I WOMEN’S MOVEMENTS AND
THE STATE IN PAKISTAN, C.
1947-1977
CHAPTER I
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The origins of the women's movements in Pakistan go back to the colonial period, when women in Punjab, Sind and North-West Frontier Province, along with the other women's groups in India, were engaged in a dual struggle of resistance against the colonial rule on the one hand, and the patriarchal forces, on the other. M.A. Jinnah, to his credit, realized the need to involve women in politics, and advocated gender equality, in the face of stiff opposition from the aristocratic classes, supporting him. As he said:

‘No nation can rise to glory unless your women are side by side with you. We are victim of evil custom. It is a crime against humanity that our women are shut up within the four walls of houses as prisoners. There is no sanction anywhere for the deplorable conditions in which our women have to live. You should take your women along with you as comrades in every sphere of life’.

1 Mohammad Ali Jinnah, at Aligarh Muslim University, 1944.
Women's rights movement began in the pre-independence period, much before Pakistan came into existence. Educated women in East Bengal, Punjab, Sind and the North-West Frontier Province were an integral element of the national movement, and were keenly conscious of their rights and entitlements. These women were also involved in the movement for women's reform, in particular the movement for women's education.\(^2\) When Pakistan came into existence it already had educated, politically-conscious groups of women who recognized themselves to form several meaningful women's movements.

Even as the new state of Pakistan gained independence from foreign domination, it continued to be controlled by the traditional forces, deeply patriarchal and obscurantist. Since the feudal elements dominated the political system, the process of state building in Pakistan led to the increasing marginalization of women. Women did become markers of national identity, but the symbolic appropriation of women by the state led to, or was accompanied with, the erosion of their and political rights.

Pakistani women’s colonial and post-colonial experiences are different from those of women in other Muslim countries. Women in Pakistan were excluded, isolated and confined to the domestic spaces. Female education was abysmally low, and was largely continued to education provided in the four walls of the house. Women were not expected to receive secular education, and were provided with religious education, and the training to be efficient managers of the household.3

It needs to be emphasized that, the founder of Pakistan, Mohammad Ali Jinnah believed in gender equality and saw them as equal citizens of Pakistan. He encouraged women to play an active role and participate in the building of the nation, on an equal basis. Women constituted a vital force in anti-colonial struggle as well as in the Pakistan movement.4 ‘Pakistan’ movement in the 1940s opened up for the Muslim women of the subcontinent a new space for political action. Pakistan came into being on the basis of the two-nation theory and the identification of faith with nationality. While its constitution as a ‘Muslim’ nation meant

different things to diverse sections of society, all the divergent streams coalesced in the identification of the state with particular, and the enforcement of gender inequities in the newly founded state of Pakistan.\(^5\)

In the years (1947-68), orthodoxy and religions conservatism was looked upon with disdain in Pakistan, but none the less the states gave huge concession to the orthodox forces. Pakistan was declared an Islamic Republic, under the 1956 constitution, and the *ulema* were provided with an advisory role in the legislature. Maulana Madudi\(^6\) advocated that voting right should be extended to all adult males, but women, only the educated ones should have voting rights. According to him public offices including that of head of state could only be held by pious and learned males and women should not be allowed to take up any public office where they were likely to come in contact with men.\(^7\)

In spite of the fact that women were quite active in nationalist struggle, when it came to their representation in legislature, women were

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\(^6\) A recognized an important scholar of Islam and later head of the fundamentalists political party, the Jamaat-e-Islami.

\(^7\) Anwar Syed, *Pakistan: Islam, Politics and National Solidarity*, p. 68
not taken seriously and only two women\textsuperscript{8} were inducted into the Constituent Assembly.\textsuperscript{9} The new born state began building its infrastructure with the participation of only a handful woman, who were often berated by the orthodox Muslims for leaving their homes and for indulging in political activities.\textsuperscript{10} A real test for women activists came in 1948, during budget session debate in which first attempt was made to secure economic rights of women. A report of \textit{Shari'at} Bill by select committee was to be presented to the House in the session but it was withdrawn the last moment.\textsuperscript{11} Women members of Punjab Assembly along the Muslim league women's Committee took up the issue and persuaded the Prime Minister Liaquat Ali Khan to intervene and finally the Muslim Personal including agricultural property.\textsuperscript{12}

\textsuperscript{8} Begum Jahanara Shahnawaz, a Muslim League Veteran who had been elected to the All India Muslim League Council in 1937, and Begum Shaista Ikramullah from the Suhrawardhy family of East Pakistan.

\textsuperscript{9} \textit{Report of the Pakistan Commission on the Status of Women}, (Islamabad, 1989), p. 113


\textsuperscript{12} Mumtaz and Shaheed, \textit{Women of Pakistan}, p. 55
In February 1949, the Pakistan’s Muslim League’s council refused to consider electing a woman candidate for the office of Joint secretary and even an official statement was not issued regarding this, the women members led by the Prime minister’s wife, walked out the meeting and thus was formed the first women’s organization i.e. All Pakistan Women’s Association (APWA). Its membership was confined to upper class women, and represented the only acceptable avenue for women’s activities and participation outside the home. Its base was not broad enough to either influence the legislative bodies, or to become a pressure group for rights of lower and lower middle class women. Reservation for Ten special seats for the women in the national and provincial legislature has been taken up by APWA in 1953. A draft charter for women’s rights was prepared to be presented in the Constitutional Assembly with the involvement of two female members, which covered issues such as equality of status and opportunity, equal pay for equal work, and a guarantee of rights for Muslims women under the Islamic Shari‘ah. Although the draft charter was a serious attempt to obtain legal protection for women, it was not taken seriously by the state. It seems that the struggle to achieve women’s

\[13 \text{ APWA, working paper No. 1, 1950} \]

\[14 \text{ Salima Ahmad, Status of Women in Pakistan, (Lahore, 1975)} \]
rights through the male dominated legislature was an utopian idea. The Constitution which was finally adopted in 1956 accepted the principle of female suffrage for women's reserved seats on the basis of special women's territorial constituencies, thus giving women dual voting rights for general seats and reserved women seats.\(^\text{15}\)

Women and women's organization continued to battle for their rights. An incident that becomes source of agitation for the women's rights groups in 1955 was the Prime Minister Mohammad Ali Boghra's second marriage, which brought to prominence the issue of polygamy.\(^\text{16}\) The agitation launched by women forced the government to appoint a commission under the Chief Justice of the Supreme Court, Justice Rashid, to examine the existing laws concerning polygamy, and devise laws concerning marriage, divorce, maintenance, etc. that protected the interests of women.\(^\text{17}\) The commission submitted its report in 1956 but was shelved under pressure of orthodoxy clergy.\(^\text{18}\) Finally the recommendations of

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\(^{15}\) Mumtaz and Shaheed, *Women of Pakistan*, p.56  
\(^{17}\) Mumtaz and Shaheed, *Women of Pakistan*, p.56  
\(^{18}\) Minault, *Extended Family*, p. 268
committee were implemented by the military regime of President Ayub Khan and came to be called, 'Family Laws Ordinance 1961'.

Their was a change in power from civil to military rule in 1958, when General Ayub Khan assumed power through a military coup. He saw ulema as divisive and retrogressive in society. He made progressive amendments to previous laws concerning marriage divorce, with a view to improve the position of women. More women were receiving education and entering new fields of employment. Other than teaching, women were also entering professions like, journalism, sciences and the civil services. Ayub Khan had a very strong aversion against the reactionary forces and held them responsible for the degradation of the country. But he also made use of Islam to fulfill his political ends. When in 1965 elections Fatima Jinaah stood up as presidential candidate against him with the support of combined opposition parties, Ayub Khan opposed her candidature as un-Islamic, since she was a woman.

The main objective of the 'Family Laws Ordinance 1961' was to discourage polygamy and regulate divorce by prescribing stringent procedures for both. Second marriage was made conditional on the first

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19 See Appendix 1.1 and 1.2
wife's permission as well as the decision of a locally constituted arbitrary council. A man seeking second wife now had to seek the written consent of his first wife, and notify the local council. In contrast, marriage without consent became liable to one year's imprisonment and a fine upto Rs. 5,000. To obtain divorce, the husband was required to send a written notice to the chairman of the local council, with a copy to his wife assigning specific reasons. A council was to be set up for reconciliation, but in case of the failure of such efforts, divorce would be effective, 90 days after the issuance of the first notice and in case of pregnancy, after delivery of the child.20 For the first time, a standard marriage contract form was issued and it became compulsory to register all marriages, although unregistered marriages were not considered invalid either. The minimum marriage age was increased from 14 to 16 years for girls and from 18 to 21 for boys.21 The Family Law ordinance also provided for divorce by consent and delegated right of divorce for women. A woman was entitled to obtain quick divorce in case of disappearance or imprisonment of the husband for seven years or more. The dowry was paid on demand, and the council was given the

20 Jalal, Convenience of Subservience, pp. 94-95

21 Shaukat Mahmood, Muslim Family Laws Ordinance, (Lahore: Pakistan Law Times, 1974)
jurisdiction to grant maintenance.\textsuperscript{22} It also intended setting up family courts for speedy decisions relating to such issues. Although this ordinance provided some relief to women, it had many flaws.\textsuperscript{23} In fact, the law penalized women by requiring them to suffer two years of non-support before filing for divorce on the basis of lack of maintenance.

In spite of the flaws in the Ordinance, it took care of the vital concerns of women in family matters, providing some relief and rights to women, allowing them to seek divorce and receive maintenance, as well as restricting polygamy. However, it is widely accepted that the Family Laws Ordinance became a pivotal point to further legislative measures, and also became a reference for the promotion of women's rights.

The Ordinance was strongly criticized as un-Islamic by religious groups.\textsuperscript{24} They opposed it on the ground that it was against the spirit of Islam and would encourage men to enter into sexual relationship outside marriage. They also felt that their authority was threatened, and the state

\begin{itemize}
\item[\textsuperscript{22}] Mumtaz and Shaheed, \textit{Women of Pakistan}, p.58
\item[\textsuperscript{23}] Hafiz Abdullah Farooqi, 'Emancipation of Women of Islam', \textit{The Pakistan Review}, Vol. 13, no. 5, (May 1965), p. 21
\item[\textsuperscript{24}] Mumtaz and Shaheed, \textit{Women of Pakistan}, p.59
\end{itemize}
was trying to usurp their powers.\textsuperscript{25} The second most prominent resistance was on the question of the husband taking his wife's permission for second marriage. The clergy in Pakistan also criticized the ordinance for providing comparatively easier procedure for the wife to obtain divorce through the court. The orthodox, under the influence of customs, had always felt that it is only man's prerogative to divorce. This is in spite of the fact that Islamic laws provide permission, under certain conditions, for the wife to divorce her spouse. In 1962, the military regime appointed the Islamic Council of Ideology to examine these laws, and in 1963, the Ordinance became a law, that could not be challenged in the court of law.\textsuperscript{26} The promulgation of these laws were, however, not widely applied and were only partially effective. In practice, its application has been limited, and entrenched customs and traditions have often prevented from making good use of these laws.

Most women in Pakistan are not conscious of their rights, and are unaware of the privileges and entitlements that are provided to them under the laws. Even so, the ordinance of 1961 did mark a big step forward in the struggle for women's rights in Pakistan. Women's movement in

\textsuperscript{25} Minault, \textit{Extended Family}, p.271
\textsuperscript{26} \textit{Ibid.}, p. 277
Pakistan was not only instrumental in the transformation of the ordinance into law, but also in educating women of their rights under the law.

Ayub Khan's Family laws were a landmark for women in Pakistan, while his military regime ruthlessly suppressed all dissent and democratic articulation of provincial, ethnic and linguistic rights in Pakistan. A change in government in 1969 brought an elected and ostensibly progressive government into power in 1971. The move from dictatorship to democracy as a result of mass public protest engendered a mood of optimism and hopes of new beginnings in the country. This was also the time when, an articulate and self-defining feminism was beginning to draw attention to women's issues with a new insistence. The new regime, which continued to draw its policy-makers from the liberal and progressive sections of society, responded to this new ambience in a predictable manner. In the year 1975, a world conference on women was held in Mexico where a world plan of action was adopted and the period 1975-85 was proclaimed by the United Nations as the decade for women. Nusrat Bhutto attended
this conference and a commission on the status of women was set up. Women’s issues received much state publicity at this time.\footnote{Neelam Hussain, ‘Military Rule, Fundamentalism and the Women’s Movement in Pakistan’, in Nighat Said Khan (ed.), \textit{Up Against the State}, (Lahore, Pakistan, 2004), p. 29}

The post Ayub period and the rising popularity of Bhutto’s PPP led to widespread politicization of masses including women. The women were directly targeted by PPP during its campaign in the general elections. A women’s wing with \textit{mohalla} level branches was formed by Bhutto’s party. The PPP manifesto had made a special appeal to women and promised them equal rights with men. Bhutto was liberal and progressive in his views about women, but turned out to be quite inept in withstanding the pressure of the orthodox clerical forces.\footnote{Ibid., See Introduction.} He sought to conciliate them by suppressing the rights of Women, and in a major effort to reach out to them, announced a new constitution in 1973.

The 1973 Constitution not only reiterated Pakistan to be an Islamic Republic but also declared that the laws of the state would be governed by the \textit{Qur’an} and \textit{Sunnah}. He established the Council of Islamic ideology and

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\footnote{Ibid., See Introduction.}
also hosted an Islamic Summit of Muslim states.\textsuperscript{29} Ostensibly the Constitution provided to women equality before law, right to hold the highest offices of the states and the assurance of steps to ensure full participation of women in all walks of life. However, in an obvious attempt to curtail women’s political rights, the constitution insisted on indirect elections to the reserved seats for women. Women’s Organizations campaigned against the system of indirect elections, but their protests were ignored by the state.\textsuperscript{30}

Despite his modern and progressive outlook, Bhutto was unwilling to risk his political survival by supporting ‘peripheral issues’ such as women’s emancipation.\textsuperscript{31} Gender inequities were ignored by the state, and even as Bhutto fine tuned rhetoric of class, issues concerning the oppression of women were silently glossed over.\textsuperscript{32} In an obvious attempt to placate the feudal elements, Bhutto refused to engage with women’s

\textsuperscript{29} Dr. Deepa Mathur, ‘Women in Transition in South Asia’, \textit{South Asian Series}, 37, (Delhi, 2001)

\textsuperscript{30} Rouse, Women’s Movement in Pakistan

\textsuperscript{31} Stanley Walpert, \textit{Zulfi Bhutto of Pakistan}, (Lahore, 1990), pp. 230-45

\textsuperscript{32} Fareeda Shaheed, \textit{Pakistan’s Women: An Analytical Description}, (Lahore, 1990), p. 43
organizations in securing the development of women. A lot of expectations were attached to Bhutto’s regime, but irrespective of an increase in women’s organizations, Pakistani women did not gain half the benefits that they expected to achieve through the restoration of democracy.

Indeed Article 25, of the 1973 Constitution ensured the right of participation for women in all arenas; and firmly rejected discrimination on the basis of sex. Under a constitutional provision, 20 seats were reserved for women in the National Assembly but in a curious subversion of women’s rights, women were to be elected to these seats not by women, but by the sitting members in the assembly. This was however, no ban on women contesting elections against the general seats. Through Article 34, Constitution guaranteed, that all necessary steps would be taken to ensure the full participation of women in all spheres of national life. Article 35, stipulates that the state shall protect the marriage, the family, the mother and the child. The article reaffirms the state-family contract, and secures

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34 Jalal, Convenience of Subservience, p. 98
35 Mumtaz and Shaheed, Women of Pakistan, p. 63
36 Ibid.
the role of women within the domestic domain. Women were certainly allowed to hold the highest state offices, such as those of the President, Prime Minister, Governors and Cabinet ministers, but their chief responsibilities were still seen to lie within the family. Despite these guarantees, women were deterred from contesting in the party based elections as the male dominated political parties did not generally endorse their participation in politics. Women’s demands for election on reserved seats to be held on the basis of adult franchise were not accepted, and in a curiously anomaly men continued to send women to assemblies against seats reserved for women.

Apart from the five per cent legislative representation through reserved seats, the regime took certain administrative actions to address the issues of women in Pakistan. Through the 1972 reforms, women became eligible to join all the public services; including those previously banned for women, such as police force, district administration and foreign services.37 The 1970s saw an increased participation of women in higher educational and professional institutions, as well as in the labour

37 Jalal, op. cit., p. 99
market, where they entered new forms of employment. In social matters, a major stipulation of the Bhutto era included the enactment of laws to limit the total value of dowry, bridal gifts and presents to Rs.5000; restricting the amount of money spent on wedding feast to Rs.25,000 and requiring all dowry and gifts to be displayed and a list submitted to the Registrar of marriage. The intention of the law was to give financial relief to the lower and lower middle class, where the practice of dowry was a burden and an obstacle to finding suitable matches for young girls. The families had to borrow money either from money lenders or from relatives and in certain cases, lost all their assets in repaying their debt. Beyond some temporary relief, these laws were largely ineffective, and people found ways of circumventing them. It could be said that the Bhutto era, failed to bring a change in social attitudes, but restricted itself to only symbolic gestures. Laws alone could not change the condition of women. Not enough action was taken to transform the society from within. The


labour policies of Bhutto regime encouraged Pakistani skilled and unskilled labour to immigrate to the oil-rich Gulf States, which resulted in an increased number of women acting as heads of their household. Though the role of these women changed dramatically within their family structures, their status and rights in the wider society remained unchanged.
APPENDIX I.1

MUSLIM FAMILY LAWS ORDINANCE 1961 (VIII OF 1961)

An ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws [Gazette of Pakistan, Extraordinary, 2nd March, 1961]

Whereas it is expedient to give effect to certain recommendations of the commission on marriage and family laws; view, therefore, in pursuance of the proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following ordinance:

1. Short title, extent, application and Commencement

(i) This ordinance may be called the Muslim Family Ordinance 1961.

(ii) It extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.
(iii) It shall come into force on such date as the Central
Government may, by notification in the official gazette,
appoint in this behalf.

2. Definitions

In this ordinance, unless there is anything repugnant in the subject
or content,

(i) "Arbitration Council" means a body consisting of the
chairman of the Union Council and representative of each of
the parties to a matter dealt with in this ordinance;

(ii) "Chairman" means the chairman of the Union Council or a
person appointed by the Central Government to discharge the
functions of a chairman under this ordinance;

(iii) "prescribed" means prescribed by rules made under section
11;

(iv) "Union Council" means the Union Council or the Town or
Union Committee constituted under the Basic Democracies
Order, 1959 (P.O. No. 18 of 1959), and having jurisdiction in
the areas concerned;

(v) "Ward" means a ward within a Union or Town as defined in
the aforesaid order.
3. Ordinance to override other laws, etc.:

(i) The provisions of this ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only accordance with those provisions.

(ii) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act 1940 (X of 1940), the code of Civil Procedure 1908 (Act V of 1908), and any other law regulating the procedure of courts, shall not apply to any Arbitration Council.

4. Succession:

In the event of the death of any son or daughter of the porosities before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

5. Registration of marriages:

(i) Every marriage solemnized under Muslim law shall be registered in accordance with the provisions of this ordinance.
(ii) For the purpose of registration of marriages under this ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrations, but in no case shall more than one Nikah Registrar be licensed for any one ward.

(iii) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this ordinance, be reported to him by the person who has solemnized such marriage.

(iv) Whoever contravenes the provisions of subsection (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(v) The form of nikāhnāmā, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of nikāhnāmā shall be supplied to the parties, and the fees to be charged therefore, shall be such as may be prescribed.
(vi) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council, the record preserved under subsection (5), or obtain a copy of any entry therein.

6. Polygamy:

(i) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this ordinance.

(ii) An application for permission under subsection (i) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained there to.

(iii) On receipt of the application under subsection (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such
conditions, if any, as may be deemed fit, the permission applied for.

(iv) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan, to the collector and in the case of East Pakistan to the sub-divisional officer concerned and his decision shall be final and shall not be called in question in any court.

(v) Any man who contracts another marriage without the permission of the Arbitration Council shall; (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue, and (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to one year, or with fine which may extend to five thousand rupees, or with both.
7. *Talaq:*

(i) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* is any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(ii) 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 fine thousand rupees or with both.

(iii) Save as provided in subsection (5) a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under-subsection (1) is delivered to the chairman.

(iv) Within thirty 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.
(v) If the wife be pregnant at the time talāq is pronounced talāq shall not be effective until the period mentioned in subsection (2) or the pregnancy, whichever be later, ends.

(vi) Nothing shall debar a wife whose marriage has been terminated by talāq effective under this section from re-marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

8. **Dissolution of marriage otherwise than by talāq:**

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 talāq, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

9. **Maintenance:**

(i) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the chairman who shall constitute an Arbitration Council to
determine the matter, amount which shall be paid as
maintenance by the husband.

(ii) A husband or wife may, in the prescribed manner, within the
prescribed period, and on payment of the prescribed fee,
prefer an application for the revision of the certificate, in the
case of West Pakistan, to the collector and, in the case of East
Pakistan to the sub-Divisional officer concerned and his
decision shall be final and shall not be called in question in
any court.

(iii) Any amount payable under sub section (1) or (2), if not paid in
due time, shall be recovered as arrears of land revenue.

10. Dower:
Where no details about the mode of payment of dower are specified
in the nikāhnamā, or the marriage contract, the entire amount of the
dower shall be presumed to be payable on demand.

11. Power to make rules:

(i) The provisional government may make rules to carry into
effect the purposes of this ordinance.

(ii) In making rules under this section, the provincial government
may provide that a breach of any of the rules shall be
APPENDIX I.2

WEST PAKISTAN RULES UNDER THE MUSLIM FAMILY LAWS ORDINANCE 1961, AS AMENDED

[Gazette of West Pakistan, Extraordinary, 20th July, 1961]

No. Integ: 4.5/61: In exercise of the powers conferred by section 11 of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), the Governor of West Pakistan is pleased to make the following rules, namely:

Preliminary:

1. These rules may be called the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961.

2. In these rules, unless there is anything repugnant in the subject or context:

   (a) "Form" means a form appended to these rules; (b) "Ordinance" means the Muslim Family Laws Ordinance, 1961 (VIII of 1961);

   (c) "Register" means a register of nikāhnamās prescribed under rule 8; and (d) "Section" means a section of the ordinance.

Arbitration Council:

3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (d) of section 2 shall be as follows, namely: (a)
In the case of an application for permission to contract another marriage under sub-section (2) of section 6, it shall be the Union Council of the Union or Town where the existing wife of the applicant, or where he has more than one, the wife with whom the applicant was married last, is residing at the time of his making the application:

Provided that if at the time of making the application, such wife is not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be:

(i) In case such wife was at any time residing with the applicant in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with the applicant, and

(ii) In any other case, the Union Council of the Union or Town where the applicant is permanently residing in West Pakistan;

(b) In the case of notice of talāq under the sub-section (1) of section 7, it shall be the Union Council of the Union or Town where the wife in relation to whom talāq has been pronounced was residing at the time of the pronouncement of talāq;
Provided that if at the time of pronouncement of talāq such wife was not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be:

(i) In case such wife was at any time residing with the person pronouncing the talāq in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with such person; and

(ii) In any other case, the Union Council of the Union or Town where the person pronouncing the talāq in permanently residing in West Pakistan; and

(c) In the case of an application for the maintenance under section 9, it shall be Union Council of the Union or Town where the wife is residing at the time of her making the application, and where application under that section is made by more than one wife, it shall be the Union Council of the Town or Union in which the wife who makes the application first is residing at the time of her making the application.

3-A. Where the whereabouts of the wife who is to be supplied a copy of the notice of talāq under sub-section of section 7 of the ordinance, are not known to the husband and cannot, with due
diligence, be ascertained by him, he may, is so permitted by the chairman, give notice of the talaq to the wife through her father, mother, adult brother or adult sister, or if their whereabouts are not known to the husband or cannot, with due diligence be ascertain by him, he may, with, the permission of the chairman, serve the notice of talaq on her by publication in a newspaper, approved by the chairman having circulation in the locality where he last resided with the wife.

4. Where a non-Muslim has been elected as chairman of a Union Council, the Council shall, as soon as may be, elect one of its Muslim members as chairman for the purposes of the ordinance, in the manner prescribed for the election of a chairman of a Union Council.

5. (1) All proceedings before an Arbitration Council shall be held in Camera unless
the chairman otherwise directs with the consent of all the parties (2) the chairman shall conduct the proceedings of an Arbitrator Council as expeditiously as possible. (3) Subject to the provisions of the sub-rule (4), Such proceedings shall not be vitiated by reason of a vacancy in the Arbitration Council, whether on account of failure of any person to nominate a representative or otherwise.
(4) Where a vacancy arises otherwise than through failure to make a nomination, the chairman shall require a fresh nomination. (5) No party to proceedings before an Arbitration Council shall be a member of the Arbitration Council. (6) All decisions of the Arbitration Council shall be taken by majority, and where no decision can be so taken, the decision of the chairman shall be the decision of the Arbitration Council. (7) A copy of the decision of the Arbitration Council, duly attested by the chairman, shall be furnished free of cost to each of the parties to the proceedings.

6. (1) Within seven days of receiving an application under sub-section (2) of section 6 or under sub-section (1) of section 9, or a notice under sub-section (1) of section 7, the chairman shall, by order in writing, call upon each of the parties to nominate his or her representative, and each such party shall, within seven days of receiving the order, nominate in writing a representative and deliver the nomination to the chairman or sent to him by registered post. (2) Where a representative nominated by a party is, by reason of illness or otherwise, unable to attend the meetings of the Arbitration Council, or willfully absents himself from such meeting, or has lost confidence of the party, the party may, with the previous
permission in writing of the chairman, revoke the nomination and
make, within such time as the chairman may allow, a fresh
nomination.

"Provided that where a party on whom the order is to be served is
residing outside Pakistan, the order may be served on such party
through the consular officer of Pakistan in or for the country where
such Party is residing." (3) Where a fresh nomination is made under
sub-rule (2), it shall not be necessary to commencement the proceedings
before the Arbitration Council de novo unless the chairman, for
reasons to be recorded in writing, directs otherwise.

6- A. (1) Wherever, it is made to appear to the collector, whether on the
application of a party to the proceedings or on his own information,
that the chairman is interested in favour of a party to any
proceedings before the Arbitration Council or is prejudiced against
any such party, or that the chairman is misconducting himself in any
such proceedings, the collector may, after giving notice to all the
parties to the proceedings, appoint any other member of the Union
Council as the chairman for purposes of this ordinance, an pending
the passing of such order may stay the proceedings before the
Arbitration council. (2) A collector passing an order under this rule shall record in writing his reasons for the same.

Registration of Marriages:

7- (1) Any person competent to solemnise a marriage under Muslim law may apply to the Union Council for the grant of a licence to act as Nikah Registrar under section 5. (2) If the Union Council, after making such inquiries as it may consider necessary, is satisfied that the applicant is a fit and proper person for the grant of a licence, it may, subject to the conditions specified therein, grant a licence to him in Form I. (3) A licence granted under this rule shall be permanent and shall be revocable only for the contravention of any of the conditions of a licence granted under this rule. (4) If any person for whom a licence has been granted under this rule contravenes any of the conditions of such licence, he shall be punishable with simple imprisonment for a term, which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

8- (1) The Union Council shall, on payment of such cost as may be determined by the Provincial Government, supply to every Nikah Registrar a bound register of nikhānamās in Form II, and seal bearing
the inscription, “The seal for Nikah Registrar of word
(x)...........(y)..........”. (2) Each Register shall contain fifty leaves,
consecutively numbered, each leave having a nikāhnamā, in
quadruplicate, and the number of leaves shall be certified by the
chairman. (3) Notwithstanding the payment of cost under sub-rule
(1), the register and the seal remain the property of the Union
Council.

9- (1) For the registration of a marriage registered under section 5, the
Nikah Registrar shall be paid by the bridegroom or his
representative a registration fee of two rupees, or when the dower
exceeds two thousand rupees, a fee calculated at the rate of one
rupee for every thousand or part of the thousand rupees of such
dower, subject to a maximum fee of twenty rupees. (2) Of the fees
received under sub-rule (1), the Nikah Registrar shall retain for
himself eighty per cent and shall pay the remaining twenty percent
to the Union Council. (3) Where dower consists of property other
than money, or partly of such property and partly of money, the
valuation of the property shall, for purposes of fees under sub-rule
(1), be the valuation as settled between the parties to the marriage.
10- (1) The Nikah Registrar shall, in the case of a marriage solemnized by him, fill in Form II, in quadruplicate, in the register, the persons whose signatures are required in the Form shall then sign, and the Nikah Registrar shall then affix his signature and seal thereto, and keep the original intact in the register. (2) The duplicate and triplicate of the nikāhnama filled in as aforesaid shall be supplied to the bride and the bridegroom, respectively, on payment of fifty paisa each, and the quadruplicate shall be forwarded to the Union Council. (3) If any person required by this rule to sign the register refuses so to sign, he shall be punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or with both.

11- (1) Where a marriage is solemnized in Pakistan by a person other than the Nikah Registrar, such person shall fill in Form II, to be had loose on payment of such price as may be determined by the Provincial Government, the persons whose signatures are required in the Form shall than sign, and the person solemnizing the marriage shall then affix his signatures to the Form and ensure delivery, as expeditiously as possible, of the same together with the registration fee to the Nikah Registrar of the ward where the
marriage is solemnized. (2) If any person required by this rule to
sign the Form refuses so to sign he shall be punishable with simple
imprisonment for a term which may extend to one month, or with
fine which may extend to two hundred rupees, or with both.

12- (1) In the case of marriage solemnized outside Pakistan by a person
who is a citizen of Pakistan, such person shall ensure delivery of
Form II, filled in, in accordance with the Provisions of Rule II,
together with the registration fee, to the Consular Office of Pakistan
in or for the country in which the marriage is solemnized, for
onward transmission to the Nikah Registrar of the ward of which
the bride is a permanent resident, and in case the bride is not a
citizen of Pakistan, the Nikah Registrar of the Ward of which the
bridegroom is such resident. (2) In the case of a marriage solemnized
outside Pakistan by a person who is not a citizen of Pakistan, the
bridegroom, and where only the bride in such citizen, the bride,
shall for purposes of filling in, as far as may be, Form II, be deemed
to be the person who has solemnized the marriage under sub-rule
(1).
13. On receipt of Form II under Rule 11 on Rule 12, the Nikah Registrar shall proceed in the manner provided in Rule 10 as if the marriage had been solemnized by him:

Provided that, except where the marriage has been solemnized within his jurisdiction, it shall not be necessary for the Nikah Registrar to obtain the signatures of the necessary persons.

Polygamy:

14. In considering whether another proposed marriage is just and necessary during the continuance of an existing marriage, the Arbitration Council may, without prejudice to its general powers to consider what is just and necessary, have regard to such circumstances, as the following amongst others; sterility, physical infirmity, physical in unfitness for the conjugal relation, willful avoidance of a decree for restitution of conjugal rights, or insanity on the part of an existing wife.

15. An application under sub-section (1) of sections 6 for permission to contract another marriage during the subsistence of an existing marriage shall be in writing, shall state whether the consent of the existing wife or wives has been obtained thereto, shall contain a brief statement of the grounds on which the new marriage is alleged
to be just and necessary, shall bear the signature of the applicant, and shall be accompanied by a fee of one hundred rupees.

Revision:

16. (1) An application for the revision of a decision of an Arbitration Council, under sub-section (4) of section 6, or of a certificate under sub-section (2) of a certificate under sub-section (2) of section 9, shall be preferred within thirty days of the decision or of the issue of the certificate, as the case may be, and shall be accompanied by a fee of two rupees. (2) The application shall be in writing set out the grounds on which the applicant seeks to have the decision or the certificate revised, and shall bear the signature of the applicant.

Records and their inspection, etc.:

17. As soon as may be after the Arbitration Council has given its decision under Rule 6, the record of the proceedings before it in which such decision, has been given shall be forwarded by the chairman to the office of the Union Council, where it shall be preserved for a period of five years from the date of the decision.

18. (1) The quadruplicate of the nikāhnamā forwarded by the Nikah Registrar under sub-rule (2) of Rule 10 shall be preserved in the office of the Union Council until such time as the register containing
the originals is, on being completed, and deposited by the Nikah Registrar in such office. (2) The completed register so received shall be preserved permanently. (3) In the office of the Union Council there shall be prepared and maintained an index of the contents of every register, and every entry in such index shall be made, so far as practicable immediately after the Nikah Registrar has made an entry in the register. (4) The aforesaid index shall contain the name, place of residence and father's name of each party to every marriage registered within the Union or Town, as the case may be, and the dates of the marriage and registration.
APPENDIX 1.3
CONSTITUTION OF PAKISTAN, 1973

The laws effecting women rights in Pakistan:

♦ Article 4: Right of Individual

(i) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

♦ Fundamental Rights: Guarantee equality in all spheres of life.

♦ Article 8: Laws inconsistent with or in derogation of Fundamental Rights to be void: (i) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this chapter, shall, to the extent of such inconsistency, be void.

♦ Article 25: Equality of Citizens

(i) All citizens are equal before law and are entitled to equal protection of law

(ii) There shall be no discrimination on the basis of sex alone
(iii) Nothing in this article shall prevent the state from making any special provision for the protection of women and children

- **Article 27**: Safeguard against discrimination in services
  
  (i) No citizen other wise qualified for appointment in the services of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

**Principles of Policy:**

- **Article 34**: Full Participation of women in National Life: steps shall be taken to ensure full participation of women in all spheres of national life.

- **Article 37**: Promotion of Social Justice and eradication of social evils:

  (e) Make provisions for securing first and human conditions of works, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

- **Article 38**: Promotion of social and economic well being of the people: the State shall-
(b) Provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure.