court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the haq mahr received by the wife in consideration of marriage.”⁷⁴

3.1.1.1.1. Gaps in the Prevailing Legal System and Impact thereon Divorced Women

The major problem in the Family law is that the law does not adequately address the issues relating to women’s right to dissolve marriage. The main reasons are:

⁷⁰ Saksena, Muslim Law, page 215

⁷¹ Asia v. Abdul Rehman & another: 1994 CLC 1388 (b)

⁷² Family Courts Act, 1964, Section 5

⁷³ The Proviso was added to Family Court Act, 1964 by virtue of the Family Court Amendments Ordinance (No. LV of 2002) dated 01/10/2002

⁷⁴ ibid, Proviso to Section 10(4)

1. Lack of Criteria for Calculating the Dower Amount

The law does not specify any standard for the calculation of dower amount. mahr-e-fatami (the dower amount fixed for Prophet's ^ﷺ daughter namely Hazrat Fatima which was 32 dirhams more than 1400 years ago), is generally considered without taking into consideration the present currency value, inflation and its objectives.

2. Lack of Provision for the Payment of Dower under Different Circumstances

The Holy Qur'an is very explicit on the payment of half dower in case of the non-consummation of marriage. Various opinions of scholars and judgments, as discussed herein below, further provide for the payment of dower even in the case of valid retirement (khilwat-e-sahiha), but the law is silent on the issue. Therefore, either women remain silent on their rights or they spend years in litigation to get their due rights.

3. Lack of Jurisdiction of Family Court to Determine the Mode for the Payment of Dower in the Absence of Details in Nikahnama

Though the law is in existence (section 10) under which if the mode for payment of dower is not mentioned, the entire dower is presumed to be payable on demand but it still needs more clarification to empower women to enforce their rights.

4. Lack of Distinction Between Khul'a and Dissolution of Marriage on the Grounds Identified in Dissolution of Muslim Marriages Act, 1939

Since the term khul'a, its grounds and conditions are not defined in the law, hence it is generally considered on the grounds provided under section 2 of the Dissolution of Muslim Marriages Act, 1939 namely, desertion, failure to provide maintenance, additional wife, imprisonment, failure to fulfil marital obligation, impotency, insanity or disease, option of puberty, cruelty or any other valid ground and not otherwise like non-compatibility of temperament etc. This fact has been observed in Muhammad Bilal's and Muhammad Zafar Iqbal's cases. The court held:

“Marriage could not be dissolved on ground of khula merely because wife desired dissolution of marriage.”⁷⁵

⁷⁵ Muhamad Bilal v. Nasim Akhtar, 1983 CLC 2390 & Muhammad Zafar Iqbal v. Parveen Akhtar: NLR 1992 Civil 522 (a)

However, in most of the cases khul'a is considered a valid ground for dissolution of marriage on total or partial restoration of benefits received by the wife, as was held in Muslim Sher case.⁷⁶

Case studies revealed that women seeking dissolution on the ground(s) recognized under the law⁷⁷ for which no consideration is required to be paid by wife to the husband,⁷⁸ are often driven to a situation to file suit for khul'a on the said grounds and forego their dower or pay any other consideration. The highlights of some of such cases are as follows:

<p>Zafar Ali case⁷⁹</p> <ul style="list-style-type: none"> • Husband threw out his wife simply on ground that she was not in a position to bear any child and contracted second marriage • Evidence on record, reflected that wife was treated in the most cruel manner and even maintenance was not provided to her • Reconciliation between parties had become impossible and only course left was dissolution of marriage through khul'a.
<p>Nazir case⁸⁰</p> <ul style="list-style-type: none"> • Wife had successfully proved that due to maltreatment of her husband she had developed extreme hatred for her husband and she had to forego her dower • Wife's marriage was thus, rightly dissolved on ground of Khul'a
<p>Sardara case⁸¹</p> <ul style="list-style-type: none"> • Wife's first suit for dissolution of marriage, on ground of Khul'a dismissed. • More serious rift developing between parties after dismissal of suit. • Husband instituting criminal case against wife and proceeding under S.100, Cr. P.C., merely for dragging wife to Court, held unexceptionable.
<p>Suleman case⁸²</p> <ul style="list-style-type: none"> • Husband treating wife with habitual cruelty. Assuming wife not able to establish her non-maintenance by husband and his failure to perform marital obligations. • Divorce could be granted on basis of cruelty alone and also otherwise if case made on basis of khula.

⁷⁶ Muslim Sher v. Qudrat Bibi: PLD 1984 Pesh. 91

Case relied: Muhammad Hussain Munir v. Sikander and others: PLD 1974 SC 139

⁷⁷ Grounds for dissolution of Marriage have been recognized under 'Dissolution of Muslim Marriage Act, 1939.'

⁷⁸ Dissolution of Muslim Marriage Act, 1939. Section 5

⁷⁹ Zafar Ali v. Judge, Family Court: 1992 CLC 1244

⁸⁰ Nazir Ahmad v. District judge: 1996 MLD 2017 ©

⁸¹ Sardara v. Sakina: PLD 1979 Lah.476

⁸² Salman v. Asma Bibi: 1983 CLC 2400

In Muhammad Jamil case,⁸³ however, the court distinguished between Khul'a and the grounds valid for the dissolution of marriage, by stating that: "Wife is entitled to claim dissolution of marriage by way of khula' and also on any grounds recognized as valid under Dissolution of Muslim Marriage Act (VIII of 1939) which include cruelty and non-maintenance. Court coming to conclusion that wife has been subjected to cruelty or she is not being maintained as provided by Act, held can lawfully pass decree for dissolution of marriage."

And in some cases like that of Bilqees Bano⁸⁴ and Abdur Rehman's⁸⁵, the court while considering dissolution of marriage on the ground of khul'a stated that "the wife is not required to prove reasons and circumstances justifying her aversion and hatred towards husband."

5. Lack of Provision to Investigate into the Cause of Khul'a Though there is no Legal Bar

Mostly women are forced to ask for khul'a by the husband and in-laws so that she may give up all her due rights. This situation is against the clear injunctions of Islam.

6. Mandatory Provision for the Courts to Restore Dower (mehr) to Husband in case of Failure in Reconciliation

Another dilemma of the prevailing legislation is the amendment in Family Courts Act. The proviso to section 10(4) of Family Courts Act makes it obligatory upon the court to restore to the husband haq mehr received by the wife in consideration of marriage at the time of marriage.

Here it is pertinent to mention that under section 7, the reconciliation proceedings take place even in the case of talaq. Thus, in any case, wife has to give up dower, if unpaid and even in case she had been paid this, she must return as quoted herein above, under which dower has to be restored to the wife in case of failure of reconciliation between the spouses. Thus, no matter on what grounds the dissolution is taking place the wife has to give up dower if reconciliation fails. This provision even encompasses the case of dissolution by way of talaq. Thus a woman is put under a situation of being 'between the devil and the deep blue sea.'

⁸³ Muhammad Jamil v. Sarwar Jehan: 1982 CLC 655

⁸⁴ Belqees Bano v. Shamim Ahmad alias Yasin: 1991 CLC 2057

Cases relied upon:

Dr. Akhlaq Ahmad v. Kishwar Sultana: PLD 1983 SC 169

Mst. Rashida Bibi v. Bashir Ahmad and 2 others: PLD 1983 Lah. 549

Mst. Shahida v. Abdul Rahim: PLD 1984 Lah. 365

Muhammad Sharif and another v. Muhammad Afzal Sohail etc.: PLD 1981 SC 245

⁸⁵ Abdur Rehman v. Judge, Family Court, Gujranwala: 1981 CLC 68.

The aforesaid proviso is contradictory to the provision of section 5 of the Dissolution of Muslim Marriage Act which clearly provides that the right to dower or any part thereof shall not be affected on dissolution of her marriage. in contradiction to this provision.

7. Consideration is must in Khul'a

In view of the explicit Qur'anic verses discussed herein below, the payment of consideration is optional and not mandatory. Further, in view of the jurists' opinion, non-payment of consideration does not invalidate dissolution by way of khul'a. But unfortunately since the law is silent on the point hence in certain judgements, it is revealed that the waiver of right to dower or payment of any other consideration by the wife seeking khul'a is mandatory. The highlights of some of such judgments are as under:

Munir Anwar case⁸⁶

In case of khul'a wife is bound to return all the benefits which she has received on account of marriage from her husband because khul'a causes every right to fall or cease which either party has against the other depending on marriage.

Shamshad Begum case⁸⁷

Consideration a must for khula.

Abdul Majid case⁸⁸

Whether dower deferred or prompt, held should be taken into consideration by Court while granting khula'.⁸⁹

Mukhtar Ahmed's case⁹⁰

- Where marriage was dissolved on other grounds as well as khula, the wife was entitled to recover sums of dower and dowry
- Where it was dissolved solely on khula the situation would be different and it would be examined keeping in view the offer she had made for getting marriage dissolved on khula.

⁸⁶ Munir Anwar v. Mst. Nabeela Safdar: 2004 YLR 674

⁸⁷ Shamshad Begum v. Abdul Haque: PLD 1977 Kar. 855

⁸⁸ Abdul Majid v. Razia Bibi: PLD 1975 Lah. 766

⁸⁹ The Court relied on case: Razia Begum v. Saghir Ahmad: 1982 CLC 1586

⁹⁰ Mukhtar Ahmad v. Ansa Naheed: PLD 2002 SC 273 (a)

Nargis Begum case⁹¹

Though she was considered entitled to half of the dower but decree of khula was granted subject to her relinquishing half of the portion of the dower to which she otherwise was entitled.

Two interviewees out of eight who sought dissolution of marriage by way of khul'a were made to give up their dower amount which valued Rs.8,00,000/= (rupees 8 lac) in one case, while in the other case Rs.32/= (rupees thirty two) only.

According to the judgment in the case of Mst. Parveen Begum,⁹² the amount of consideration paid or to be paid for khula' should not exceed the amount of wife's dower or property given to her by the husband. Some jurists no doubt relying upon the words "what she gives upto become free thereby" as used in verse 229 of Sura Baqra have held that consideration even in excess of that given to the wife by her husband can be determined while dissolving marriage on the basis of khula'.

The positive impact of interpretations has also been observed. As in cases where the presents, gifts, payment of dower and ornaments by the husband to the wife was not proved, khula' was allowed even without consideration, as was held in the case of Javed Iqbal case.⁹³ But that's rare.

While in certain cases consideration for khul'a has been held to be wife's discretion. As for instance in Maqbool Ahmad Abid's case,⁹⁴ the courts held that discretion lies with the wife to return the whole mehr. Similarly, in the cases of Shamshad Begum⁹⁵ and Hamidan Begum⁹⁶ it was held that the failure of wife to pay consideration does not cancel khula but the husband is entitled to recover the same consideration from wife.

8. No Penal Provision for Obtaining Undertaking from Wife to Forgo her Dower under Force, Duress & Pressure

The law does not provide any penalty for those who forcefully obtain undertaking from wife to give up her rights inter alia dower in case of dissolution of marriage by mubarat.

9. Proof of Dower

There is no prescribed manner for payment of dower. Consequently, evidence regarding the same, often becomes an issue at times of matrimonial disputes, as

⁹¹Nargis Begum v. Zebar Shah: 2000 CLR 2015

⁹² Mst. Parveen Begum v. Muhammad Ali: PLD 1981 Lah.116

⁹³ Javed Iqbal v. Nasreen Akthar: PLD 1994 Azad J&K 86(b)

⁹⁴ Maqbool Ahmad Abid v. Rehana Kausar KLR 1996 Sh Cases 50c

⁹⁵ Shamshad Begum v. Abdul Haque: PLD 1977 Kar. 855

⁹⁶ Hamidan Begum v. Abdul Riaz: 1993 CLC 2170(a)

was raised in Abdul Rashid case⁹⁷ wherein the court held that ‘the liability to pay dower may be proved by the agreement entered into in the performance of nikah as is evident from the testimony of the Imam who not only performed the same but also witnessed the deed in question.’ But such proof is not available to most of the women in Pakistan due to non-registration of marriage or mode of dower being deferred (about 45.23%). The rate of the non-registration of marriage is the highest in Baluchistan (95.5%), followed by (93.8%), Sindh (49%), Punjab (16%) and in AJK (5.5%)⁹⁸ and the law is silent on the issue. Thus women are put under the most disadvantageous position in the prevailing scenario.

10. Lack of Legal Provisions Regarding Divorced Women’s Right to Dower in the case of Non-consummation of Marriage & Valid Retirement

The family laws are completely silent on this point hence such matters are left for the judiciary to decide.

In view of the case law, generally wife is considered entitled to half of the dower amount in case of dissolution of marriage without consummation as for instance in Nargis Begum case.⁹⁹ In this case the marriage was not consummated and on demand of khul’a the court held that though she was considered entitled to half of the dower but decree of khula was granted subject to her relinquishing half of the portion of the dower to which she otherwise was entitled.

However, in case where complete valid retirement had taken place, the court directed the husband liable to pay full dower in Muhammad Ishaque’s case.¹⁰⁰

The aforesaid court decisions are not disputed but the question is how many women can opt for litigation under their poor socio-economic and cultural circumstances?

11. Lack of Provision for Divorced Women’s Right to Dower in case of Mubarat

In the absence of relevant provision in this context, the women seeking Dissolution of Marriage on the ground specified under section 2 of Dissolution of Muslim Marriage Act, 1939 are often driven to a situation of mubarat (dissolution of marriage by consent outside court) on the condition that wife will state that she is voluntarily giving up her rights inter alia dower. One of the examples before us is that of Dr. Rakhshanda who was forced for voluntary giving up her rights to dower, return of dowry, maintenance (past, present and for the period of iddat) through mubarat. Thus the divorced women’s right to dower is required to be explicitly determined and provided in the law in terms of valid retirement.

⁹⁷ Abdul Rashid and another v. Mst. Shaheen Bibi & 2 others: PLJ 1980 Pesh 66

⁹⁸ NCSW Research on ‘Women’s Right to Inheritance and its Implementation’. The sociological survey sample size was 1000.

⁹⁹ Nargis Begum v. Zebar Shah: 2000 CLR 2015

¹⁰⁰ Muhammad Ishaque v. Rukhsana Begum: PLD 1988 Kar. 625. In this case, the Court relied upon Kitab-ul-Fiqah, Vol.IV (Personal Law) by Rahmann Al Jazraini translated by Manzoor Ahsan Abbaso, published by Auqaf Department Punjab 1977, pp.289, 292, 293, Raddul Muhtar, Vol.2, pp.69, 70, 358 365, 366, 370, 371 and 379

The law must also prohibit the waiver of right to dower in case valid retirement has taken place, irrespective of the mode for the dissolution of marriage.

12. Lack of Penal Provision

Since law does not provide any penal provision for non-payment of dower to wife particularly at the time of dissolution of marriage, the payment of dower is often taken for granted and divorced women are compelled to approach the court and opt for a lengthy and cumbersome process, which is often more expensive than the actual amount to be realized particularly under the circumstance when they are also going through emotional stress.

During the course of survey it was revealed that just one woman ¹⁰¹ out of eight succeeded in getting the mere amount of dower of Rs.10,000/= (rupees ten thousand) through a lengthy litigation.

3.1.1.2. Islamic Laws

Since the basis of right to dower is founded on the law extracted from the Holy Qur'an and Sunnah, it is significant to understand this right to seek guidance for improving the current policy and legal framework.

Dower (mehr), as defined under the Code of Muslim Personal Law, 'is that financial gain which the wife is entitled to receive from her husband by virtue of the marriage contract itself whether named or not in the contract of marriage.'

It is a settled principle that dower of a wife can either be in cash, kind or it may even be in the form of the rendition of personal services as was done in the case of Hazrat Moosa, for the dower of his wife, the daughter of Hazrat Shoaib, stated in Sura Al Qasas of the holy Qur'an.

By virtue of the said code,¹⁰² it is classified as either specified by an agreement between the parties (mahr ul, aqd) or unspecified (also known as "mahr al-mithl").

The specified dower is further sub-classified into "prompt" and "deferred" dower. The prompt dower is payable immediately at the time of marriage. In most cases, however, part or the entire dower is deferred and is payable on the dissolution of marriage by divorce, death or on the happening of a specific event. Where the marriage contract does not classify the dower as prompt or deferred, u/s 10 of MFLO it is presumed to be payable on demand.

On the other hand, unspecified dower or "mahr al-mithl" becomes due where the dower has not been mentioned in the marriage contract. The size of the dower in the case of

¹⁰¹ Ms. Rukhsana Parveen

¹⁰² Section 63

“mahr al-mithl” is left to be determined in view of the socio-economic conditions of the parties. The payment of dower has been made obligatory on husband in the following words:

وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِن طِبْنَ لَكُمْ عَن شَيْءٍ أ

“And give the women (on marriage) their dower as a free gift”¹⁰³

Thus right of the married woman to receive dower from her husband as stipulated or otherwise becomes due under the law, is an inseparable ingredient of the very concept of marriage in Islam

The main objective of dower under the Islamic jurisprudence is the protection of the wife against the arbitrary exercise of the power of divorce by the husband¹⁰⁴ and economic stability of women under the circumstances. To some Mohammadan writers, dower is a mark of respect for the woman and is not to be taken as payment of her “equivalent or value”. It also refers to her prospective responsibilities rather than to the possession of her person.¹⁰⁵ While to some scholars it is recompense for the burden of child bearing and suckling and hizanat of children which weigh upon women.¹⁰⁶

A pre-nuptial agreement releasing the husband from his obligation to provide his wife with a dower is a void contract in Islamic law.¹⁰⁷ In view of verse 4 of Surah Al-Nisa quoted above, the wife may remit part or all of the dower after marriage. Such a remission is equivalent to a gift, which confirms that the wife is the absolute owner of the dower.¹⁰⁸

3.1.1.2.1. Divorced Women’s Right to Dower under Different Modes/Circumstances for Dissolution of Marriage.

3.1.1.2.1.1. Divorce

A man is forbidden to take back any part of the dower he paid to his former wife by the following words:

وَأِن أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا
أَتَأْخُذُونََّهُ بُهْتَانًا وَإِنَّمَا مُبِينًا

¹⁰³ ‘The Holy Quran’, Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Nisa (4:4)

¹⁰⁴ Ameer Ali, Mohammadan law, 6th ed. Pp.390-391

¹⁰⁵ Fitzgerald, Muhammadan law, p.62

¹⁰⁶ Ruxton, p.108

¹⁰⁷ Pearl & Menski; p. 181.

¹⁰⁸ *Ibid.*

“But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: Would ye take it by slander and manifest wrong?”¹⁰⁹

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

“And how could ye take it when ye have gone in unto each other, and they have taken from you a solemn covenant?”¹¹⁰

Dr. Tanzil-u-Rahman, while explaining this verse writes that it is based on expediency. The wife in such a situation is put to the inconvenience of having her marriage dissolved by the husband, and so she must not, in addition thereto, be put to financial loss. With reference to various modes for the dissolution of marriage, we did not find many exceptions to women’s right to the entire dower except in the case of dissolution of marriage before consummation and khul’a / mubarat.

3.1.1.2.1.1.1. Divorce before Consummation of Marriage

In the case of divorce taking place between the spouses before the consummation of marriage, the woman is entitled to half of the dower (where the dower has been fixed) or a present (where the dower has not been fixed). The basis of this contention is the following verse of the holy Qur’an:

وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَىٰ وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

“And if ye divorce them before consummation, but after the fixation of a dower for them, then half of the dower (is due to them), unless they remit it or (the man’s half) is remitted by him in whose hands is the marriage tie; and the remission (of the man’s half) is the nearest to righteousness. And do not forget liberality between yourselves. God sees well all that ye do.”¹¹¹

The above verse makes it clear that where the divorce takes place before consummation of marriage but after fixation of the dower, half of the dower fixed shall be paid by the man to the woman. It is open to the woman to remit the half due to her, or to the man to remit the half which he is entitled to deduct, and thus pay the whole. However, in the case of divorce before consummation and fixation of the dower, the wife is entitled to a gift of reasonable amount as it is directed: ¹¹²

¹⁰⁹ ‘The Holy Quran’, Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Nisa (4:20)

¹¹⁰ Ibid, (4:21)

¹¹¹ The Holy Qur’an, Text, Translation & Commentary by Abdullah Yusuf Ali, Vol. I, Sh. Muhammad Ashraf, Publishers & Book Sellers, Surah Al-Baqarah (2:237),

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمُقْتِرِ قَدْرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ

“There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means; A gift of reasonable amount is due from those who wish to do the right thing.”

The “gift” mentioned in verse 2:236 of Surah Al-Baqarah and the synonymous “present” mentioned in verse 33:49 of Surah Al-Ahzab above, is held by some jurists to be in addition to the half dower due to them under verse 2:237 of Surah Al-Baqarah (see above). This “gift” or “present” is, in practice, treated as a matter of goodwill and custom and is considered to be a compensation payment for an arbitrary talaq. Generally, therefore, it is not seen as an automatic entitlement.¹¹² In case wife dies before consummation, her heirs can sue for recovery of the dower-debt.¹¹³

In case of dissolution of marriage before consummation, a divorced woman is under no obligation to observe iddat in the light of the following verse of the holy Qur’an:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا

“O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so give them a present, and set them free in a handsome manner.”¹¹⁴

3.1.1.2.1.2. Dissolution of Marriage after Consummation of Marriage or even Valid Retirement (Khilwat al Sahihah¹¹⁵)

Under section 68 of Muslim Personal Law, the dower in the case of cohabitation after valid retirement shall become peremptory and the whole shall become payable. The Hanafis and Malikis agree on this. In support of their view, there are, amongst others, the following traditions on which the Sunni jurists have reached a consensus:

1. Dar Qutni narrated from Muhammad b. ‘Abdul Rahman b. Thawban that the Prophet ﷺ has said, “The person who removes the veil of a woman and looks at

¹¹² Pearl & Menski; p. 184.

¹¹³ *Ibid.*

¹¹⁴ ‘The Holy Quran’, Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al-Ahzab (33:49)

¹¹⁵ Valid retirement: “When a husband and a wife are alone together under such circumstances that there is no legal, moral, religious, or physical impediment to marital intercourse, they are said to be in khilwat al Sahihah.’ Fatawa ‘Alamgiriyyah, Dewband, vol. ii. P.20

- her, the whole of the dower becomes due from him, whether the act of penetration takes place or not.”
2. It is narrated from Said b. al-Musyyib that ‘Umar ordered that if a man after marrying a woman uncovers her veil the whole of dower shall assuredly become due from him.
 3. Zayd b. Thabit said if a man goes to a woman and the veil is lifted the whole dower shall become due.

‘A Code of Muslim Personal Law,’ on the basis of fatawa ‘Alamgiryyah, has placed khilwat al-sahihah in the same category as actual cohabitation in respect of its certain consequences, particularly in the matter of confirmation of dower, the establishment of paternity, the observance of probation (‘iddat), the (wife’s) right to maintenance and lodging, and the unlawfulness of marriage with her sister or with four other women beside her.

In Shi’ah law, on the other hand, mere valid retirement as such is of no consequence as regards the rights of the parties. Cohabitation must be proved either by circumstantial evidence of valid retirement or otherwise, to give rise to legal effects. This ruling derives its strength from the writings of the following jurists:

1. Najm al Din Abi Ja’far Al Hilli’s book, Sharia’ al-Islam
2. Abu Ja’far Muhammad b. Al-Hasan al-Tusi’s (d.460 A.H.) book “Al-Istibar, a collection of Shia’ traditions chosen carefully, in chapter XIV of Vol.III, deals with matters that make the full dower incumbent.

Al-Tusi, in support of the above Shiah view, has quoted a number of traditions through Imam Jafar Sadiq.¹¹⁶

There is a consensus of opinion among Muslim jurists that payment of the entire dower becomes due on actual consummation. According to Hanafis and Malikis, valid retirement is equivalent to cohabitation, in certain matters. If there has been valid retirement, according to them, the entire dower becomes due, irrespective of whether cohabitation has taken place or not. According to Shafis and Shi’as, however, retirement is not equivalent to cohabitation. Under Sunni law, valid retirement does not necessarily constitute consummation of marriage hence a divorced woman will not be considered entitled to the full amount of dower unless the marriage has been consummated.

3.1.1.2.1.2.1. Khul’a and Mubarat

As discussed herein above, man is forbidden to take away dower from the wife upon dissolution of marriage. However, in case of khul’a a wife may forego dower or give any monetary benefit derived from the husband during the subsistence of marriage. There is

¹¹⁶ Al-Tusi: Al-Istibar, vol.III, p.226, quoted by Dr. Tanzil-ur-Rehman in ‘A Code of Muslim Personal Laws, Vol. I, Hamdard Academy Pakistan, p. 253

no mandatory provision for a woman to forego her dower in order to be released from the marital ties by way of khul'a, as the holy Qur'an very clearly states that, "there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah, so do not transgress them".¹¹⁷

In the light of the above verse, a woman cannot even be compelled to give up her dower or give some consideration for khul'a.

Similarly, it is ordained that:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضَلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them, except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and God brings about through it a great deal of good."¹¹⁸

Abdullah Yusuf Ali,¹¹⁹ whilst interpreting the aforesaid verse writes that in preislamic practice, a trick to detract from the freedom of a married woman was to treat her badly and force her to sue for khula divorce or its equivalent in preislamic custom, when the dower could be claimed back. Also, divorced women were prohibited by those who had control of them from remarrying unless they remitted their dower. Such harsh practices have been strictly forbidden in the above verse.

The above verse indicates that a man may be entitled to take part of the dower 'only when the wife is guilty of open lewdness'. But for that the husband must prove his charge by producing four reliable witnesses in support thereof, as required under the following verse of Surah Al Nisa:^{120 121}

وَالَّذِينَ يُرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ
أَرْبَعَةٌ شَهْدٌ بِاللَّهِ إِنَّهُ لَمِنَ الضَّالِّينَ ○

According to a hadith attributed to Hazrat Aisha, the Prophet ﷺ allowed Thabit b. Qais, to take back the property (given as dower) to his wife, namely Habibah daughter of Sahl,

¹¹⁷ The Holy Qur'an, Text, Translation & Commentary by Abdullah Yusuf Ali, Vol. I, Sh. Muhammad Ashraf, Publishers & Book Sellers, Surah Al Baqrah, (2:229)

¹¹⁸ Ibid, Surah Al-Nisa (4:19)

¹¹⁹ Ibid, page 190

¹²⁰ Ibid, Surah Al Nisa (4:15)

¹²¹ Note: According to Abu Aala Moududi this verse relates to the punishment for women guilty of adultery (zina): Tafheem-ul-Qur'an, Tarjuman-ul-Qur'an, Lahore, Vol. I, page 331.

as compensation for giving khula.¹²² Same hadith has also been narrated by Ibne‘Abbas.¹²³ Hazrat Uthman permitted the husband in the case of this divorce to take from his wife everything other than the ribbon of her hair.¹²⁴

The husband, however, is forbidden to realize any compensation from the wife in lieu of effecting “khul’a”, when he himself is the initiator of khul’a.

Abu Yusuf and Muhammad (disciples of Imam Abu Hanifa) hold the opinion that the financial rights of the couple do not lapse by khul’a unless it is clearly mentioned. This view is based on traditions, rather than Qiyas and none of the jurists has produced any Quranic verse or any tradition in support of his contention.

Amongst Hanafi scholars (A’immah), there is a difference of opinion regarding the effects and consequences of khul’a. According to Abu Hanifa, on khul’a being effected all the financial rights, that are incumbent on each other because of their marriage contract, cease spontaneously. For instance, if the dower or the maintenance allowance of the wife is due on the husband it shall lapse after khul’a is effected. Thus the wife cannot make demands for the same. Similarly, if the husband has paid the maintenance allowance for a year in advance to the wife and after the expiry of six months, khul’a is effected between them, the husband cannot take back from the wife the maintenance allowance paid for the unexpired period.

Qadi Khan, an eminent jurist and qadi of Damascus in his fatwa¹²⁵ writes that if the spouses settle consideration other than dower in such a case at the time of dissolution of marriage, if the marriage has been consummated and the whole dower has been paid to the wife, she shall be entitled to retain it. According to the unanimous view of Abu Hanifa, Muhammad and Abu Yusuf, the husband will get only the consideration agreed upon. But, if the dower has not been paid to her, then, according to Abu Hanifa, she is not entitled to claim the dower because, , khul’a puts an end to all the rights, which the spouses have against each other except the wife’s maintenance and residence during her ‘iddat. But, according to Abu Yusuf and Muhammad the wife shall be entitled to claim it from her husband because the dower is firmly established if the marriage has been consummated. Since any lawful objection can form a consideration for khul’a, hence the wife can surrender her dower as consideration for khul’a. In such a case the marriage shall be dissolved while the wife will lose her right to dower. It can, however, be made an express condition of khul’a that the wife’s dower or a portion thereof remains payable by the husband.

¹²² Hadith 2220, Chapter 734, ‘Separation from wife for Compensation (Khul)’, Sunan Abu Dawud, translation with Explanatory Note by Prof. Ahmad Hasan, Vol.II, Sh. Muhammad Ashraf, Booksellers & Exporters, 600

¹²³ Hadith No.5273 & 5276, Chapter 12, ‘Divorce (in return for monetary compensation to be paid by the wife to her husband), Sahih Al Bukhari , Vol.7, Darul Ishaat, Karachi-Pakistan, 150

¹²⁴ Chapter 12 ‘Divorce (in return for monetary compensation to be paid by the wife to her husband), Sahih Al Bukhari , Vol.7, Darul Ishaat, Karachi-Pakistan, 149

¹²⁵ Qadi Khan: Fatawa, vol.ii, p.256

However, in case where the marriage has not been consummated and the whole dower has been paid to her, then according to Abu Hanifah the husband will not be entitled to the return of any portion of the dower. He shall, of course, take the consideration that may have been agreed upon. But, according to his two disciples, the wife shall have to return half of the dower to the husband and will be entitled to keep half of it with herself though the consideration agreed upon has to be paid by the wife to the husband in each case in view of Abu Yusuf and Muhammad.

According to Maliki Law if the marriage has not been consummated and the parties settle khul'a for a specified consideration, the wife shall have to pay the specified consideration and her right to dower shall be extinguished. She will not be entitled to get the whole or any portion of it.

Under Shafi'i Law if the spouses agree to khul'a for a particular consideration and the marriage has not been consummated, the wife will be entitled to half the dower. If the whole dower has been paid to her, she shall have to return half of it. If it has not been paid to her, the husband has to pay half the dower to her. Ahmad b. Hambal believes that the right to dower is not lost in consequence of khul'a and the husband remains liable for its payment if the same has not already been paid to her (if not otherwise agreed upon).

Under section 67(b) of A Code of Muslim Personal Law, as well, a woman is not considered entitled to dower if the responsibility for the dissolution of marriage contract before valid retirement is hers.

By virtue of explanation to section 140, 'A Code of Muslim Personal Law,' the wife's dower (if not paid) and the maintenance allowance for the period of her probation, on account of khul'a being effected, shall not be annulled except when there is some agreement to the contrary between the husband and wife. However, in the case of mubarat the husband and the wife shall be deemed exonerated of the entire financial or non-financial commitments that exist during the subsistence of marriage between them, in the absence of any contract to the contrary.

Quantum of Compensation for Khula

Under A Code of Muslim Personal Law, 'the husband is entitled to effect khul'a to his wife on compensation equal to or less or even more than the dower. But in the event of disagreement as to the amount of compensation, the court shall have the power to fix the quantum of compensation.'¹²⁶ There are, however, incidents contrary to the said provision. As for instance a dispute arose between the couple and the wife of Thabit b. Qays said before the Prophet ﷺ "Yes, I would return the garden and give some (more) property as well", the Prophet ﷺ stopped her from giving back more.¹²⁷

¹²⁶ Section 133

¹²⁷ Al-Bayhaqi: Al-Sunan al-Kubra, Deccan, 1353, A.H., vol.vii, p.314: quoted by Dr. Tanzil-u-Rehman in 'A Code of Muslim Personal Laws, Vol. I, Hamdard Academy Pakistan

In another tradition attributed to Ata b. ‘Azib to the effect that the Prophet ﷺ said “Only that property should be accepted back from the wife, released under khul’a, which had been given by the husband to her and not more than that.”¹²⁸

In this context, there are different averments from the companions of Prophet ﷺ (Sihabah-e-karam) and their successors (Tabi’in). Ibne al-Qayyim stated that according to some, taking back more than what the husband has given to the wife is prohibited. To some it is permissible.

Hazrat Abu Bakr considers the taking of more than what was given by the husband unlawful and he maintains that the husband shall be made to return the same to the wife. Taus and Zuhri also agree to this view. According to ‘Ata, if the husband takes back anything more than the dower he shall be made to restore the same to the wife. Azza’i too has said that it is not competent judicially for the husband to take anything from the wife except what he has given to her.¹²⁹

With reference to the view that taking compensation more than what the husband has given to his wife is lawful, ‘Abd al-Razzak has reported from Ma’mar and Ma’mar from ‘Adullah b. Muhammad b. ‘Aqil that Rabi’bt Mu’awwdh b. ‘Afra’ told him that she obtained khul’a from her husband in return for everything that she was owner of. When the matter was taken to caliph ‘Uthman, he held the same lawful.

According to Imam Abu Hanifa taking back more is disapproved.¹³⁰ The basis of this opinion is the tradition narrated by Abu al-Zubayr viz., that Thabit b. Shamas intended to effect khul’a to his wife and when the Prophet ﷺ inquired of his wife whether she would return that to her husband which he had given to her as dower, she replied “Yes! and more besides”. Thereupon the Prophet ﷺ forbade her from giving more.¹³¹

Ahmad b. Hanbal not only holds the similar view but also asserts that husband shall be made to return to the woman what in addition he had given her.¹³² On the other hand Malik and Al-Shafi’i hold the opinion that taking back more than the dower is lawful.¹³³ The basis of this opinion, in view of Dr. Tanzil-u-Rahman is the interpretation of the verse 229 of surah Al-Baqrah, providing “.....there is no blame on either of them if

¹²⁸ Al-Bayhaqi: Al-Sunan al-Kubra, Deccan, 1353 A.H., vol.vii, p.204: : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

¹²⁹ Ib al-Qayyim: Zad al-Ma’ad, Cairo, 1369 A.H., vol.ii, p.35: : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-u-Reshman, vol.I, Karachi, Hamdard Academy.

¹³⁰ Ibn Qayyim: Zad al-Ma’ad, Cairo 1369, vol.ii, p.35: : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

¹³¹ Ib al-Qayyim: Zad al-Ma’ad, Cairo, 1369 A.H., vol.ii, p.35, : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-u-Reshman, vol.I, Karachi, Hamdard Academy.

¹³² Ibn Qayyim: Zad al-Ma’ad, Cairo 1364, vol.ii, p.35, : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy.

¹³³ Ibn Rushd: Bidayatul Mujtahid, Cairo, : Quotation from A Code of Muslim Personal Law by Dr. Tanzil-ur-Reshman, vol.I, Karachi, Hamdard Academy. 1379 A.H., vol.ii, p.67,

she gives something for her freedom”. Thus accordingly, if the husband demands more than that he has given to the wife and she agrees to it the same shall be legal.

In mubarat, the issue of giving up dower or any property in favour of husband does not arise at all as unlike khul’a no consideration is required to be paid to any of the parties. The terms and conditions are settled between the parties mutually. Thus only non-financial commitments that are established on account of marriage contract shall automatically lapse on khul’a and mubarat but the husband shall not be exonerated of the liability of financial rights such as dower and maintenance except when the wife agrees to it at the time of khul’a being effected.

3.1.1.2.1.3. Li’an (when wife is being accused of having committed adultery)

There is no Qur’anic directive on this point, however, according to a tradition attributed to Ibn-e-Abbas, Prophet Muhammad ﷺ directed the payment of dower to wife in the cases of li’an.¹³⁴

In view of a hadith narrated by Ibne ‘Abbas, the wife will not be entitled to dwelling and maintenance for her, as the husband and wife have been separated without divorce and death.¹³⁵

According to another hadith attributed to Sa’id bin Jubair,¹³⁶ where the dower has been paid, it shall not be restored to the husband, particularly when the marriage has been consummated as only Allah knows as to who is a liar among both the parties.

3.1.1.2.1.4. Dissolution of Marriage on the Ground of the Cruelty or Impotency of Husband

Logically speaking, under the circumstances of cruelty or physical incapacity of a husband which adversely affect the very basis of the marriage contract, a wife seeking relief from such a relationship without any fault on her part is entitled to all the benefits of the marital contract, even if the desire for freedom from marital ties is at the instance of wife her right to dower shall not be affected at all.

Accordingly, it is declared in Al-Hidayah, “If cruelty is from the side of the husband, his realizing from the wife a compensation for effecting khul’a is disapproved”. Likewise, Al –Shaybani in his book reports through Hammad and Ibrahim, Imam Abu Hanifa’s assertion, that “When the cruelty is from the side of the husband his accepting compensation for Khul’a is not lawful.”¹³⁷ Al-Kasani also expresses the similar views

¹³⁴ 2070, Chapter ‘Li’an’, Sunan Ibn-e-Majah Sharief, Translation & Commentary by Allama Nawab Waheed-uz-Zaman, Mehtab Co. Lahore-Pakistan, Vol.II, p 137

¹³⁵ Hadith No.2248, Chapter 743, ‘Invoking Curse (Li’an),’ Sunan Abu Dawud, translation with Explanatory Note by Prof. Ahmad Hasan, Vol.II, Sh. Muhammad Ashraf, Booksellers & Exporters, 608

¹³⁶ Hadith No.5311, Chapter 32, ‘Dower of cursing’, Sahih Al Bukhari , Vol.7, Darul Ishaat, Karachi-Pakistan, 171

¹³⁷ Muhammad al-Shaybani: Kitab al-Athar, Karachi, Chapter on Khul’a: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-u-Rehman, vol.I, Karachi, Hamdard Academy.

and further states that if the husband accepts compensation it shall be judicially unlawful.¹³⁸

Similarly, in case of natural and permanent impotency of husband, Imam Sarakhsi, on the basis of the averments of Imam Abu Yusuf and Muhammad, states that wife shall be entitled to get the marriage dissolved and the husband shall be bound to pay entire dower to his wife on dissolution of marriage.

Under the Hanafi Law also the husband shall be liable to make full payment of dower; his impotency shall not affect the consequence of a valid retirement in so far as it relates to his liability of payment of dower.

In Shi'ia law, however, the wife under such circumstances is entitled to only half, as according to them, valid retirement is not equivalent to cohabitation. There is a consensus of all jurists in this respect.¹³⁹

3.1.1.3 . Recommendations of Commission/Committee on the Status of Women

In order to address the issues of dower the following recommendations were made:

1. It should be enacted that a husband will have to pay the mehr fixed in the marriage contract however high it may be.
2. It should be enacted that there shall be no period of limitation in a suit for mehr.
3. If no details about the mode of payment of mehr are given in the nikahnama, the entire mehr shall be presumed by the court to be payable on demand (mehr-e-muwajjal).

3.1.1.4. Legal Provisions in other Countries

Iran

Unpaid dower is recoverable upon divorce, provided the woman is not held to be at fault. If the dower is not stipulated in the marriage contract, "mehr-ul-mithl" is recoverable. Also, courts in Iran have begun to determine the amount of dower on divorce by calculating the effect of inflation on the original amount written in the marriage contract.

Nigeria

The dower is invariably paid in full at the time of marriage and remains with the woman on divorce by talaq or where the husband breaches the terms of the marriage.

¹³⁸ Al-Kasani: Bada'I 'al-Sana'I, Cairo, 1328, A.H., vol. iii, p.150: Quotation from A Code of Muslim Personal Law by Dr. Tanzil-u-Reshman, vol.I, Karachi, Hamdard Academy.

¹³⁹ Dr. Tanzil-ur-Rehman, 'A Code of Muslim Personal Laws,' page 233

Sri Lanka

When a husband divorces his wife, it is the duty of the qazi to initiate the recovery of unpaid dower, even if the wife does not demand such recovery. The qazi determines whether or not and how much dower should be paid. However, the woman can only claim the dower within three (3) years after divorce.

India

The classical Hanafi Law has been modified by the passage of the Muslim Women (protection of rights on divorce) Act, 1986, section 3(1) of which enables a divorced Muslim woman to claim inter alia, an amount equivalent to the sum of mehr or dower agreed to be paid to her at the time of her marriage or any time thereafter according to Muslim Law.

Conclusion

Necessary amendments are required to be introduced in the Shari'at Application Act so that the courts may not feel reluctant in acting upon the clear and explicit bidding of the holy Qur'an. The West Pakistan Shari'at Act of 1961 and Family Laws Ordinance VIII of 1961 ought to be amended so as to explicitly define 'marriage' and 'modes for the dissolution of marriage', their conditions, rights and obligations arising thereof.

Dower is meant for the economic stability of a woman and it is the legal, moral and religious obligation of husband to fulfil this under all circumstances. In case of dissolution of marriage, irrespective of the mode opted for it, if the dower has not been paid then it should be paid immediately.

In the case of non-consummation of marriage, the obligation is upon husband for the payment of half the dower amount. However, whether the marriage has been consummated or not, if the valid retirement has taken place and proved with circumstantial evidence then payment of full amount of dower to the wife by husband becomes mandatory. Non-payment of the dower amount to a divorced wife must be made a penal offence.

In case of khul'a, waiver of the right to dower or any part thereof or payment of consideration by the wife to get herself released from the marital ties is not obligatory unless wife has been proved to be guilty of lewdness by producing four witnesses.

Dower is the consideration of marriage. Its payment becomes due even before consummation of marriage. Though contradictory arguments exist in respect of the payment of dower in the cases of khul'a and mubarat yet in view of the explicit directives in Surah Nisa (4:19-21), Surah Al Baqrah (2:237), divorced women must not be forced to give up their dower amount unless such women are proved to be guilty of lewdness.

The law is also required to be explicit on the term 'dower', and standards of its calculation. In case of khul'a, payment for the consideration should not be a condition, but be left at the discretion of women. Further, if a wife seeks dissolution of marriage on

any of the grounds under Dissolution of Muslim Marriage Act 1939 then she should not be put under an obligation to give up her dower or pay any other consideration. Even if she offers or undertakes to forgive her dower to get herself released from marital ties under such circumstance, her offer/undertaking shall be considered null and void.

The amount of dower must also be specified in the nikahnama. In case it is not specified in the nikahnama or if the marriage had not been registered, the court must ensure payment of dower amount to the wife at the time of dissolution of marriage, even if wife has not demanded that.

3.1.2. Maintenance

This term, in context of the subject under Black's Law Dictionary, is described as "separate maintenance." It means financial support given by one person to another, if they are no longer living as husband and wife. This kind of support is often mandated by a court order.

3.1.2.1. Prevailing Legal Provisions

There is no legal provision explicitly defining and/or giving details in this context. Hence, a divorced woman's right to maintenance is subject to interpretation by the court of law. Accordingly, maintenance has been defined in Maqsood Ahmed Sohail case as "means to keep in existence, to preserve, to support, to make good. As per D.F. Mulla in his commentary on Mahommedan Law, it includes food, apparel, lodging and other necessary expenses for mental and physical well-being. Maintenance also includes covering expenses incurred during childbirth."¹⁴⁰

In the absence of any explicit legal provision in this context, the courts of law often grant maintenance to the divorced women by interpreting the term 'wife' in section 9 of Muslim Family Laws Ordinance, 1961 under which a wife is entitled to claim maintenance.

By virtue of multiple interpretations, divorced women have been considered entitled for the maintenance under the following circumstances:

1. Period of iddat¹⁴¹
2. Past maintenance (for the period during the subsistence of marriage when wife was not maintained)
3. Maintenance beyond the period of iddat
4. Maintenance for the children

Limitation Issue

The period for filing of a suit for maintenance is 6 years as per article 120 of Limitation Act, 1908.¹⁴²

3.1.2.1.1. Gaps in the Prevailing Legal System and Impact thereof

The main problem with the family law is its inadequacy and ambiguity on the subject. Some of the following major gaps have been observed:

¹⁴⁰ Maqsood Ahmed Sohail v. Mst. Abida Hanif and 2 others: 1992 MLD 219

¹⁴¹ 'Iddat or period of probation is that fixed period during which it is incumbent upon the wife, whose marriage whether valid or irregular, has been dissolved either by a divorce after consummation or by the death of her husband, to remain in seclusion and to abstain from marrying another husband. Section 159, 'A Code of Muslim Personal Law' by Dr. Tanzil-ur-Rahman.

¹⁴² Muhammad Aslam v. Zainab Bibi & Brother: 1990 CLC 934(Lah.)

1. Lack of Legal Provision on ‘Divorced Women’s Right to Maintenance’

There is no provision for the entitlement of divorced women to maintenance during iddat or even past maintenance.

2. Lack of Security Mechanism for the Protection of Women from Violence after Divorce

It has been observed that at times violence against divorced women by the former husband goes to such an extent that the organization providing support to them also becomes victim of violence. One latest example is that of Ms. Zeba a mother of two children who had been provided shelter by SACH Foundation’. Another example is that of Ms. Shagufta, a mother of two children. She is constantly facing harassment at the hands of her former husband who is from a feudal family and according to her even the shelter homes have refused to provide her any protection.

3. Lack of Legal Provision for Divorced Women Right to seek Maintenance of her Children

Since mother is not considered natural guardian hence there is no presumed right of her to seek maintenance for her children unless appointed by the court as guardian of children.

4. Lack of Mechanism for the Enforcement of Right to Maintenance Outside Courts

In the absence of such mechanism, for every single case an aggrieved woman has to approach the court which is not feasible in the prevailing socio cultural and economic set up.

Impact of the Aforesaid Lacunae on the Right of Divorced Women

As pointed out earlier the term ‘maintenance’ is neither defined in the law nor is there even a single provision on divorced women’s right to maintenance. In the absence of explicit legal provisions there is no hard and fast rule to ensure divorced women’s right to maintenance. Thus the court gives a ruling subject to interpretation of the law. As a result, there is both positive and negative impact on the divorced women.

Consequently, it has been observed during survey that none of the divorced women (irrespective of the fact that marriage was dissolved by way of talaq, khul’a or mubarat) was paid maintenance for the period of iddat and even for the period during the subsistence of marriage when she was not maintained.

Another negative impact as observed in some of the cases is the refusal of past maintenance to divorced wife on the ground of the limited scope of the prevalent laws. The example of such cases is shared as follows:

Syeda Hamida's case¹⁴³
"No scope under personal law for grant of past maintenance"

During the course of survey we did not come across any woman who had been paid past maintenance by the husband after dissolution of marriage. Only one of them¹⁴⁴ initiated litigation against the husband in this regard about eight years ago, since the husband is out of country the case is lying pending.

In some cases, however, positive interpretation has been observed. As for instance, in Muhammad Akhtar case¹⁴⁵ wherein the Court, while interpreting the Provisions of S. 5, and item 3 of the schedule of West Pakistan Family Courts Act, 1964, held that 'catering for maintenance without distinguishing period thereof, in terms of past or future, were in consonance with the injunctions of Islam.'

The ex-wife has also been considered entitled to maintenance for the period when wedlock was intact (if she had not been maintained properly by her husband at that time), besides maintenance for the period of iddat: in quite a few cases. Highlights of some of them are shared as follows:

Ahmed Riaz case:¹⁴⁶

Divorced wife could file an application for maintenance for the period, when the marriage was subsisting and husband was under obligation to maintain her.

Muhammad Banaras case:¹⁴⁷

The language of this section does not even impliedly import that maintenance allowable to wife is the future and that the jurisdiction to allow past maintenance has not been conferred hereunder

Muhammad Nawaz case:¹⁴⁸

In the language of section 9 of the Muslim Family Laws Ordinance, 1961 there is no prohibition for grant of past maintenance as opposed to section 488 of the Cr.P.C. under which the monthly allowance can be ordered to be paid only from the date of the order or from the date of the application.

¹⁴³ Syed Hamid Ali Shah v. Mst. Razia Sultana: KLR 1991 C.C.439

¹⁴⁴ Rukhsana Parveen

¹⁴⁵ Muhammad Akhtar v. Mst. Shazia & others: 1992 MLD 134 (a)

¹⁴⁶ Ahmed Riaz v. Qisera Minhas & others: 1994 CLC 2403

¹⁴⁷ Muhammad Banaras v. Chairman Union Council, Chak Malak, Tehsil & District Chakwal: LN 1990 Rawp. Bench 1197

¹⁴⁸ Muhammad Nawaz v. Mst. Khursheed Begum & 3 others: PLD 1972 SC 302

<p>Muhammad Akhtar case¹⁴⁹ The Ordinance is silent on past maintenance. Therefore while interpreting the statute the intention of the legislature must be kept in mind. When the intention of the legislature is to make the beneficial provision of law to a person, the nearest interpretation of law will be for the benefit of a person claiming.</p>
<p>Riffat Abrar case¹⁵⁰ The High Court while relying on the Supreme Court judgement in Muhammad Najeeb's case held that where the dispute between the parties is related to the period during which marriage was subsisting and husband was under an obligation to maintain his wife, divorced wife could validly invoke jurisdiction of arbitration council u/s 9, MFLO, 1961 before arbitration council to claim past maintenance even if the application was brought by her after divorce.</p>
<p>Syed Mudassar Altaf case¹⁵¹ It is a settled law that a Muslim husband is under an obligation to maintain his wife if she is forced to live away from him.</p>
<p>Ahmed Riaz case¹⁵² A divorced wife can file an application for the period, when the marriage was subsisting and the husband was under the obligation to maintain her and the arbitration council is very well empowered by law to specify the amount payable by the husband.</p>
<p>Ghulam Jilani case¹⁵³ Wife can ask for maintenance due from period of marriage notwithstanding dissolution.</p>
<p>Ghulam Jilani case¹⁵⁴ Where the dispute related to the period during which marriage was subsisting husband was under an obligation to have maintained the wife notwithstanding dissolution of marriage. Once a liability on account of maintenance had accrued, same can be recovered in the manner provided u/s 9, MFLO.</p>
<p>Muhammad Najeeb case¹⁵⁵ Section 9 Constitution Article 185(3). Wife entitled to maintenance for iddat period and also when marriage was intact.</p>

¹⁴⁹ Muhammad Akhtar v. Mst. Shazia & others: 1994CLC 2403(b)

¹⁵⁰ Riffat Abrar v. Mst. Sheila Sabri and others PLD 1994 Lah 148(b)

¹⁵¹ Syed Mudassar Altaf v. Deputy Commissioner/Collector, Lahore and three others PLJ 1994 Lah.387

(ii)

¹⁵² Ahmed Riaz v. Mst. Qaisera Minhas and others 1994 CLC 2403 ©

¹⁵³ Ghulam Jilani v. Deputy Commissioner/Collector, Sialkot. PLJ 1992 Lah 73 (a)

¹⁵⁴ Ghulam Jilani v. Deputy Commissioner/ District Collector and others 1991 CLC 1813

¹⁵⁵ Muhammad Najeeb v. Mst Talat Shahnaz 1989 SCMR 119

Inamul Islam case¹⁵⁶

Wife is entitled to maintenance from date she separated from husband till date of effectiveness of divorce plus 90 days but not beyond such period.

But the question arises as to how many women can afford to get their right through court under their poor socio-economic and cultural circumstances?

With reference to maintenance to divorced wife beyond period of iddat (probation) there is neither any scope in law nor in the interpretations as done by the courts in Pakistan. It has been clearly held in Inamul Islam case¹⁵⁷ that:

‘maintenance beyond the period of iddat is illegal and without lawful authority.’

3.1.2.2. Islamic Law

The holy Qur’an clearly orders for maintenance of divorced women as follows:

وَلِلْمُطَلَّاتِ مِمَّا عَزَا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

“For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.”¹⁵⁸

The above verse and related traditions do not set out for any time limitation for maintenance to the divorced women. However, specific directives exist with reference to maintenance to divorced women during period of iddat. Thus the holy Qur’an leaves sufficient scope for the state to legislate in this context.

3.1.2.2.1. Past Maintenance

In classical Hanafi law, past maintenance only becomes a debt. Therefore, maintenance can be payable either during the marriage or from the date of a Court decree to this effect.¹⁵⁹ On the other hand, Shia, Shafi, Hanbali and Maliki schools of thought unanimously hold that arrears of maintenance are a debt on the husband that can be claimed no matter how much time has elapsed.¹⁶⁰

¹⁵⁶ Inamul Islam v. Mst. Hussain Bano and 4 others: PLD 1976 Lah. 1466

¹⁵⁷ Inamul Islam v. Mst. Hussain Bano and 4 others: PLD 1976 Lah. 1466

¹⁵⁸ ‘The Holy Quran’, Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Baqrah, 2: 241

¹⁵⁹ Pearl & Menski; p. 183.

¹⁶⁰ *Ibid.*

3.1.2.2.2. Maintenance during Iddat (probation)

The holy Qur'an forbids men to turn their wives out of the matrimonial home during iddat, while women are also exhorted not to leave of their own accord, as separation may hinder conciliation efforts during iddat, in the following words:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

“O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately), their prescribed periods: And fear God your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by God: and any one who transgresses the limits of God, does verily wrong his (own) soul: thou knowest not if perchance God will bring about thereafter some new situation.”¹⁶¹

Abdullah Yusuf Ali, whilst elaborating the above verse, states that Islam treats the married woman as a full juristic personality; she has a right to a house or apartment of her own, including reasonable expenses for the upkeep of herself as well as her children's maintenance. This is obligatory not only in the married state, but also during iddat. The aforesaid argument appears to be in line with the following hadith:

“ Husband has to bear the expenses of divorced wife during her iddat, as she can live at his home”¹⁶²

A tradition is attributed¹⁶³ to Hazrat Sabie that according to Hazrat Umar, a husband is responsible for the maintenance of her divorced wife during her iddat., in the light of the holy Qur'an and Sunnah.

Section 90 of 'A Code of Muslim Personal Law', also provides that a wife is entitled to maintenance during her period of probation (iddat) due on divorce, whether the divorce is revocable or irrevocable.

Likewise, Shafai and Hanafi schools of thought also hold an opinion that wife would be entitled to maintenance only if she has been irrevocably divorced. In classical Hanafi law, such a woman could even stay in her matrimonial home. On the other hand, the Maliki law provides that a woman is entitled to full maintenance during iddat only when she is actually pregnant, regardless of whether or not she remains in the matrimonial home.

¹⁶¹ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al-Talaq (65:1)

¹⁶² Hadith No. 1051, Jamae Termazi, Chapter No. 796, Volume:1, Compiled by: Imam Muhammad Bin Eesa Tirmazi, Translated by: Molana Fazal Ahmed, Publisher: Darrul Asha'at Lahore, Page 470

¹⁶³ Hadith No. 1052, Jamae Termazi, Chapter No. 1052, Volume:1, Compiled by: Imam Muhammad Bin Eesa Termazi, Translated by: Molana Fazal Ahmed, Publisher: Darrul Asha'at Lahore, Page 471

Also required by Maliki law is provision of lodging to a non-pregnant woman during iddat following an irrevocable divorce.

3.1.2.2.3. Maintenance during Pregnancy and Lactation

The 'iddat' of a pregnant woman as laid down in Surah Al-Talaq, Surah Al-Baqra and LXV:6 is till her delivery from pregnancy and as is the obligation for the payment of maintenance. In the light of the traditions, the 'iddat' of a pregnant widow, is four months and ten days or till the pregnancy ends (whichever be later.). According to a tradition also if a woman is pregnant at the time she is divorced, her maintenance is compulsory¹⁶⁴

3.1.2.2.4. Maintenance beyond Period of Iddat (probation) / Pregnancy (Mat'a)

There is considerable controversy on a Muslim man's obligation to maintain his ex-wife beyond the iddat period. The concept of long-term maintenance of a woman after her iddat period is known as "mata'a" and generally extends till her death or remarriage to another man.

The term mata'a has been interpreted in multiple ways as for instance according to Asghar Ali Engineer,¹⁶⁵ the interpretations extended by 'Abdullah bin 'Abbas and 'Abdullah bin Mas'ud (Companions of Prophet ﷺ).

According to Abdullah bin 'Abbas at the time of divorce the wife should be given enough money to make remarriage a feasible proposition, but if she does not want to marry it should be enough to maintain her for life while, Abdullah bin Ma'oud says that it could be just a token, some clothes as a token of parting may be enough. These are radically different positions and quite debatable.

Since Islam is the religion of justice and equity and it provides for the protection of women both socially and economically, we would prefer following the definition of mat'a as interpreted by Abdullah bin 'Abbas.

Khalid M. Ishaque suggests that the holy Qur'an speaks for a divorced wife to live for a year without being ejected from the husband's house. The holy Qur'an also speaks of the obligation of muttaqin (righteous people) to provide mat'a for their divorced wife. This was the Court's interpretation in the famous case of Shah Bano in India. Pakistan's Law reform Commission for Women also recommended adopting the Indian interpretation. Any law that provides alimony long after divorce for a woman who cannot maintain herself is all for the good if the husband can afford to maintain her. If he is penniless she becomes the responsibility, under the law of nafaqat, of her other relations. The provision

¹⁶⁴ Hadith 3585, Sunan-e-Nesaye Shareef, Chapter 1772, Volume:2, Compiled by: Imam Abu Abdur Rehman Nesaye, translated by: Molana Fazal Ahmed, Publisher: Darrul Asha'at Lahore, 424

¹⁶⁵ Engineer, Asghar A., Article 'Shariah, Ijtihad and Civil Society', Source: internet

of providing maintenance to a divorced wife for longer periods is very much in line with the moral thrust in Qur'anic injunctions.¹⁶⁶

Dr. Zeinab-al-Radhwan¹⁶⁷ argues that Shafi'i schools had allowed maintenance till sixty years of age. (Chief Justice @ Aftab Hussain)

Shari'a, however, does not consider maintenance to a divorced woman beyond four and a half month.¹⁶⁸

3.1.2.2.5. Maintenance in case of Khul'a and Mubarat

By virtue of proviso to section 140, A Code of Muslim Personal law, notwithstanding any agreement to the contrary, the house in which wife resides at the time of khul'a and mubarat, her right of residence therein shall continue during the term of probation at the cost of the husband.

Dr. Tanzil-u-Rahman, while elaborating the above provision writes that in the case of khul'a or mubarat wife's right of maintenance during iddat does not lapse, unless agreed upon, as it is a right which accrues only on separation, not before.

However, maintenance of divorced women, during iddat, in the light of Surah Al Talaq verse 1, is a religious obligation, and a right that cannot be given up by mutual agreement. There are some ahadith contrary to this contention which provide that there is no alimony for one who has been given irrevocable divorce. The divorced wife cannot even stay in her husband's house during the period of iddat.¹⁶⁹ But certainly by virtue of rules of interpretation ahadith need to be understood in the light of explicit injunctions of the Holy Qur'an and the related principles set out therein.

¹⁶⁶ Islamic Laws & Women-In the Modern World, Giant Forum, Global Awareness for National Trust, Islamabad, 108

¹⁶⁷ Dr. Zeinab Abdul Maguid al-Radhwan, scholar from Egypt, participant of International Conference on Islamic Laws In the Modern World, Global Giant Forum

¹⁶⁸ International Conference on Islamic Laws In the Modern World, Global Giant Forum

¹⁶⁹ Hadith No.1480, Chapter 6, Sahih Muslim, Vol.II B, rendered into English by Abdul Hamid Siddiqi, Sh. Muhammad Ashraf, Booksellers & Exporters, 839;

Hadith No.2037, narrated by Fatimah Bint-e-Qais, Chapter Kitab-ul-talaq, Sunan Ibn-e-Majah Sharief, Vol.II, Translation into urdu and commentary by Allama Nawab Waheed-uz-Zaman Khan, Mehtab Company, Lahore, 117;

Hadith No.2277, attributed to Abu Salamah b. Rahman on the authority of Fatimah, daughter of Qais, Chapter 755 ' On the Maintenance of a Woman who has been divorced Absolutely,' Sunan Abu Dawud, translation with Explanatory Note by Prof. Ahmad Hasan, Vol.II, Sh. Muhammad Ashraf, Booksellers & Exporters, 619

3.1.2.2.6. Quantum of Maintenance and Mat'a

In the light of Surah Al-Talaq, the women during the period of iddat are entitled to maintenance on the same standards as enjoyed by them during marital life.¹⁷⁰ The said Surah also guides on the question of quantifying maintenance:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

“Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden on any person beyond what He has given him. After a difficulty, God will soon grant relief.”¹⁷¹

In the light of the above verse, Dr. Fathi Osman¹⁷² and Monir Bin Yaacob¹⁷³ firmly hold the opinion that a divorced woman is entitled to mata' depending on status. Thus the socio-economic conditions and individual circumstances of the spouses all have a bearing on the issue of quantum of maintenance. All schools of thought have consensus on the point that the level of maintenance should be in accordance with their standard of living.

However, where there is a discrepancy in the financial standing of the husband and wife, differences arise amongst the schools of thought. The Maliki and Hanbali schools adopt the view that the average and medium level should be maintained in all cases. The Hanafi School, on the other hand, adopts the average level only where the husband is wealthy and the wife is poor. In the case where the wife is wealthy and the husband is poor, the Hanafi school lays down the rule that the husband's condition alone should be the guiding factor.¹⁷⁴

3.1.2.3. Recommendations of Previous Commissions / Committees in Pakistan

In order to secure divorced women's right to maintenance the **Commission of Inquiry for Women, 1997 (CIW)** made the following recommendations:

1. In case it is proved that the husband has wilfully failed to provide maintenance for his wife for a consecutive period of six (6) months or more, he should be required to pay the entire amount, past, present and future amount for one (1) year in lump sum within a period of three (3) months which may be deposited in the court. The law must also ensure that in case an appeal is preferred against the order of the court,

¹⁷⁰ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Talaq (65:6)

¹⁷¹ Ibid, Surah Al Talaq (65:7)

¹⁷² Opinion expressed in meeting with the Researcher

¹⁷³ International Conference on Islamic Laws In the Modern World, Global Giant Forum

¹⁷⁴ Ibid.

the appeal should only be heard if the husband deposits at least 50% of the decreed amount.

2. In case the husband fails to deposit the decreed amount awarded by the Court within a period of three (3) months, or after the appeal has been finally disposed of, whichever is later, he shall be liable to imprisonment for a term which may extend to one (1) year.
3. Maintenance should be provided to women beyond the period of iddat.
4. Criteria for the maintenance of a wife should be laid down which must include food, clothing, accommodation, medical care, educational expenses and other benefits appropriate to the financial status of the wife.

While, the **Commission on the Status of Women, 1985 (CSW)** made the following recommendations:

1. When the husband fails to maintain his wife adequately, whether living together or separately, the wife should be given interim maintenance immediately on the institution of suit for maintenance;
2. The maintenance awarded by the court to the wife ought to be deposited by the husband in court within a period not exceeding thirty (30) days. In case of default, the husband should be liable to confinement of simple imprisonment for up to six (6) months; and
3. Criteria for maintenance of wife should be laid down which must include food, clothing, accommodation, medical care, educational expenses and other benefits appropriate to the financial status of the wife.

3.1.2.4. Legal Provisions in Other Countries

Egypt

A divorced woman is entitled to iddat maintenance for up to one (1) year, the amount of which is based on the man's capacity but shall not be less than is needed to meet the woman's basic needs. Interim maintenance orders are to be passed within two (2) weeks of the wife's claim, the amount of which is to be deducted from the final adjudged amount of maintenance.

Sudan

A divorced woman is entitled to iddat maintenance, the amount of which is to be fixed according to the husband's financial capacity. The overall payment period should not exceed one (1) year, except when the woman gives birth to a child, in which case she is entitled to a maximum of two years and three months of maintenance starting from the date of the child's birth. Women also have a guaranteed right to spend the iddat period in the matrimonial home. During this period, however, the woman is to be physically restricted to her residence, regardless of whether she is a working woman.

Bangladesh

The maintenance in this country is limited to the period of iddat. However, there was a move towards consideration of divorced women's right to maintenance beyond that, as was held by High Court in the landmark case of Muhammad Hefzur Rahman¹⁷⁵ where it was held that a Muslim husband's responsibility to maintain his divorced wife does not cease with the expiry of the iddat. The court stated that the former husband is bound to provide his divorced wife with maintenance on a reasonable scale for an indefinite period, until her status as a divorced woman changes, that is, if she remarries. This ruling was, however, overturned by the Supreme Court's in December 1998¹⁷⁶ and maintenance for divorced women was again limit to iddat period.

Egypt

A woman divorced by talaq or without fault is entitled to mat'a. However, the mat'a is envisaged as extended maintenance rather than a lump sum. It includes at least two years' maintenance after iddat, the amount and duration being determined by taking into consideration the husband's wealth, circumstances of the divorce, and length of marriage.

Malaysia

A woman divorced "without just cause" may apply for mat'a. The amount of mat'a is to be fair and just.

Tunisia

If a woman is "wrongfully" divorced, she may be awarded mata'a in the form of a lump sum, a property transfer or monthly instalments. Payment of monthly instalments may be increased or decreased, and end on the death of the husband, the wife's remarriage, or at any time the wife ceases to require maintenance. The amount of mata'a may be determined by the standard of living the wife was accustomed to.

India

In the famous Shah Bano case¹⁷⁷ the Supreme Court of India gave a ruling that the conflict between classical Hanafi law, which only specifies the obligation to maintain a wife during her iddat period, and the requirement, established by state legislation, to support a former wife unable to maintain herself beyond iddat. This ruling was fiercely protested by sections of the Muslim community that viewed it as a gross interference in matters of Muslim personal status. During the aftermath of this controversial judgment, classical Hanafi law was modified by the passage of the Muslim Women (protection of rights on divorce) Act, 1986, Section 3(1) which enables a divorced Muslim woman to claim inter alia a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband.

¹⁷⁵ Muhammad Hefzur Rahman v. Shamsun Nahar Begum, 15 BLD (1995) 34

¹⁷⁶ Hefzur Rahman v. Shamsun Nahar Begum, 4 MLR (AD) (1999) 41

¹⁷⁷ Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

The said Act also directs that if neither the wife nor the husband has means to provide for the divorced woman's support, the responsibility of her maintenance falls on those of her relations who would stand to inherit from her. As a last resort, liability for maintenance would fall on the state Waqf Board or Muslim Welfare Trust.

Initially, this Act was interpreted as leaving the inflexible Hanafi position intact with reference to mata'a. However, case law that has emanated under Section 3(1) of the Act confirms that a divorced Muslim woman can demand maintenance for the period after iddat from her former husband. As for instance, in the case of *Ali v. Sufaira* in 1988, in which the Kerala High Court held that appropriate interpretation of section 3(1)(a) above, namely, "a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband", was that maintenance during the waiting period and "reasonable and fair provision" were two separate issues. Thus, the Court ruled that the divorced Muslim woman is entitled not only to maintenance for her waiting period, but also to a reasonable and fair provision to provide "for her future livelihood, from her former husband." This has since been confirmed in a large number of judgments.

With this decision, a divorced Muslim woman, who otherwise would have to depend on section 125 of the Criminal Procedure Code that provides for a maximum of Rs. 500 as a monthly maintenance for life,¹⁷⁸ would now be able to obtain a lump sum amount as a settlement.

In practice, the courts are making a liberal use of the various provisions of the act to secure divorced women maintenance (nafaqa) for 'Iddat and for the duration of fosterage and recovery of dower (mehr) and dowry(jahez). Quite often they also award compensation (mat'a). The lacunae in the Act from an Islamic viewpoint, however, require suitable revision by the legislature.

Conclusion

The family laws are completely silent on divorced women's right to maintenance. However, since Muslim family laws are based on Islamic Law (shar'iah) hence the benefit is often extended to divorced women through interpretation but this does not help the women in general as very few of the divorced women have opportunity to get their right through court and that too is lengthy, cumbersome and least affordable and even then justice is not guaranteed.

Since the holy Qur'an and Sunnah are very clear on the subject and the constitution also provides that all laws shall be brought in conformity with the Qur'an and Sunnah hence it is obligatory to amend the existing legal framework in light thereof.

¹⁷⁸ "HC adds 'life' to Muslim Divorce Act." Express News Service; The Indian Express. May 6, 1999. See <http://www.hvk.org/articles/0599/2.html>

It may conveniently be deduced from the Islamic injunctions discussed above that a divorced woman is entitled to maintenance during the period of iddat on a reasonable scale. Further, she also has a right to mat'a or maintenance after iddat until she gets remarried, especially under the circumstances of her being lonely and having no other means of subsistence. The quantum of maintenance, however, is to be decided on the basis of the capacity of husband.

3.1.3. Maintenance for Child(ren)

The maintenance of children relates to food, clothing, residence, medicine and some other essential services.

3.1.3.1. Prevailing Legal Provisions

There are no explicit legal provisions in the family laws on the point and the family courts,¹⁷⁹ derive their guidance from the general principles of Islamic jurisprudence, but the same is again subject to judicial interpretation.

The Islamic Law clearly recognizes the father's liability to maintain his legitimate children (even where the wife is from a strong financial background), and draws a distinction between this liability and the husband's obligations towards his wife.

Divorced women's right to maintenance cannot be waived in any circumstance. Under A Code of Muslim Personal Law, ' it is not lawful for the husband to grant khul'a or have mubarat in lieu of his wife's relinquishing his children's maintenance; provided that the relinquishment is for a fixed period and the wife has got sufficient means to maintain them.'

Thus the spouses cannot agree to khul'a or mubarat on the condition that the wife shall be responsible to maintain a child or children (born out of wedlock), as the case may be) born of the marriage. However, there is an exception to this rule as in case of an infant if such condition is specified it shall not be invalid because it will be presumed that she has to suckle the child for the usual period of two years.¹⁸⁰

According to Minhatal Khaliq,¹⁸¹ if a wife obtains khul'a on renunciation of her right to claim maintenance of his child aged ten years, when she herself is poor and unable to bear his maintenance expenses, she is entitled to claim his maintenance from the husband. The basis of this rule is that the consideration for khul'a is a debt against her, and the maintenance of her child cannot be set off against her own debt.

Generally the Courts consider the following aspects for the award of Maintenance to ex-wife and children:

¹⁷⁹ Family Courts have been established under Family Courts Act, 1964

¹⁸⁰ Fatawa Alamgiriyyah, vol.ii, page 119

¹⁸¹ Muhammad Amin: Minhatal Khaliq, vol.iv, page 89

1. Means of Ex-wife

Under Muslim Personal Law the right of wife to maintenance is recognized regardless of her own financial position.

2. Socio-economic Status of Parties

The amount of maintenance varies depending upon the socio-economic status of the parties. While determining the same, factors like the means of the husband, the commitments of the husband, living standard of the parties, needs of the child(ren), if any, etc., are taken into consideration.

3. Reasonable

The amount of maintenance must be fair, proper and just under the circumstances and be based on record.

4. Non-Muslim Parties

Where the parties are non-Muslim, maintenance could be claimed under Section 488 of Cr.P.C. instead of Family Laws.

3.1.3.1.1. Gaps in the Prevailing Legal System and Impact thereof

Owing to inadequate legal provisions on the subject, the court often denies maintenance to children on the ground that the custody is not with him. As for instance the decision of the court in the following cases:

Iftikhar Zafar, case¹⁸²

Father is bound to maintain an indigent child himself but not through another unless so directed by the qazi or the court.

Muhammad Aslam case¹⁸³

Where a child is staying away from the father contrary to his legal right of his custody then it can be urged that there is no liability on him to pay maintenance for such a child

In certain cases, however, on the basis of Islamic Laws, father or grandfather are generally considered liable to maintain the children until they get married, even if they are living with the mother. Accordingly, an ex-wife had been considered for the grant of maintenance for her child(ren) in the following case:

Mahmooda Khatoon case¹⁸⁴

Father is bound to maintain children even if they are in mother' custody.

¹⁸² Muhammad Iftikhar Zafar v. Muhammad Ahmed: 2000 YLR 768

¹⁸³ Muhammad Aslam v. Family Judge and 2 others 1987 CLC 247

¹⁸⁴ Mahmooda Khatoon v. Zainul Hasnain Rizvi: PLD 1958 Kar. 150

With reference to adult son it was, however, held that father is not bound to maintain him unless disabled by infirmity or disease.¹⁸⁵ Similarly, a father is not under obligation to maintain his daughter who being of advanced age and capable of being maintained out of her own earning.¹⁸⁶

But the question again arises as to how many women can afford to opt for litigation And, even if they approach, all are not the lucky ones to get their right. Ms. Rukhsana Parveen, a divorced woman, mother of four kids (age 10, 14, 18 & 20), filed a suit for the maintenance of her children eight years ago, her former husband is staying abroad and she is facing financial crisis and has no one to extend any financial help.

In the context of illegitimate child, the court in Nafees Ara case¹⁸⁷ decided that since Muslim Personal Law makes no specific provision for granting or prohibiting the grant of maintenance to an illegitimate child, hence a child couldn't be debarred from maintenance on the ground of his/her being illegitimate.

3.1.3.2. Islamic Law

Man is the maintainer of the family by virtue of Surah Al Baqrah which clearly states "...he shall bear the cost of their food and clothing, on equitable term."¹⁸⁸

3.1.3.3. Recommendations of Previous Commissions / Committees in Pakistan

In order to help women in getting their due right to maintenance the **Law Reform Commission, 1958 (LRC)** recommended the provision for the grant of maintenance to minors till they reach the age of 21 years regardless of whether they are married or have become financially independent prior to that time.

Conclusion

Father is under an obligation to maintain children even if their custody is not with him in the interest of the welfare of the children. However, he is not bound to maintain his children of advanced age, if they are capable of earning their living.

3.1.4. Guardianship ("wilayat") and Custody ("hizanat")

By virtue of Black's Law Dictionary, *Guardian* is one who has the legal authority and duty to care for another's person or property, especially because of other's infancy, incapacity or disability. A guardian may be appointed for all purposes or for specific purpose, while *Custodian* is one who is entrusted with the care and control of a thing or person for inspection, preservation, or security.

¹⁸⁵ Abdullah v. Jawaria Aslam: 2004 YLR 616

¹⁸⁶ Bibi Inayat Sultan & another v. Sardar Habib Khan & 2 others: PLD 2005 Pesh 77

¹⁸⁷ Nafees Ara v. Asif Saadat Ali Khan AIR 1963 All 143

¹⁸⁸ 'The Holy Quran', Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Baqrah (2:233)

3.1.4.1. Prevailing Legal Provisions

In Pakistan, Guardian and Wards Act, 1890 deals with the guardianship and custody of a ward (a ‘minor’ for whose person or property, or, both there is a guardian.

The term “guardian” has been defined as ‘a person having the care of the person of a minor or of his property, or of both his person and property.’¹⁸⁹ sections 7 and 17 of the Act empowers the District Court¹⁹⁰ to appoint guardian of a minor by keeping in view the welfare of a minor. And, any of the following persons may apply for the custody of a minor (section 8):

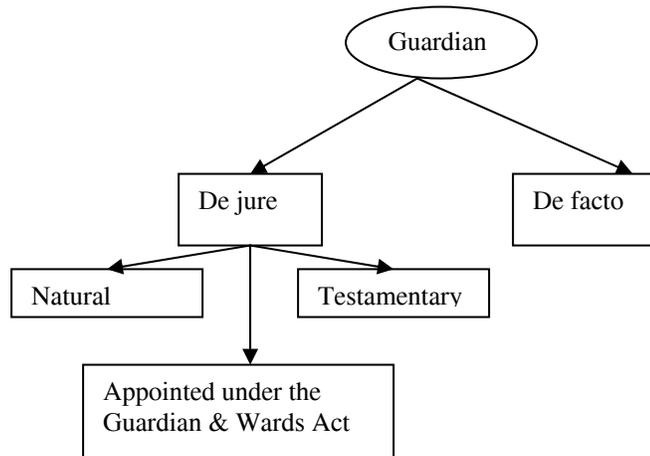
- a. the person desirous of being or claiming to be the guardian of the minor
- b. any relative or friend of the minor
- c. a collector of the district or other local area within which the minor ordinarily resides or in which he has property
- d. a collector having authority with respect to the class to which the minor belongs.¹⁹¹

Section 19 of the Act is biased with reference to the right of a mother as it explicitly debars the court from appointing or declaring her a guardian under the circumstance, inter alia, ‘of a minor whose father is living and is not, in the opinion of the court, unfit to be guardian of his/her person’.¹⁹²

3.1.4.2. Gaps in the Prevailing Legal System and Impact thereof

3.1.4.2.1. Right to Guardianship (wilayat)

The law does not recognize mother as the natural and legal guardian. The basis of this law is the concept of guardianship under fiqh that classifies guardians as follows:



¹⁸⁹ Guardian and Wards Act, 1890, Section 4(2)

¹⁹⁰ Ibid, Section 9 authorizes District Court having jurisdiction in the place where the minor ordinarily resides, to try the cases in this respect.

¹⁹¹ Pearl & Menski; p. 426.

¹⁹² Guardian and Wards Act, 1890, Section 8

Under this scheme, the guardian could either be de jure (legal) or de facto. In the category of de jure guardians fall the natural testamentary guardians and those appointed under the Act. The classification is purely patriarchal as it recognizes only father as the natural guardian of the person and property of his legitimate child.

Thus under the Muslim Personal Law as interpreted by the jurists and followed in Pakistan, a mother is designated as a de facto guardian of her minor child like any other person who may have voluntarily placed himself/herself in charge of the person and property of a minor without being legal guardian or appointed by the court. The father and the paternal grandfather and in absence thereof, the executors of their will are the natural or legal guardians.

Certain interpretations emphasize that a guardian [ship] is to be treated more as a duty towards the ward rather than as a right. It seeks to protect the interests of the child against the guardian and places many restrictions on the guardian's authority and powers, especially with regard to the child's property.¹⁹³

The National Plan of Action for Women in its chapter on 'Human Rights of Women also recognizes the discriminatory element in the law of custody and guardianship which applies to all communities, with special provisions to accommodate the rules of personal law, that are also discriminatory against women. The father is presumed to be the natural guardian. In the matter of custody, Muslim mothers are, however, placed at a disadvantage.

Further, non-enforcement of laws and regulations affording protection to women against discrimination, and lack of women's access to justice have adversely affected women.¹⁹⁴

As a result of the discriminatory concepts of guardianship the mother, as such is not considered the legal guardian,¹⁹⁵ but being the de facto guardian of a minor (like minor's other relation or guardian appointed by the court) she is merely a custodian of the minor's person and property, only if court authorizes under specific circumstances. Therefore she is debarred from exercising her right on the person and property of her minor child. Case law, reflecting such situation are shared as follows:

Mahmooda Khatoon case¹⁹⁶

- Father is the guardian of minors, even if they are in custody of mother.
- Mother loses custody if she resides at a great distance from the father's place of residence

¹⁹³ Pearl & Menski; p. 425.

¹⁹⁴ National Plan of Action for Women, Ministry of Women Development, Social Welfare & Special Education, Government of Pakistan.

¹⁹⁵ AIR 1938 Oudh 97

¹⁹⁶ Mahmooda Khatoon v. Zainul Hasnain Rizvi: PLD 1958 Kar. 150

Wajid Ali case¹⁹⁷

- The mother's right to hizanat does not make her natural guardian of the minors. The father alone or if he is dead, the executor of his will, will be the legal guardian. The hizanat of the mother is thus subject to the supervision of the father of the minor as hizanat does not carry with it all the powers which a guardian of the person of a minor has under the prevailing law. She has no authority to transfer the property of her minor.

Sk. Muhammad Zafir case¹⁹⁸

- She is only a de facto guardian and is therefore not competent to act for the minors.

4.1.4.2.2. Right to Custody (hizanat)

The law does not specifically provide for mother's right to custody. The same is subject to interpretation by the court. A divorced mother has to go through tedious process to get custody of the child otherwise she can easily be charged for kidnapping her own children, as was observed in the case of Ms. Shagufta, interviewed by the researcher. The said respondent spent about ten lac rupees just to get the custody of her children. Presently, she is jobless and penniless but she has given up her right to the guardianship & custody of her children.

Sometime, in order to skip court procedure they even agree to giving up their rights for the sake of their children. In any case she, loses her right to hizanat if she has suffered from serious immoral infirmity¹⁹⁹ or on getting married again with a person not related to a minor in prohibited degrees.²⁰⁰ As for instance in the following case:

However, in some cases a divorced mother has been considered the most suitable guardian, even on contracting a second marriage as held in the cases of Mst. Shaheen²⁰¹ and Rashida Begum.²⁰²

In rare cases the mother has been considered next to a natural guardian and capable of alienating the minor's property for the welfare of a minor even without the sanction of court. As for instance in Jalaluddin Shaikh case²⁰³

- Powers of natural guardian of Hindu minor are larger than those of guardians appointed under the act.

¹⁹⁷ Wajid Ali v. Ganga Din AIR 1938 Oudh 97

¹⁹⁸ Sk. Mohammad Zafir v. Sk. Amiruddin & others: AIR 1963 Pat. 108. (DB)

¹⁹⁹ 1985 CLC 592

²⁰⁰ NLR 1995 SD, 521

²⁰¹ Mst. Shaheen v. Jaffar Khan: 2000 CLC 1627

²⁰² Rashida Begum v. Shahab Din: PLD 1960 Lah. 1142.

²⁰³ Jalaluddin Shaikh v. Kshirode Chandra: PLD 1960 Dacca 948

Jalaluddin v. Kshirode Chandra

²⁰⁴ Chundar Goswami v. Biswewer Goswami: ILR 25 Cal.5857

- A natural guardian may alienate the minor's property even without the sanction of the court, provided that the alienation is one necessary for the benefit of the estate.
- While relying on the judgement in the case of Kanti Chunder,²⁰⁴ the High Court held that mother is the next natural guardian, in the absence of the father, has the power to transfer the properties of the minors for legal necessity and for the benefit of the minors. *Court's verdict*

3.1.4.2.3. Custody of a Child in case of non-Muslim Divorced Mother

The law is completely silent on this issue hence cases are mostly decided on the basis of fiqa that disqualifies a non-Muslim divorced/separated mother from the custody of her child.

3.1.4.2.4. Transportation of Children Outside the Jurisdiction of Pakistan in Contravention of Court Custody Orders

Most often Pakistani children whose one parent is a foreigner, are brought to Pakistan or are taken away from Pakistan unlawfully. This issue cannot be resolved unless Pakistan becomes a contracting party to the Hague Convention, which provides a solution to this effect.

3.1.4.3. Islamic Law

The supervisory right of guardianship of a minor ("wilayat") is different from custody ("hizanat") of a minor. Guardianship centres on the legal rights and obligations pertaining to the child, whereas custody is more concerned with practical matters such as care and control of the child.

There is no Qur'anic directive specifically on the exclusive right of father or mother to the guardianship of a child. The divine directives with particular reference to Surah Al Baqrah verse 233, stress on mutual consultation of both the parents for the welfare of the child. The jurists, however, consider appointment of guardians in the following manner:

1. natural right
2. testamentary
3. appointment by a judge.

The Hanafi code of jurisprudence treats these three methods of appointment in this way:

"Of Guardians there seems to be two kinds-the lineal guardian and the testamentary guardian. The powers and duties of the former are limited to the marriage of his ward, and that of the latter to the care of his person and property. The testamentary guardian does not appear to be distinguished from the ordinary executor. No executor has authority to contract minor in marriage unless he happens to be the lineal guardian also."

3.1.4.3.1. Guardianship for the Purposes of Marriage

This extends to the father and grandfather and other relations in their absence. But, when a guardian, other than the father or grandfather, gives a minor in marriage he or she can exercise the option of puberty and ask the court to annul the marriage.

3.1.4.3.2. Guardianship for the Purposes of Management and Preservation of Property

The guardianship of a minor, in this respect devolves on the following in accordance with the sequence:

1. His/her father
2. The father's executor
3. The paternal grandfather
4. Executor
5. The executor of such executor; and
6. Ruling power or his representatives vis-a-vis., qazi /judge

Thus the ultimate authority rests with the qazi to appoint a guardian for an infant's property when there is no near guardian (i.e., father, the father's father and executors). The other paternal kinsmen termed as 'remote kindred', and the mother succeeds, according to proximity, to the guardianship of an infant for the purpose of education and marriage. They do not have the right to be guardians of the minor's property unless appointed to do so by the ruling authorities, or unless appointed to be guardian in the original proprietor's will, which has been duly attested by competent witnesses. If the mother remarries, she forfeits her right to guardianship. However, she can regain this right in case of her being divorced or widowed.

3.1.4.3.3. Custody ('hizanat') for the Purposes of Bringing up Child (education etc.)

The jurists by way of seeking Qur'anic sanction deduce mother's preference for the custody of a child from the following verse relating to fosterage:

۲۳۳- وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ ۗ
وَعَلَى الْمَوْلُودِ لَهُ رِشْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۗ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۗ
لَا تُضَارَّ وَالِدَةٌ بَوْلًا لَهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهَا ۗ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۗ

“The mothers shall give suck to their offsprings for two whole years if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable term. No soul shall have a burden laid on it greater than it can bear, no mother shall be treated unfairly on account of her child, nor father on account of his child, an heir shall be chargeable in the same way.”²⁰⁵

²⁰⁵ ‘The Holy Quran’, Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al Baqrah (2:233)

The same is reflected in the tradition reported by Abdullah b. Amr that a woman complained to the Prophet ﷺ saying, "O, messenger of God: This child of mine, my womb was his container, my lap is his place of comfort and my breasts are his milk source. His father claims that he will take him away from me". The Prophet ﷺ said, "You have more rights over the child as long as you do not marry". (Abu Da'ud 3:282) However, if the child is capable of taking a decision, the custody should be given according to the choice of the child, as was directed by Prophet Muhammad, ﷺ as per tradition attributed to Hazrat Abu Huraira.²⁰⁶

According to Sunni Law, the mother is, entitled to the *hizanat* (custody) of her male child until he has completed the age of seven (7) years and of her female child until she has attained puberty and this right continues even though her husband may divorce her. Under Shia (Shia Asna Ashari) Law, mother is entitled to the custody of a male child until he attains the age of two years and of a female child until she attains the age of seven years. And, she cannot be denied her right to *hizanat* on the ground of her inability to maintain the minor(s).²⁰⁷ After the child attains the foregoing age the father has the right to custody of the child. Though in quite a few cases mother has been considered to be the best guardian to the teen-age children as was held in *Noor Muhammad case*.²⁰⁸

In Hanafi law, this age is seven (7) years for boys and nine (9) years for girls. In Maliki law, the mother retains the right of custody until puberty for boys and marriage for girls. In Hanbali law, the relevant ages are seven (7) years for both boys and girls, after which the child is given a choice between either parent. Shafi law, however, does not lay down any fixed age limits for custody, though, on the attainment of discretion, the child is given the choice between either parent.

Al Shafi'i also prefers minor's custody to the mother in the following words: "Thus when the child is indiscreet, the mother has a greater right to his upbringing inasmuch as this is a question of the right of the child, not the question of the degree of love, attachment and affection of the parents."²⁰⁹

In Shia law, the period of custody is only two (2) years for boys and seven (7) years for girls.²¹⁰

According to *Fatawa Al-Azhar* 'under *fiqh* as well, it is an established rule in Islamic Law that in principle custody of children belongs to women, because a woman is more patient and stronger than a man in respect of upbringing of children. The right of custody first goes to real mother, provided that she fulfils other conditions required by law, then

²⁰⁶ 3529, *Sunan Nisai Sharief*, Translation by Moulana Ahmed Sahib, Vol. II, Darul Ishaat, Karachi-Pakistan, p.398

²⁰⁷ 1978 SCMR 299rel. PLD 1994 Azad J & K 1 (f)

²⁰⁸ *Noor Muhamamd v. Mst. Bakhtan*: 1981 SCMR 828

²⁰⁹ *Al-Shafi'i: Kitab al-Umm*, Egypt, 1381 (A.H.) Vol.VIII, p.235

²¹⁰ *Pearl & Menski*; p. 411.

to the mother of child's father. The man has no right of custody of a minor child until seven years of age.²¹¹

The author of Al-Mughni, Ibn Qudama Maqdisi Hanbali has written that "the mother, when divorced, has better rights of custody of her minor and immediate children."

Dr. Muhammad Farooq also writes that "divorced woman has more rights on children than the father unless she marries to another man."²¹²

Circumstances Under Which Mother is Disqualified for the Custody of her Child(ren)

Though mother is considered most suitable for the custody of her children but in certain situations she is likely to lose custody of her child. For instance, where the mother marries a man who is not related to the child within the "prohibited degrees".²¹³ Also, where the mother is non-Muslim, custody is usually awarded to the father.²¹⁴ However, according to another opinion mother is the most entitled to the custody of her infant child during marriage and after separation from her husband, unless she (1) has become an apostate, (2) is wicked, or (3) is unworthy to be trusted.²¹⁵

However, a Mohammedan illegitimate child of a Sunni sect is considered to be the child of its mother only inheriting as such. Consequently, if there should be any religion at all for such a child it should be the religion of the mother.

Similarly, in case of dissolution of marriage on the ground of li'an, the child would belong to the mother, as per directives of the Prophet ﷺ in a tradition attributed to Hazrat Ibne Umar.²¹⁶

Since the prevailing family laws are based on the principles devised by different schools of thought a wide scope for interpretation is left for the courts. Thus the status of a divorced mother depends on the court's decisions rather than the status and rights as enshrined in the Islamic injunctions and constitutional guarantee for the equality of rights.

²¹¹ Fatwa Al-Azhar, vol.5,1955

²¹² Dr. Muhammad Farooq Khan and Dr. Rizwana Farooq, Chapter :3, 'Islam and Women', Translated by: Professor Salman Basit, Darrul Ashraq Lahore, page: 151

²¹³ Dr. Tanzil-ur-Rehman, A Code of Muslim Personal Law, Section 177

²¹⁴ Pearl & Menski; p. 412.

²¹⁵ Fatawa-i-'Alamgiri, vol.1, p.728

²¹⁶ Ibne Umer (), Chapter Li'an' Sunan Ibn-e-Majah Sharief, Translation & Commentary by Allama Nawab Abu Abdullah, Vol. II, Mehtab Co., Lahore Pakistan, p. 137. This tradition has also been reported in Sunane Nisai, Translation by Moulana Ahmed Sahib, Vol. II, Darul Ishaat, Karachi-Pakistan, p.399

Guardianship is considered a right, and a trust and in the light of the holy Qur'an, it is also a sacred duty, which the guardian is to scrupulously perform and who else can perform this sacred duty better than a mother? Across the globe mother is considered to be the best guardian of her child(ren). In discussing parents' rights, the Qur'an privileges mothers while displacing the thematic of father's rule, thus also challenging the way patriarchies treat both mothers and fathers.²¹⁷ It is said that even on the judgment day each soul will be called by his mother's name, then why law debars mother from the category of a natural guardian?

The Commission of inquiry for women showed its concern on the point by stating that "it is ironic to exclude the mother from this very definition, which she alone can truly qualify for "naturally". Adherence to such archaic notion is not only condescending but also humiliating to motherhood".²¹⁸

3.1.4.4. Recommendations of Various Commissions in Pakistan²¹⁹

While pointing the gaps, the previous commissions made the following recommendations:

1. Suitable amendment should be made in the Guardian and Wards Act, 1890 to provide:
 - a. that the court shall have power, irrespective of whether any proceedings for the custody or guardianship of a minor are pending before it or not, to direct the person having the custody of the minor to allow the father or mother or other near relative to see the minor after reasonable intervals
 - b. In case of the custody of minor the father of the minor shall not be allowed custody if it is proved that he had failed to provide maintenance to the minor for a period of two years or more without a reasonable cause.
2. Section 5(1) of the Guardians and Wards Act, 1890 should be amended so that after the words "European British Subject", the words "or Pakistan Christians or Christians domiciled in Pakistan" are inserted. As a consequence of this amendment, sections 6, 15 and 19 of the Act should also be suitably amended in which the words, "European British Subjects" have been used;
3. In section 6 of the Act the words "European British Subject" should be deleted
4. Section 15 be amended to include that the mother of the minor should always be considered for the guardianship of the property and the person of the minor at par with any other persons;

²¹⁷ "Believing Women in Islam, Unreading Patriarchal Interpretations of the Qur'an, Asma Barlas, Sama Editorial and Publishing Services, Karachi, Pakistan, 172

²¹⁸ The Commission of Inquiry for Women-Pakistan, August 1997

²¹⁹ On the Path of Women's Empowerment-A synthesis of Reports of Commissions/Committee on the Status of Women, Government of Pakistan, M/o Women Development, Social Welfare and Special Education, Islamabad, page 39

5. Section 17 be amended so that the only consideration for the court to determine guardianship should be the welfare of the minor;
6. Section 19(a) be amended so that the husband of a minor female should not be given preference for appointment as a guardian;
7. Section 19(b) be amended to replace the words ‘whose father s’ with ‘where either of the parents are’;
8. Section 21 be amended to allow some flexibility so that a guardian of the minor can temporarily remove the minor anywhere within the province without leave of the court but shall not remove the minor outside the jurisdiction of the province or Pakistani territory without the permission of the guardian court;
9. Section 26 be amended to allow some flexibility so that a guardian of the minor can temporarily remove the minor anywhere within the province without leave of the court but shall not remove the minor outside the jurisdiction of the province or Pakistani territory without the permission of the guardian court;
10. Section 41(d) be amended so that it does not automatically make the husband guardian of a female ward;
11. In section 41(e), all occurrences of the word ‘father’ should be replaced by ‘parents’;
12. Pakistan should become a contracting party to the Hague Convention in order to protect children who habitually reside in one contracting state and who have wrongfully been removed from, or retained, in another contracting state.

3.1.4.5. Legal Provisions in other Countries

The relevant law on hizanat has been enacted in Qanun al Ahwal al Shakhsiyah in several Muslim countries. The same in some of such countries are discussed herein below:

Turkey

According to the Turkish law there is equality of right of both parents for the custody of children and the judge decides as to which of the parents should be best in each case in the interest of the child.

Egypt

According to Nagla Nassar, the custody of children of different ages for boys and girls remains with the mother provided that the mother does not remarry. On remarrying, the custody goes to maternal or paternal grandmother depending upon who is living. The age limit may be extended for boys to the age of fifteen and for girls until marriage. This needs the intervention of the courts and judicial decisions.

In fact, this is a very disputed issue in Egyptian courts. Under Islamic Law, the custody is not defined in terms of fixed ages. It is defined by the need for mother’s service which gives flexibility to the courts to move the ages of children upwards or downwards unless the mother does not want the custody.

Iran

In view of Shahnaz Nikanjam, the custody in case of divorce is woman's responsibility, provided she has to prove in court that she is capable of raising the child. But, as stated by Monir Bin Yaacob, the power of the court to give custody depends on the age of the child(ren) so the court will decide whether it goes to the mother or the father.

Bangladesh

Like Pakistan, as Justice Naimuddin stated, the law in Bangladesh is the same. The custody of girl child up to attainment of puberty and male child up to the age of seven remains with the mother and then goes to the father, in the absence of the father, the paternal grandfather and in the absence of the mother, the maternal grandfather. It is a general rule but, the judge has discretion to decide in the best interest of the child.

Gambia

The best interest of the child is the guiding principle when determining both custody and guardianship. Custody and guardianship may be awarded to a third party also.

Sri Lanka

Custody matters are decided in ordinary courts according to principles of Islamic law (Shafi school of law), subject to the best interests of the child. Therefore, the courts can grant custody to a mother if her right to custody has expired under traditional principles of Islamic law and also disregard any disqualifications placed on the mother's right to custody applicable under traditional Shafi law. The courts have consistently reiterated that traditional Islamic custody principles may be displaced in the interests of the child. As for instance in Subair's case,²²⁰ the Supreme Court held that, depending on the child's best interests, the mother could be awarded custody even if she contracted a second marriage to a person not related to the child within the prohibited degrees. Father, however, remains the guardian of the child even where custody is awarded to the mother.

Tunisia

Laws recognize equal rights of parents in custody and guardianship. In the event of divorce the court awards custody on the basis of the best interests of the child. If the mother is awarded custody, she also exercises the authority of guardianship in relation to the child's travel, education and financial affairs. The mother may also be granted full powers of guardianship if father is unable or unfit to exercise them.

²²⁰ Subair v. Isthikar (1974, 77 NLR 397)

Malaysia

Like Pakistan and Turkey and few other countries, the court decides on granting custody to either spouse, mainly on the basis of children's interest.

Maldives

Children less than 7 years of age will, primarily, remain with their mother; if this is not deemed appropriate (if, for example, the mother is to remarry and have other children), custody will be offered to the maternal grandmother, the paternal grandmother or the father, in descending order of priority. Children over the age of 7 years can choose in whose custody they wish to remain.²²¹

Conclusion

The family laws are silent on divorced woman's rights to claim maintenance of children from her ex-husband. The United Nations Convention on the Recovery of Maintenance debars any maintenance claim forwarded under the Convention by divorced spouses. However, under the Islamic laws and interpretation thereof, the responsibility for maintenance is the sole responsibility of the father in all circumstances. The children's right to maintenance cannot be waived even as a condition for khul'a or mubarat, except when such waiver is for a specified period and the mother has sufficient means to maintain to their sustenance. While calculating the amount of maintenance due consideration is given to the socio-economic status of the parties which should be on the reasonable scale.

3.1.5. Return of Dowry

Though there is no concept of dowry in Islam and as such certain incidents of Islamic history have been interpreted wrongly to validate the practice of dowry.

The custom of dowry has its origin in a widely prevalent Hindu custom and Islam has absolutely no space for dowry, yet dowry remains hot favourite in Indo-Pakistan subcontinent. In order to put a check on this customary practice Pakistan introduced "Dowry and Bridal Gifts (Restriction) Act" containing provisions somewhat more stringent than those of the Indian law.

3.1.5.1. Prevailing Legal Provisions

By virtue of the Dowry and Bridal Gifts (Restriction) Act, 'dowry' is defined as any property given before, at or after the marriage either directly or indirectly, to the bride by

²²¹ <http://www.law.emory.edu/IFL/legal/maldives.htm>

her parents in connection with the marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her.²²²

The law fixes a maximum limit of the aggregate value of such bridal gifts or of the presents given to the bridegroom which should not be more than rupees five thousand.²²³

Since it is a restrictive law and not a prohibitive law hence no complete ban has been imposed on giving of dowry exceeding the value of Rs. 5000/=. Accordingly, it was also held in Masud's case that 'restriction of articles of dowry is repugnant to the injunctions of Islam. There is no limit on value of bridal gift according to Qur'an and Sunnah.'²²⁴

By virtue of section 5 of the Act, the dowry and bridal gifts, given to a bride are her absolute property and her interest in the property, however, derived shall not be restricted, conditional or limited. Thus dowry cannot be equated with zar-e-Khula (consideration for khul'a). In the light of the judgement in the case of Mst. Fakhrunnisa Khokhar,²²⁵ retention of dowry by ex-husband as zar-e-Khula is totally unislamic but generally women are forced to give up their right to dowry in case of khul'a, as zar-e-khula.

3.1.5.2. Gaps in the Prevailing Legal System and Impact thereof

Despite the above, women are often denied their right to recover dowry particularly in case of khul'a as the same is being treated as 'zar-e-khul'a', as was observed in Mukhtar Ahmed's case.²²⁶ The court held:

Where marriage was dissolved on other grounds as well as khula, the wife was entitled to recover sums of dower and dowry. However, where it was dissolved solely on khula the situation would be different and it would be examined keeping in view of the offer she had made for getting marriage dissolved on khula.

Where the dissolution of marriage is on the grounds other than khul'a, mostly judgements are given in favour of divorced women, as for instance in the following:

1. Musarrat Zaman Begum v. Ali Hassan: 1986 CLC 2265.
2. Ghulam Dastgir Shah v. Tahira Saboohi: PLD 1986 Lah. 52
3. Masud Sarwar v. Farah Deebea: 1988 CLC 1546
4. Anisur Rehman v. Shehla Fatima: 1988 CLC 1888
5. Ghulam Rasool v. Judge, Family Court: 1991 CLC 1696
6. Muhammad Tazeel v. Khair-un-Nisa 1995 SCMR 885

²²² Dowry and Bridal Gifts (Restriction) Act (XLIII of 1976)Section 2(b) Dowry and Bridal Gifts (Restriction) Act (XLIII of 1976)

²²³ ibid, Section 3

²²⁴ Masud v. Mst. Farah Deebea: 1988 CLC 1546

²²⁵ Mst Fakhar-un-nisa Khokhar , J v. Ghulam Rasool alias Sulha and another: PLJ 1996 Lah. 1207 = 1996 Law Note 617 = PLD 1997 Lah.

²²⁶ Mukhtar Ahmad v. Ansa Naheed: PLD 2002 SC 273 (a)

7. Mst. Shahnaz Begum v. Muhammad Shafi: PLD 2004 Lah. 290

But the question arises as to how many women can conveniently approach the court to get their due right to return of dowry?

The subject of dowry is very complicated and divorced women mostly find themselves at disadvantageous position. Some of the major issues in this context are as follows:

Restriction on the Amount of Dowry

The limitation of rupees five thousand on the aggregate amount of dowry is unrealistic for people belonging to multiple strata of the society.

2. Lack of Evidence

Though under the law dowry exceeding rupees five thousand is illegal even the customarily expensive dowries are given (without any documentation), mostly on demand of the bridegroom and his family. Thus upon dissolution of marriage, it is practically difficult to have her dowry back from the husband and his family members. Even otherwise in the absence of any documentary evidence recovery of the dowry articles is quite difficult.

3. Lack of Law Enforcement

Although the Dowry Prohibition Act 1961 made an outright declaration that 'demanding, giving and taking' of dowry would all be punishable offences yet the social evil of dowry is rampant throughout the country. Since mostly costly dowries are given hence people feel reluctant to put them on record and even restrain from claiming their recoveries at the time of dissolution of marriage. Eventually, it's only the divorced woman who suffers in silence.

3.1.5.3. Recommendations of Various Commissions in Pakistan²²⁷

In this context the previous commissions made the following recommendations:

- (1) If after separation, the wife's possession fall into somebody else's hands, the family court should be given the powers to recover the possessions and restore them to the rightful owner. This should be done through summary procedure.
- (2) On talaq becoming effective, if the husband does not pay the dower and/or does not return the ex-wife's dowry within one month, he should be liable to

²²⁷ On the Path of Women's Empowerment-A synthesis of Reports of Commissions/Committee on the Status of Women, Government of Pakistan, M/o Women Development, Social Welfare and Special Education, Islamabad, page 39-40

- punishment with simple imprisonment for a term not exceeding three months or fine or both.
- (3) The dowry articles should be returned without being spoiled or damaged, otherwise the wife may be allowed compensation for the spoiled and damaged articles.
 - (4) Dowry and Bridal Gifts (Restriction) Act, 1976 should be revised on realistic lines keeping in view the rising inflation. (p.43)

3.1.5.4. Legal Provisions in Other Countries

There is no concept of dowry in many Islamic countries. However, as in Pakistan giving of dowry is a regular practice among Muslims and Hindus of India and Bangladesh.

India

Dowry and bridal gifts all can, notably, be recovered by divorced Muslim women through criminal proceedings in a magistrate's court. This insures speedy justice. In Bombay a case decided before the enactment of the Muslim Women (protection of rights on divorce) Act 1986, the court held that as marriage in Islam was a "contract", either party unilaterally terminating the marriage must return to the other all benefits received under the contract, by virtue of section 64 of the Indian Contract Act 1872.²²⁸ This was an attempt to secure to a divorced woman the bridal gifts in the husband's custody. The Act of 1986 goes far beyond this and makes all dowries, bari and bridal gifts recoverable by divorced Muslim women through speedy criminal proceedings. However, the potential and scope of the provisions of the Muslim Women Act (protection of rights on divorce) 1986 relating to recovery of mehr and marital properties by divorced women is yet to be explored by the courts, most of which remain biased against the act.

Failing to achieve the very purpose of the statute, the legal provisions are often, as hinted by the Indian judge, misused to settle personal scores and pressed into service to add fuel to remorseless family feuds.

Bangladesh

Following Pakistan, Bangladesh has also enacted its own "Dowry Prohibition Act" - a cocktail of the Indo-Pak laws.

In all the three countries these grand anti-dowry laws have, however, remained mere show-pieces having no noticeable impact on the society. Nowadays, dowry is a pre-requisite for marriage and if the brides is not given adequate dowry they often face domestic violence, the outcome of which is the cases of stove burning, wife battering, acid throwing and even 'honour' killings reported in the cases almost every day.

²²⁸ 1978 Mah LJ 26

Conclusion

The practice of dowry is un-islamic. The prevailing law on the subject is a mere show-piece and it needs to be substantially amended. The law must explicitly provide that dowry should not be made a consideration for khul'a.

Beside the above, the following rights though not explicitly spelled out in the law yet in the light of Islamic injunctions are most important to be stressed upon and enforced to ensure women their due status in the society on dissolution of marriage.

3.1.6. Remarriage

3.1.6.1. Prevailing Legal Provisions

The right to remarriage is not mentioned in the Family Laws because it is a presumed right of a divorced woman.²²⁹ The declaration of dissolution of marriage (by any of its recognized mode) must be notified in writing by the husband to the chairman of the arbitration council and supply a copy thereof to the wife. Within thirty days of the receipt of notice, the chairman constitutes an arbitration council to bring about reconciliation between the spouses. In case reconciliation fails or does not take place for any reason the divorce will become effective at the end of 90 days of the pronouncement of divorce or the termination of the pregnancy of wife, whichever is later.

Though the notice of dissolution of marriage is mandatory upon husband and in case of its non-compliance he shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both. But unfortunately mostly people ignore the compliance of this provision particularly in the case of divorce not reduced in writing, deliberately so that if their ex-wife gets remarried after the completion of iddat, they may deny the divorce. In quite a few cases they even charge their ex-wife for adultery under Hudood Ordinance. In certain cases the purpose of denial of divorce is to force women to give up their rights of dower, maintenance, dowry etc. A number of cases of this nature have been handled by Aurat Foundation's office in Peshawar.

3.2.6.2. Islamic Law

The teachings of the holy Qur'an and Hadith are very clear that a widow and a divorcee are completely free in their decision about remarriage. They cannot be denied their choice or consent nor can they be forced to marry someone they do not like as the consent of the intending parties to the marriage is quite essential.

In case of dissolution of marriage by talaq, if it is not affected for the third time, then the holy Qur'an allows the divorced women to remarry their husband in the following verse:

²²⁹ Right to re-marriage accrues to a Muslim women after iddat, if the marriage had been consummated and in case a woman was pregnant at the time of divorce then after delivery.

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَمْ أَرْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

“When ye divorce women, and they fulfil the term of their ('Iddat), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you who believe in God and the Last Day. That is (the course Making for) most virtuous and pure amongst you and God knows, and ye know not.”

However, if talaq is effected for the third time or where irrevocable dissolution of marriage has taken place then the right to remarry former husband will not be possible without any intervening marriage as the holy Qur'an provides:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُؤْتِيَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

“So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and he has divorced her...”²³⁰

Thus in order to remarry former husband the divorced women have to go through halala i.e. getting married with another man and if that marriage has either been dissolved or the spouse has died only then she can get married to the former husband. Here it is pertinent to mention that the practice of second marriage with the objective to legalize her for the former husband is against the spirit of the above verse hence cursed.

The hadith attributed to Nafi, Prophet ﷺ and Hazrat Aisha, reported in Sahih Al Bukhari²³¹ is in line with the principle prescribed by the holy Qur'an.

Though halala is permissible, it is most detested by Allah Almighty and His Prophet. ﷺ According to Hazrat Abdulla²³² Prophet ﷺ cursed women who opt for halala.

The frequent practice of halala in any society was also condemned by Caliph Umar²³³ who declared that marriage contract with the condition to divorce for the purpose of halala was a crime punishable by stoning to death. Remarriage after divorce is not forbidden for ever. The couple is allowed to remarry, if the wife, after being divorced by her second husband, wishes to go back to her former husband.

²³⁰ ‘The Holy Quran’, Text, Translation and Commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Surah Al-Baqarah (2::230)

²³¹ Hadith 5264 & 5265 Sahih Al Bukhari, rendered into English by Dr. Mahmood Matraji, Vol. VII, Darul Ishaat Karachi-Pakistan, page 141

²³² Hadith 3448, Sunan Nisai Sharif, Translation by Moulana Ahmed, Darul Ishaat Karachi-Pakistan, page 376

²³³ Nadwi, 1990, 2:193

3.1.7. Descent and Kind Treatment

It is important that a divorced woman should depart in a decent manner. She should be departed with respect,²³⁴ as the holy Qur'an clearly provides that "when you have divorced women, and they have reached their term, then retain them in kindness or release them in kindness. Retain them not to their hurt so that ye transgress. (2:231)."

Owing to lack of legal provision in this context most women face violence and are thrown out in the street to suffer.

According to Zenab Radhwan, the problems faced by a Muslim woman are due to the fact she has not availed herself of the rights which the Islamic Shari'a gave her more than one thousand four hundred years ago. Most legislation concerning women is wrongly applied in real life.²³⁵ Unfortunately, in Pakistan the law is completely silent on the issue. There is not even a policy or mechanism to ensure the security and safety of divorced women in Pakistan.

3.1.8. Inheritance in case of Talaq al-mariz (Divorce by a Sick Husband)

According to the Sunni doctrine, "when a man pronounces an irrevocable talaq in death-illness and dies before the expiry of his wife's iddat, she is entitled to take her share in his estate unless the Talaq was given at her request. But, if he were to die after the expiration of her iddat, her right would be lost".²³⁶

Similarly, according to the Shi'a doctrine, the wife "has a right to inherit from her husband if he should die any time within a year from the date of the talaq, provided that in the meantime, the woman did not marry any other person".²³⁷ the court considered this principle in Hidayat Shah's case²³⁸:

Person under fear of death divorcing his wife – such woman should not be deprived of inheritance if person dies within period of iddat. *Court's verdict*

Beside the above, following rights are the recent development that are applicable on both the Muslim and non-Muslim divorced women:

²³⁴ Hadith 3587, Sunan-e-Nesaye Shareef, Chapter 1774, Volume:2, Compiled by: Imam Abu Abdur Rehman Nesaye, translated by: Molana Fazal Ahmed, Publisher: Darrul Asha'at Lahore, 426

²³⁵ Islamic Laws & Women In the Modern World, Giant Forum, Global Awareness for National Trust, Islamabad, 108

²³⁶ Radd-al-Muhtar, Vol. II, p. 855, Fatawa-e-Alamgiri, Vol. I, PP.628-639

²³⁷ Radd-al-Muhtar, Vol. II, p. 855, Fatawa-e-Alamgiri, Vol. I, PP.493

²³⁸ Hidayat Shah and 6 others v. Mst. Murad Murad Khatun: PLD 1976 Lah. 119

3.1.9. Damages on Giving Divorce Without any Fault of Wife

Right to divorce women under certain conditions as for instance, adultery, lewdness, etc. is justifiable in Family Laws relating to Muslims and Non-Muslims both. Divorce on the grounds other than specified ones is not possible in family laws relating to non-Muslims. However, under Muslim personal law owing to misinterpretation, a man is considered to have a right to give divorce to his wife without any rhyme or reason. The same is against the principles of Islam.

A woman in case of being divorced without any fault of her own is entitled to damages. This fact was also pointed out in Muhammad Masood Abbasi case,²³⁹ wherein it was held:

Condition for payment of damages to the wife in the event of divorcing her without any cause or justification is not against public policy but is rather in conformity with the same as it discourages unjustified divorces which result in broken homes and endless social and economic problems for divorcee, children and the society as well.

3.2. Right of non-Muslim Divorced Women

The family laws applicable to non-Muslims in Pakistan are silent on this issue. The only right which is explicitly provided is the right of remarriage of a divorced Parsi.²⁴⁰

3.2.1. Legal Provisions in Other Countries

The other countries recognize a divorced mother's right to both guardianship and custody of her child(ren) on an equal footing with the father of the child, as for instance in the following:

United Kingdom

The legal concepts of 'guardianship', 'custody', and 'access' have been replaced by the Children Act 1989 to 'residence', 'contact', 'prohibited steps', and 'specific issue' orders. The terms have been introduced to avoid the idea that anyone has possession of a child. The new law does not remove parental authority from one parent or confer sole power on the other. It is designed to be practical and enables the court to make whatever arrangements seem best in a particular case, doing so by dealing with practical questions rather than abstract rights. Such arrangements are overall more flexible.

Parents will continue to have parental responsibility for their children even when their children are no longer living with them. They are to be kept informed about their children and participate when decisions are made about their future.²⁴¹

²³⁹ Muhammad Masud Abbasi v. Mst. Mamona: 2000 YLR 482

²⁴⁰ Parsi Marriage and Divorced Act, 1936, Section 48

²⁴¹ http://www.justice.govt.nz/pubs/reports/2000/resp_for_children/appendix_2.html

Ireland

The rights of parents to guardianship are set out in section 6 of the Guardianship of Infants Act, 1964. Under the Act, married parents of a child are 'joint guardians' and have equal rights in relation to the child.²⁴²

Australia

In 1995 Australia amended their Family Law Act 1975 to replace the concepts of 'guardianship', 'custody', and 'access' with the all-embracing concept of 'parental responsibility'. The court orders are now for parenting, residence, or contact. The law encourages parents to reach agreement rather than seek a court order, which can be in the form of a parenting plan which may be registered.

Both parents have parental responsibility,²⁴³ which is not affected by separation, marriage or remarriage. The focus has moved away from the idea that parents have rights over children, towards the notion of parents having responsibilities towards their children.²⁴⁴

United States

Although family law is different in each state, there are three general approaches: 1. joint custody, 2. primary care-taker, 3. and parenting plans.

Joint custody generally means that both parents share responsibility and authority for the major decisions concerning the child's upbringing, although one parent may have the responsibility for the child's living arrangements and day-to-day care. If a parent who does not care for the child on a day-to-day basis loses custody, he or she has no right to have any say in the child's life. The best the parent can hope for is visitation rights.

The primary caretaker approach means that the judge has to make decisions based on who he thinks was the parent who spent the most time carrying out the day-to-day child care tasks before separation. This criterion can be challenged in only two ways: 1. the child's preference and 2. showing the parent unfit to have custody.

²⁴² http://www.oasis.gov.ie/relationships/civil_relationships/

²⁴³ Parental responsibility is defined in Section 3(1) of the Children Act as 'all the rights, duties, powers, responsibilities and authority which, by law, a parent has in relation to a child and his property'.

It is the people with parental responsibility who have the legal authority with respect to their child; they are the decision makers who must be consulted. It is important to realize that for children in public care their parents retain parental responsibility; either:

- sharing it with the local authority, in the case of those on Care Orders; or
- entirely, in the case of those 'accommodated' under Section 20.

²⁴⁴ http://www.justice.govt.nz/pubs/reports/2000/resp_for_children/appendix_2.html

Parenting plans are agreements between parents about arrangements for the children. Generally, if the parents cannot decide on a parenting plan the court can impose one.²⁴⁵

New Zealand

The legal rules for guardianship, custody, and access in respect of children and young people are set out in the Guardianship Act 1968. Under this Act, the mother and father are automatically guardians of their children if they are living together at the time of the baby's birth. This is true, whether or not they are legally married. If however, the father is not married to the child's mother, and is not living with her at the time of the baby's birth, the father will have to apply to the family court to be appointed a guardian.

When the family court is deciding who should have custody of a child or young person, there is no presumption in favour of one parent over another. In fact, the act specifically says that there is no presumption that the sex of a person who wants to have custody is relevant when deciding on what will best serve the welfare of the child. Also, there is no presumption that the children in a family should remain together when their parents separate.²⁴⁶

People's Republic of China

Law of the People's Republic of China on the protection of rights and interests of women was adopted at the fifth session of the seventh national people's congress on April 3, 1992.

The state guarantees that women enjoy equal rights with men in marriage and family²⁴⁷. Both parents enjoy equal right to guardianship of their minor child (children).^{248 249}

3.3. Rights of both, Muslim and non-Muslim Divorced Women

3.3.1. Share in Homemaking

This concept is a recent development in the modern world to secure women's socio-economic development.

The core of this right is the recognition of invisible socio-economic and moral contribution of the wife in not only the making but also sustaining and strengthening of the family through home-management, nursing and grooming of child (ren), looking after the husband and other family members, etc. The logic behind this right is that most commonly upon marriage, the husband and wife both have their priorities for setting up a home and to have a family. This means that the couple is interested in establishing themselves in their respective professions as well as to earn money to establish the new home. Once the family starts growing, in most of the cases all over the world, it is the

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Article 40.

²⁴⁸ Article 45.

²⁴⁹ <http://www.women.org.cn/english/english/laws/02.htm>

woman who sacrifices her profession and stays home for the sake of the family but unfortunately in case of dissolution of marriage she is mostly left with no economic support. Therefore, to ensure woman's economic stability on the dissolution of marriage, they must get a share in the homemaking. Since the concept of home sharing is not in Islam hence in the changing world, ulemas are required to do ijthihad in this context.

3.3.1.1. Legal Provisions in Other Countries

This right has not only been recognized rather its enforcement has been ensured through legislation in the following countries:

Malaysia

Jointly acquired property during the marriage is recognized. However, the distribution of such property whether the wife has actually contributed towards property is subject to interpretation by the courts. Thus, upon divorce, the court has the power to order the division of assets or sale proceeds of any assets acquired by joint effort of the parties during marriage.

The court must incline towards an equitable division, taking into account the following factors:

- i. extent of contributions made by each party in money, labour or property toward acquisition of assets
- ii. debts incurred by either party for their joint benefit
- iii. needs of any minor children of the wedlock. Assets acquired by the sole effort of one party for the marriage may also be divided, provided that the division is reasonable and the party by whose efforts the assets are acquired receives a greater proportion. The assets to be divided may include assets owned before the marriage by one party but which have been substantially improved during the marriage by either the other party or by the parties' joint effort.

Turkey

The Turkish Civil Code is based on the principle of equality of both men and women before law. It provides that during separation, the husband or the wife has to support each other depending on the judge's decision. This is based on an egalitarian understanding. The Matrimonial Property Law of 1926 was designed exactly in the same way. Each one of them keeps their own separate property. Most of the property acquired during marriage is registered under the husband's name.

There is a new movement coming from some circles of the government and from the women's movement and some political parties to change the matrimonial property system. The property acquired during marriage is divid equally between husband and wife in case of divorce. This applies to all the marriages of the Turkish citizens with nationals or non-nationals, Muslims or non-Muslims.

Gambia

Courts have the discretion to make a “just and equitable” order for the division of assets. The spouse not maintaining ownership of non-divisible assets may be compensated for their share of such assets through a single payment or multiple instalments. The court may issue a restraining order to prevent one party from disposing of or permitting the disposition of property with the intention of defeating a financial or property settlement.

Iran

Courts in Iran are empowered to require a divorcing husband to pay wages to his wife for the housework she has contributed to the marital union, provided she is not found to be at fault in the divorce. The court fixes the amount based on the period of time the couple co-habited, the wife’s activities, and the husband’s financial position. Where the husband has no money, the woman will not be paid any such wages. The “wages for housework” is in addition to payments of the dower and maintenance by the husband.

Singapore

In Singapore, women are able to recover a substantial share of the matrimonial assets even when they have not contributed to the family’s income through paid employment. The factors to be taken into account for division of matrimonial assets are as follows:

- (a) extent of contribution made by each party in money, property or work towards acquiring, improving or maintaining the property
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage
- (c) needs of the children, if any
- (d) extent of contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependent of either party
- (e) any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce
- (f) any period of rent free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party
- (g) giving of assistance or support by one party to the other party (whether or not of a material kind) including the giving of assistance or support which aids the other party in the carrying on of his/her occupation or business
- (h) income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future
- (i) financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future
- (j) standard of living enjoyed by the family before the breakdown of marriage
- (k) age of each party and duration of marriage
- (l) any physical or mental disability of either party;
- (m) value to either of the parties of any benefit (such as pension) which, by reason of the divorce, that party will lose the chance of acquiring.

The Singaporean law defines “matrimonial assets” as:

- (i) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (ii) any asset of any nature acquired during the marriage by one or both the parties to the marriage.

Chapter 4

Procedural Issues and their Impact

Any aggrieved person has a right to enforce his/her right. In this respect the Family Court Act, 1964 provides for the jurisdiction of family courts and procedure for the enforcement of rights.

4.1. Gaps and their Impact

4.1.1. Inadequacy and Complexity of Procedural Laws

The aforesaid statute is applicable not only to Muslims but to non-Muslims also but it is not exhaustive enough owing to its limitations. As for instance the concerned family court has jurisdiction to decide the question of dower in case of Qadianis²⁵⁰ but it cannot entertain the cases of dissolution of marriages among non-Muslims because the family court can decree dissolution only in cases falling under Dissolution of Muslim Marriages.²⁵¹ Act-Further, in the light of Zakir Hussain case,²⁵² the family courts cannot try the offence of bigamy (being under the jurisdiction of a Magistrate). It is also not applicable to the tribal areas of Baluchistan as well as in the cases where the spouses are the subjects of Azad Jammu and Kashmir.

4.1.2. Lack of Procedure for Summary Trial

Initially judges of family courts were given an additional power of a magistrate first class to grant maintenance under Section 488 of the Cr.P.C. It was a summary trial and maintenance granted could be realized as a fine and could be granted through the courts. Though one of the disadvantages of this provision was that the court could not grant maintenance beyond fixed upper limit. Instead of appropriate amendment in section 488 of the Cr.P.C., the entire section was omitted by Federal Laws Reform Ordinance, 1972.

The powers of family court under section 488 are required to be revived with amendment to omit the limit for the quantum of maintenance and that the order of family court under section 488 must be appealable.

Though the law²⁵³ prescribes a period of six (6) months to dispose of a case and if the case has not been disposed off within the said period, either party may make necessary application to the High Court for necessary directions. But such cases usually prolong. According to Zia Awan, the minimum period for a family suit to decide is eight months in ideal situation i.e., if the notices have been served properly and the parties do not take unnecessary adjournments. Such ideal situation is least observed. The usual time period for family cases, according to him is 2-3 years.

²⁵⁰ Naeem Ahmad v. Mst. Nuzhat Almas & 2 others: 1981 CLC 195

²⁵¹ Sultan Ahmad v. Mst. Mehr Bahri & another: 1982 PSC 71 (Sc.C)

²⁵² Zakir Hussain Siddiqui v. Mst. Najma Parveen: NLR 1989 CLJ 27

²⁵³ Family Courts Act, 1964, Section 12-A

4.1.3. Role of Arbitration Council

The Arbitration Councils at Union Council level had been established to perform the task inter alia of pre and post dissolution of marriage reconciliation between the spouses which usually take three (3) months but as disclosed by the interviewees namely Ms. Shagufta, Farzana and Rukhsana Parveen, obtaining of certificate of dissolution of marriage takes about six (6) months. The Council, however, does not have jurisdiction to enforce the payment of maintenance to the divorced wife and child(ren), if any, and dower if unpaid. Further they had not been very effective. Hence, every case has to be filed in the family court which also have jurisdiction to entertain civil, criminal and rent cases and burdened with huge backlog.

Now under the Punjab Local Govt. Ordinance, 2001, Musalehat Anjumans (consisting of a panel of three musaleheen (conciliators)) have been constituted²⁵⁴ and entrusted with the task of amicable settlement of disputes amongst people in the Union through mediation, conciliation, and arbitration, whether or not any proceedings have been instituted in a court of law in respect of such disputes.²⁵⁵ These Councils started functioning only in certain areas. However, the preparation of their code of conduct is in progress.

4.2.3.1. Gaps in the Local Government Ordinance

- **Lack of Specific Provision for the Appointment of Woman Conciliator**

Since the family matters are of sensitive nature and can be understood and resolved better by women than men but the law is gender neutral in this respect. In our patriarchal society, unless the appointment of women conciliator is specified it is quite possible that only men will be appointed as conciliator, which may cause adverse effects on the rights of divorced women hence, appointment of women conciliator is imperative.

- **Lack of Specific Provision for the Settlement of Family Matters at Initial Phase**

Section 104 of the law providing that '*any Court of competent jurisdiction may, in a case where it deems appropriate, refer a matter to the Musalehat Anjuman through the Union Nazim for settlement:*' will have an effect of delaying the matter unnecessarily. The situation is required to be other way round by delegating specific jurisdiction to Musalehat Anjuman to decide the pre and post divorce matter at the initial stage. And, if required, refer the matter to the family court and provide assistance to the parties particularly women and children. This will not only reduce the burden on family courts but will also ensure speedy justice with least botheration to the parties.

²⁵⁴ Section 102

²⁵⁵ Section 103

- **Qualification of Conciliator and Lack of Provision for Legal Assistance to the Masalehat Anjuman to Decide the case out of Court**

The only criteria of the Musaleheen (conciliators) as specified in section 102 is that they should be publicly known to be persons of integrity, good judgment and should command respect. To ensure justice out of the court this qualification, though important is not adequate, hence the Masalehat Anjuman must be provided with a committee of legal experts with sound knowledge of Islamic laws and any decision of the Anjuman should be in line with the legal opinion of the experts.

4.1.4. Judicial Set up

The major problems in the existing judicial set up have been observed as follows:

- 1. Low Percentage of Family Judicial Officers, Particularly Female**

The number of Family Court judges is not adequate and very few of them are female Judicial Officers. The male Family Court judges are not gender sensitive to understand the depth of the problem hence, at times their decisions are gender biased. Therefore, sensitization of subordinate judiciary and increase in number of female judicial officers is imperative.

- 2. Multiple Jurisdiction of Family Courts**

The Family Courts which are also vested with the jurisdiction to try criminal, civil and rent cases lack privacy for the family matter suit proceedings. Thus most of the women particularly of the respectable families feel reluctant to approach the court for the enforcement of their due rights.

- 3. Inadequate Number of Family Courts**

It is an established fact that each of the courts has heavy backlog, the reason being that the number of family courts is insufficient.. Even if more than 100 cases are fixed every day for hearing, very few are actually taken up for hearing thus adding to the backlog.

- 4. Lack of jurisdiction of Family Courts to Entertain Application on Harassment of Women Victims of Domestic Violence**

Since gender violence is mostly a family matter and it gets aggravated during litigation hence the family court must also have jurisdiction to entertain application of a woman being harassed in the context of their family dispute.

- 5. Lengthy Procedure**

The cases usually take very long time to be disposed off, mainly for the following reasons:

- a. The lawyer of the other side usually takes frequent adjournments and there is no penalty for them under the law.
- b. Some lawyers ignore the code of ethics and drive the clients into complications and miseries.
- c. The serving of notice usually takes long time. Serving of electronic notice or notice through telephone is not recognized under the law.
- d. Lack of provision to serve legal notice upon the accused staying abroad
- e. The number of cases fixed in each family court every day is usually above one hundred. Thus it is humanly not possible for a judge to hear all or even fifty per cent of cases. This keeps on adding to the backlog of the court.

6. Complications in the Execution of the Judgment

Even if the case is decided in time, execution of judgment is a cumbersome and time consuming task. Hence, each judgment of the family court must be self-executing.

7. Lack of Conducive Environment

The environment of the courts, simultaneously entertaining criminal cases, is not suitable for women and children. The family courts should be housed separately.

8. Ineffective Arbitration Councils

The role of Arbitration Councils has been observed to be very vague. Consequently family courts are approached for every family matter even at the initial phase.

9. Corruption

In the judicial set up particularly the administration departments and record section clients and their lawyers have to face problems in ensuring a proper movement of files and in obtaining the hard copy of the court order and other documents unless the palms of the concerned officer are greased properly. These delays complicate the procedure.

10. Lack of Facilities in the Subordinate Courts

The lower Courts that are overloaded with backlog, lack latest technology like computer, fax and internet to ensure speedy disposal of work.

11. Lack of Technical Assistance to Subordinate Judiciary

Not all the judges of lower courts are well-versed in Qur'an and Sunnah. hence, they face problems in applying the law. For the said reason, at times, negative judgments are delivered. It is, therefore, pertinent to arrange for a board of technical experts to help in applying and interpreting the laws in their true spirit.

12. Lack of Thorough Computerization of Case Law

Though the superior courts are well equipped but the computerization of case law has not been done. Many professionals have prepared various packages of laws and case law on different themes; that is required to be introduced in judiciary at all levels to ensure quick reference.

4.1.5. Lack of Mechanism for the Monitoring and Analysis of Judicial set-up, its Output and Impact

Just a day's visit to the family courts in any district will reveal dozens of issues persisting since ages and their impact on women and children in their endeavour to get their due rights but, unfortunately, the courts lack systematic mechanism at all levels to put the issues on record, analyze them and make strategies to address them.

4.2. Impact on the Rights of Divorced Women

Women mostly hesitate to approach the court for the following reasons:

4.2.1. Resistance for Divorced Women in Enforcing their Right

Most of the divorced women do not approach the court as they feel embarrassed to have their personal matters discussed in office that is open to public.

I filed my case for khul'a but it was dismissed even in appeal. The discussion of my marital issues in open Court was too embarrassing.
Later, panchayat reconciled the marital dispute but my husband divorced me after three months of reconciliation. He did not pay me maintenance during iddat and dower amount. I had already been stigmatized in earlier litigation process so much so that resort to judicial process appeared too traumatic to opt. Hence stayed quite.
Being alone I got remarried but the second husband also divorced me after three months without any reason. He also did not pay me maintenance and dower hence, I stayed silent against. This time I even changed my name and ended up at Edhi Centre to live alone. *Statement of a destitute woman at Edhi Centre, Islamabad*

I felt embarrassed when I went along with my father (a retired professor) to the family court in order to file suit for khul'a. I could not bear my personal matters to be discussed in the open court so I decided to give up the exercise of my right. My husband took advantage of the situation and offered dissolution of marriage by mutual agreement and forced me to agree to give up the condition of paying dower, dowry and maintenance including the maintenance of a child in lieu of the custody of a child. He very cleverly took away everything from me and got remarried.
Dr. Rakhshanda (an aggrieved person)

4.2.2. Expensive Litigation

It's better to give up the rights than to be dragged in courts for years and get stigmatized, socially:

Statement of a destitute woman at Edhi Centre, Islamabad

I spent all my savings of about ten lac in securing the custody of my children. Now I am penniless and have no support to go further .

Statement of a respondent, Islamabad

4.2.3. Lengthy and Cumbersome Process

The expenses for litigation were far more than my dower amount:

Statement of a destitute woman at Edhi Centre, Islamabad

4.3. Recommendations of Various Commissions in Pakistan²⁵⁶

To address the issues identified and discussed herein above and others, the previous Commissions made the following recommendations:

Arbitration Council's Role

1. Rule 19 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 be amended so that revision against decisions of the Arbitration Council be heard by the family court.
2. Steps be taken to make arbitration proceedings under the Arbitration Council more effective.

Prior Decision of all Matters Following Divorce

All matters that follow as a consequence of divorce should be decided prior to the divorce, pertaining to children's custody and manner of upbringing, with both parents' rights fully preserved.

Family Courts (applicable to non-Muslims and Muslims) 1956

The Rashid Commission laid down in detail the requirements for the establishment and procedure of matrimonial and family law courts. The recommendations are:

1. One matrimonial and family laws court should be established in each commissioner's division to deal with cases relating to marriage and family laws.

²⁵⁶ On the Path of Women's Empowerment-A synthesis of Reports of Commissions/Committee on the Status of Women, Government of Pakistan, M/o Women Development, Social Welfare and Special Education, Islamabad, page 39

This court should be presided over by an officer of the rank of a district and sessions judge;

2. It should be definitely enacted that a matrimonial and family law court shall not follow the Civil Procedure Code and the Evidence Act. These enactments should be entirely scrapped in respect of suits relating to marriage and family laws. The legislature should lay down a few fundamental principles for the guidance of matrimonial and family law courts, and the remaining procedure should be regulated by simple rules framed by the High Court. The object should be to grant substantial and natural justice to the litigants in marriage and to dispense with all technicalities. "Legislative-made" procedure leads to an unwise division of responsibility for the administration of justice between the legislature and the law courts. The legislative-made practice and procedure is highly inflexible and that is the worst feature of our procedural laws. The advantages of judicial rule-making for the matrimonial and family law courts are obvious. As soon as the court finds that certain rules hinder expeditious disposal, these rules can be modified or eliminated.
3. The next reform suggested is that the right of second appeal and revision should be entirely taken away so far as decisions of matrimonial and family law courts are concerned. As the presiding officer of a matrimonial and family law court would be a person of the rank of a District and Session Judge, an appeal should lie against his decision directly to the High Court, and the decision of the High Court should be final and conclusive. Suits relating to human relationship must be expeditiously decided, and it is infinitely better to take the risk of an erroneous decision in one in a hundred cases than to allow a hundred suits to drag on indefinitely until the man and the woman involved therein are either dead or too old to reap the benefit of the litigation. All human courts are likely to go wrong sometimes, and even if as many as five appeals are allowed in five different forums, the final court of appeal will still be reversing some decisions of the courts immediately below. Finality of an appellate judgment at the earliest possible time is conducive to the welfare of the subject in a far greater degree than avoidance of possible mistake in one out of hundred cases.
4. It should be enacted that every suit in a matrimonial and family law courts shall be decided within a period of three months. Some indications may be given as to how it can be accomplished:
 - (a) whenever a suit is instituted, personal service should be effected by means of a registered letter simultaneously with substituted service by advertisement in the press shall be taken to be conclusive proof of the fact that the defendant has been informed of the suit pending against him.
 - (b) the plaintiff shall be required to submit copies of his entire documentary evidence and a précis of his oral evidence in typed form with the plaint. The defendant shall be required to submit a written statement and also attach therewith typed copies of his entire documentary evidence and a précis of his oral evidence.
 - (c) the judge after studying the record and the evidence of both the parties should hold a pre-trial hearing where the entire dispute should be

discussed in an informal manner with the parties. Efforts should be made by the judge to induce both parties to abandon all frivolous and unnecessary objections. Thereafter, the judge should frame one or two basic and central issues for trial.

- (d) formal proof of all documents should be eliminated, if any party insists on the production of the original when the judge is of the opinion that there is no reason to doubt the authenticity of the copies, the party so insisting should be burdened with heavy costs.
 - (e) the examination of the witness, as it is prevalent at the present time, is done in a most unsatisfactory manner. After the court has studied the whole case the witnesses whose testimony is necessary should be called as court witnesses. Everyone should be given his deposition in his own words without unnecessary interruption. The judge should examine witnesses and after he has done so regarding the main facts of the case the lawyers of the parties, if they appear, should be allowed to ask additional questions to bring out the facts more clearly. Substance should not be sacrificed into form and an effort should be made to make the proceedings intelligible to the parties concerned.
 - (f) the suggestions made above should be embodied in the rules framed by the High Court with the express purpose of expediting disposal of the cases in matrimonial and family law courts. The court shall be given large discretionary powers to regulate its own procedure to suit the circumstances of each case. It must be remembered that expeditious disposal does not mean summary disposal, the trials in matrimonial and family laws would be expeditious but not summary.
5. The trials in matrimonial and Family law courts should be made as affordable as possible. We, therefore, propose for the abolition of court-fee and other charges in such courts. No frivolous or vexatious litigation is likely to result by abolishing the court-fee as cases concerned with human relationships stand on an entirely different footing from suits in respect of lands, houses and other property.
 6. In cases relating to matrimonial matters, it is suggested that one male and one female advisor shall be associated with the judge. The female advisor shall be chosen by the wife and the male advisor by the husband. These advisors will stand on an entirely different footing from the assessors in session cases. The experiment of assessors has, no doubt, been a failure. We, therefore, do not recommend the appointment of assessors chosen by the court;
 7. In order to further reduce the cost of litigation in matrimonial and family law courts it is recommended that the presiding officer of the court shall hold a session of the court in each district headquarters by turn. We further recommend that the parties should be allowed to be represented by agents or relations and not necessarily by legal practitioners.
 8. The orders and decrees of the matrimonial and family law courts should not be executed in the same manner as orders and decrees of ordinary civil courts. All moneys payable by any party as a result of an order of a matrimonial and family law courts be realizable as arrears of land revenue. Obedience to other orders shall

be enforced by the court by committing the defaulting party to imprisonment for contempt of court. Summary powers to punish for contempt of court be conferred on the matrimonial and family law courts on the same basis as vested in High Courts.

9. The commission does not consider it feasible to recommend that all cases where a woman is the plaintiff, shall be cognizable at the matrimonial and family law courts. Women and men be placed on an equal footing in this respect; all cases relating to matrimonial and family laws to be heard and decided by special courts as suggested above, irrespective of the sex of the parties.

Chapter 5

Policy Framework

In Pakistan the pivot of policies is the Constitution of Pakistan, 1973. There is nothing specific on the subject of divorce. However, like all other citizens of the country, divorced women, irrespective of any caste, creed, culture, religion, etc., have been guaranteed security of persons,²⁵⁷ inviolability of dignity,²⁵⁸ protection of property rights²⁵⁹ and other rights on the basis of equality.²⁶⁰

Further, the principles of policy lay stress on protection of family with reference to, inter alia, the mother and child, promotion of social justice and eradication of social evils,²⁶¹ promotion of social and economic well-being of the people.²⁶² Accordingly, the Government framed *National Policy for Development & Empowerment of Women*. This policy document is in line with the principles of policies as set out in the constitution and provides protection to, inter alia, divorced women through the following key measures which are required to be undertaken:

1. Eliminating negative customary practices by increasing knowledge of women's existing rights under the law and of law itself, to have access to judicial relief and redress.
2. Ensuring effective implementation and enforcement of existing rights.
3. Removing discrimination through legal reforms.
4. Promoting women's access to justice by providing legal aid, assistance and counseling.²⁶³

Besides the above, the conventions ratified by Pakistan also provide policy guidelines to the country. Accordingly, the Government of Pakistan is under obligation to ensure due rights and status of women (including divorced women) by virtue of the following conventions:

1. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)²⁶⁴
2. Convention on Right of Child (CRC)

²⁵⁷ The Constitution of Pakistan, 1973, Art. 9

²⁵⁸ *ibid*, Art.14

²⁵⁹ *ibid*, Art. 24

²⁶⁰ *ibid*, Art.25

²⁶¹ *ibid*, Art.37

²⁶² *ibid*, Art. 38

²⁶³ 4.3., law & access to justice, Chapter 4 'Social Empowerment of Women' National Policy for Development & Empowerment of Women, March 2002, Government of Pakistan, Ministry of women Development, Social Welfare and Special Education, Islamabad.

²⁶⁴ CEDAW was adopted by United Nations General Assembly on 18th December 1979

*CEDAW*²⁶⁵ covers three dimensions of the situation of women vis-à-vis civil rights, legal status of women and human reproduction as well as the impact of cultural factors on gender relations. The thrust of this document is on the recognition of a woman as a ‘human being’ with an independent identity that is to be respected. It demands rights for a woman particularly with reference to children on an equal footing with the father, irrespective of the marital status. Accordingly, it requires the state to adopt the following measures to secure the rights of divorced women:

- a. to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women²⁶⁶
- b. to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women²⁶⁷
- c. to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices which contribute to discrimination against women²⁶⁸
- d. to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;²⁶⁹
- e. the same rights and responsibilities as parents, irrespective of marital status, in matters relating to children; in all cases the interests of the children shall be paramount²⁷⁰
- f. rights and responsibilities with regard to guardianship, trusteeship and adoption of children; in all cases the interest of the child(ren) shall be paramount.²⁷¹

This document however, does not explicitly spell out the rights of divorced women with regard to dower, maintenance, and share in home-making. This is probably because the said rights are based on Shariah and CEDAW is of general application to all countries whether they are secular or not.

CRC’s objective is the protection of children’s rights. By virtue of the provisions of the convention a divorced woman is not only entitled to the custody/guardianship of her child(ren) on equal footing with the father of her child(ren) but she can also recover maintenance for her child(ren). Accordingly, the state is required to take the following measures:

1. to ensure the rights of child(ren) without discrimination of any kind, irrespective of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,²⁷²

²⁶⁵ CEDAW was ratified by Pakistan in April 1996

²⁶⁶ Ibid, Art. 2(a)

²⁶⁷ Ibid, Art. 2(b)

²⁶⁸ Ibid, Art. 3

²⁶⁹ Ibid, Art. 5

²⁷⁰ Ibid, Art. 16(d)

²⁷¹ Ibid, Art.16(f)

2. to ensure to the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures,²⁷³
3. to ensure recognition of the principles that both parents have common responsibilities for the upbringing and development of the child,²⁷⁴
4. to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities,²⁷⁵
5. to assist the parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programme, particularly with regard to nutrition, clothing and housing,²⁷⁶
6. to secure the recovery of maintenance for the child from the person having financial responsibility for the child both within the state and abroad,²⁷⁷

Family Laws and Federally Administered Northern Area (FANA)

By virtue of the Constitution of Pakistan, 1973, Federally Administered Northern Area (FANA), does not explicitly form a part of Pakistan. Though its various policies, laws and programmes are extended to FANA but not the family laws. Consequently, in view of the key stakeholders,²⁷⁸ FANA has the following issues with reference to family matters:

- There is no family court and / or family judge. Therefore, District and Session judge acts as guardian of wards.
- There is no proper mechanism for the registration of nikah.
- Pakistan's initiatives for the welfare of women have not been extended to FANA.
- There is no darul aman (shelter home) for destitute women.
- There is lack of consensus of ulema, political/social thinkers on family matters
- Judiciary is not independent.
- The number of female judges is very small.
- The female lawyers are rare.
- Cultural stigma restrains women from approaching the court.

Owing to the aforesaid issues, the family cases are filed as civil suits under Civil Procedure Code (CPC), which is a lengthy process and takes years to finalize the case. In the absence of said laws, instead of family court / judge, the District and Session Judge decides the family matters. Since, the number of female judges and lawyers is not adequate enough, due to socio-cultural constraints, the aggrieved women find hard to approach the court for their rights.

²⁷² Ibid, Art.2

²⁷³ Ibid, Art.3

²⁷⁴ Ibid, Art. 18(1)

²⁷⁵ Ibid, Art. 18(2)

²⁷⁶ Ibid, Art. 27(3)

²⁷⁷ Ibid, Art.27

²⁷⁸ Consultative meeting with the key stakeholders of FANA was held on 13th September 2006.

Conclusion

There is a dire need to develop a concrete policy for the protection of divorced woman and her due rights, as required under the constitution and international conventions for the entire Pakistan including FANA. Accordingly, lacunae in the prevailing legal system must be removed to ensure their comprehensiveness, adequacy and effectiveness.

Chapter 6

Mechanism for the Institutional Support of Divorced Women

Besides, reforms in legal framework, as discussed in the previous chapters, the mechanism for the support of divorced women, particularly, the destitute ones invites the attention of the concerned quarters. In this context, the Government of Pakistan as well as civil society have taken quite a few initiatives. Some of such initiatives are shared by:

Government of Pakistan Ministry of Women Development

It has established about eleven (11) crisis centres in Islamabad, Lahore, Karachi, Sahiwal, Quetta, Vehari, Mianwali, Kohat and Mirwala (also named as Mukhtaran Mai). Recently established centre at Rawalpindi is functional as yet. According to the information provided to us these centres provide medical, legal and psychological aid services to the destitute women beside initiating investigation into the incidents of violence against them.

Ministry of Social Welfare

This Ministry has established darul aman and darul falah, which are under the supervision of the Social Welfare Ministries at provincial levels. Women can seek shelters in the said centres only through police and court.

Civil Society

Edhi Foundation

The largest network of service delivery inter alia for destitute women is of Edhi foundations. In view of the information gathered from 'Resource Directory for Women',²⁷⁹ there are about 149 centres for the support including medical and shelter of destitute women. Earlier the Foundation also used to provide legal aid but that has been discontinued owing to certain unavoidable circumstances.

PANAH Trust

The performance of PANAH Trust,²⁸⁰ in this context, is worth mentioning. From 2002 to June 2005, eighty seven (87) divorced women some with children, were registered in the trust to whom full support was provided²⁸¹ free of cost. The trust provides, apart from shelter, food, medical, legal, psychological, psychical consulting and informal education free of cost.

²⁷⁹ Resource Directory for Women by Shirkat Gah Women Resource Centre, Lahore

²⁸⁰ PANAH Trust in Karachi was established in 2001 and it became operational in 2002

²⁸¹ Information provided by Shelter Manager vide letter dated 21st September 2005

SACH (struggle for change)

This organization has been providing support including shelter to destitute women but owing to excessive harassment to the officials this organization has discontinued shelter services to divorced women.

Quite a few organizations also claimed to be providing free legal aid to divorced women and according to them an average of 7-8 divorced women approach them for help but unfortunately, they did not provide us any statistics of their registered cases in this context.

One of the unfortunate factors is that the institutions particularly civil society organizations that provide shelter to destitute women are subjected to harassment and law enforcing agencies do not protect them. That is why some of the organization like SACH has discontinued shelter services in the cases where the offenders are influential.

Another shortcoming on the part of some of the organizations, which was revealed during the course of field research was that almost every interviewee (divorced woman in Islamabad and Rawalpindi) claimed that she did not receive any financial support from any institution. According to them only free legal advice was given but they were charged substantial money for litigation.

Policy Recommendations on the Rights of Divorced Women Amendments in Laws

I. Dower

Muslim Family Laws Ordinance, 1961

1. Specific provision must be added in the law that ‘dower amount shall be calculated in accordance with the status of parties’.
2. The law must clearly provide that ‘the wife shall be entitled to half dower in case of the dissolution of marriage prior to consummation of marriage but valid retirement (khilwat-e-sahiah).
3. In case, the dower has not been specified in nikahnama, the court must determine the same at the time of the dissolution of marriage. Accordingly, criteria must be laid down.
4. If details about the mode for payment of mehr are given in the nikahnama, the entire mehr shall be presumed to be payable on demand (mehr-e-muajjal).²⁸²
5. If a man has not paid full dower due to his wife, within 15 days of the dissolution of marriage, the entire amount be recovered as arrears of land revenue.
6. There must be no period of limitation in a suit for mehr.²⁸³
7. Section 10 (4) must be amended to provide that there shall be no payment of consideration by the wife in case of failure in reconciliation between the parties

²⁸² Recommendation of the earlier Commission, endorsed by NCSW

²⁸³ ibid

by Musalehat Anjuman except in khul'a, provided that such desire of the wife for khul'a is not an outcome of the circumstances purposely created by the husband and other relatives. In case of proof that wife has been compelled by the husband or by in-laws to seek khul'a, then she will not be under obligation to pay any consideration at all.

II. Maintenance

Muslim Family Laws Ordinance, 1961

8. The law must explicitly provide that 'the divorced woman must be entitled to maintenance and residence in her former husband's house, during the period of iddat, if so desired by her.'
9. The divorced woman must be entitled to past maintenance i.e for the period during the subsistence of marriage if she was not maintained by the ex-husband properly during iddat and lactation (in case of child) period.
10. The criteria for the maintenance of a wife should be laid down which must include food, clothing, accommodation, medical care, educational expenses and other benefits appropriate to the financial status of the wife.²⁸⁴
11. The calculation of the quantum of maintenance must be calculated on the basis of the following:
 - i. financial means of the husband, including but not limited to earning capacity, property and other financial resources
 - ii. respective financial needs and obligations of the parties
 - v. emotional effect of divorce on the parties
 - vi. behaviour of the parties during court proceedings
 - viii. any mental or physical disability of either of the parties
 - ix. any other relevant circumstances of the case'
12. In case it is proved that the husband has wilfully failed to provide maintenance for his wife for a consecutive period of six (6) months or more, he should be required to pay the entire amount of past maintenance in lump sum within a period of three (3) months which may be deposited in the court.
13. The law must also ensure that in case an appeal is preferred against the order of the court, the appeal should only be heard if the husband deposits at least 50% of the decreed amount. In case the husband fails to deposit the decreed amount awarded by the court within a period of three (3) months, or after the appeal has been finally disposed of, whichever is later, he shall be liable to imprisonment for a term which may extend to one (1) year.²⁸⁵

²⁸⁴ Recommendation made by Commission of Inquiry for Women, 1997 (CIW)

²⁸⁵ Recommendation made by Commission of Inquiry for Women, 1997 (CIW) made in respect of a wife.

III. Mat'a

14. A provision must be added in the law, that 'the divorced women must be entitled to mat'a, (as one time token money (cash or kind), the quantum of which must be calculated and decided by the Arbitration Council in view of the status of the parties and their circumstance' and the contribution of wife by services or otherwise.'

IV. Guardianship & Custody of Children

Guardian and Wards Act, 1890

15. Section 15 must be amended to include that 'mother shall always be considered natural and legal guardian of the minor at par with father. In case of dissolution of marriage, if any of the parents is having custody, he/she shall be presumed to be the minor's guardian.'
16. Section 17 must be amended to specifically provide that the only criteria to determine the guardianship of a child is the welfare of the child.
17. The law must specifically provide that 'divorced woman shall be entitled to the custody of her son up to the age of 7 years and daughter(s) upto the age of puberty in the absence of any serious disqualification of mother. After the age of the children specified herein above, the children shall be given a choice to give their consent as to with whom they wish to live.'
18. Father shall be responsible for the maintenance of his son up to the age of 21 years (in case he is not infirm or deceased) and daughter until she gets married or is independent enough to meet her expenses conveniently, after the age of 21 years of age.
19. Criteria for the quantum of maintenance of children should be laid down which must include food, clothing, accommodation, medical care, educational expenses, and other necessities appropriate to the financial status of the family.
20. The provision must be added that 'in case of infirmity, disease, disability and lack of means of father, grandfather or father's brother shall be responsible for the maintenance of the children. In the absence of any of the said relations, mother shall be responsible for the maintenance of children. In case mother also does not have the resources the state shall be responsible.'

V. Dowry /Gifts

Dowry and Bridal Gifts (Restriction) Act, 1976

21. The law must explicitly provide that 'the dowry shall not constitute or form a part of consideration for khul'a'.
22. The limitation of Rs.5000/= on the value of dowry u/s 3(1), is required to be removed.
23. The law must prescribe an imprisonment of 7 years where the cause of cruelty on wife is by her husband or his family for insufficient dowry brought by the bride in marriage.

VI. Remarriage

24. In order to secure divorced women's right to remarriage, section 7 of the Muslim Family Law Ordinance, 1961 must be amended to provide the following:
- i. wife's right to notify the dissolution of marriage; and
 - ii. the wife/husband's right to get registered the deed for the dissolution of marriage of his/her spouse's earlier marriage.
25. clause 31 below

VII. Right to Share in Inheritance

26. A woman divorced during marz-al-maut must be entitled to inherit her share from her deceased husband, if he died during her period of iddat. Further if the intention of divorce was just to deprive her of inheritance then such talaq should be held a illegal and void.

VIII. Damages to Wife for Giving Divorce without her Fault

27. A provision must be added to authorize family court to award damages to divorced woman, in case she has been given divorce without any fault of hers.

IX. Share in Homemaking

28. Ulemas must exercise injtihad in the matter relating to women's share in homemaking
29. The family court must be vested with the jurisdiction to decide the spouses' share in homemaking by ordering the division of matrimonial property and assets where the circumstances warrant, having regard to what is "fair and reasonable" on the basis of the following factors:
- i. extent of contributions made by each party in money, labour or property toward acquisition of assets since marriage
 - ii. debts incurred by either party for their joint benefit
 - iv. needs of any minor child(ren) of the wedlock
 - v. period of time that the spouses cohabited;
 - vi. the wife's housework activities
 - vii. the husband's financial means.

X. Other Related Issues

Khul'a, Mubarat & Li'an Muslim Family Laws Ordinance, 1961

30. Modes of Muslim marriages vis-à-vis, khula, mubarat and li'an must be specifically mentioned

31. The grounds of khul'a must be the sole desire of wife and not any of the ground as specified in Dissolution of Muslim Marriage Act, 1939.
32. The consideration for khula must not be mandatory but voluntary, at the instance of wife alone. However, if the wife has received substantial benefits from husband and she wants khul'a shortly after marriage then the court may order to restore the same or part thereof, to the husband. In any case the law must explicitly provide that the quantum of the consideration of khul'a must not in any case be more than the benefit derived by the wife from her husband, during the subsistence of marriage.
33. The husband should be required to file details of his assets and income.
34. Nikahnama must provide for the current marital status of the spouses their existing partners, number of children and current addresses
35. The law must explicitly provide that the quantum of the consideration of khul'a must not be more than the benefit derived by the wife from her husband, during the subsistence of marriage.
36. Rights and obligations of husband and wife during subsistence of marriage must be specified in nikahnama.
37. The legal provision regarding registration of nikah and dissolution must be strictly enforced.
38. There must be a mandatory provision for the reconciliation proceeding between the parties prior to grant of Khula.'

Strengthening of Support System

39. The shelter homes for destitute women must be established, particularly in areas where no such facility exists, in collaboration with Ministries of Women Development, Social Welfare, Health and Bar Councils and NGOs. Such centres must also have a provision for education, health and legal aid services.
40. The proposed shelter homes must either have their own vocational centres or linked to some outside centre to provide training to destitute women to make them self-supporting and their expertise may be utilized on payment to ensure their economic empowerment.
41. The information of the existence of shelter homes, their whereabouts, procedure for entry/registration, and facilities offered must be disseminated, so that women should not suffer in ignorance of existing support system
42. Free legal aid and counselling and baby day-care-centres for rearing up of child(ren), must be established at each Union Council to help the parents or guardians.

Education and Awareness Campaigns

43. Topics relating to rights and obligations of both men and women must be introduced as part of the syllabi at higher secondary school and college level. Family laws must be included in programmes for adult literacy in an easy manner.
44. The information on the following themes must be widely disseminated through seminars, workshops, print and electronic media:

- i. Men and women's rights and obligations in Islam, international commitments of Pakistan and prevailing laws.
 - ii. procedure for getting due rights of women
 - iii. provisions of legal aid offered by various organization
45. Female students in FANA must be encouraged and facilitated to adopt legal profession through awareness of women issues and the role of women lawyers in helping aggrieved women through media and sensitization programmes in educational institutions.
46. Media policy must be revised to ensure the projection of women's rights in a positive manner.

Administrative Measures

47. Multiplicity of laws must be avoided. Relevant Muslim Personal Laws(for Shia and Sunni) pertaining to divorce and related matters should be codified in a single statute.

The Punjab Local Government Ordinance, 2001 / Family Courts Act, 1964

48. All family matters (pre and post divorce including custody and guardianship of child(ren) must be decided at the initial phase by Masalihat Anjuman which shall also guide the parties and send the case to family courts, if required, for further consideration.
49. A code of conduct must be devised for the reconciliation, mediation and arbitration by Musalihat Anjuman.
50. There must be a close coordination between Family Courts and Musalihat Anjuman
51. Section 102 must be amended to include at least one woman as musaliheen (conciliators).
52. The Masalihat Anjuman must be assisted by a committee of experts, well versed in law and Shar'iah.
53. In case of failure in reconciliation, Musalihat Anjuman must ensure that divorced woman has received all her due rights.

Family Courts Act, 1964

54. The Family Courts must be presided over by male and female judges both.
55. The Family Courts must be exclusive in jurisdiction
56. The Family Courts must also have jurisdiction to entertain applications of females who have been harassed by their former/ present husbands, in-laws or persons linked to them.
57. In camera proceedings must be opted for family matters, upon the application of the party(ies).
58. Cost must be imposed on the lawyers seeking frequent adjournments on frivolous grounds for more than one date.
59. Mata should be added to the schedule of Family Courts Act 1964
60. Every judgment of the Family Court must be self-executing

61. Strict penal provisions are required to be added in the law to prevent corruption in judiciary as well as in the administration.
62. The judiciary is required to be sensitized further on Shari'a law, international commitments of the Government of Pakistan.
63. Lawyers need to be sensitized on the code of ethics
64. The case law must be computerized for quick reference.
65. Subordinate judiciary must be well equipped with high technology
66. Subordinate judiciary must be assisted by a board of technical experts
67. Emolument of the subordinate judiciary must be revised to a decent level.
68. Number of family judges must be increased .
69. The candidates to be selected as family judge must have standing of at least 7 years legal practice.
70. A body must be established to revise the laws relating to minorities in Pakistan
 - a. Such body must take up the following concerns of Hindu community regarding amendment in their personal laws, in line with the laws in India
 1. Hindu woman's right to seek divorce
 2. Right to contract marriage on dissolution of marriage
 3. Enforcement of Canon Law
 4. Right to maintenance in case of separation
 5. Child's custody matter.
 - b. Representation of minority in all spheres of life.
 - c. The laws relating to Christian and Parsis being limited are required to be amended.

Monitoring of Judicial Process

71. To establish a Family Courts Monitoring Committee at federal, provincial and local level.
 - i. The federal committee may be presided over by the Chief Justice of Pakistan
 - ii. The provincial committees must be presided over by the Chief Justices of their respective provinces.
 - iii. The district committees must be headed by the District and Session Judges, of their respective district

The members of each committee shall be eminent jurists, scholars, concerned public sector officials and representatives of civil society organizations (CSOs) with 33% women representation.

Appendix A

Federal Laws

S.No.	Laws	Application Target Group
1.	Family Courts Acts, 1964	All citizens of Pakistan
2.	Child Marriage Restraint Act, 1929	
3.	The Guardians and Wards Act, 1890	
4.	The Majority Act	
5.	Dowry and Bridal Gifts (Restriction) Act, 1976	
6.	The Charitable and Religious Trusts Act, 1920	
7.	The Small Claims and Minor Offences Courts Ordinance, 2002	
8.	The Conciliation Courts Ordinance, 1961	
9.	The Foreign Marriages Act, 1903	
10.	The Maintenance Orders Enforcement Act, 1921	
11.	The Claims for Maintenance (Recovery abroad) Ordinance, 1959	For contracting parties staying abroad
12.	The Special Marriage Act, 1872	Does not apply to Christians, Hindus, Muslims, Parsis, Buddhists, Sikhs or Jain.
13.	The Married Women's Property Act, 1874	Does not apply to those who at the time of marriage professed, Muslim, Hindu, Buddhist, Sikh or Jaina religion.
14.	Muslim Family Laws Ordinance, 1961	Muslims
15.	The Dissolution of Muslim Marriages Act 1939	
16.	The West Pakistan Rules under the Muslim Family Laws Ordinance, 1961	

17.	The West Pakistan Muslim Personal Law (Shariat) Application (Amendment) Ordinance, 1963	
18.	The Muslim Personal Law (Shariat) Application Act, 1937	Does not apply to NWFP
19.	The West Pakistan Muslim Personal Law (Shariat) Application (Amendment) Act, 1964	Does not apply to tribal areas
20.	The Kazis Act, 1880	
21.	The Cutchi Memons Act, 1938	Cutchi Memons
22.	The Khoja Disposition of Property Act, 1916	Shia and Sunni
23.	The Anand Marriage Act, 1909	Sikhs
24.	The Christian Marriage Act, 1972	Christians
25.	The Marriages Validation Act, 1892	
26.	The Divorce Act, 1869	
27.	The Hindu Widow's Marriage Act, 1856	Hindus
28.	The Hindu Marriage Disabilities Removal Act, 1946	
29.	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946	
30.	The Arya Marriage Validation Act, 1892	
31.	The Hindu Disposition of Property Act, 1916	
32.	The Hindu Inheritance (Removal of Disabilities Act, 1928) (Act XII of 1928)	
33.	The Hindu Law of Inheritance (Amendment) (Act II of 1929)	
34.	The Hindu Marriage (Disabilities Removal) (Act Xxviii of 1946)	
35.	The West Pakistan Hindu Women's Rights to Agricultural Land Ordinance (XI Of 1959)	
36.	The Parsi Marriage and Divorce Act, 1936	Parsis

Provincial Laws

S.No.	Laws	Application Target Group
1.	The Punjab Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act, 2003	All Citizens
		Punjab
2.	Punjab Laws Act, 1872	
3.	Punjab Limitation (Custom) Act, 1920	
4.	The Punjab Court of Wards Act, 1903	Punjab and NWFP
5.	The Sind Court of Wards Act, 1905	Sind
6.	The Punjab/Sind/NWFP/Baluchistan Muslim Personal Law (Shariat) Application Act, 1962	All Muslims
		All of Pakistan except the tribal areas
7.	The Punjab Muslim Personal Law (Shariat) Application (Amendment) Act 1951	Punjab
8.	The Punjab Muslim Personal Law (Shariat) Application (Removal of Doubts) Ordinance, 1972	
9.	The Punjab Muslim Personal Law (Shariat) Application (Removal of Difficulties) Ordinance, 1975	
10.	The West Punjab Muslim Personal Law (Shariat) Application Act, 1948	
11.	The Muslim Personal Law (Shariat) Application (Sind Amendment) Act, 1950	Sind
12.	The Sind Muslim Marriages Act, Divorce Registration Act, 1955	
13.	The NWFP Muslim Personal Law (Shariat) Application Act, 1935	NWFP
14.	The Hindu Women's Rights to Property (Sind Extension to Agricultural Land) Act, 1950	All Hindus (Sind)

Appendix B

Family Laws: Text of Sections Relevant to the Rights of Divorced Women in Pakistan

Dissolution of Muslim Marriages Act, 1939	
S. 5	<p><i>Right of dower not to be affected.</i></p> <p>Nothing contained in this Act shall affect any right that a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.</p>
Muslim Family Laws Ordinance, 1961	
S. 7	<p><i>Talaq.</i></p> <p>(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of the talaq in any form, give the chairman notice in writing of having done so, and shall supply a copy thereof to his wife</p> <p>(2) Whoever contravenes the provisions of subsection (1) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.</p> <p>(3) Save as provided in subsection (5) a talaq unless revoked earlier expressly or otherwise, shall not be effective until the expiration of 90 days from the day on which notice under subsection (1) is delivered to the chairman.</p> <p>(4) Within 30 days of the receipt of notice under subsection (1) the chairman shall constitute an arbitration council for the purpose of bringing about reconciliation between the parties, and the arbitration council shall take all steps necessary to bring about such reconciliation.</p> <p>(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in subsection (3) or the pregnancy, whichever be later, ends.</p> <p>Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.</p>
S. 8	<p><i>Dissolution of marriage otherwise than by talaq.</i></p> <p>Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply</p>
S. 9	<p><i>Written Statement.</i></p> <p>(1) On the date fixed under clause (a) of subsection (1) of section 8, the plaintiff and the defendant shall appear before the family court and the</p>

defendant shall file his written statement, and attach therewith list of his witnesses along with a précis of the evidence that each witness is expected to give. (1a) A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it. (1b) A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make a claim for dissolution of marriage including khula which shall be deemed as a plaint and no separate suit shall lie for it, provided that the proviso to subsection (4) of section 10 shall apply where the decree for dissolution of marriage is to be passed on ground of khula.

- (2) Where a defendant relies on any other document not in his possession or power, as evidence in support of his written statement, he shall produce it or a copy thereof in the court along with the written statement.
- (3) Where he relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents in a list to be appended to the written statement.
- (4) Copies of the written statement, list of witnesses and précis of evidence referred to in subsection (2) shall be given to the plaintiff, his agent or advocate present in the court.
- (5) If the defendant fails to appear on the date fixed by the family court for his appearance, then-
 - (a) if it is proved that the summons or notice was duly served on the defendant, the family court may proceed *ex parte*; provided that where the family court has adjourned the hearing of the suit *ex parte*, and the defendant at or before such hearing appears and assigns good cause for his previous non appearance, he may upon such terms as the family court directs, be heard in answer to the suit as if he appeared on the day fixed for his appearance
 - (b) if it is not proved that the defendant was duly served as provided in subsection (4) of section 8, the Family Court shall issue fresh summons and notices to the defendant and cause the name to be served in the manner provided in clauses (b) and (c) of subsection (1) of section 8.

In any case in which a decree is passed *ex parte* against a defendant under this Act, he may apply within thirty days of the service of the notice under subsection (7) of the passing of the decree to the family court by which the decree was passed for an order to set it aside, and if he satisfies the family court by which the decree was passed for an order to set it aside, and if he satisfies the family court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the family court shall, after service of the notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree as against him, and shall appoint a day for proceeding with the suit provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against or any of the other

	defendants also.
	<p>(6) The notice of passing of the <i>ex parte</i> decree referred to in subsection (6) shall be sent to the defendant by the family court together with a certified copy of the decree within three days of the passing of the decree through process server or by registered post, acknowledgment due, or through courier service or any other mode or manner as it may deem fit.</p> <p>Service of notice and its accompaniment in the manner provided in subsection (7) shall be deemed to be due service of the notice and decree on the defendant.</p>
S. 10	<p><i>Pre-trial proceeding.</i></p> <p>(1) When the written statement is filed, the court shall fix an early date for a pretrial hearing of the case.</p> <p>(2) On the date so fixed, the court shall examine the plaint, the written statement (if any) and the précis of evidence and documents filed by the parties and shall also, if it deems so fit hear the parties and their counsel.</p> <p>(3) At the pre-trial, the court shall ascertain the points at issue between the parties and attempt to affect a compromise or reconciliation between the parties, if possible.</p> <p>If no compromise or reconciliation is possible the court shall frame the issues in the case and fix date for recording evidence, provided that notwithstanding any decision or judgment of any court or tribunal, the family court in a suit for dissolution of marriage forthwith and also restore the husband the haq mehr received by the wife in consideration of marriage at the time of marriage.</p>

S. 14	<p><i>Appeal.</i></p> <p>(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a family court shall be appealable:</p> <p>(a) to the High Court, where the family court is presided over by a district judge, and additional district Judge, or a person notified by Government to be of the rank and status of a District Judge or a additional district Judge,</p> <p>(b) to the district court, in any other case.</p> <p>(2) No appeal shall lie from a decree passed by a family court-</p> <p>(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of section (2) of the Dissolution of Muslim Marriage Act, 1939.</p> <p>(b) For dower (or dowry) not exceeding rupees 30 thousand;</p> <p>(c) For maintenance of rupees (1000) or less per month.</p> <p>(3) No appeal or revision shall lie against an interim order passed by a family court.</p> <p>The appellate court referred to in subsection (1) shall dispose of the appeals filed under this section within a period of four months.</p>
S. 21	<p><i>Provisions of the Muslim Family Laws Ordinance to be applicable.</i></p> <p>(1) Nothing in this Act shall be deemed to affect any of the provisions of the Muslim Family Laws Ordinance 1961, or the articles framed there under and the provisions of sections 7,8,9 and 10 of the said Ordinance shall be applicable to any decree for the dissolution of marriage solemnized under the Muslim Law, maintenance or dower, by a Family Court.</p> <p>(2) Where a family court passes decree for the dissolution of a marriage solemnized under the Muslim Law, the court shall send by registered post within seven days of passing such decree a certified copy of the same to the appropriate chairman referred to in section 7 of the Muslim family laws ordinance 1961 and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of talaq required to be given under the said ordinance.</p> <p>(3) Notwithstanding anything to the contrary contained in any other law, a decree for dissolution of a marriage solemnized under the Muslim Law shall-</p> <p>(a) not be effective until the expiration of ninety days from the day on which a copy thereof has been sent under subsection 2.</p> <p>to be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim family laws ordinance, 1961.</p>
S. 25	<p><i>Family Court deemed a District Court for the purposes of the Guardians and Wards Act, 1890.</i></p> <p>A Family Court shall be deemed to be a district court for the purposes of the</p>

	Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall in dealing with matters specified in that act, follow the procedure prescribed in that act.
Family Courts Act, 1964	
S. 3	<p><i>Establishment of Family Courts.</i></p> <p>(1) Government shall establish one or more family courts in each district or at such other place or places as it may deem necessary and appoint a judge for each of such Court: Provided that at least one Family Court in each District, shall be presided over by a woman judge to be appointed within a period of six months or within such period as the federal government may extend on the request of provincial government.</p> <p>(2) A woman judge may be appointed for more than one district and in such cases the woman Judge may sit for the disposal of cases at such place or places in either district, as the provincial government may specify.</p> <p>(3) Government shall, in consultation with the High Court, appoint as many woman judges as may be necessary for the purposes of subsection (1)</p>
S. 7	<p><i>Institution of suit.</i></p> <p>(1) Every suit before a family court shall be instituted by the presentation of a plaint or in such other manner and in such court as may be prescribed.</p> <p>(2) The plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witness and the brief summary of facts to which they would depose.</p> <p>Provided further that the parties may, with the permission of the Court, call any witnesses at any later stage, if the court considers such evidence expedient in the interest of justice.</p> <p>[‘Provided that a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children.’]</p> <p>(3) (i) Where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time, deliver the document or a copy thereof to be filed with the plaint. (ii) Where he relies on any other document, not in his possession or power, as evidence in support of his claim, he shall enter such documents in a list to be appended to the plaint [‘giving reasons of relevancy of these documents to the claim in the plaint.’]</p> <p>(4) The plaint shall be accompanied by as many duplicate copies thereof including the schedule and the lists of documents referred to in subsection (3), as there are defendants in the suit, for service upon the defendants.</p>

S. 8	<p><i>Intimation of defendant:</i></p> <p>(1) When a plaint is presented to the family court, it-</p> <p>(a) shall fix a date of not more than thirty days for the appearance of the defendant</p> <p>(b) shall issue summons to the defendant to appear on a date specified therein</p> <p>(c) shall, within three days of the presentation of the plaint, send; (i) to each defendant, by registered post, acknowledgement due, [or by courier service or by both] a notice of the suit together with a copy of the plaint, a copy of the schedule referred to in subsection (2) of section 7 and copies of the documents and a list of documents referred to in subsection (3) of the said section; and (ii) to the Chairman of the Union Council within whose jurisdiction the defendant or defendants, as the case may be, reside and where the defendants reside within the jurisdiction of different Union Council, a notice of the plaint having been presented.</p> <p>(2) Every summon issued under clause (b) of subsection (1) shall be accompanied by a copy of the plaint, a copy of the schedule referred to in subsection (2) of section 7, and copies of the documents and list of documents referred to in subsection (3) of the said section.</p>
	<p>(3) On receipt of the notice under clause (c) of subsection (1), the chairman shall display the notice on the notice board of the Union Council for a period of seven consecutive days, and shall, as soon as may be, after the expiry of the said period, inform the family court of the notice having been so displayed.</p> <p>(4) Service of the plaint and its accompaniments in the manner provided in clause (b) or clause (c) of subsection (1) shall be deemed to be due service of the plaint upon the defendant.</p> <p>(5) Every notice and its accompaniments under clause (c) of subsection (1) shall be served at the expense of the plaintiff. The plaintiff shall deposit the postal charges for such service at the time of filing of the plaint.</p> <p>Summons issued under clause (b) of subsection (1) shall be served in the manner provided in the Code of Civil Procedure, 1908, Order V, Rules 9, 10, 11, 16, 19, 20, 21, 23, 24, 26, 27, 28 and 29. The cost of such summons shall be assessed and paid as for summons issued under the Code of Civil Procedure, 1908.</p>

The Divorce Act, 1869 (Viii of 1869)

S. 24	<p><i>Separated wife deemed spinster with respect to after-acquired property.</i> In every case of a judicial separation under this act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire or which may come to or devolve upon her. Such property may be disposed of by her in all respects as an unmarried woman, and on her demise the same</p>
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	<p>shall, in case she dies intestate, go as the same would have gone if her husband has been then dead:</p> <p>Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.</p>
S. 27	<p><i>Deserted wife may apply to Court for protection.</i> Any wife to whom section 4 of the Indian Succession Act, 1925 does not apply, may, when deserted by her husband, present a petition to the court of civil judge at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and property of which she may have become possessed after such desertion, against her husband or his creditors, or any person claiming under him.</p>
S. 30	<p><i>Liability of husband seizing wife's property after notice of order.</i> If the husband, or any creditor of, or person claiming under, the husband seizes or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her sum equal to double its value.</p>
S. 36	<p><i>Alimony. Pendente lite.</i> In any suit under this act, whether instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.</p> <p>Such petition shall be served on the husband and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:</p> <p>Provided the alimony pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in the case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.</p>
S. 37	<p><i>Power to order permanent alimony.</i> 'The court may, if it thinks fit, on any decree declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, order.'</p> <p>Power to order monthly or weekly payments. In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:</p> <p>Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, again to revive the same order wholly or in part,</p>

	as the court seem fit.
S. 38	<i>Direct payment of alimony to wife or to trustee.</i> In all cases in which the court makes any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restriction which the court seem expedient and may from time to time appoint a new trustee, if it appears to the court expedient to do so.
S. 39	<i>Power to order settlement of wife's property or benefit to husband and children.</i> Whenever the court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife if it is made to appear to the court that the wife is entitled to any property, the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both. Any instrument executed pursuant to any order of the court at the time or after the pronouncement of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of execution thereof. <i>Settlement of damages.</i> The court may direct the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.
S. 41	<i>Power to make orders as to custody of children in suit for separation.</i> After a decree a judicial separation the court may upon application, from time to time, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.
Parsi Marriage and Divorce Act, 1936	
S. 48	<i>Liberty of parties to marry again.</i> When the time hereby limited for appealing against any decree granting a divorce annulling or dissolving a marriage shall have expired, and an appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective

	parties thereto marry again, as if the prior marriage had been terminated by death.
Dowry and Bridal Gifts (Restriction) Act, 1976	
S. 5	<i>Vesting of Dowry (etc) in the bride.</i> All property given as dowry or bridal gifts and all property given to bride as a present shall vest absolutely in the bride and her interest in property however, derived shall hereafter not be restrictive, conditional or limited.
S. 8	<i>Declaration regarding expenditure to be submitted to Registrar.</i> (1) The father of the bridegroom or any other person who arranges the marriage shall, within fifteen days of the expiry of the period fixed under subsection (2) of Section 3 for giving dowry, bridal gifts and presents, and entertainment did not exceed the limit laid down in this act. The registrar shall forward the declaration submitted under sub-section (1) to the Deputy Commissioner within fifteen days of receipt of such declaration.
8A	<i>Complaints against violation of the Act.</i> If any person attending a marriage ceremony is satisfied that the provisions of this Act or the rules made there under has been contravened in respect of such ceremony, he may submit a complaint, giving full particulars of the contravention to the Deputy Commissioner.

Guardians and Wards Act (Viii Of 1890)	
Section No.	Text
S. 7	<p><i>Power of the Court to make order as to guardianship.</i></p> <p>(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-</p> <p>(a) appointing a guardian of his person or property or both, or</p> <p>(b) declaring a person to be such a guardian, the court may make an order accordingly.</p> <p>(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the court.</p> <p>(3) Where a guardian has been appointed by will or other instrument, or appointed and declared by the court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this act.</p>
S. 9	<p><i>Court having jurisdiction to entertain application.</i></p> <p>(1) If the application is with respect to the guardianship of the property of the minor, it shall be made to the district court having jurisdiction in the place where the minor ordinarily resides.</p> <p>(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the district court having jurisdiction in the place where the minor ordinarily resides, or to a district court having jurisdiction in a place where he has property.</p> <p>(3) If an application with respect to the guardianship of the property of the minor is made to a district court other than that having jurisdiction in the place where the minor ordinarily resides, the court will/may return the application if in opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.</p>
S. 19	<p><i>Guardian not to be appointed by the Court in certain cases.</i></p> <p>Nothing in this chapter shall authorize the court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a court of Wards, or to appoint or declare a guardian of the person-</p> <p>(a) of a minor who is a married female and whose husband is not, in the opinion of the court, unfit to be guardian of her person</p> <p>(b) of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor</p> <p>(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.</p>

S. 22	<p><i>Remuneration of guardian.</i></p> <p>(1) A guardian appointed or declared by the court shall be entitled to such allowance, if any, as the court thinks fit for his care and pains in the execution of his duties.</p> <p>(2) When an officer of the government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the government out of the property of the ward as the provincial government, by general or special order, directs.</p>
S. 24	<p><i>Duties of guardian of the person:</i></p> <p>A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.</p>
S. 25	<p><i>Title of guardian to custody of ward:</i></p> <p>(1) If a ward leaves or is removed from the custody of a guardian of his person, the court, if it is of the opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.</p> <p>(2) For the purpose of arresting the ward, the court may exercise the power conferred on a magistrate of the first class by section 100 of the Code of Criminal Procedure, 1898 (Act V of 1898)</p> <p>(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.</p>
S. 26	<p><i>Removal of ward from jurisdiction:</i></p> <p>(1) A guardian of the person appointed or declared by the court, unless he is the collector or is a guardian appointed by will or other instrument, shall not without the leave of the court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.</p> <p>(2) The leave granted by the court under subsection (1) may be special or general, and may be defined by the order granting it.</p>
S. 28	<p><i>Power of testamentary guardian:</i></p> <p>Where a guardian has been appointed by will or other instrument, his power to mortgage, or charge or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this act been declared guardian and the court which has made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order</p>
S. 29	<p><i>Limitation of powers of guardian of property appointed or declared by the Court:</i></p> <p>Where a person other than a collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the court to be guardian of</p>

	<p>the property of a ward, he shall not, without the previous permission of the court-</p> <p>(a) Mortgage, or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or</p> <p>(b) Lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.</p>
S. 32	<p><i>Variation of powers of guardian of property appointed or declared to apply to the court may apply to the court for opinion in management of property of ward:</i> Where a guardian of property of the ward appointed or declared by the court and such guardian is not the collector, the court may, from time to time, order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward in subject.</p>
S. 33	<p><i>Right of guardian so appointed or declared to apply to the court for opinion in management of property of the ward:</i></p> <p>(1) A guardian appointed or declared by court may apply by petition to the court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or management or administration or direction on any present question respecting the management or administration of property of his ward.</p> <p>(2) If the court considers the question to be proper for summary disposal, it shall cause a copy of the petition to served, on, and the hearing thereof may be attended by, such of persons interested in the application as the court thinks fit.</p> <p>(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject matter of the application.</p>
S. 34	<p><i>Obligations on guardian of property appointed or declared by the court:</i> Where a guardian of property of the ward appointed or declared by the Court and such guardian is not the collector, he shall-</p> <p>(a) if so required by the court, give a bond, as nearly as may be in the prescribed form, to the Judge of the court to enure for the benefit of the judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of ward</p> <p>(b) if so required by the court, deliver to the court, within six months from the date of his appointment or declaration by the court or within such other time as the court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of debts due on that date to or from the ward</p>

	<p>(c) if so required by the court, exhibit his accounts in the court at such times and in such form as the court from time to time directs</p> <p>(d) if so required by the court, pay into the court at such time as the court directs the balance due from him on those accounts, or so much thereof as the court directs</p> <p>(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependant on him and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the court from time to time directs, the whole or any part of that property.</p>
S. 35	<p><i>Suit against guardian where administration-bond was taken:</i> Where a guardian appointed or declared by the court has given a bond duly to account for what he may receive in respect of the property of the ward, the court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the court, or otherwise as the court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the judge of the court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.</p>
S. 36	<p><i>Suit against guardian where administration-bond was not taken:</i> (1) Where a guardian appointed or declared by the court has not given a bond as aforesaid, any person, with the leave of the court, may as, next friend, at any time during the continuance of the court, may as, next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be. Omitted by the Federal Laws (Revision and Declaration) Ordinance XXVII of 1981.</p>
S. 37	<p><i>General liability of guardian as a trustee:</i> Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which not being expressly provided in either of those sections any other beneficiary or his representative would have against his trustee or the representative of the trustee.</p>
S. 39	<p><i>Removal of guardian:</i> The court may, on the application of any person interested or of its own motion, remove a guardian appointed or declared by the court, or a guardian appointed by will or other instrument for any of the following causes, namely- (a) for abuse of his trust</p>

	<p>(b) for continued failure to perform the duties of his trust (c) for incapacity to perform the duties of his trust (d) for ill-treatment, or neglect to take proper care, of his ward (e) for contumacious disregard of any provision of this Act or of any order of the court (f) for conviction of an offence implying, in the opinion of the Court, defect of character which unfits him to be the guardian of his ward (g) for having an interest adverse to the faithful performance of his duties; (h) for ceasing to be reside within the local limits of the jurisdiction of the court (i) in the case of a guardian of the property, for bankruptcy or insolvency (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject</p> <p>Provided that the guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed— (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that, that person made and maintained the appointment in ignorance of the existence of the adverse interest for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the court, renders it impracticable for him to discharge the functions of guardian.</p>
S. 41	<p><i>Cessation of authority of guardian:</i></p> <p>(1) The powers of a guardian of the person cease- (a) by his death, removal, or discharge (b) by the court of wards assuming superintendence of the person of the ward (c) by the ward ceasing to be a minor; (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the court by her marriage to a husband who is not, in the opinion of the court, so unfit (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the court to be so unfit, by his ceasing to be so in the opinion of the court.</p> <p>(2) The powers of a guardian of the property cease- (a) by his death, removal or discharge (b) by the court of wards assuming superintendence of the person of the ward; (c) by the ward ceasing to be a minor;</p> <p>(3) When for any cause the powers of a guardian cease the court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his</p>

	<p>possession or control relating to any past or present property of the ward.</p> <p>(4) When he has delivered the property or accounts as required by the court, the court may declare him to be discharged from his liabilities save as regards any fraud that may subsequently be discovered.</p>
S. 43	<p><i>Orders fir regulating conduct or proceedings of guardians and enforcement of those orders:</i></p> <p>(1) The court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the court.</p> <p>(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the court for its direction, and the court may make such order respecting the matter in difference as it thinks fit.</p> <p>(3) Except where it appears that the object of making an order under subsection (1) or subsection (2) would be defeated by the delay, the court shall, before making the order, direct notice of the application therefore or of the intention of the court to make it as the case be, to be given, in case under subsection (1), to the guardian or, in a case under subsection (2), to the guardian who has not made the application.</p> <p>(4) In the case of disobedience to an order made under subsection (1) or subsection (2), the order may be enforced in the same manner as an injuncton granted under rules 1 and 2 of Order 39 of the First Schedule to the Code of Civil Procedure, 1908 in a case under subsection (1), as if the ward were the plaintiff and the guardian were the defendant, or in a case under subsection (2), as if the guardian who made the application were the plaintiff and the other guardian was the defendant.</p> <p>(5)Except in a case under subsection 2, nothing in this section shall apply to a Collector who is, as such, a guardian.</p>

Appendix C

Case Laws

1. Abdullah v. Jawaria Aslam: 2004 YLR 616
2. Abdul Majid v. Razia Bibi: PLD 1975 Lah. 766
3. Abdul Rashid and another v. Mst. Shaheen Bibi & 2 others: PLJ 1980 Pesh 66
4. Abdur Rehman v. Judge, Family Court, Gujranwala: 1981 CLC 68.
5. Ahmed Riaz v. Mst. Qaisera Minhas and others 1994 CLC 2403 ©
6. Ahmed Riaz v. Qisera Minhas & others: 1994 CLC 2403
7. Akthar: NLR 1992 Civil 522 (a)
8. Asia v. Abdul Rehman & another: 1994 CLC 1388 (b)
9. Belqees Bano v. Shamim Ahmad alias Yasin: 1991 CLC 2057
10. Bibi Inayat Sultan & another v. Sardar Habib Khan & 2 others: PLD 2005 Pesh 77
11. Chundar Goswami v. Biswewer Goswami: ILR 25 Cal. 5857
12. Dr. Akhlaq Ahmad v. Kishwar Sultana: PLD 1983 SC 169
13. Ghulam Jilani v. Deputy Commissioner/Collector, Sialkot. PLJ 1992 Lah 73 (a)
14. Ghulam Jilani v. Deputy Commissioner/ District Collector and others 1991 CLC 1813
15. Hamidan Begum v. Abdul Riaz: 1993 CLC 2170(a)
16. Hefzur Rahman v. Shamsun Nahar Begum, 4 MLR (AD) (1999) 41
17. Ikran Bari & 524 others v. National Bank of Pakistan through President and others: 2005 SCMR 100
18. Inamul Islam v. Mst. Hussain Bano and 4 others: PLD 1976 Lah. 1466
19. Jalaluddin Shaikh v. Kshirode Chandra: PLD 1960 Dacca 948
20. Jalaluddin v. Kshirode Chandra
21. Javed Iqbal v. Nasreen Akthar: PLD 1994 Azad J&K 86(b)
22. Mahmooda Khatoon v. Zainul Hasnain Rizvi: PLD 1958 Kar. 150
23. Maqbool Ahmad Abid v. Rehana Kausar KLR 1996 Sh Cases 50c
24. Masud v. Mst. Farah Deeba: 1988 CLC 1546
25. Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

26. Mst Fakhar-un-nisa Khokhar , J v. Ghulam Rasool alias Sulha and another: PLJ 1996 Lah.
27. Mst. Parveen Begum v. Muhammad Ali: PLD 1981 Lah.116
28. Mst. Rashida Bibi v. Bashir Ahmad and 2 others: PLD 1983 Lah. 549
29. Mst. Shaheen v. Jaffar Khan: 2000 CLC 1627
30. Mst. Shahida v. Abdul Rahim: PLD 1984 Lah. 365
31. Muhammad Akhtar v. Mst. Shazia & others: 1992 MLD 134 (a)
32. Muhammad Akhtar v. Mst. Shazia & others: 1994CLC 2403(b)
33. Muhammad Aslam v. Zainab Bibi & Brother: 1990 CLC 934(Lah.)
34. Muhammad Aslam v. Family Judge and 2 others 1987 CLC 247
35. Muhammad Banaras v. Chairman Union Council, Chak Malak, Tehsil & District Chakwal: LN 1990 Rawp. Bench 1197
36. Muhamad Bilal v. Nasim Akhtar, 1983 CLC 2390 & Muhammad Zafar Iqbal v. Parveen
37. Muhammad Hussain Munir v. Sikander and others: PLD 1974 SC 139
38. Muhammad Iftikhar Zafar v. Muhammad Ahmed: 2000 YLR 768
39. Muhammad Ishaque v. Rukhsana Begum: PLD 1988 Kar. 625.
40. Muhammad Jamil v. Sarwar Jehan: 1982 CLC 655
41. Muhammad Masud Abbasi v. Mst. Mamona: 2000 YLR 482
42. Muhammad Najeeb v. Mst Talat Shahnaz 1989 SCMR 119
43. Muhammad Nawaz v. Mst. Khursheed Begum & 3 others: PLD 1972 SC 302
44. Muhammad Shahbaz Ahmad v. Sher Muhammad & another: PLJ 1987 Cr.C.331
45. Muhammad Sharif and another v. Muhammad Afzal Sohail etc.: PLD 1981 SC 245
46. Mukhtar Ahmad v. Ansa Naheed: PLD 2002 SC 273 (a)
47. Mukhtar Ahmad v. Ansa Naheed: PLD 2002 SC 273 (a) 1978 Mah LJ 26
48. Munir Anwar v. Mst. Nabeela Safdar: 2004 YLR 674
49. Muslim Sher v. Qudrat Bibi: PLD 1984 Pesh. 91
50. Naeem Ahmad v. Mst. Nuzhat Almas & 2 others: 1981 CLC 195
51. Nafees Ara v. Asif Saadat Ali Khan AIR 1963 All 143
52. Nargis Begum v. Zebar Shah: 2000 CLR 2015

53. Nazir Ahmad v. District judge: 1996 MLD 2017 ©
54. Noor Muhamamd v. Mst. Bakhtan: 1981 SCMR 828
55. Rashida Begum v. Shahab Din: PLD 1960 Lah. 1142.
56. Razia Begum v. Saghir Ahmad: 1982 CLC 1586
57. Riffat Abrar v. Mst. Sheila Sabri and others PLD 1994 Lah 148(b)
58. Rukhsana Parveen
59. Saeeda Khanam vs. Muhammad Sami, PLD 1952, Lahore 113
60. Salman v. Asma Bibi: 1983 CLC 2400
61. Sardara v. Sakina: PLD 1979 Lah.476
62. Shamshad Begum v. Abdul Haque: PLD 1977 Kar. 855
63. Sk. Mohammad Zafir v. Sk. Amiruddin & others: AIR 1963 Pat. 108. (DB)
64. Subair v. Isthikar (1974, 77 NLR 397)
65. Sultan Ahmad v. Mst. Mehr Bahri & another: 1982 PSC 71 (Sc.C)
66. Sultan Ahmad v. Mst. Mehr Bahri & another: 1982 PSC 71 (Sc.C)
67. Syed Hamid Ali Shah v. Mst. Razia Sultana: KLR 1991 C.C.439
68. Syed Mudassar Altaf v. Deputy Commissioner/Collector, Lahore and three others
PLJ 1994 Lah.387 (ii)
69. Wajid Ali v. Ganga Din AIR 1938 Oudh 97
70. Zafar Ali v. Judge, Family Court: 1992 CLC 1244
71. Zakir Hussain Sidiqui v. Mst. Najma Parveen: NLR 1989 CLJ 27

Appendix D

NCSW Policy Research Draft Report

Outcome of Countrywide Consultative Meetings

Sindh (Karachi) 25th July 2006

Participants suggestions	Responses of policy research unit
Computerization of case law for quick reference	Incorporated in report.
<ul style="list-style-type: none">• Translation of provisions of International conventions into family laws• Pakistani laws be amended in accordance with provisions of CEDAW	Incorporated in report.
There is no prohibition on appointment of mother as guardian. Once she is fit to have the custody, it is necessary that she should also be the guardian. Laws should be amended accordingly.	Incorporated in report.
<ul style="list-style-type: none">• Adopt amendments suggested by the Report of the Commission of Inquiry for Women headed by Justice Nasir Aslam Zahid• Inquiry Comm. '97 pg. 19 – 42 to be considered	There is just one recommendation in respect of divorced women. Same is incorporated. Further, some of the recommendations in the report are in respect of wife's right to maintenance. We have considered and recommended them for divorced women.
Security for divorced women	Already considered in the report and recommendations.
Halala is unjust and most oppressive for women.	Same has been discussed in the report
Section 10(4) should not be touched	Amendment suggested in favour of women's right to dower.
Women should not be forced to give up her right to dower under section 10(4)	Incorporated in report.
Codification of Islamic laws on	It has already been codified in Muhammadan

maintenance would lead to problems	Law. These codes are the basis interpretation and they could easily be adopted
No need for further recommendations as there are already many reports	Previous reports are not focused on the rights of divorced women. However, some of the relevant previous recommendations have been adopted in this report to ensure their implementations.
Provision for the return of dowry after dower	
There must be provision for the filing of an affidavit in family cases instead of bringing witnesses to the court. As amendment brought in rent laws	Affidavits are normally filed besides calling of witnesses in the court. Mere reliance on affidavit might lead to miscarriage of justice, But they should be cross examined as in the rent cases.
The wife must give property declaration owned by husband at the time of suit	This can be adopted optional. In some cases wives do submit the details of their husbands' properties to demand recovery of arrears accordingly.
The court must attach the properties of the husband before judgement so that execution of the judgement may be made easier	This can be requested and interim prohibitory orders can be passed.
Amendment for simultaneous adoption modes for service of notice	Already recommended by NCSW.
Mother can be a guardian of a child hence there must not be any prohibition.	Already recommended by NCSW
Law needs to be specific to discourage corruption	Incorporated in report.
Women's rights must be in curriculum	Already recommended by NCSW
Ijtihad is required in the matter of home-making	Incorporated in report.
Rights and obligations of marriage must be provided in the nikahnama and signed by the parties	Incorporated in report.
Procedural methodology of laws must be reviewed	Recommendations have already been made in the report.
All laws must be implemented in the	NCSW policy recommendations

context of the spirit of Islam	
<ul style="list-style-type: none"> • Advocacy of the rights of divorced women • Men and women must be aware of their rights of obligations 	NCSW has already recommended that in the report.
System must be modified	NCSW's policy recommendations are to modify system.
Initially issues must be settled at Union Council level and not in the courts	NCSW has already recommended that in the report
Distinction must be made between dowry and jahez	How? No explanation given.
Divorced women must be given shelter by government. Welfare officer must be involved.	NCSW has already recommended that in the report.

NWFP (Peshawar) 8th August 2006

The women are not provided rights according to the Quran and Sunnah.	This point has been substantially discussed in report and recommendations are made accordingly
There are problem in the implementation	This issue was highlighted in the report and recommendations are made accordingly
Judiciary is not well versed with Quran and Sunnah.	NCSW has already recommended in this regard
Mata (wajib) should be provided to divorced women as mark of respect.	NCSW has already recommended that in the report
Mahar should be given to divorced women	NCSW has already recommended that in the report
Limitation of 5000 for dowry should be removed	NCSW has already recommended that in the report
Maintenance beyond period of Iddah leads to exploitation	It is a question of interpretation. Mata is the same though terminology is different. It is lump sum.
Decisions should not be left to interpretation. Laws should be explicit and comprehensive	NCSW has already recommended that in the report

Man is not under obligation to pay maintenance after divorce	Incorporated in report Disputed Discussed in the report.
Man is not under an obligation to give any reason for divorce	This point has been discussed in detail and recommendations are made accordingly.
Council of ulemas at zila level to settle family matters	Discussed
Rights to be revised through Ijtihad by Council of Islamic Ideology	CII is already working on Ijtihad
Social Security system: Umarian system in UK	Mechanism has been suggested in view of our social setup
NCSW must recommend inclusion of chapter on rights and obligations in syllabus	NCSW has already recommended that.
Women should be empowered economically both before and after marriage	Many initiatives have already been taken up by the Government & NGOs for the empowerment of women
Khula is a right of a woman without any 'ifs' & 'buts'	Incorporated in the report.
In guardianship mother should be given rights	NCSW has already recommended that in the report
Awareness of rights among women and children should be increased	Incorporated in the report.
People at grass root level should be involved in the consultation (on the draft reports)	Consultative meetings on policy research draft report are meant to be with the concerned experts to strengthen policy and legal recommendations
Procedural law should be in accordance with the substantive law	Gaps have been identified and recommendations are made accordingly.
Awareness of rights in nikahnama, must be increased among women	Incorporated in the report
Nikahnama should explicitly provide for the marital status of bridegroom as well	Incorporated in the report.
The verse quoted on page 61 is in respect	Rights to suck come only with custody.

of right to suck & not custody	When mother is put under an obligation of breast feeding of her child for 2 years then she obviously has to have custody.
Procedures should be simplified in respect of guardian and ward matters	NCSW has made recommendations accordingly.
Implementation mechanism be devised	Gaps have been identified and recommendations are made accordingly.
Court proceedings be made speedy	Provision is there but implementation is to be ensured through monitoring mechanism. Policy recommendations are made accordingly
CONCERN: Too much facility to divorced women might increase rate of divorce	NCSW's policy recommendations are meant to facilitate destitute women and not the families' breakup
Rights must be given in accordance with Holy Qur'an and Sunnah	The point has been mentioned at various places in report
Modernization should be without westernization	The opinion has already been taken care of.
Divorce should not be used in generalized but specific terms	Law is clear on the point
Divorce should be through court	Registration must be ensured. Courts are already back logged.
Gaps must be removed from the report	Which gaps? No details given. Participants opinion have, however, been considered.
Attitudes of lawyers of opposing parties needs to be modified	Incorporated in the report.
There must be checks and balance with ref. the handling of case by lawyers & presiding case	Incorporated in the report.
This report should be reviewed by experts	<ul style="list-style-type: none"> • The draft report was shared with the experts and subsequent consultative meetings were held to obtain their feedback. • This draft report will also be reviewed by Law Commissioner.
Maintenance for life to divorced women is not acceptable	Discussed in report.

Obligation on husband for compensation to divorced women in case of divorce without fault of women is not acceptable	This point has been discussed in detail in report
Existing laws must be strengthened	This research is meant for it.
Provision regarding limitation of Rs.5000/= must be amended	Incorporated in the report.
Time limit must be fixed for the payment of maintenance	Incorporated in the report.
Status of bridegroom should be mentioned in nikahnama (bill passed in Punjab)	Incorporated in the report.
Father should provide maintenance to children	NCSW has already recommended that.
Advocacy on the procedure of divorce, which is very conforming.	Incorporated in the report.
Monitoring and evaluation of the implementation mechanism is required	Incorporated in the report.
Procedure for the implementation of laws is required	Gaps have been identified and recommendations are made accordingly
Woman should not be forced to forgo her mehar: investigation required in cases	NCSW has already made recommendations in this context.
Maintenance for illegitimate child should not be provided	This point has been discussed in the draft report.
There should be restriction on divorce without any reason	Already considered.
Maintenance should be provided to divorced women until they get remarried	This point has been discussed in detail during consultative meetings and recommendations are made accordingly
For execution the court must send the case to the court which has the jurisdiction wherein property lies	Appropriate recommendation with the majority opinion has been formulated in the draft report.
There must be no restrictions on divorce without fault	NCSW has already made recommendations in this context

Right of puberty should remain even if the marriage is consumed	Discussed in the report.
Conducive environment in courts must be ensured	Incorporated in the report.
Dowry must be prohibited	Discussed, but implementation is difficult.
Court procedures must be simplified	Repeated
Awareness of women's rights must be increased	Repeated
Limitation of 6 years for past maintenance should be waived	Discussed in the report.
Musalihat jirgas (as in Frontier) should be empowered to settle family matters	A uniform mechanism has been suggested.
Limitation of 3 years for the recovery of dower must be waived.	Discussed, as law already exists.
list of dowry articles must be attached to nikahnama a	Prevailing rules provide this provision.
Registration of the payment of dower must be done	Incorporated in the report.
Family Court Act must provide for finalization of khula proceeding within 2 months	Point discussed.
Amendment required in section 10(4)	Considered in the report.
Dower should be transferred into the Account of bride prior to marriage through bank draft	Not practical in general
Tribal laws must also be considered	They are governed by customary rules. While this research study focused on the enacted and enforced laws of Pakistan.
Dissolution should not be in haste, precautions must be taken	Incorporated in report.

Talaq-i-bidi must be declared illegal	It is a irregular mode. Discussed in the report.
Dower must be made mandatory by virtue of law	Incorporated in the report.
Father is liable for the maintenance of divorced wife during the period of the custody and rearing of children	Incorporated in the report.
Wilayat and hizanat shall be subject to the welfare of a child	Discussed in the report. Laws also exists.
Social security is the responsibility of the State	Incorporated in the report
Attitudinal change toward divorced women is imperative	Incorporated in the report
Judges should be married and with children	It's a minority view and violation of law hence cannot be recommended.
Social security must be provided for destitute women	Repeated
Mehar should be provided to women at the earliest	Provision for payment is clear in Holy Qur'an. It is both prompt & deferred.
Maintenance after iddat is not accepted: Tafseer Ibn e kaseer	Considered
NCSW's recommendation for maintenance of illegitimate child is against Shariah	NCSW has not made any such recommendation
Talaq without any reason is allowed-process should be simplified	Discussed in the report.
Ulemas must be consulted	Ulemas had been consulted all over Pakistan and FANA & FATA
NCSW must cause policy change to strengthen the family unit	Research and recommendation are for this very purpose.
Union council must ensure that divorced woman has received all her rights	Incorporated in the report
Family Court must have power to entertain application in case divorced	Incorporated in the report

wife has been harassed	
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Punjab (Lahore) 18th August 2006

Law must provide a provision for khula	NCSW has already made recommendations in this regard.
Other grounds should not be compounded with khula	NCSW has already made recommendations in this regard.
No amendment required with ref. to Zihar and Ila as the same are not prevalent in our society	Amendment in the recommendation are made accordingly.
In view of Quranic injunction, dower is bride's right even if marriage has not been consummated: amendment required in law	NCSW has already made recommendations in this regard.
Dower should not be returned to husband on khula. Other benefits (which she has received from husband during marriage) may however be returned	Incorporated in the report
Fine should be imposed on adjournment	Incorporated in the report
Courts must decide the case within 3 months	Incorporated in the report
Effectiveness of service must be ensured	Incorporated in the report
Mindset of judiciary is required to be changed	Incorporated in the report
More females must be appointed as judges	Incorporated in report
There is a need for in camera proceedings in family matters	Incorporated in report
NCSW's recommendations for substantive law need to be paid attention	Yes
Clarity on mehr-e-fatime is required in draft report (as explained in presentation 400 dirhams)	Amendment has been made accordingly

Mehar should be in accordance with the social status of the parties	Incorporated in the report
There should be no minimum limit for dower (ref. Hazrat Umar's decision)	Incorporated in the report
Prevailing family laws should be repealed and fresh laws be framed.	Too far reaching. Majority of the house did not agree to it.
Prevailing family laws should not be repealed unless alternative is proposed	Policy Recommendations' are reflection of this point of view
Some provisions of prevailing family laws contravene Qur'anic injunctions. There is even a joint statement of ulemas in this context.	This was with reference to the proceeding of divorce and reconciliation proceedings have been discussed.
Right of khula is as important as man's right to divorce. It must be established by law	Incorporated in the report
Family matters must not be referred to political institutions under Local Govt. Ordinance	There are problems in political institution but that is the only way to reduce the backlog of the courts. Monitoring mechanism has been suggested to minimize problems.
Section 10(4) of Family Courts Act is against women's right to economic security	Incorporated in the report
Section 10(4) must be amended to specify that this provision is valid in the case of khula	Incorporated in report
Right to maintenance after divorce needs consideration for amendment	Majority of women are against maintenance after divorce. Right to mata is unanimously accepted. Recommendations are made accordingly.
Serious thought is required on the need for the provisions on women's right to inheritance in case of Talaq Marz.	NCSW has already made recommendations in this regard.
Number of judges should be increased	NCSW has already made recommendations in this regard.
Dower should not be returned in the case of valid reasons	Section 5 of family courts law is clear

Provision of sec.10(4) is only in the case of 'khula' and not in the case of other grounds for dissolution.	Recommendation has been made for amendment in section 10 to clarify this point.
Section 10(4) must be repealed	Amendment suggested in section 10(4)
Dower must be paid even if not fixed. Ref. Marina's Jatoi's case	Recommendations are made accordingly
<ul style="list-style-type: none"> • Maintenance to divorced wife must be provided under section 9 • Matters regarding the above must be decided by musalihat Anjuman 	Incorporated in the report
Family courts must have exclusive jurisdiction	Incorporated in report
There is need for affirmative action to facilitate female judges	Recommendations are made accordingly.
In view of the judgment on maintenance to women during lactation period, amendment is required in law.	Incorporated in report
Any agreement on the waiver of the established rights of women is unlawful. It can be challenged.	Incorporated in report
Divorce on marzul maut is null and void	Not exactly in line with shariah. However, inheritance right of such women has been recommended to be secured.
Scrapping of the entire prevailing Family laws is not desirable. Amendments must be made	Draft report is in line with it
The female candidate must have standing of at least 7 years legal practice for appointment to the post of family judge	Incorporated in the report
Judges must be trained	Incorporated in the report
Limit of Rs.5000/= for dowry is unrealistic. It leads to problems.	Incorporated in the report
Role of media on women's right needs to be checked	Incorporated in the report

Every judgement should be self executing	Incorporated in the report
Reconciliation should be the earnest phase	Incorporated in the report
Detailed discussion is required on each point raised in the draft report	Consultative meetings are meant for that.
Penalty for lawyers seeking adjournment needs reconsideration	The quantum may be decided by the judge
Provision for marriage certificate is required: Hindu & Christian	Out of scope of this study. However changes and growth in both laws have been recommended.
Body to review the laws relating to minorities must be established	Incorporated in the report
Registration of marriage must be irrespective of any religion	Out of the scope of this study. Registration of marriages in one form or the other do exist.
All provisions in nikahnama should be filled to validated that document.	Parties cannot be forced to agree on terms. It needs awareness strategies
Delegated right of divorce is against the directions of Allah Almighty	It is very much in accordance with Islamic law.
State exchequer must be utilized for the economic security of destitute divorced women.	Policy recommendations are made accordingly
Nikahnama must be simplified	Out of scope of this study
Reconciliation procedure is most non serious phase and least practiced	Incorporated in the report
Amendment in this law regarding delegated right of divorce is required	Discussed.

Balochistan (Quetta) 24th August 2006

Problems are in the implementation of laws	Policy recommendation's are formulated accordingly
Translation of Surah Baqrah by	Translation by M. Asad has also been

Abdullah Yusuf is not true sense	considered.
Support mechanism for divorced women is very week	Policy recommendations are formulated accordingly
Research design must originate from consultation	Participatory approach was adopted during the entire research proceed including conceptualization.
Family courts in Quetta have exclusive jurisdiction on family matters	The NCSW's recommendations are for the entire country.
Courts should be strengthened at lower level	Policy recommendation's are formulated accordingly
Constitution must be implemented in its true spirit	This research study is a step towards it.
Meher is consideration of marriage which must be paid to wife	NCSW has already recommended that.
Return of mehar in case of khula is must	Mandatory provision for return of Mehar is contradictory to Qur'anic injunctions. Surrah Nisa & majority opinions
Court must ensure the payment of Mehar in case if it is not specified in nikahnama	Incorporated in report. Law already exists.
There must be regular inbuilt mechanism for the review of laws	Council of Islamic Ideology & Law & Justice Commission are working on these lines.
Rights and obligation of both men and women must be included in the curriculum	Incorporated in the report
Registration of nikahnama must be ensured	Out of the scope of this study. Law already exists.
There must be legislation on separation with ref. to Muslims	Out of the scope of this study
Divorced women's right to custody of child and maintenance, irrespective of the financial status of mother must be specified in law	Incorporated in the report
Reconciliation proceedings should be prolonged to give enough time to the	Effectiveness is most important. Recommendations are made accordingly.

parties	
Police system must be improved	Out of scope of this study
Reconciliation proceedings must be in accordance with Holy Qur'an	Out of scope of this study
Amount of mehr must be equal to six months income of the husband	Consensus could not be achieved on this point.
Payment of mehr must be ensured	Policy recommendations are made accordingly.
Custody of child must be with husband and not mother	It is subject to the welfare of a child. Recommendations are made accordingly.
The amount of dower should not be fixed	Incorporated in the report
Appropriate package for judges must be provided	Policy recommendations are made accordingly.
Awareness of women's rights must be at the grass root level	Policy recommendations are made accordingly.
Islamic law should be made the supreme law of land and inculcated in the entire system and training of children	Policy recommendation's are made accordingly
Security of life, property and prestige of divorced women must be ensured	That is possible through awareness & suggested policy measures
Mehr must be equivalent to ½ share of husband in his inheritance or according to the socio economic status of the husband	Not practical. Majority opinion was against the limit on the amount of dower.
Negative role of media must be checked	Incorporated in the report
Religious education must be stressed	Incorporated in the report
Definition of halala must be corrected	Amendments are made accordingly.
Education of both men and women is imperative	Education through awareness. Inclusion of women's right in syllabus of schools & adult literacy programme is recommended.
Post divorce matters should not be a part of family laws but civil law	It is difficult to consider because the rights originated as a result of wedlock & children will remain a part of family of both the

	parents irrespective of their marital status.
<ul style="list-style-type: none"> All laws must be Islamized Islamization process must be continued 	Policy recommendations are formulated accordingly.
Basic training of children needs to be improved	Out of scope of the study
Family units must be strengthened	Out of scope of the study
Mehr must be paid at the time of marriage	Holy Quran is clear on this point
Media must be used for creating awareness	Incorporated in the report
Customary law in villages and tribal areas must be gradually changed, because some customary laws are very strict and contrary to the injunctions of Islam, e.g., in Baluchistan society concept of divorce is rare. But if circumstances have become worst it may be permitted in tribal society also.	The Government of Pakistan is taking measures for the enforcement of laws everywhere. Recently some of the 'B' area of Balochistan has been included in 'A'
State must establish institutions for the rehabilitation of divorced women	Policy recommendations are made accordingly.

Islamabad 29th August 2006

Mehr must mark the earnestness of the husband to fulfil his obligation as husband and father	Policy recommendations are formulated accordingly
Amount of mehr-e-mithal must be specified in nikahnama	Column is provided in nikahnama
<ul style="list-style-type: none"> Dues on dissolution are termed as mata' in Holy Qur'an: It should be in accordance with the accepted traditions Mata' must be given as one time grant: leg. Reform needed 	Incorporated in the report
Maintenance beyond iddat should not be	Yes, amendments are made accordingly.

equated with haq-e-mata	
Court must determine haq-e-mata (parting gift) as one time grant (ref. Moroccan code)	Incorporated in the report
Lactation maintenance should be given and law must be modified	Incorporated in the report
Past maintenance and maintenance during iddat must be specified in the law	Incorporated in the report
To be a male is not a condition for guardianship: It's obligatory and not privilege: Amendments in the legislation required	Incorporated in the report
Dissolution should be publicly announced like nikah	Incorporated in the report
There must be a document for dissolution of marriage	Incorporated in the report
Law must be modified to give divorced women right to register her divorce	Incorporated in the report
Women must be compensated for being divorced without valid reasons. This concept may be covered under the provision of mata' instead of civil suit	This will prejudice women's right to mata in case of modes for dissolution of marriage other than talaq
A body must be established for review of laws relating to minorities	Incorporated in the report
Dower should be of a considerable amount	Recommendations are made accordingly
Child's welfare must be considered in guardian and ward matters	Recommendations are made accordingly
Registration of divorce must be ensured	Law already exists.
Damages must be given to women on divorce without valid reason (Holy Quran: nashooz (disloyalty) is the only reason)	Policy recommendations are made accordingly.

Family laws must also be reformed in terms of revised modern terminologies	Out of scope of this study.
Family courts must have exclusive jurisdiction	Incorporated in the report
Orientation of presiding officer particularly on the implementation / execution of order is needed	Incorporated in the report

FANA (Gilgit) 13th September 2006

Family Laws in Pakistan must be extended to FANA	Policy recommendations are made accordingly.
Family Courts must be established at District level	Policy recommendations are made accordingly.
Suicidal rate is getting higher in FANA mainly due to forced marriage and no Court to get justice from	Out of scope of this study
Initiatives for the welfare of women have not been extended to women hence that must be ensured for FANA as well	Issues have been considered and policy recommendations are made accordingly.
There is no system for the registration of nikah	Policy recommendations are made accordingly.
There should be a legal coverage to divorced women for their economic security	Policy recommendations are made accordingly.
There is no right to inheritance under law. It is taken as moral obligation	The law already exists.
Need for consensus of ulema, political/social thinkers on the rights of divorced women	Draft report is shared with experts belonging to all spheres of life for their input and to ensure their consensus on the solution of the problems.
Mother is not considered competent as guardian hence law must be revised.	Incorporated in the report
More female lawyers are required	Incorporated in the report

Cultural shame restrains women from approaching the court	Incorporated in the report
Need for legalizing jirga system at Union Council levels	The network of musalihat-e-anjuman has been suggested to resolve the family issues out of court.
Awareness raising is required at district level	Incorporated in the report
Dower amount must be determined in accordance with the status of parties	Incorporated in the report
Women belonging to Ismaili community are discriminated due to lack of determination of their fiqh. Male members seek relief under fiqh of their convenience	According to the majority of participants it is an exception.
Ulema's consensus is on a dower amount's limit of Rs.5000/=	Majority opinion is not to fix any limit but to determine according to the status of the parties
Police and administration needs to be strengthened	Out of scope of the study
NCSW's survey on suicide in all district of FANA is required in collaboration with MoWD	
Lack of darul aman or shelter home for destitute women	Discussed in the report and recommendations are made accordingly.
Issues of FANA must be highlighted in the NCSW's draft reports	Considered
There is need for developing a code for the capacity building of the organizations(engaged in the capacity building of councilors) working at local and national levels	Out of scope of this study.
Customary jirga board must be inserted within the family court system	Law council of FANA needs to give its technical input
Updated draft copy to be submitted to NA Legislative Council and Distt. Bar	Yes, at relevant time.

Council for their comments and further support	
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Islamabad(Exclusively with Minorities) 30th September 2006

	Response of Policy Research Unit
<ul style="list-style-type: none"> • The laws relating to Hindus in Pakistan must provide for the following, in line with the laws in India: <ul style="list-style-type: none"> • Hindu woman’s right to seek dissolution of marriage • Right to re-marriage • Maintenance on separation from husband • Code of Canon law must be referred to in the draft report. • Hindu divorced women must be provided security • Right of maintenance to a Hindu / Christian woman who has been deserted by husband • Grounds for dissolution of marriage in Hindus must be the same as in case of Dissolution of Muslim Marriage Act • Christians: Dissolution disliked but relief to be provided to aggrieved married woman within the ambit of biblical framework • Hindu woman must be given 50% of share in inheritance, children’s custody upto their age of 10 years and maintenance until she get remarried. • In Ramayan, Hindu woman does not have a right to remarriage • Hindu custom prohibits more than one marriage but society compelled to change laws to help oppressed class of people. • The scope of divorce in Christian and Parsi laws must be enhanced. 	<p>In view of the participants’ views following policy recommendation is made:</p> <p>A body must be established to revise the laws relating to minorities in Pakistan</p> <p>a. Such body must take up the following concerns of Hindu community regarding amendment in their personal laws, in line with the laws in India:</p> <ol style="list-style-type: none"> 1. Hindu woman’s right to seek divorce 2. Right to contract remarriage on dissolution of marriage 3. Enforcement of Canon Law in Pakistan 4. Right to maintenance in case of separation 5. Child’s custody matter <p>b. Representation of minority in all spheres of life</p> <p>c. The laws relating to Christian and Parsi being limited are required to be amended.</p>

<ul style="list-style-type: none"> • Hindu women’s views must be taken • Hindus in Pakistan must have consensus on rights of Hindu women’s rights before NCSW suggest amendments 	<p>The representatives of the minorities (in the meeting at NCSW), had been requested to consult their people, build consensus on the issues and suggestions, within their communities and communicate that to the Commission.</p>
<ul style="list-style-type: none"> • Special Courts must be established 	<p>NCSW has made recommendations for the exclusive jurisdiction of family courts to try family suits, increase in the number of courts and appointment of more female family court presiding officers. The establishment of new court will not be required.</p>
<ul style="list-style-type: none"> • Family Courts Act have been given jurisdiction to take ultimate decision to settle family matters 	<p>Right to appeal to High Court and Supreme Court is in the interest of justice hence this limitation will not be feasible.</p>
<ul style="list-style-type: none"> • Section 10, jurisdiction of Civil Judge needs amendment • Conflict in a jurisdiction: Under Divorce Act Civil Court has jurisdiction but under Family law, the jurisdiction is with the Family Courts • Family laws must be extended to Baluchistan Tribal areas [Art.246] 	<p>Out of the scope of this research study.</p> <p>Conflict can be resolved according to the subject of litigation.</p> <p>Recommended.</p>
<ul style="list-style-type: none"> • The family matters must be decided by Panchayat & then by court in case of need 	<p>NCSW has already made recommendations in this regard.</p>

Appendix E

List of Participants of Consultative Meetings

Sindh (Karachi) 25th July 2006

Sr. No.	Name	Designation/ Organization
1	Mr. Rasheed Raza Turabi	Religious scholar represented Allama Aqil Turabi
2	Ms. Mariam Palijo	Sindhiyani Tahreek
3	Ms. Shaista Zaidi	Professor, University of Karachi.
4	Dr. Habiba Hasan	Panah Shelter Home, Managing Trustee
5	Ms. Naimah ullah	Law Secretary, Law Department Sindh
6	Ms. Rehmat Yazdani	Policy Advocacy Officer, NCSW
7	Ms. Sheen Farrukh	Inter Press Communication
8	Dr. Jabbar Khattak	Managing Editor, Daily Awami Awaz
9	Ms. Zehra Mujtaba	Advocate, Surrige & Beechero Law Associate
10	Ms. Nadia Farooq	Journalist, Daily News
11	Dr. Farah Aslam	
12	Ms. Sharifunnisa	MPA-PPPP
13	Ms. Muneezeh Saeed Khan	Consultants, RAASTA Development
14	Ms. Nadda Salim	Fashion Designer, Asian Institute of Fashion Design
15	Ms. Fareeda Khan	Chairperson, Projects & Programmes
16	Prof. Dr. Perveen Shah	Member, NCSW
17	Ms. Mussarat Akram	Welfare Office/Establishment Division, President/ Saiban Women
18	Ms. Suhela Asif	Director General, Ministry of Women Development
19	Ms. Aisha Dar	Deputy Director, Social Welfare Department
20	Ms. Uzma Zaidi	Clinical Psychologist, New Horizon
21	Ms. Aroosa M. Khan	Reporter, The News
22	Ms. Ghazala Fasih	Daily Nawa-e-Waqt
23	Mr. Wadood Muhammad	AF
24	Dr. Khattak	Daily Awami Awaz
25	Ms. Farhat Anis	Assistant Editor, The News
26	Mr. Nasir Aslam Zahid	Committee for Welfare of Women Division Karachi
27	Ms. Farhat Perveen	PILER
28	Ms. Hina Mir	Student (Law)
29	Ms. Schaane Ansari	Student (Law)
30	Ms. Faiza Siddiqui	ARY One World
31	Ms. Erum Zaidi	The Nation

32	Mr. Ashfaque Ahmed Qadri	Director, Women Development Sindh
33	Dr. Farhat N. Zahid	Member, Pardah Shelter Home, HRCP & SAHR
34	Mr. Faisal Kamal Alam	Advocate,
35	Ms. Rafia Haider	Journalist, Associated Press of Pakistan
36	Ms. Hunaiza Qadir	Ex- Councilor
37	Ms. Kulsoom Nizamani	MPA (MMA)
38	Ms. Tasleem Durrani	
39	Mr. Khurshid Abbasi	Chief Reporter, AWAM Karachi
40	Ms. Farida Memon	Coordinator NPA Unit Sindh.
41	Ms. Ambreen Ansari	Monitoring Evaluation Incharge, NPA Unit Sindh.

NWFP (Peshawar) 8th August 2006

Sr. No.	Name	Designation/Organization
1	Ms. Hina Ambreen	Project Manager, BEFARE-GT2
2	Dr. Simin Mahmood Jan	MPA, NWFP Assembly
3	Mr. Arif Yousafzai	Bureau Chief, Daily The Post
4	Mr. S.Bukhar Shah	Staff Reporter, The News
5	Mr. Qaisar Afridi	Staff Reporter, The Post
6	Ms. Sofia	M&E Coordinator, Dost Foundation
7	Ms. Razia Aziz	MNA, Jamat-e-Islami
8	Ms. Faiza Hameed	Programme Officer, Aurat Foundation
9	Dr. Mushtaq Ahmed	Manager Director, WWS
10	Mr. Akhtar Amin	Reporter, Daily Times
11	Ms. Saeeda Nayyar	Administration., PCA.ISSP
12	Ms. S. Abida Sultan	Programme Officer, Aurat Foundation
13	Ms. Farzana Sheri	Programme Officer, Aurat Foundation
14	Mr. Ijaz Muhammad Khan	Manager law, SPARC
15	Mr. M. Murtaza Ayub	Finance & Admin, Action Aid Programme
16	Mr. Hifz-ul-Kakakhel	Senior Programme Producer, PTV Peshawar
17	Dr. Ibrahim Jabbar	Executive Officer, Global
18	Mr. Suluman	Executive Officer, Global
19	Mr. S. Noor Ahmed Shah	President Islahi Committee, Ashrafia Colony
20	Ms. Uzma Mehboob	Coordinator, Aurat Foundation
21	Ms. Rukhshanda Naz	Director, Aurat Foundation
22	Mr. Syed Hamid	Consultant, HAP

23	Mr. Abdul Rasheed	Consultant, HAP
24	Dr. Mehr Taj Roghani	Member, NCSW
25	Engr. Mardan Ali	CEO, KRISO
26	Ms. Musrrat Hilali	Advocate, HRCF
27	Ms. Tehmina Tajik	Project Coordinator, Aurat Foundation
28	Ms. Haseena	Advocate, Aurat Foundation
29	Mr. Javed Afridi	Advocate, Aurat Foundation
30	Ms. Zuhra Luqman	Coordinator, SPO
31	Ms. Sadia Q. Shah	Journalist, Daily Dawn
32	Ms. Hina Gul	Social Organizer, HRMDC
33	Ms. Sofia Sultan	Social Organizer, HRMDC
34	Mr. Syed Asif Ali Shah	Advocacy, Khwendo Kor(kk)
35	Mian Mumtaz Shah	SO, AWARD
36	Mr. Zahid Iqbal	Advocate
37	Prof. Dr. Naheed Ali	Member, NCSW
38	Mr. Tariq	Programme Officer, Aurat Foundation
39	Ms. Shamim	Director, Innovation Marketing Officer
40	Mr. Imran Malik	Co, Aurat Foundation
41	Mr. M. Diyar Khan	Reporter, Avt Khyber
42	Ms. Sumra Ghafoor	MG, Manager
43	Mr. Irshad Khan Abbasi	Project Coordinator, CBRM/SDC
44	Ms. Tehmina Ambreen	Lawyer
45	Ms. Saima Arooj	Aratolian Officer, IRC
46	Ms. Ambreen	CF-HR, Khwendo Kor
47	Prof. Dr. Farooqi	Dean, Chairman, Islamia College Peshawar
48	Mr. Akbar Ali Shah	Coordinator, Aurat Foundation
49	Ms. Shahida Parveen	Reporter, Daily Express
50	Mr. Fakhar Alam	Reporter, APP
51	Mr. Ghulam Dastageer	Reporter, The News
52	Dr. Habib Gul	Director, PERET Peshawar
53	Mr. Ibadullah	Programme Coordinator, NRDF
54	Mr. Qaisar Nawab	SPO
55	Mr. Farooq Ahmed Jan	DSP ® Police
56	Ms. Meena Khan	Legal/Project Coordinator. IRC

57	Ms. S. Rehmat Agha	President, CHEWO
58	Mr. Muhammad Tahir	Manager, SABAWON
59	Mr. S. Muhammad Ali	Assistant Project Coordinator, DE LAAS GUL
60	Ms. Romana Bashir	District Member
61	Mr. Ghullam Nabi	I.D.R.C
62	Ms. Naheed Hussain	AD(legal), Directorate of Women Social Welfare
63	Dr. Begum Jan	Member, NCSW
64	Dr. Fazlur-Rehman	Executive Member, DTHS
65	Mr. Mashhod A. Mirza	Dy Director, Regional Director of Human Rights
66	Mr. Aftab Awan	Cameraman, AAJ TV
67	Mr. Umar Gul	President, NGO "SCHWA"
68	Ms. Samina Kahattak	Gender Coordinator, IUCN, Peshawar
69	Mr. Zaheer khattak	CEO, URDO
70	Mr. Mohsin Ali	Internee, URDO
71	Mr. Qazi Allauddin	Vice Chairmen, GLYDR
72	Ms. Shagufta Naz	MPA
73	Ms. Fozia Rana	MPA
74	Mr. Khurum Ilyias Khan	Advocate, H.C.Bar
75	Mr. Khaleeq Rehman	Msi Specialist, PERRA
76	Mr. Raja Imran	Photo Journalist, Express
77	Mr. Adil Khan	Reporter, Al-Akhbar
78	Mr. Abdul Ahad	Reporter, The Khyber News
79	Mr. Riaz Dawoodzai	Chief Reporter, The Statesman.

Punjab (Lahore) 18th August 2006

Sr. No.	Name	Designation/Organization
1	Mr. Imdad Hussain Bhatti	Senior Staff Reporter, Daily Pakistan
2	Ms. Mahira Afzal	Development Officer, Girls Guide Association
3	Mr. Saeed Lodhi	Bureau Chief, DHOOM TV
4	Mr. M. Azeem	Freelance
5	Ms. Rizwana Saeed	Vocational Art & Craft Teacher, ANCE
6	Ms. Fehmida Mushtaq	D.S (Admn), Social Welfare Development
7	Ms. Shamsa Ali	Advocate Supreme Court
8	Ms. Afifa Khaliq	Program Manager, IRC
9	Ms. Hifza Iqbal	Educational Teacher, ANCE
10	Mr. Haji Irshad Ahmed	Editor/Publisher, Monthly Volunteer

11	Mr. Syed Afzal Haider	Senior Advocate
12	Ms. Shereen Masud	Advocate, Masud Law Associate
13	Ms. .Iqbal Liaqat Malik	Deputy Secretary, W.D
14	Justice® A.M.Tirmizi	Retired Judge
15	Ms. Huma Aziz	Chairperson women committee, Pakistan Workers Federation
16	Mr. Peter Jacob	Executive Secretary, Ntional Commission for Justice & Peace
17	Ms. Saira Ansari	Coordinator women's & children desk, HRCP
18	Ms. Fatima Sheikh	Information Officer, PTV
19	Ms. Farah Nadeem	Coordinator, ASR
20	Mr. Altaf Hussain Baloch	Presedent ,Mutahida Labour Federation Punjab
21	Ms. Asifan Mumtaz	Representative, FWCS
22	Sh. Humayoun	G.P, M. Herald
23	Mr. Rana Tanveer	Reporter, Daily Times
24	Ms. Khadija Zaheer	Shirkat gah
25	Mr. Azeem	SSP Police
26	Ms. Tanzila Rasheel	Producer, Aaj TV
27	Mr. Iftikhar A. Khan	Photographer, NNI
28	Ms. Sidra Humayun	War Against Rape (WAR)
29	Ms. Fakhira Tahreem	Reporter, Daily Jang
30	Mr. Khalid Mehmood Baig	Provincial Project Manager,Gender Project Punjab
31	Mr. Ayaz Hussain	Research Consultant,Bonded Labor Liberation Front of Pakistan
32	Mr. Aurangzeb	Forum
33	Ms. Syeda Ghulam Fatima	Secretary, Bonded Labour Liberation Front Pakistan
34	Mr. Emanuel Sarfaraz	Staff Reporter, Daily Nation
35	Mr. Babar	Jang
36	Ms. Rafia Naheed Ikram	Incharge Women Edition, Daily Nawa-e-Waqt
37	Mr. Akmal Bhatti	Photographer, The News
38	Mr. Hamid Riaz	Bureau Chief, Daily Jasarat
39	Ms. Sumaira Altaf	Freelance, The Sun
40	Mr. Jalees Hazir	Director, HPK
41	Dr. Miskeen	Vice Presedent, Human Rights Pakistan
42	Mr. Moazzam S. Bhatti	Bureau Chief, Financial Post
43	Mr. Shumail Jafferry	Reporter, PTV
44	Ms. Imrana Akhter	Advocate, Anwar Kamal Law Associate
45	Ms. Farnaz Batool	Advocate, Anwar Kamal Law Associate
46	Mr. Amir Fida	Manager HR,DAMEN
47	Ms. Sharon Bashir	Field Officer, CLAAS
48	Justice ® Zia Mahmood	Retired
49	Mr. Ali Imran	Program Officer, Aurat Foundation

50	Mr. Naveed Ejaz	Advocate
51	Ch. Naeem Shakir	Advocate
52	Mr. Sohail A. Warraich	Programe Coordinator, Shirkat gah
53	Mrs. Ayra Inderyas	Programe Coordinator, NCTP
54	Ms. Amber Haque	Internation Intern, HRCP
55	Ms. Amna Qureishy	Director, Adolescent & Women Empowerment, FPAP
56	Mr. M.Iqbal Afaqi	Editor, Awaz Digest
57	Ms. Naila Naz	D. Director, ASR
58	Ms. Sabahat Chaudry	Lawyer
59	Mr. M. Imtiaz Ali	Consultant, SAVE
60	Ms. Qurat ul Ain	Vice President, WWRC
61	Mr. M.Aslam Saleemi	Advocate, Vice Presedent, Jamaat-e-Islamia
62	Mr. M. Shoaib Mirza	Editor Presedent, PHOOL Children Magazine Society
63	Mr. Jamil Iqbal	Retired Judge
64	Ms. Aqsa Naz	Lady Repoprtter, Daily Osaf
65	Mr. Nasir Raza	Daily Awaz
66	Mr. Amjad Hussain	Photographer, Daily Khabarain
67	Mr. Malik Sajjad Hassan	Photographer, Daily Al-Akhbar
68	Ms. Shahida Haider	Member NCSW
69	Ms. Nasira Iqbal	Retired Judge High Court
70	Mr. Zia Mahmood	Retired Judge Supreme Court
71	Mr. Muhammad Aslam Saleemi	Advocate
72	Mr. Javed Iqbal	Retired Judge Supreme Court
73	Dr. M. Fiaz Qamar	Veterianan , Zaidis International
74	Dr. Sarfaraz	Veterianan , Zaidis International
75	Mr. Haider Aman	Veterianan , Zaidis International
76	Ms. Nukhbat	Reporter, GEO
77	Ms. Asma Rahman	Coordinator, LRC/Piler
78	Mr. Asad Rahman	Provincial Coordinator, AF/Lahore
79	Mr. I.H Rashid	Journalist, Dawn
80	Ms. Nasira Iqbal	Member, LJCP
81	Ms. Sidra Mazhar	Lady Reporter, Nawa-e-Waqt
82	Mr. Tahir	
83	Ms. Irum Sherwani	PLI
84	Mr. Abdul Waheed Butt	Chief Cameramen, Geo TV
85	Ms. Neelam Hussain	Coordinator, SIMORGH

Balochistan (Quetta) 24th August 2006

Sr. No.	Name	Designation/Organization
1	Mr. Nasrullah Achakzai	Advocate, Baluchistan Bar Association

2	Ms. Shahida Durrani	Research. Associate, University of Baluchistan
3	Ms. Shahina Ahmed	Deputy Secretary, Women Development & Social Welfare
4	Dr. Monica Qamar Zaman	Assistant Professor, Baluchistan University
5	Ms. Yasmeen	Jamiat-e-Islamia
6	Mr. Shahzada Zulfiqar	Staff Correspondent, The Nation
7	Mr. Nanik Ram	Staff Reporter, Daily Mashriq
8	Ms. Quratul Ain Bakhtair	Director IDSP
9	Ms. Shabana Akhtar	Lecturer, S.B.K University
10	Ms. Yasmeen Syed	Student, S.B.K University
11	Ms. Shahina Aftab	T.I.B.M
12	Dr. Chisti Mujahid	Bureau Chief, Weekly Akhbar-e-Jahan
13	Mr. Jawad Haider	Bureau Chief, A.P.P
14	Capt. Javed Khan	P.P.M, UNDP
15	Mr. Shamyil Aziz	Incharge NPA, Women Development & Social Welfare
16	Ch. Mubashar	Private service
17	Ms. Faiza Myir	Lecturer, University of Baluchistan
18	Ms. Riffat Pervez	Programme Manager, Legal Society
19	Mr. Syal Anouilly	Professor, BUIT
20	Mr. Abdul Latif Kakar	District Attorney, Law Dept.
21	Mr. Abdul Rahim	Social Welfare
22	Mr. M. Anwar Kasi	Civil Judge, High Court
23	Mr. Zahoor Langore	Civil Judge III, Judiciary
24	Mr. Hashim Kakar	Advocate, Baluchistan Bar Council
25	Ms. Surriya Amiruddin	Educationist, Zeb Welfare Society
26	Dr. Rukhsana	Director IPH, Health Dept.
27	Ms. Yasmeen Mandokail	IPH, Health Department
28	Ms. Fauzia Shah	PTE-WPS, WPS-UNDP
29	Mr. M. Aslam Khan	Principal, Legend Hall School & College
30	Ms. Hussan Ara	Lecturer, University of Baluchistan
31	Dr. Zahida	MoEDI
32	Mr. S. Abid Rizvi	Chairman, SAD
33	Mr. Amjad Rashid	C/E ,Taraqra
34	Mr. Abdul Sattar Mandokhail	Provincial Organizer, Peoples Youth Organization, Baluchistan.
35	Dr. Irum	Assistant Director, DSP
36	Dr. Nasrullah	Health, HRD
37	Mr. Kawish Javed	Engineer, Pakistan Broadcasting Corporation Quetta.
38	Ms. Afshan Noureen	Coordinator, OCD/BFD
39	Ms. Farghana Ruby	Assistant Director, Divisional Welfare Quetta
40	Brigd. Sardar Abdul	Brigadier

	Rahim Durrani	
41	Ms. Shazia Ghafoor	Gender Advocacy & Training Coordinator, WESS
42	Ms. Yasmeen Bibi	Project Manager, PIDS
43	Mr. M. Asif Kasi	Program Manager, PIDS
44	Mr. M. Naeem	Student, University of Baluchistan
45	Ms. Farhat Shahin	D.A ,District Court Quetta
46	Mr. Zamir Maqbul	Project Coordinator, Social Welfare Women Division
47	Dr. M Tariq Jafar	CMO EPI, Health
48	Mr. Muhammad Rafi	Producer, Pakistan Broadcasting Corporation Quetta
49	Ms. Ambreen Naz	Manager, Women Center
50	Ms. S. Tanfeem Akhtar	Student, Women Studies Dept. University of Baluchistan.
51	Mr. Muhammad Yousaf	Student, Women Studies Dept., University of Baluchistan
52	Mr. Fahad Rahim	Student, Women Studies Dept., University of Baluchistan
53	Mr. Syed Zulfiqar Husnain	Program Manager, High Court of Baluchistan.
54	Dr. Tahira	Member, NCSW
55	Ms. Irum Niazi	Add. Session Judge,
56	Mr. Shah Mohammad	Reporter/Editor, APP
57	Ms. Fozia Dilawer	Programme Officer, Aurat Foundation
58	Ms. Saeeda Manan	Field Officer, Directorate of Social Welfare
59	Mr. Zahoor Ahmed	Vice Chairperson, HRCP
60	Ms. Seemab Abid	Lecturer, SBKU
61	Mr. Syed Zubair	Sub-Editor, APP
62	Prf. Irfan Ahmed	Feature Writer, Daily Jang
63	Mr. Rashid Chohan	Sen. Staff Reporter, Baluchistan Times
64	Ms. Ayesha	Lecturer, S.B.K Women University
65	Ms. Shamim	Student, S.B.K Women University
66	Mr. Mansoor	Ahmadiyah Missionary
67	Mr. Hashim Dar	Baluchistan Provincial Assembly
68	Mr. Akbar	M.P.A, Baluchistan Provincial Assembly
69	Ms. Nasreen	B.R.S.P
70	Mr. Tahir Hussain Khan	H.R.C.P
71	Mr. Malik Inayatullah	Advocate, District Court Quetta
72	Dr. Atta ur Rehman	Imam Khateeb, Jamia Masjid
73	Ms. Samina Saeed	M.P.A, M.M.A
74	Mr. Rao Muhammad Iqbal	Chief Reporter, Daily Mashriq
75	Mr. Iftikhar-ul-Haq Khan	Advocate, Baluchistan Bar Association

76	Mr. Athar Mehmood	Businessmen
77	Mr. Mir Aurangzeb	Advocate, Supreme Court Bar Association
78	Dr. Noor	Senior Lecturer, I.P.H
79	Ms. Abida Nadeem	Jamiat-e Islamia
80	Mr. Javed Mughal	Bureau Chief, Sindh TV
81	Ms. Neelaur Momal	Journalist, Sindh TV
82	Ms. Samina Gul	Information Officer, S.B.K.W.U
83	Ms. Razia	Student, SBKWU
84	Ms. Shahida	Chiarperson, Daily Dawn
85	Ms. Asma Mushtaq	S.O (Solicitor), Law Dept.
86	Mr. M. Tahir Malik	PM HRD, BRSP
87	Ms. Maemona Khanam	Assistant Professor, University Law College Quetta
88	Ms. Irum Farooq	Associate Professor, Girls College
89	Mr. Afzal	Journalist, Pakistan Observer
90	Mr. Waheed Ahmed	KPO, University of Baluchistan
91	Mr. Hazmir Mandokhail	AD, NADRA
92	Dr. A Mateen	Geoman
93	Mr. Muhammad Suhail	KPO, University of Baluchistan

Islamabad 29th August 2006

Sr. No.	Name	Designation/Organization
1	Ms. Zahida Jabeen	Executive Assistant, Community Uplift Program (CUP)
2	Ms. Asia Parveen	Project Officer Education, Community Uplift Program (CUP)
3	Ms. Farzana Nuzhat	Manager, Khushali Bank
4	Mr. Aftab Qureshi	Journalist, APP
5	Mr. S.H.R Jahfery	Staff Reporter, Pakistan Observer
6	Mr. Zaheer Ahmed	Deputy Director, Gender Crime Cell
7	Dr. Firoza Ahmed	Member, NCSW
8	Ms. Faiqa Ibrahim	Programme Officer, UNDP, MoWD
9	Dr. Ansar Ali Khan	Representative, UNESCO
10	Mr. Hafiz S. A. Rehman	Senior Advocate, Supreme Court
11	Ms. Shabnam Rani	Team member, Mercy Corps
12	Ms. Noreen Sadiq	CDU Team member, Mercy Corps
13	Ms. Atiya Ayub	CDU Team member, Mercy Corps
14	Ms. Gulcheen Aqil	Coordinator GAD, AKRSP
15	Ms. Sissel Volan	Minister Councilor, Norwegian Embassy
16	Ms. Feyza Bhatti	Senior Research Fellow, Mahbubul Haq Human Development Center
17	Mr. S.M. Sohail	Photo Journalist, online
18	Mr. Aamir Rizvi	Photo Journalist, ASAS
19	Mr. Rafiq	Advocate, SLA-ISB

20	Mr. Azher Rafiq	Advocate, SLA-ISB
21	Ms. Shamim Abbassi	A.D M/o LG & RD
22	Ms. Mehnaz Khan	Assiatant Professor, Iqra University
21	Ms. Rukhsana Hassan	Assiatant Professor, FJWU
22	Ms. Shafia Awan	Photographer, Khabarain
23	Ms. Sarah Malik	Intern, PIEDAR
24	Mr. A. Sultana	Lady Reporter, Daily Aazaakar
25	Mr. Jehangir	Advocate, BS Law Associate
26	Mr. Qazair	Photographer, Daily Pakistan
27	Dr. Farooq	
28	Mr. Yasir Mirza	PG, Al Akhbar
29	Ms. Mirjan Krijnen	First Secretary, Nether land Embassy
30	Ms. Riffat Sardar	Project Officer, UNICEF
31	Ms. Afshan Zahoor	Reporter, The Post
32	Ms. Misbah Saboohi	Assistant Professor, IIU Islamabad
33	Ms. Asma Bashir	Staff Reporter, Daily The Nation
34	Mr. M. Zafarul Hasan	Research Fellow, IPS
35	Ms. Faiza Effundi	ARR, UNDP
36	Ms. Rabia Khattak	P.O, UNDP
37	Ms. Ghania Gilani	Internee, GSP
38	Ms. Sabiha Syed	Regional Manager, FPAP
39	Ms. Tahira Abdullah	WAF & HRCF
30	Ms. Nida Najam	SACH
41	Mr. Ghulam Raza	RDF
42	Ms. Arifa Mazhar	Manager, Sungi
43	Ms. Kiran Habib	Project Associate, SDPI
44	Ms. Saira Khan	Reporter, ATV
45	Engr. F.A. Hashmi	Consultant, H.S Ahmedey
46	Mr. Asim Shigri	Photographer, KPx1
47	Mr. Syed Mehdi	Photographer, The Nation
48	Mr. Khazir Kharso	Reporter, APP
49	Col @ S.Q. Yazdani	Dir, Nadra
50	Mr. Chris Wardce	Country Representative, WPF
51	Ms. Aashi Chanda	Member, NCSW
52	Ms. Shang Kuser	Lawyer, Islamic Relief
53	Mr. Raaziq Bokhari	Nawa-e-Waqt
54	Mr. Kamran Durrani	Manager Development Plannning, Lead Pakistan
55	Mr. Sajid Baloch	Program Cordinator, UNDP
56	Ms. Monaza Tariq	Intern, GSP
57	Mr. Khadim	Photographer, Daily Jinnah
58	Mr. Mazhar Khan	Photographer
59	Mr. Qaiser Abbassi	Photographer
50	Mian Imran Hayat	Nazim
61	Mr. Khalil Ahmed	Reporter
62	Mr. Ishaq Ch.	Photographer

63	Mr. Mustafa Baig	Reporter, Daily Jinnah
64	Mr. Saad Saud	Reporter, Daily Mall
65	Mr. Amjad	Reporter, The Nation
66	Mr. Abdur Rasheed	Naib Mufti, Jamia Islamia Rawalpindi
67	Mr. Raja Khalid Mehmood	President, Pakistan National AIDS Consortium
68	Mr. Om Parkash	PSC, Panyan
69	Dr. Amara	M & E Affair, UNFPA
70	Mr. Waseen Nazir	Photographer, Daily Express
71	Mr. Danish Abbasi	Lawyer
72	Mr. S. M. Sohail	Photographer, online
73	Mr. Rizwan Khan	Photographer, Daily Azkaar
74	Ms. Nazia Shah	S.O, PIEDAR
75	Mr. Saleemullah Baig	Senior Executive, SACHET
76	Mr. Muhammad Saeed	Dy. Dir, MoWD
77	Mr. Azhar Saleem	CEO, HDF
78	Dr. M. Tahir	Associate Professor, International Islamic University
79	Ms. Fauzia Yazdani	Programme Officer, Norwegian Embassy
80	Ms. Farelina Rehman	Reporter, APP
81	Mr. Malik Asif Iqbal	Producer, PTV
82	Ms. Manrea Bano	ED, SAHIL
83	Mr. Jahanger	Consultant, Law Division
84	Ms Lubna Mazher	Reporter, Khabarain
85	Mr. Jawed Ahmed	SACHET
86	Mr. Aziz Ahmed	Project Director, PSQCA
87	Mr. Abdul Rauf	Staff Reporter, Ravi TV
88	Mr. M. Azam Khan	Staff Reporter, Khabarain
89	Mr. Mumtaz Ahmed	Reporter, NNA
90	Mr. Abdul Karim Usman	Idara Gufran
91	Mr. Ehsan-ul-Haq	
92	Mr. Waqas	Reporter
93	Ms. Salma Kazmi	Reporter, Dhoom TV
94	Mr. Sajjad Ali	The Nation

FANA (Gilgit) 13th September 2006

Sr. No.	Name	Designation/Organization
1	Mr. Wazir Farman	Lawyer/ NAWADO
2	Mr. Mir Nisar Hussain	Lawyer/ Judiciary NAWADO
3	Mr. Waseem Wali	Secretary/Judiciary
4	Mr. Afsar Jan	Assistant/judiciary
5	Mr. Qasim Shah	Producer/ ARY City
6	Ms. Tahira Yasub	Inspector/Northern Area Police
7	Ms. Salima Yar khan	WSG coordinator/PDCN

8	Ms. Nargis Khatoon	Gadofficer/ AKRSP
9	Ms. Shereen Aman	Lawyer
10	Ms. Aamina Zamir	Civil judge/N.A.S Judiciary
11	Mr. Ghulam Zbbas	Advocate/ Jamshaid Welfare
12	Mr. Abdul Feroz	LFS/WDD
13	Ms. Afsana	L.D.C/WDD
14	Ms. Nasira	LFS/WDD
15	Ms. Sahina	Union Member
16	Ms. Taj Begum	Union Member
17	Ms. Rani Atiqa	Member
18	Capt. ® Sikander	Advisor
19	Ms. Taj Begum	Member/Union Council
20	Mr. Mumtaz Ali	Teacher
21	Mr. Raja Karamatullah	President/GNN/VADO
22	Mr. Israruddin	Journalist/Sada-e-Gilgit
23	Ms. Noor bano	President/Women Development
24	Mr. Syed Yousaf	Chairman/UNAM
25	Mr. M.Tahir Shah	General Secrrtary/UNAM
26	Mr. Latif Shah	Advocate
27	Ms. Sosan Aziz	Program officer/NADP
28	Mr. Jehanzeb Khan	Lawyer
29	Ms. Najma Farman	Research Officer/Planning and Development Dept.
30	Ms. Zareemat Tabassum	S.W.O/CCC Skardu
31	Ms. Aalia Khan	President/All Baltistan Women NGOs Network
32	Mr. Rahim Shah	PSO to DCE
33	Ms. Shama Chirag	Chairperson /Sahara Organization
34	Ms. Fauzia Qazi	Gender Coordinator/AKESP
35	Mr. Azizullah Baig	Regional Manager/AKRSP
36	Ms. Benazir Baig	Activist/Women Organization
37	Mr. Zahanzeb Khan	Advocate/Bar Association
38	Mr. Muhammed Aslam	ALWAIZ/ ITREB
39	Mr. Muhammed Ali	ALWAIZ/ITREB
40	Col. Azhar	Secretary Education/ Government
41	Mr. Mir Awan Hunzai	Career and Communication Officer/AKESP
42	Mr. Shahbaz Ali	Advocate/NAWADO
43	Mr. Tasleem Akhter	Program Officer/Women Development
44	Mr. S.Jaffar shah	Advocate
45	Ms. S. Shifunisa	Teacher/ITREB
46	Ms. Shama Miraj	Consultant WCN
47	Ms. Mehbooba	Co-ordinator/ IVCN
48	Ms. Fouzia Qazi	Gender Coordinator/AKESP
49	Mr. Nazakat Ali	Staff Reporter/ Karakarum Publication
50	Mr. Mohammad Ayub	AD, LG& RD
51	Mr. Sabir Hussain	President/ PPP Patriot N.A

52	Mr. Amjad Wali	C/o Women Development
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Islamabad (Exclusively with Minorities) 30th September 2006

Sr. No.	Name	Organization/Designation
1	Mr. A. Ashok Chohan	General Secretary, Scheduled Cast Federation
2	Bishop Asher Kamran	Bishop of Methodist Church
3	Mr. Jagdish Bhotto	President, Balmik Subha
4	Mr. Om Parkash Narian	Member District, Minority Board Rawalpindi
5	Mr. Pundat Gurdass	Hindu Welfare Association
6	Mr. Pundat Channa	Member,, Minority Audit Officer
7	Engr. M.P. Gangwani	President, IEP Foundation
8	Mr. Mukesh Chawla	President KHP,
9	Mr. Jai Jai Veshno	President, Pakistan Balmik
10	Mr. Roshan K. Bharocha	Social Worker, V.P FPAP Baluchistan
11	Justice Mehta Kailash Nath	Judge of High Court
12	Mr. Umesh Kumar	Advocate
13	Mr. Sunder Dass	Advocate
14	Dr. Ashok Kumar	President
15	Dr. Alumin Murad	Executive Secretary, Justice and Peace Commission
16	Ms. Iffat Gill	Social Activist, Justice and Peace Commission
17	Audun Rogne	First Secretary, Royal Norwegian Embassy
18	Ms. Afshan Zahoor	Reporter, The Post
19	Ms. Rabia Khattak	Programme Officer, UNDP
20	Mr. Imran Naeem Sarfra Kamal	Reporter, Daily Times
21	Mr. Syed Mehdi	Photographer, The Nation
22	Ms. Asma Ghani	Reporter, The Nation
23	Mr. Shakoor Raheem	Reporter, VOG
24	Mr. S.M Sohail	-