



# LEGISLATIVE WATCH

**AF**  
AURAT  
PUBLICATION  
AND  
INFORMATION  
SERVICE  
FOUNDATION

## EDITORIAL

The process of reform of Muslim Family Laws has a long history of dedicated efforts by several public and private institutions and individuals, who immensely contributed towards improvement of these laws. Among them, women's rights and human rights groups, along with some committed jurists, legislators and activists, have always remained in the forefront to bring positive changes in these laws, which concern women's lives so closely, and in so many respects. A number of recommendations were forwarded to Ministry of Women's Development by Aurat Foundation in 2000. Meanwhile, the Law and Justice Commission also made a number of recommendations during the same timeframe.

Some amendments in the Family Courts Act, 1964, made in 2002, have shown a positive change. Although these recommendations were appreciated by various quarters and facilitated the process of decree for khula for women, these were certainly not enough. Aurat Foundation, therefore, continued to take up and carry forward the process of reform of these laws. During the year 2007-2008, it re-initiated the movement and organized a national working group meeting in August 2008 to discuss six of these laws and the nikahnama (marriage deed). The participants included some of the most eminent lawyers and jurists from across the country.

The recommendations were finalized by a second working group held in October 2008 and shared with civil society in the country through nationwide seminars. The second working group was able to focus on four of the six laws, namely, West Pakistan Family Court Act, 1964; West Pakistan

Family Court Rules, 1965; The Dissolution of Muslim Marriages Act, 1939; and the Child Marriage Restraint Act, 1929. These suggested recommendations are being presented in the current newsletter for the purpose of sharing them with a larger audience to make them part of the public discourse.

The emphasis of some of the crucial amendments has been: to ease down the procedure of litigation for women to seek divorce while ensuring maximum benefits for them; to make their lives less repressive in polygamous marriages and; to prohibit child marriages. The amendments have also broadened the scope of relevant laws by suggesting to include FATA and FANA under their jurisdiction. The amendments also suggest that at least one family court in each district shall be presided over by a woman Judge. One amendment has tried to improve the criterion of the qualification of the Judge of the family court.

One purpose of sharing these recommendations with our readers, is to draw attention of the decision-makers, particularly senior members of mainstream political parties and women legislators, who could actually make a difference in the lives of ordinary women by according these amendments a priority in their future legislative initiatives vis-à-vis new amendments in respective laws. This stands out as their constitutional responsibility, but, more importantly, it is their social obligation too, which binds them with the commitment to uphold and protect the interests of women in the domestic sphere, in a manner that women become equal and respectable members of family and they are able to lead happy lives freely and with dignity, and they are not treated merely as subjects of a patriarchal empire at home.

## For Whom Will the Gulai-Nargis Bloom this Spring in the Swat Valley!

By Shaheen Sardar Ali

**Dedicated to the girls of Swat who may never go to school again from their sister who was fortunate enough to be educated.**

Today, the 15th January 2009 civilisation, democracy, human rights, rule of law, equality, justice and equity stand defeated. Today, the Government and people of Pakistan have succumbed to a disparate group of faceless, semi-invisible individuals hiding behind an opaque mask of religion and declared all girls' education as outside the pale of Islam. 'Iqra'[Read], a mandatory injunction in the Qur'an for every Muslim male and female, has been reduced to a meaningless word trampled under the feet of worldly gods speaking in God's name. The great and glorious of the state of the Islamic Republic of Pakistan, in a state of complete denial whine and whimper as the state recedes under their very eyes..... For today, the parallel 'taliban' the only government with any writ in Swat has declared all girls' schools closed forever.

But who cares for the Swat Pukhtuns from the back of beyond. Let them shut down girls' schools and chop up heads, hang them from poles and tree tops. After all, Islamabad is thriving, we have a democrati-

cally elected President, Prime Minister and Parliament. Swat and FATA are very far away and only become significant when foreign masters are in town and demand action. After agonising, weeping, brooding and making angry conversations with whoever cared to listen, I decided to share these thoughts with anyone who may wish to read and capture the tormented soul of a Swati woman sitting continents away from her beloved homeland. Is the pain greater when one is far away from home and loved ones. Does everyone living in the 'diaspora' experience a

*The writer is Professor of law, University of Warwick, United Kingdom, Professor II, University of Oslo, Norway and Member of the UN Working Group on Arbitrary detention. She was formerly Professor of law, University of Peshawar.*

sinking feeling at the sound of a ringing telephone in the early hours of the morning, fearing some horrible news awaiting at the other end of the telephone. Does everyone sit glued to the television set in the anxious hope of more news of Swat, FATA and the country.

How long before we will say: enough is enough and rise, speak and act. How much more suffering before we declare emphatically that we refuse to be harassed and silenced any longer and demand answers for the wrong doings meted out to us. How many more

humans will have to be slaughtered, before we stand up and say NO. When will we shout from the rooftops of Mingora, Saidu, Kabal, Matta, Sangota, Manglawar, huprial, Dewlai, Madyan, Bahrein, Kalam: stop your underhand, hypocritical games, blowing hot and cold, killing us in the name of protecting us when all the while what is being protected, is power and wealth of a few and destruction of the people of Swat. Go and play your foul game elsewhere and leave us in peace. Stop our genocide.

But, who will listen to the pleas of the traumatised souls that are my compatriots: impoverished beyond belief materially, emotionally and physically. Not the evil Machiavellis of today who cast the net of violence over ungarded people going about their daily business. Not those perched in the superior location of the corridors of power and wealth who are in a state of denial, simply looking the other way and celebrating their power and opportunity to humiliate the people of Pakistan by decorating the perpetrators of their destruction with medals.

It is that time of year in Swat when the harsh winter breeze cascades from the peaks of majestic snow capped mountains spreading its icy cold wings throughout the valley. As a child, I had bittersweet

Continued on next page



## For Whom Will the Gulai-Nargis Bloom this Spring in the Swat Valley!

From Page 1

sentiments for these freezing cold winds as they coincided with my winter vacations from the Sacred Heart Convent in Lahore. Just when the sun would start shining every morning and I would want to play outside, the freezing winds would make me want to huddle indoors by the fire. One of my aunts [and later my mother-in-law] once told me why those far away mountains I saw were always to remain covered with snow... this is called the *gunaangaar ghar* [sinful mountain]... it is under a curse and destined to carry the burden of a snowy cap.... Turning my head to the other side of the valley, I would see illum, another grand mountain lying between my home valley and that of Buner. This mountain held a more positive image in popular imagination as a saying goes in Pukhto: May you become as tall in stature as the illum mountain.

I now wonder whether it was us Swatis as well as that far away mountain carrying its 'cursed' load of snow all year round and visible only on clear sunny days from Mingora, that may have been under a curse. Why else has tragedy of the present proportion struck Swat and her people, making a reported 5 lakh people homeless, rendering as many others homeless and thousands dead or missing. What merited this punishment and terror, is a complex and mysterious saga details of which we may never fully comprehend. The stark reality is that hundreds of thousands of Swatis who have been peaceful, hospitable, people now live a tormented life, inside as well as outside Swat and see their beloved homeland being destroyed by the histrionics of Machiavellian power play.

**I know that** at this tragic stage of our existence as God and human forsaken Swatis, it is all too easy to fall into the trap of recalling a romanticised past.... Yet for us forgotten and forsaken people, any respite must come from recalling our past and building on it towards a future. I cannot help but see, albeit in a mist and haze of tearful eyes and broken heart [but not broken spirit] images of those not so long ago times, when droves of tourists from home and abroad, would ply through the Malakand Pass and make their way to Swat. We never used the word 'tourist' for these people coming from 'khakata' ['down' country]; everyone used the word 'meylma' [guest] for these visitors and holiday makers, film production teams, honeymooners and families proudly showing off the 'Switzerland of the East' to their children who would then go back to school in Lahore, Rawalpindi, Karachi, indeed all parts of Pakistan, and narrate tales of the gushing waters of the river Swat, the tall pine clad mountains, the narrow dangerous roads, the clear sapphire blue waters of mahodand [a lake beyond Kalam], the 'white palace' in Marghozaar where the tall mountains met....

I recollect those early years of my life when we had no piped water in the family home presided over by my grandparents, and when it was common every evening, before sunset, for women to walk through discreet side alleys, towards the 'gudar' and 'gaaga' to fill their mangle [earthen ware vessels] with fresh, cold drinking water for their families. Images of dozens of women in their chaddars artfully balancing mangle on their heads and often one in their armpit walking single file down narrow lanes against the backdrop of a glorious golden setting sun on the horizon are still fresh in my memory. We children were not allowed to distract this daily ritual but on the rare occasion when my cousins and I would cajole our mothers and aunts into letting us accompany those assigned to fetch water, I would wonder why all the men suddenly seemed to 'shy' off and turn their heads towards the walls of the lanes, creating a 'private-public' space for women.

**The male public** sphere of this small village-like town would transform itself for a short while into

female space with mangle-holding women gracefully navigating the streets and narrow alleyways. The same principle applied to the gudar where the family laundry was done. This truly was a picnic where one could simply roll back about in the green fields, tap your feet in the cold water of the streams, play hide and seek behind a bush, greedily pick the blackberries that grew along the stream, and the occasional scream when pricked unceremoniously by the thorns in the blackberry bush. There was the even rarer treat in the autumn when wild peas were in bloom and we could cunningly pick a few pods as we sauntered through the fields on our way to the water. I must emphasise that this was a regular all-women excursion and the only male intruder would be at midday when a male helper would bring the much-awaited lunch.

At about this time of year, in a few weeks perhaps, when the sun starts shining with a bit more courage and looks down on this icy cold valley, the *gulai-nargis* [narcissus] and *ghaantol* [wild tulips] will take heart and peep out of the muddy soil on the slopes of the adjoining mountains. Scores of women will be awaiting these first signs of the turning weather in the hope that they can go *saaba-picking* [edible green clover leaves, chives and a host of other saag type vegetation which is the staple food of most of the population]. Travellers along the road from Mingora towards Peshawar will find the familiar sight of young boys and girls holding up bouquets of narcissus and wild tulips for sale.

**That is how I** remember life growing up as a young girl in the Swat valley. My husband went to a co-education school in the town and his female classmates are grandmothers now. Sixty years ago in Swat, girls and boys went to primary school together; secondary and higher secondary schools for girls were full to the brim from where hundreds of young women ventured forth to the colleges and university in Peshawar and beyond. My induction as the first woman cabinet minister in the NWFP government in 1999 was widely hailed and men and women alike shared in what they saw as a collective pride and recognition of one of their own.

So when, why and how did the present nightmare unfold for us unfortunate Swatis. When did this serene, hospitable valley get chosen as the venue of game playing individuals and groups, local, national, regional and international. What was/is the game plan, input and output and what is the desired result that perpetrators of the scheme aspire to achieve. Why choose Swat as opposed to adjoining territories with less accessibility to the outside world and governmental infrastructure. How true is it that so-called militant religious extremists are entirely responsible for all the horror, terror, death and destruction of Swat and Swatis and so-called 'progressive' democratically elected government is innocent and beyond reproach. How true is it seeds of the present situation were sown by institutions responsible for upholding and protecting the national interest in 1994 when Sufi Mohammad took Swat and the entire governmental machinery hostage. The 'black turbans', as they were called simply emerged as if from nowhere and before anyone could take a deep breath, had spread themselves across the valley. The government of the time gave them some crumbs in the form of the Nizam-i-adl regulation 1994, re-named judges and courts by using the names Qazi, Ilaqa Qazi etc., and assigned supposedly Shari'a literate muavin or advisers to assist the Qazi in administration of justice to make sure it was Shari'a compliant. People of the Malakand division as it was then called, had a choice to use the 'Islamic law' or the 'regular' law of the country. It is no secret that apart from a few women daring to challenge their male relatives to obtain their inheritance by using Islamic law, all and sundry stuck to the civil

and criminal law of the country.

Some time later, dissatisfied noises started being heard regarding unsatisfactory nifaz/promulgation of Sharia, but it actually turned out that some of the muavineen, or 'Shari'a' conversant advisers, were angling for a raise in their salaries. This demand was of course met, as that was the easy way out and then forgot all about the underlying million dollar question: Was/Is there a popular demand for Shari'a promulgation in the region; how is this to be gauged; what is the problem with existing offerings and what/who is the underlying, simmering problem and issues. Why is it that this demand emanates not from more urbanised centres of Swat including Mingora, Saidu etc., but from outlying, rural areas where class divisions are more pronounced and landed class unpopular among the general population. Surely, if the demand was the result of delays in court and administration of justice generally, ought the people from the urban centres not likely to be the ones more affected thus proponents of the demand for Shari'a.....

**Leaving the above critical** question on the back burner to simmer and exacerbate, we now come to another governance and neglect issue in Swat. This is the issue of 'custom-chor' vehicles that have flooded the market. Cars, jeeps etc are available for unbelievable paltry sums creating avenues for all sorts of activities outside the purview of the law. Why was this not dealt with and nipped in the bud asap when the problem was first spotted. Receding and abdicating state control and remit are terms that come readily to mind. The question I pose here is: Was the state apparatus unaware of this and the wider, serious implications for government and governance not to mention the lost revenue and financial fallout. Is it rocket science to decipher the fact that when you give an inch, a yard is what is generally being conceded. The signal given to those who may have had intentions of violent adventures in the area would be quite clear: go ahead and do what you want; there is very little to stop you.

Deep in the forests of Swat, it was being reported that when government officials went on inspection tours of the area, they were stopped at the foot of the mountains where the thick pine forests started. The local population also reported periodic 'earthquake-like' happenings as if a bomb has gone off; they were spotting unfamiliar people on the roads, were generally confused but as unsuspecting people focussing on earning two square meals for their families, never thought more of it. Neither did they know who to say all this strange goings on to; who would listen to poor villagers in the first place....

Hospital staff in the several hospitals and health facilities recollect numerous men and women patients who 'did not look like us', spoke a very strong sounding language, the men had 'long hair and sort of chinky eyes', etc etc.. These sightings started about two summers ago but no governmental, agency picked this up, or did they....

**Is it possible** that the few thousands of militants are so superior in arms and training that the 7th largest army in the world is unable to out manoeuvre them. Are the government structures and institutions so weak that access lines to arms and ammunition cannot be cut off. But the critical questions of all, that Swatis are asking themselves and the world: Who are these 'people' who have captured their land, terrorised them to death, why and for what end and purpose. As citizens of this country, Swatis demand answers to these questions and for the government to take responsibility for leaving them without security, succour and sustenance.



# MFLO in Pakistan: Critical Issues

By Rukhshanda Naz and Maliha Zia

After the formation of the Commission on Marriage and Family Laws in 1955, its recommendations were accepted in a diluted form and the Muslim Family Laws Ordinance (MFLO) was promulgated in 1961. Its main aim was to discourage polygamy and regulate divorce. While the law also ensured the right of inheritance of grand children and provided for procedures and much needed documentation of marriages and divorces, it did not grant women any substantive rights.

Despite the good 'intentions' to provide protection to women in the realm of family law, the law, along with the others continued to have lacunas that discriminate against women and did not measure up to the expectations of the women who had struggled on its behalf. Various Commissions set up to review situation of women (Pakistan Women's Rights Committee -1975; Pakistan Commission on the Status of Women -1985; and Commission of Inquiry for Women -1994) proposed further recommendations, some of which were incorporated into the law sporadically, including amendments in MFLO, 1961 and West Pakistan Family Court Act, 1964 (WPFCA); but no attempt was made to address the issues comprehensively. Thus the gains made were only marginal and family laws continued to remain discriminatory to women.

Some of the major Muslim family laws prevailing in the country are: The Guardians and Wards act, 1890; Child Marriage Restraint Act, 1929; The Dissolution of Muslim Marriages Act, 1939; West Pakistan Rules Under The Muslim Family Laws Ordinance, 1961; West Pakistan Family Court Act, 1964; West Pakistan Family Court Rules, 1965; Dowry and Bridal Gifts (Restriction) Act, 1976; Dowry and Bridal Gifts (Restriction) Rules, 1976

Amendments made to the Family Courts Act in 2002 proved to be a lot more positive. Concrete and welcomed changes were made to make it easier for women to get a 'khula' within a specified time-period, and courts are now mandated to complete a case of divorce and other related issues such as maintenance and guardianship within six months. The over-arching issue that persists throughout all the legislation is the prejudicial aspect of family laws for women, as the constitution of most of them is based on strong patriarchal values, where the husband always has a dominating position and the concept of the 'husband' as the sole provider; head of the family and household; and having the right of restoration of conjugal as compared to wife. A woman's personal status within the family directly impacts her status at all other levels, since her rights in the public and private sphere are inextricably linked. If she is not recognized as an equal within the family and remains vulnerable in terms of her personal and financial security, a woman cannot freely make decisions concerning her own life or participate equally with men in other arenas of public life, even if she is given equal social and political rights.

Keeping this in mind, the biggest contention with the law of divorce and maintenance is that while giving men this 'power', it also leaves space for them to walk away from responsibilities i.e. if wife wants to continue living with her husband, he may reject her plea to live together and leave her destitute without any obligations of maintenance or support beyond the three month iddat post-divorce period. In a society like Pakistan, where women usually do not work, nor have the necessary qualifications to attain employment, they are mostly left dependent on their own families who, also reserve

the choice as to whether they wish to accept them or not - the idea being that once a woman leaves her home for her husband's home, she ceases to belong to her parents household. Furthermore, a woman is considered a burden and divorce shameful, which results in many families refusing to aid or assist the divorced woman.

The Guardianship laws (Guardians and Wards Act, 1890) also give an inferior position to the mother as automatic guardian in absence of father, although concept of natural guardian has been changed. Women, as single parents, have to seek the permission of court to be able to become so. As a consequence the law gives unilateral freedom to men, and women to be left dependent and vulnerable.

Furthermore, the implementation of law against polygamy; child marriage; the minimum age of marriage of the girl; and citizenship for a foreigner husband (Shafrihan vs Federation of Pakistan, PLD 1998, Lahore) are still crucial issues. Conservative scholars and elements always influence and effectively block any positive attempt for progressive legislation or amendment. It therefore remains a fact, that women remain vulnerable under the current regime of Muslim family laws, whether under legislation or the informal personal law, both of which are influenced by custom and traditions and the patriarchal interpretation of religion.

The law, being given shape through case law, has highly patriarchal overtones and has, as a result, a discriminately effect on women and children. The MFLO was promulgated with the intention of providing women with safety against arbitrary divorce, first wives from non-consensual and lack of knowledge of second marriage etc, however, a number of contentious and discriminatory clauses remain in the legislation including the right to contract a second marriage. While this has been made illegal in many other Muslim countries, it remains legal and in fact the only condition is to inform and receive consent from the first wife. Not attaining consent or letting the first wife know does not make the marriage illegal and in fact only has a very nominal punishment.

The biggest issue that has arisen relate to the requirement of applying to the Arbitration Council for the divorce certificate and the requirement of 90 days iddat period: the procedural method as opposed to the 'Islamic' method. This has resulted in two different streams of case law with no final and clear indication as to which should prevail. The case of Allah Rakha (Allah Rakha vs Federation of Pakistan, PLD, 2000, FSCI.), which asks this specific question, has been challenged in the Supreme Court, but the judgment has been delayed for a number of years.

Maintenance for the wife lasts only for 3 months. In a patriarchal country like Pakistan, where women do not usually attain the necessary level of education, nor work and devote their lives to their families, when they are divorced, unless their families are willing or able to support them, they are left distraught and penniless. A woman's work in the home is not recognized as 'labour' nor is it considered as a measurable amount, which can be compensated by the husband.

Inheritance has remained a central issue for women and girls in Pakistan. Family disputes always settled on the basis of personal laws of the parties but right of inheritance is still matter of prevailing tradition of the families, especially the inheritance regarding agriculture land.

## Summary of main recommendations

Some of the major amendments in the West Pakistan Family Court Act, 1964; West Pakistan Family Court Rules, 1965; The Dissolution of Muslim Marriages Act, 1939; and the Child Marriage Restraint Act, 1929, as discussed, suggested and endorsed by some of the most eminent lawyers and jurists from across the country, who finalized them in two working group meetings in 2008, under the auspices of Legislative Watch Programme of Aurat Foundation (see picture on Page 8), are reproduced below.

- The laws should extend to the whole of Pakistan, including FATA and FANA.
- At least one Family Court in each District shall be presided over by a woman Judge. No person shall be appointed as a Judge of a Family Court unless she/he is or has been or is qualified to be appointed as a District Judge, an Additional District Judge, a Civil Judge with a three-year standing.
- A plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongs of wife, custody of children and visitation rights of parents to meet their children.
- An application for permission to contract an additional marriage as provided in sub-section Section 6 of the Muslim Family Laws Ordinance, 1961, shall be submitted in such manner and in such form as is prescribed under the rules. The application shall contain all the material facts as prescribed under the rules.
- The consent to the proposed marriage, in whatever form, the Judge shall meet the wife separately in chamber and satisfy himself that her consent has been voluntarily and freely given, right of own residences, financial status and dower.
- No permission for contracting a child marriage shall be given unless the intending spouses, or the child or children for whose marriage the permission is being sought, are present and have been heard by the Court.
- The interim maintenance and in the final decision in a suit for maintenance, the Court shall simultaneously direct the husband or father, as the case may be, to pay the entire decreed amount within one month and fix a schedule for future maintenance, failing which ten per cent penalty shall be charged for every month of delay in payment.
- If the husband as the case may be, fails to deposit the lump sum amount, he shall be liable to punishment for imprisonment of any description for any term, which may extend to one year, or with fine, which may extend to twenty thousand, or both.
- The proper age of bride according to law should be eighteen years and punishment suggested for violation of law are imprisonments of either description for a term for a minimum of 1 year and may extend to five years and with fine which may extend to twenty-five thousand rupees, or with both.
- Punishment for solemnising a child marriage be punishable with imprisonment of either description for a term of minimum nine months and may extend to three years and with fine which may extend to twenty thousand rupees, or with both.

Detailed suggested amendments in four Muslim Family Laws — Page 4 to Page 7



# Suggested amendments in the Muslim Family Laws

The recommendations have been reproduced here and are highlighted in orange and placed below the actual text of the reviewed legislation. Only the relevant portions of legislation have been reproduced, as opposed to the entire text.

## West Pakistan Family Courts Act, 1964

Whereas it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith;  
It is hereby enacted as follows:

1. Short title, extent and commencement:- (1) This Act may be called the West Pakistan Family Courts Act, 1964.

(2) It extends to the whole of Pakistan except the Tribal Areas

2. Definitions:- (1) In this Act, unless the context otherwise requires, the following

(2) It extends to the whole of Pakistan including FATA and FANA

expressions shall have the meanings hereby respectively assigned to them, that is to say:-

(b) "Family Court" means a Court constituted under this Act;

The powers of 1st Class Magistrate have been conferred on every Judge of the Family Court so that he may act under S. 488 Cr.P.C. and may make orders for maintenance under that section.

(c) "Government" means the Government of West Pakistan;

Sub-section (b) to read:

"Family Court" means a Court constituted under this Act;

3. Establishment of Family Courts:- (1) Government shall establish one or more Family

(c) "Government" means the Federal Government of Pakistan;

Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Courts:

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, on the request of the Provincial Government, extend;

(2) A woman Judge may be appointed for more than one District and in such cases, the

Provided that at least one Family Court in each District shall be presided over by a woman Judge.

woman Judge may sit for the disposal of cases at such place or places in either District, as the Provincial Government may specify.

4. Qualifications of Judge:- No person shall be appointed as a Judge of a Family Court

(2) A Judge may be appointed for more than one District and in such cases, the Judge may sit for the disposal of cases at such place or places in either District, as the High Court, with the approval of Provincial Government, may specify.

unless he is or has been or is qualified to be appointed as a District Judge, an Additional District Judge, a Civil Judge or a Qazi appointed under the Dastur-ur-Amal Diwani, Riasat Kalat.

5. Jurisdiction:- (1) Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclu-

4. Qualifications of Judge:- No person shall be appointed as a Judge of a Family Court unless he is or has been or is qualified to be appointed as a District Judge, an Additional District Judge, a Civil Judge with a three year standing or a Qazi appointed under the Dastur-ur-Amal Diwani, Riasat Kalat.

sive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is a victim of an offence committed by the other.

6. Place of sitting:- Subject to any general or special orders of Government in this behalf, Family Court shall hold its sittings at such place or places within the District or area for which it is established as may be specified by the District Judge.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try offences over which it has jurisdiction including offences specified in Part II of the Schedule, where one of the spouses is a victim of an offence committed by the other.

7. Institution of suits:- (1) Every suit before a Family Court shall be instituted by the pres-

6. Place of sitting:- Subject to any general or special orders of the High Court in this behalf, the Family Court shall hold its sittings at such place or places within the District or area for which it is established as may be specified by the District Judge.

entation of a plaint or in such other manner and in such Court as may be prescribed.

(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 witnesses and a brief summary of the facts to which they would depose:

Provided further that the parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interests of justice.

Provided that a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongs of wife, custody of children and visitation rights of parents to meet their children.

Provisos to be inserted:

8. Intimation to defendant:- (1) Where a plaint is presented to a family court, it:-

(c) shall within three days of the presentation of the plaint send:-

(i) to the Chairman of the Union Council within whose jurisdiction the defendant

Provided that a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongs of wife, custody of children and visitation rights of parents to meet their children, and

Provided further that the parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interests of justice.

or defendants, as the case may be, reside and where the defendants reside within the jurisdiction of different Union Councils, to the Chairman of every such Union Council, a notice of the plaint having been presented.

Explanation:- For the purposes of this section, the expression "Union Council" means a Union Council, Town Committee or Union Committee constituted under section 57 of the Electoral Colleges Act, 1964 (IV of 1964).

10. Pre-trial proceedings:- (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

Provided that notwithstanding any decision or judgment of any Court or tribunal, the

Explanation:- For the purposes of this section, the expression "Union Council" means a Union Council, Tehsil, Town or District Council, constituted under the (Provincial i.e. Balochistan, NWFP, Punjab, Sindh) Local Government Ordinances 2001.

Family Court in a suit for dissolution of marriage, if reconciliation fails shall pass decree 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.

12. Conclusion of trial:- (1) After the close of evidence on both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties.

Provided that notwithstanding any decision or judgment of any Court or Tribunal, the Family Court in a suit for dissolution of marriage on the sole ground of Khula, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and determine, the amount of Haq Mehr, if any, and restore the same to the husband..

(2) If such compromise or conciliation is not possible, the Family Court shall announce its judgment and give a decree.

12-A. Cases to be disposed of within a specified period:- The Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution.

Provided that where a case is not disposed of within six months either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.

14. Appeal:- (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:-

**Addition:**

12-B. Proceedings on an application for permission to contract an additional marriage during the subsistence of an existing marriage or marriages:-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, the procedure in the case of an application for permission to contract an additional marriage shall be as provided hereunder:

(2) An application for permission to contract an additional marriage as provided in sub-section Section 6 of the Muslim Family Laws Ordinance, 1961, shall be submitted in such manner and in such form as is prescribed under the rules.

(3) The application shall contain all the material facts as prescribed under the rules.

(4) The provisions of Section 7 of the Act shall, as far as possible, apply to an application under this Section, with the existing wife or wives being substituted as interested parties in place of any of the parties.

(5) The provisions of section 8 and 9 shall, as far as possible, apply to proceedings under this Section, with the existing wife or wives being substituted as interested parties in place of the defendants.

Provided that if any interested party or parties fail to appear after being duly served notice, the Court shall, before proceeding ex parte, depute any person as an officer of the Court to personally visit the concerned party or parties to ascertain the reasons for non-appearance, and submit a report before the next date of hearing.

(6) Where the interested parties, or any of them, oppose the application, the application



shall be dismissed.

(7) (a) Where the interested party if there is only one, or all the interested parties if there are more than one, give their consent to the proposed marriage, in whatever form, the Judge shall meet the interested party or parties separately in chamber and satisfy himself that her or their consent has been voluntarily and freely given.

(b) Where any interested party or parties do not appear in Court, the Court shall appoint an officer of the Court to meet the interested party or parties at their homes or any other place, to ascertain whether her or their consent has been voluntarily and freely given, and report to the Court accordingly.

(c) If the interested parties, or any of them, refuse to meet the officer so appointed, the presumption will be that the consent was not voluntarily or freely given, and the application will be dismissed.

(d) Where the Judge or officer meet with the interested party or parties under clause (a) or (b) of subsection (7):

(i) if the Court, or the officer, is of the opinion that the consent of all the interested parties has been freely and voluntarily given, the statements of the interested party or parties shall be recorded before proceeding with the case.

(ii) if the Court, or the officer, is of the opinion that their consent has not been freely or voluntarily given, the application shall be dismissed.

(8) Where the Court proceeds with the case after recording the statements of the interested party or parties, it shall proceed to examine the witnesses or calling additional witnesses where it deems fit.

(9) After the close of evidence, the Court shall announce its decision in accordance with the provisions of Section 6 of the Muslim Family Laws Ordinance, 1961.

(10) Where permission to contract an additional marriage has been given, the decision shall also make:

(i) adequate provision for the existing wife or wives and their children, if any, to maintain their own residences and ensure their financial status is not affected; and

(ii) fixation of dower keeping in view the financial status of the parties, if there is no dower fixed or if, in the opinion of the Court, the dower fixed is inadequate.

(11) Where an appeal is preferred, the decision of the Court shall take effect only after the appeal has been disposed of.

(12) Where a man contracts an additional marriage without permission of the Court, his existing wife or wives and the additional wife, shall apart from any other remedies available under the law, be entitled to apply to the Court for the same relief available under subsection (10).

#### Addition:

12-C. Proceedings on an application for permission to contract child marriage:-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, the procedure in the case of an application for permission to contract a child marriage, as provided in sub-section (9) of Section 5-A of the Muslim Family Laws Ordinance, 1961, shall be as provided hereunder:

(2) An application for permission to contract a child marriage shall be submitted in such manner and in such court as is prescribed under the rules.

(3) The application shall contain all the material facts as prescribed under the rules.

(4) The application may be filed by either or both of the intending spouses, or any of their parent, guardian or close family member.

(5) The provisions of sections 7, 8 and 9 shall, as far as possible, apply to proceedings under this section, with the intending spouses or children for whose marriage the permission is being sought, and their parents, guardians or immediate family members, as the case may be, being substituted as interested parties in place of the defendants.

(6) The Court shall hear the statements of all the interested parties to ascertain whether any special circumstances exist on the basis of which permission for contracting the marriage should be given.

(7) Where the Court proceeds with the case after recording the statements of the interested parties, it shall proceed to examine the parties or calling additional witnesses where it deems fit.

(8) The age of the child or children, as the case may be, shall be determined by the Court before any decision is given.

(9) No permission for contracting a child marriage shall be given unless the intending spouses, or the child or children for whose marriage the permission is being sought, are present and have been heard by the Court.

(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or any person notified by Government to be of the rank and status of a District Judge or an additional District Judge; and

15. Power of the Family Court to summon witnesses:- (1) A Family Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

(a) to the High Court, where the Family Court is presided over by a District Judge or an Additional District Judge; and

(2) If any person to whom a Family Court has issued summons to appear and give evidence or to cause the production of any document before it, willfully disobeys such summons, the Family Court may take cognizance of such disobedience, and after giving such person an opportunity to explain, sentence him to a fine not exceeding one thousand rupees.

16. Contempt of Family Courts:- A person shall be guilty of contempt of the Family Court if he, without lawful excuse:-

and the Family Court may forthwith try such person for such contempt and sentence him

(2) If any person to whom a Family Court has issued summons to appear and give evidence or to cause the production of any document before it, willfully disobeys such summons, the Family Court may take cognizance of such disobedience, and after giving such person an opportunity to explain, sentence him to a fine not exceeding five thousand rupees.

to a fine not exceeding rupees two thousand.

17. Provisions of Evidence Act and Code of Civil Procedure not to apply:-

19. Court-fees:- Notwithstanding anything to the contrary contained in the Court Fees Act, 1870, the court-fees to be paid on any plaint filed before a Family Court shall be rupees fifteen for any kind of suit.

and the Family Court may forthwith try such person for such contempt and sentence him to a fine not exceeding rupees five thousand.

(1) 25. Family Court deemed to be a District Court for purposes of Guardians And Wards

#### Addition:

17-C. Miscellaneous provisions relating to maintenance:- (1) The criteria for fixing maintenance shall be in accordance with the provisions of subsections (1), (5), (7), (8) and (9) of Section 9 of the Muslim Family Laws Ordinance, 1961.

(2) Where the interim maintenance ordered under subsection (2) is not paid, the suit to the extent of claim for maintenance along with ten per cent penalty shall be decreed.

(3) In the final decision in a suit for maintenance, the Court shall simultaneously direct the husband or father, as the case may be, to pay the entire decreed amount within one month and fix a schedule for future maintenance, failing which ten per cent penalty shall be charged for every month of delay in payment.

(4) Where in a suit for maintenance it is proved that the husband or father, as the case may be, has willfully failed to provide maintenance for his wife or children, as the case may be, for a consecutive period of six months or more, or occasional maintenance for a period of twelve months or more, he shall be ordered to deposit the entire amount of maintenance due, as well as future maintenance for up to twelve months, in lump sum in the Court within a period of three months from the date of the order.

(5) If the husband or father, as the case may be, fails to deposit the lump sum amount ordered under subsection (5), or the remainder after the decision has been upheld in appeal, he shall be liable to punishment for imprisonment of any description for any term which may extend to one year, or with fine which may extend to twenty thousand, or both.

Act, 1890:-

26. Power to make rules.- (1) Government may, by notification in the official Gazette, make rules to carry in effect the provisions of this Act.

19. Court-fees:- Notwithstanding anything to the contrary contained in the Court Fees Act, 1870, the court-fees to be paid on any plaint filed before a Family Court shall be rupees fifty for any kind of suit.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the rules so made may, among the other matters, provide for the procedure, which shall not be inconsistent with the provisions of this Act, to be followed by the Family Courts.

#### Addition:

The Punjab Amendment (Section 25-B) may be adopted by other provinces as follows:

25-B:- Stay of proceedings by the High Court and District Courts:- Any suit, appeal or proceeding under this Act, may be stayed:-

(a) by the District Court, if the suit or proceeding is pending before a Family Court within its jurisdiction.

(b) by the High Court, in the case of any suit, appeal or proceeding.

#### SCHEDULE

##### Part A

1. Dissolution of marriage
2. Dower
3. Maintenance
4. Restitution of conjugal rights
5. Custody of children and the visitation rights of parents to meet them
6. Guardianship
7. Jactitation of marriage
8. Dowry
9. Personal property and belongings of a wife

#### SCHEDULE

##### Part A

1. Dissolution of marriage
2. Dower
3. Maintenance
4. Restitution of conjugal rights
5. Custody of children and the visitation rights of parents to meet them
6. Guardianship
7. Jactitation of marriage
8. Dowry
9. Personal property and belongings of a wife
10. Other benefits available to divorced wife
11. Permission for additional marriage
12. Revision of certificate of maintenance, issued by the Arbitration Council
13. Permission to contract child marriage



## West Pakistan Family Courts Rules, 1965

4. (1) A plaint under subsection (1) of section 7 shall be in writing signed and verified by the plaintiff, it shall be presented to the Court having jurisdiction under Rule 5 of these Rules by the plaintiff or through a Counsel, and where the plaintiff is a female, by her agent.

(2) The plaint under sub-rule (1) shall also contain the following particulars:-

- (a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant as far as can be ascertained;
- (d) where the plaintiff or defendant is a minor or a person of unsound mind a statement to that effect;
- (e) the facts constituting the cause of action and the place where and date when it arose; and
- (f) the nature of the claim and valuation of the claim with particulars in brief and the relief claimed.

### Addition:

4-A. (1) A plaint under the Proviso to subsection (4) of Section 10 shall be in writing signed and verified by the plaintiff and shall be presented to the Court having jurisdiction under Rule 6 of these Rules by the plaintiff or through a counsel or by her agent.

(2) The plaint under sub-rule (1) shall also contain the following particulars:-

- (a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant as far as can be ascertained;
- (d) where the plaintiff or defendant is a minor or a person of unsound mind a statement to that effect;
- (e) a demand for the dissolution of marriage on the sole ground Khula.

4-B. (1) An application under subsection (1) of Section 12-B shall be in writing signed and verified by the applicant and shall be presented to the Court having jurisdiction under Rule 6 of these Rules by the applicant or through a counsel or an agent.

(2) The application under sub-rule (1) shall also contain the following particulars:-

- (a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;
- (b) the name, description, age and place of residence of the applicant;
- (c) the names, descriptions, ages and places of residence of the applicant's existing wife or wives, as the case may be;
- (d) the names, descriptions, ages and places of residence of the applicant's children, if any;
- (e) the name, description, age, and place of residence of the woman the applicant wishes to marry, as well as of her children and other dependants, if any;
- (f) whether the applicant's existing wife or wives have given permission to contract the proposed marriage;
- (g) the applicant's monthly/annual income and sources of income;
- (h) a list of the applicant's assets, including movable and immovable property, and their estimated value;
- (k) whether the applicant has delegated the right of divorce to his existing wife or wives.

(l) the applicant's reasons for seeking to contract an additional marriage.

4-C. (1) An application under subsection (1) of section 12-C shall be in writing signed and verified by the applicant and shall be presented to the Court having jurisdiction under Rule 6 of these Rules by the applicant or through a counsel.

(2) The application under sub-rule (1) shall also contain the following particulars:-

- (a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;
- (b) the name, description, age and place of residence of the applicant;
- (c) the names, descriptions, ages and places of residence of the intending spouses or the children for whose marriage permission is being sought;
- (d) the names, descriptions, ages and places of residence of all other interested parties;
- (e) the applicant's reasons for seeking permission to contract a child marriage.

### REGISTERS OF CASES, DECREES, ORDERS, ETC.

15. When a plaint has been filed its particulars shall be entered in a register to be kept in the form prescribed for Civil Suits under the Code of Civil Procedure, 1908

15. When a plaint or an application listed in the Schedule, has been filed its particulars shall be entered in a register to be kept in the form prescribed for Civil Suits under the Code of Civil Procedure, 1908.

16. In every suit, on passing the judgment, a decree shall be drawn up in Form I and shall be signed by the Presiding Judge. The decree shall bear the seal of the court.

### Addition:

16-A. In every application listed in the Schedule, on making a decision, an order shall be drawn up in Form II-A and shall be signed by the Presiding Judge. The order shall bear the seal of the court.

### Records and their inspection

23. The Court shall, on the application of any party to a dispute, allow inspection of the records of the Court relating to the dispute on payment of a fee of fifty paise.

23. The Court shall, on the application of any party to a dispute, allow inspection of the records of the Court relating to the dispute on payment of a fee of ten rupees.

24. The seal of the Court shall be used on all summonses, orders, decrees, copies and other documents issued under the Act or these rules.

### Addition:

Form II-A

(under this amendment, a new Form II-A has been added, with more details)

## The Dissolution of Muslim Marriages Act, 1939

2. Grounds for decree for dissolution of marriage - A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) that the whereabouts of the husband have not been known for period of four years;

(i) that the whereabouts of the husband have not been known for period of two years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of one year;

(ii-a) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961.

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iii) that the husband has been sentenced to imprisonment for a period of three years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of one year;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(v) that the husband was impotent at the time of the marriage and continues to be so; or has been medically declared sterile.

(vi) that he husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vi) that the husband is a drug addict or has been medically declared insane, or is suffering from leprosy or a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated;  
Proviso to be deleted

(viii) that the husband treats her with cruelty, that is to say -

a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

a) Frequently assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

b) associates with women of evil repute or leads an infamous life, or

b) associates with persons of evil repute or leads an infamous life, or

f) ground of Lian (inserted by Protection of Women Act 2006)

### Addition:

(h) that husband and wife have been separated from each other for over a year and reconciliation efforts have failed;

(i) that the husband gave incorrect information in the marriage contract, or has violated a condition of the marriage contract;

(j) ground of Khula;

(ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim law:

Provided that:

(a) no decree shall be passed on ground (iii) until the sentence has become final;

Be deleted

(b) a decree passed on ground (i) shall not take effect for a period of three months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the court shall set aside the said decree;

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of six months from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

5. Rights to dower not to be affected - 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.

5. Rights to dower, Ma'ta and maintenance not to be affected:- Nothing contained in this Act shall affect any rights which a married woman may have under Muslim law to her dower or any part thereof, Ma'ta, maintenance or other benefits on the dissolution of her marriage



## Child Marriage Restraint Act, 1929

2. Definitions - In this Act, unless there is anything repugnant in the subject or context:-

(a) "child" means a person who, if male, is under eighteen years of age, and if a female, is under sixteen years of age.

(a) "child" means a person of either sex who is under eighteen years of age.

4. Punishment for male adult above eighteen years of age marrying a child - Whoever, being a male above eighteen years of age, contracts a child marriage shall be punishable: with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees or with both.

4. Punishment for male adult above eighteen years of age marrying a child - Whoever, being a male above eighteen years of age, contracts a marriage with a child shall be punishable with:

i. imprisonment of either description for a term for a minimum of 1 year and may extend to five years and with fine which may extend to twenty-five thousand rupees, or with both, if the bride is less than sixteen years of age; and

ii. imprisonment of either description for a term for a minimum of 16 months and may extend to three years or with fine which may extend to twenty thousand rupees, or with both, if the bride is more than sixteen but less than eighteen years of age, and the requisite permission from the Court under subsection (9) of section 5-A of the ordinance, 1961, has not been obtained.

5. Punishment for solemnising a child marriage - Whoever, performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

5. Punishment for solemnising a child marriage - Whoever, performs, conducts or directs any child marriage shall, unless he proves that he had reason to believe that the marriage was not a child marriage, be punishable with:

i. imprisonment of either description for a term of minimum nine months and may extend to three years and with fine which may extend to twenty thousand rupees, or with both, if the child is less than sixteen years of age; and

ii. imprisonment of either description for a term of minimum three months and may extend to one year, or with fine which may extend to ten thousand rupees, or with both, if the child is more than sixteen but less than eighteen years of age, and the requisite permission from the Court under subsection (9) of section 5-A of the Ordinance, 1961, has not been obtained.

6. Punishment for parents or guardian concerned in a child marriage - (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parents or guardian or in any other capacity, lawful or unlawful who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees.

6. Punishment for parents or guardian concerned in a child marriage - (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parents or guardian or in any other capacity, lawful or unlawful who does any act to promote the marriage or permits it to be solemnised, or fails to prevent it from being solemnised, shall be punishable with:

i. imprisonment of either description of a term of minimum nine months and may extend to three years, and with fine which may extend to twenty thousand rupees, or with both, if the child is less than sixteen years of age; and

ii. imprisonment of either description for a term of minimum three months and may extend to one year, or with fine which may extend to ten thousand rupees, or with both, if the child is more than sixteen but less than eighteen years of age, and the requisite permission from the Court under subsection (9) of section 5-A of the Ordinance, has not been obtained.

Provided that no woman shall be punishable with imprisonment.

Proviso to be deleted.

7. Imprisonment not to be awarded for offences under Section 3 - Notwithstanding anything contained in Section 25 of the General Clauses Act, 1897 or Section 64 of the Pakistan Penal Code, a Court sentencing an offender under Section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.

7. Be deleted as Section 3 has already been omitted in 1961.

8. Jurisdiction under this Act - Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure 1898, no Court other than that of a Magistrate of the first class shall take cognizance of or try any offence under this Act.

8. Jurisdiction under this Act - The Family Court, established under Section 3 of the WP Family Court Act 1964 (Act XXXV of 1964) shall exercise jurisdiction under this Act and may take cognizance of an offence in the manner provided by Section 190 of the Code of Criminal Procedure, 1998 (Act V of 1989).

9. Mode of taking cognizance of offence - No Court shall take cognizance of any offence under this Act except on a complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe, and such cognizance shall in no case be taken after the expiry of one year from the date on which the offence is alleged to have been committed.

Be deleted and substituted by the Punjab amendment for all provinces as follows:

9. Mode of taking cognizance of offence - No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

12. Power to issue injunction prohibiting marriage in contravention of this Act

(5) Whoever, knowing that an injunction has been issued against him under subsection (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees or with both:

(5) Whoever, knowing that an injunction has been issued against him under subsection (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term of minimum nine months and may extend to three years, or with fine which may extend to twenty-five thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

Proviso to be deleted.

## Incidents of violence against women in 2008

Violence against women is a persistent and ongoing problem in Pakistan and around the world. It affects women's social and economic equality, physical and mental health, well-being and economic security. Decision-makers require a clear understanding of the nature and severity of social problems in order to develop effective responses.

The data shows that domestic violence is the most under-reported crime because it is generally condoned by social customs and considered as private family matter. The analysis of the reported violence cases also shows that majority of the victims belong to the lower and lower middle class families. However, this is prevalent, both in urban and rural areas.

The data collected by Aurat Foundation throughout the year 2008 reveals that there were 7240 incidents of violence against women (VAW) all over Pakistan, excluding most parts of the FATA. Out of these, there were 4147 cases in Punjab; 1351 in Sindh; 896 in NWFP; 668 in Balochistan and 178 in Islamabad. Almost all of these cases are reported cases, and mostly related to physical violence, with a very small number of domestic violence.

There were a total of 2149 cases of VAW in the last quarter of 2008 (October- December); 2229 in the third quarter (July- September); 1604 cases in the

second quarter (April-June); and 1258 cases in the first quarter of the year (January-March).

The increase in the number of cases in each following quarter, it appears, is due to the expansion of the base of the media scanning and scrutiny of Aurat Foundation's date collection, and it does not necessarily mean that VAW was actually increasing with each passing quarter. This, however, has also established that more deeply we go into the exercise of data collection on incidents of violence against women, the more their number increases, meaning by that what we are presenting still might be a tip of the iceberg.

According to the data gathered during 2008, out of a total of 7240 incidents of violence against women, 1762 cases of abduction were reported, followed by 1518 cases of murder. There were 579 cases of suicide (171 in October-December; 216 in July- September; 66 & 126 respectively in first and second quarters). The data shows that abductions and murder cases are increasing all over the country or being more widely reported.

There were 472 cases of 'honour' killing in 2008 (91 in Punjab; 220 in Sindh; 32 in NWFP; 127 in Balochistan; 02 in Islamabad); 123 cases of attempt to murder (29 in Punjab; 42 in Sindh; 05 in NWFP; 45 in Balochistan; 02 in Islamabad); 320 cases of

domestic violence (67 in Punjab; 98 in Sindh; 113 in NWFP; 34 in Balochistan and 08 in Islamabad); 449 cases of rape (326 in Punjab; 80 in Sindh; 28 in NWFP; 10 in Balochistan; 05 in Islamabad); 306 cases of gang-rape (248 in Punjab; 50 in Sindh; 01 in NWFP; 02 in Balochistan, and 05 in Islamabad); 187 cases of sexual assault (128 in Punjab; 40 in Sindh; 12 in NWFP; 03 in Balochistan and 04 in Islamabad); 117 cases of custodial violence (43 in Punjab; 69 in Sindh; 05 in Islamabad); 56 cases of burning (31 in Punjab; 11 in Sindh 01 in NWFP; 12 in Balochistan; 01 in Islamabad); 24 cases of acid throwing (19 in Punjab; 03 in Sindh; 02 in Islamabad); 298 cases of torture (273 in Punjab; 01 in NWFP; 08 in Balochistan; 16 in Islamabad); 53 cases of threat to violence (39 in Punjab; 02 in Sindh; 12 in Islamabad); 23 cases of Vanni (15 in Punjab; 07 in Sindh; 01 in NWFP); and 21 cases of miscellaneous nature were reported throughout the country ( 12 in Punjab; 6 in Sindh ;03 in Islamabad)

The cases have been put in different categories depending upon the nature of offence. The data reflects that violence survivors are mostly married women. It has been noticed that there has been a sudden rise in the incidents of suicide by women, which upon scrutiny, has shown that cruelty by male-relatives, as well as poverty are main factors behind the alarming increase in these incident.

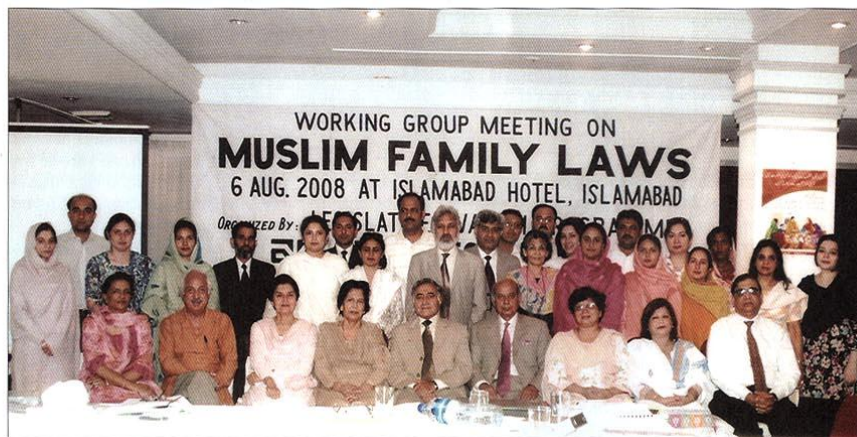


## Working Group Meetings on Muslim Family Laws

Aurat Foundation, along with several partner organizations, legal personalities and activists, has been campaigning for many years for amendments in the out-dated and redundant provisions of the different legislations that deal with Muslim family laws, including the confusing Muslim Family Laws Ordinance, the archaic Child Marriage Restraint Act and the Dissolution of Muslim Marriages Act. Although the Family Courts Act was amended in 2002 and incorporated a number of the recommendations made by civil society, there is still need for further, more comprehensive amendments.

AF invited a number of eminent lawyers and jurists to participate in a national meeting held on 6 August 2008 in Islamabad to re-analyse the set of laws on the basis of an up-dated version of previous recommendations, authored by Dr. Faqir Hussain, Secretary Law and Justice Commission of Pakistan. The participants conducted a clause-wise scrutiny of the Muslim Family Laws Ordinance 1961; the West Pakistan Rules Under the MFLO; Form of Nikahnama (marriage contract); the West Pakistan Family Courts Act, 1964; the West Pakistan Family Courts Rules, 1965; the Child Marriage Restraint Act, 1929 and the Dissolution of Muslim Marriages Act.

The house discussed in detail clauses that need to be amended to facilitate women seek justice in matters related to marriage, divorce, 'khula,' maintenance and discouraging practice of child marriages. After a day long detailed discussion, a set of



Seated (L to R): Shamsa Ali (Senior Advocate), Syed Iqbal Haider (HRCP & former federal law minister), Justice (Retd.) Nasira Javid Iqbal (member Law and Justice Commission), Justice (Retd.) Majida Rizvi (former chairperson NCSW), Dr. Faqir Hussain (Secretary, Law and Justice Commission), Justice (Retd.) Shaiq Usmani, Noor Naz Agha (PAWLA/Advocate), Anis Haroon (Aurat Foundation/WAF Karachi), Prof. Akmal Waseem (Hamdard Law College, Karachi). Standing (L to R): Shabina Ayaz (AF Peshawar), Habib Tahir (HRCP/Advocate), Saadia Mumtaz (Advocate), Shumaila Tanveer (AF), Shakeel Azam Awan (Advocate), Rubina Barohi (AF/Advocate), Imran Quershi (Shirkat Gah/Advocate), Mumtaz Mughal (AF Lahore), Shamim Malik (Advocate), Naeem Mirza (AF Islamabad), Younas Khalid (AF Islamabad/Advocate), Akbar Ali Shah (Advocate), Nasreen Zehra (AF Lahore), Haroon Dawood (AF Quetta), Maliha Zia (AF Islamabad/Advocate), Shahnaz Hameed Khattak (Advocate), Amir Ali (AF Quetta), Nuzhat Yasmin (Advocate), Ume-e-Laila (AF Lahore), Uzma Mehboob (AF Peshawar/Advocate), Farhat Fatima (journalist), Aqsa Khan (Action Aid), Samreen Sadouzi (Advocate).

recommendations were agreed upon and a smaller working group was designated to finalize the set of recommendations.

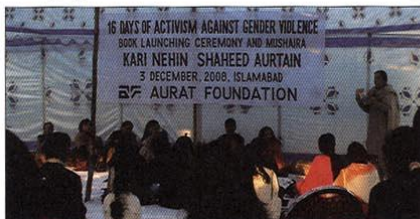
Accordingly, the second working group meeting was held on 29 October 2008 in Karachi and included the participation of a number of the country's top legal minds. After detailed discussion and analyses, rec-

ommendations for four of the acts were finalized (the text of these recommendations has been produced on pages 4 to 7). These recommendations are currently being shared in the different regions of Pakistan for further discussion and adoption by civil society. These recommendations will be presented to the government for consideration and enactment by the Parliament.



A rally in Karachi to mark 16 days of activism

16 days of activism against gender-based violence is a worldwide campaign marking the advocacy against violence against women. In September 2008, the horrifying story of burial alive of 5 women in Naseerabad was reported by brave journalists, despite threats to their own security. Such blatant disregard of the law and violation of basic human rights of women shocked the conscience of the entire society. Therefore, networks of civil society organisations, including Insaani Haqooq Itehaad (IHI), Legislative Watch Groups (LWGs), Violence Against Women Watch Groups (VAW-WGs), Women's Action Forums (WAF) and Joint Action Committees (JACs), along with other partners, met in a national consultation in Islamabad on 18 September to discuss a nationwide campaign against murders and crimes committed in the name of "honour" and customary practices. The consultation unanimously



The book launching and mushaira in Islamabad

## 16 Days of Activism Against Gender Violence

passed the Islamabad Declaration that declared all women who have been brutally murdered under such practices are to be consid-



A banner on display in Quetta

ered 'Shaheed Aurtaain' (martyred women); that the government must take responsibility to uncover the true stories and not to protect people within its own government and those who have 'connections'; that action be taken against a Senator for supporting such heinous crimes while sitting in the Senate. The meeting also decided that the 16 days of activism 2008 will be dedicated to these Shaheed women. Aurat Foundation brought out three publications on the occasion, inking a booklet title 'Kari Nehin, Shaheed Aurtaain'. A mushaira of feminist poetry was also conducted in Islamabad on the occasion. In Lahore, AF distributed several types of items, including buttons with title "say no violence against women, a pocket calendar of 2009, and flyers with history of 16 days of activism. A candle-light vigil was also held on 28 November in Lahore. In Karachi, AF organised a rally on the eve of International Day for the Elimination of VAW in collaboration with WAF and other civil society organisations on 25 November from Regal Chowk to Karachi Press Club. The rally was participated by hundreds of people from Karachi, Hyderabad, Sukkur, Badin and other areas of Sindh. In Peshawar, a seminar was held on 4 December 2008 to highlight 16 days of activism. In Quetta, two functions were held with university students and youth to highlight the message of 16 days



A candle-light vigil in Lahore

of activism. Banners with slogans on gender-based violence were also displayed in different important places of the Quetta city for awareness.



Founded by and dedicated to Shahla Zia

Legislative Watch is produced by the Resource Service of the Legislative Watch Programme of Aurat Publication and Information Service Foundation at Islamabad.

Patron-in-Chief: Nigar Ahmad

Advisory Board: I.A. Rehman, Tahira Abdullah

### Editorial Board

Anis Haroon, Naeem Mirza, Maliha Zia

Letters, opinions and contributions are welcome. Please write to House 19, Street 1, G-6/3, Islamabad  
Tel: (051) 2277512 - 2277547, Fax: (051) 2822060  
Email: lwprs@af.org.pk  
Website: www.af.org.pk

Printing funded by: RNE