



Legislative Gap Analysis & Key Reforms on Muslim Family Laws in Sindh



Policy Paper Series
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Under Section 4 of the Sindh Protection of Human Rights Act 2011 (2022 Amendment), the SHRC has the powers and functions to 4 “ (iii) formulate, implement and regularly update policies with a view to protect human rights; (v) review the safe guards provided by or under the Constitution or any law for the time being in force for protection of human rights..” and (x) encourage the efforts of non-governmental organizations and institutions working in the field of human rights’.

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Policy Paper Series

Legislative Gap Analysis and Key Reforms on Muslim Family Laws in Sindh

Introduction

Pursuant to the 18th Amendment to the Constitution of Islamic Republic of Pakistan, 1973 ('Constitution') matters relating to the family and marriage are a provincial subject. Therefore, federal legislations relevant to family laws, including Muslim Family Laws Ordinance 1961 ('MFLO 1961'), the Family Courts Act 1964 ('FCA 1964'), The Child Marriage Restraint Act 1929 and other relevant laws are governed by the provincial legislature. Since 2018, a number of key legal amendments have been made in Sindh to improve protections, especially for women and children, in the context of family laws. Notably, Sindh is the only province in Pakistan with its own standalone legislation on child marriages, namely The Sindh Child Marriages Restraint Act 2013 and the Sindh Child Marriages Restraint Rules, 2016. However, despite Sindh having the most comprehensive legal framework against child marriages, there are significant gaps in the implementation of provisions of the law leading to continuing reported incidences of child marriage across the province.

Similarly, key protections in marriage available in other provinces of Pakistan have not yet been incorporated in the law in Sindh. This includes for example: a) the Nikkahnama in other provinces contains a CNIC Column to record the age of the bride and groom, which is not yet added to the Nikkahnama in Sindh; b) In Punjab, there is a duty on Nikkah Registrars to properly fill out all columns of Nikkahnama with complete answers of bride and bridegroom and a penalty has been imposed for non-compliance in this regard. In Punjab, there is also a penalty for non-registration of Nikkahnama. These duties are not found for Nikkah Registrars under the law in Sindh; c) In Punjab, the complaint process for polygamy allows a wife as an aggrieved party to file a complaint for polygamy. In Sindh, only the Union Council can file a complaint against polygamy. In addition, the FCA 1964 created a distinct yet simplified procedural process for family-related suits. In this regard, Punjab has made provisions of special measures for access to justice in family matters, which include audio & video recording for witnesses and extended the family court's jurisdiction to '*any matter arising out of the Nikkahnama.*' These measures are not there in Sindh.

This **Policy Paper** provides a legislative gap analysis of the legal framework relevant to protecting women's marriage rights in the province of Sindh. The Paper was developed through a series of comprehensive consultations with key stakeholders from parliament, government, judiciary and other experts over a period of two years. Moreover, the development of the Paper's analysis on gaps in the legal provisions and its practice also emanate from practical challenges and lived experiences shared by communities, litigants, as well as local government functionaries, in various family law cases. Reflections and realities of multiple stakeholders engaging with the relevant family laws in Sindh were

captured and supplemented with rigorous legal research on Pakistan’s constitutional and legal framework to develop an evidence-based research approach for this Policy Paper.

Furthermore, the Paper draws from existing positive legislative developments in individual provinces in Pakistan to shed light on key recommendations for reform needed at the provincial level in Sindh. The Policy Paper is a milestone in providing a targeted analysis of the gaps in the current law to support actionable recommendations. It seeks to assist legislators, government, policy makers, practitioners and civil society organizations working to reform Muslim Family Laws in Sindh. It also aims to serve as a building block for the development of future reform initiatives.

Summary of Key Recommendations on Muslim Marriages for Sindh

Concerned Area	Issue	Recommendation	Amendment required under which law
Nikkahnama	CNIC Column	Addition of CNIC Column	Amendment of Nikkahnama Form II Muslim Family Law Rules 1961
Polygamy	Complaint Mechanism	A wife should be allowed to file a complaint for polygamy in Pakistan.	Amendment of Rule 21 (Complaints) of Muslim Family Law Rules 1961
	Punishment	The punishment for illegal second marriages should be increased in Pakistan.	Amendment of Section 6 (Polygamy) of MFLO 1961
Duty of Nikkah Registrars	Registration of Marriage & filling columns of Nikkahnama	Crossing out of columns / or leaving them blank in the Nikkahnama by Nikkah Registrars should be penalized across Pakistan, and the penalty for non-registration of Nikkahnamas should be increased.	Amendment of Section 5 (Registration of marriages) MFLO 1961
Appointment of Nikkah Registrar	No rules/regulations on the	There needs to be criteria for appointment of Nikkah Registrar.	Amendment to Rule 7 of MFLO or

	appointment criteria for Nikkah Registrars		Amendment to Local Government Rules
Divorce	Notification of Divorce to Union Council (UC)	A woman should be able to notify the UC if she has been given a divorce by her husband. Existing provision only asks men to notify UC in case of divorce and also imposes a penalty on the husband for not notifying the UC, however this provision is rarely utilized.	Amendment to Section 7 of MFLO 1961
Access to Justice	Intimation of Khula Decree	Shift the burden from the wife to the family court regarding intimation to Arbitration Council after dissolution of marriage.	Insert new section in the Family Courts Act 1964
	Defendant's Court Appearance	Lower the time period for the defendant to submit the written statement from 30 to 15 days.	Amendment to Section 8 of the Family Courts Act 1964
	Jurisdiction of Family Court	Family court jurisdiction to be extended to include any matter arising from Nikkahnama	Amendment to the Schedule Part 1 of the FCA 1964
	Recording of Evidence	Enact special measures for access to justice in family matters, such as audio & video recording for witnesses.	Amendment to Section 11 (Recording of Evidence) of FCA1964

1. Amendment of Nikkahnama

Nikkahnama: Amendment to the Nikkahnama in Sindh by adding a CNIC Column to it.

Brief Note: In the Rules prescribed under **Muslim Family Laws Ordinance 1961** as applicable to Sindh, the Nikkahnama as stipulated in Form II must contain the age of the bride and bridegroom. **The Sindh Child Marriage Restraint Act 2013** stipulates the minimum legal age of marriage for bride and bridegroom to be 18 years of age in the province.

Furthermore, under **The Sindh Child Marriages Restraint Rules, 2016**, a detailed procedure has been provided for Nikkah Khawans as well as Nikkah Registrar's to ensure that the age of parties is 18 or above. The rules state that *"An attested copy of a valid CNIC of both contracting parties shall be attached with the Nikkahnama..."* and in the absence of a valid CNIC available for the parties, there is the obligation to attach either a medical certificate confirming age of the parties and a corresponding affidavit.

Relevant extract of the said rules reproduced below:

"3. Ensuring Age of Parties.- (1) Any person performing, conducting or solemnising the marriage must ensure that the bride and the bridegroom are aged 18 or above as per the Act.

He shall provide a signed affidavit stating that he has satisfied himself about the age of the contracting parties as not being less than 18 years. Such an affidavit shall be attached with the nikkahnama.

(2) An attested copy of a valid CNIC of both contracting parties shall be attached with the nikkahnama, marriage contract or any other documentation having the same effect.

Explanation: The copies of the CNIC may be attested by a Nikkah Registrar having license under Section 5 of Muslim Family Laws Ordinance 1961 and attached with nikahnama for registration of marriages.

(3) If a CNIC of either party to the marriage is not available, the parties may attach a medical certificate verifying the age of the parties.

(4) Any person or institution providing a medical certificate verifying the age of a person shall sign and provide an affidavit stating that he has

satisfied himself about the age of the person examined. Such an affidavit shall be attached with the nikkahnama, marriage contract or any other document having the same effect.

(5) Fabricating of false evidence, statement or affidavit shall be liable to prosecution as per the Pakistan Penal Code 1860.”

However, despite Sindh having the most comprehensive legal framework against child marriages, there are significant gaps in the implementation of provisions leading to continuing reported incidences of child marriage across the province. In order to strengthen the implementation of law against child marriages, it is strongly recommended that the CNIC column be added to the nikkahanama in Sindh.

2. Polygamy

Polygamy: Amendment to allow a wife to be able to file a complaint for polygamy.

Brief Note: In **Punjab**, a wife can lodge a complaint directly to the court as “*an aggrieved party*” against her husband if he takes a second wife without the permission of the Arbitration Council. This is because Rule No. 21 of Punjab Muslim Family Rules 1961, which relates to the filing of complaints under the Muslim Family Laws Ordinance 1961, was amended through Notification No.S.O. X-1-1975-Vol. II-Punjab Gazette, Extra, 26th November, 1976 to include an ‘**aggrieved party**.’ Rule No. 21 as amended now in Punjab states that a complaint against polygamy can be made by an “Aggrieved Party or the Union Council”.

Similarly in **KP (previous N.W.F.P)**, the Provincial Government issued Notification bearing No.AO(LG)1(20)/81 dated 24th September, 1992, whereby the Governor of the North-West Frontier Province at the time, had made amendment in the West Pakistan Rules under Muslim Family Laws Ordinance, 1961 which reads;

“In the said rules, in rule-21 for the words “Union Council”, the words, “aggrieved party” shall be substituted.”

Presently in **Sindh, Balochistan and the ICT**, only the Union Council can file a complaint against polygamy. The relevant amendment should be made in these provinces too to ensure that a wife is able to file a complaint against illegal second marriage.

Extract from the Relevant Law (Punjab Muslim Family Rules 1961):

Rule 21:

No Court shall take cognizance of any offense, under the Ordinance or these rules save on a complaint in writing by the aggrieved party, stating the facts constituting the offense.

Polygamy: Amendment to increase punishment for second marriage without the permission of the Arbitration Council

Brief Note: In Punjab, through the Punjab Muslim Family Laws (Amendment) Act 2015, the punishment for any man who contracts a marriage without the permission of the Arbitration Council has been increased from ‘*simple imprisonment which may extend to one year, or with a fine which may extend to five thousand rupees, or with both*’ to ‘*simple imprisonment which may extend to one year and with a fine of five hundred thousand rupees.*’

Extract from Relevant Law (MFLO 1961):

Section 6 (b) - Polygamy

On conviction upon complaint be punishable with the simple imprisonment which may extend to one year and with fine of five hundred thousand rupees.

3. Duty of Nikkah Registrars

Nikkahnama: Crossing out of columns / or leaving them blank in the Nikkahnama by Nikkah Registrars should be penalized across Pakistan, and the penalty for non-registration of Nikkahnamas should be increased.

Brief Note: In Punjab, Nikkah Registrars are legally required to accurately fill out all the columns of the Nikkahnama and can be penalized if they do not do so under **MFLO 1961**.

The Punjab Muslim Family Laws (Amendment) 2015 added Section 5 (2A), mandating the accurate filling out of the Nikkahnama with specific answers of the parties to the contract, and Section 4 (i), penalizing contravention of Section 5 (2A), to the MFLO 1961. Additionally, through the Punjab Muslim Family Laws (Amendment) 2015 the penalty for non-registration of Nikkahnamas has also been increased.

Extract from the Relevant Law (MFLO 1961):

Section 5 (2A)	Section 5 (4)
<p>The Nikkah Registrar or the person who solemnizes a Nikkah shall accurately fill all the columns of the Nikkahnama form with specific answers of the bride or the bridegroom.</p>	<p>If a person contravenes the provision of:</p> <p>(i) Subsection (2A), he shall be punished to simple imprisonment for a term which may extend to one month and fine of twenty five thousand rupees; and</p> <p>(ii) Subsection (3), he shall be punished to simple imprisonment for a term which may extend to three months and fine of one hundred thousand rupees.</p>

4. Appointment Criteria of Nikkah Registrars

Appointment Criteria: There should be some criteria for the selection and appointment of Nikkah Registrars in Sindh.

Brief note: Rule 7 of the Family Law Rules 1961 under MFLO 1961 only states that ‘any person deemed competent of solemnizing a marriage under Muslim law can apply’ however it does not provide any academic or other qualification necessary for the appointment of Nikkah Registrar. Moreover, it is only mentioned that it is the duty of Union Council to make such inquiries it may consider necessary for grant of license to satisfy itself that the applicant is a ‘a fit and proper person’.

A comprehensive selection criteria for appointment of Nikkah Registrars is needed which may include for e.g. a minimum academic qualification, minimum age of Nikkah Registrars, the duration/term of appointment, conditions of grant of license to Nikkah Registrar, etc.

5. Divorce

Divorce: A woman should be able to notify the Union Council directly if she receives a divorce from her husband rather than having to rely/wait for her former husband to intimate the divorce to the Union Council.

Brief note: Under the current provision, Section 7 of the MFLO, a man is asked to notify the Union Council of the pronouncement of divorce as soon as possible. However, in practice this is not done, causing women a number of problems. Moreover, despite the fact that Section 7 imposes a penalty on the husband for failing to notify the Union Council, this provision is rarely utilized.

In 2021, amendments were proposed to **Section 7 MFLO 1961**, including regarding the requirement to give **notice of talaq**¹. The amendment proposed that where the notice is not given by the man after pronouncement of divorce then the woman/wife should be permitted to tell the Union Council of the same to free herself from the marriage. This prevents the woman from being subjected to harassment in the form of Zina (and other related Pakistan Penal Code ('PPC') offences) complaints filed against her by the former husband claiming she is still married (because he never gave any notice in writing to the Union Council to this effect).

Extract from the Relevant Law (MFLO 1961):

7. *Talaq*.– (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

¹ Draft Bill Muslim Family Laws (Amendment) Act, 2021 National Assembly of Pakistan, https://na.gov.pk/uploads/documents/1618561845_174.pdf

2021 Proposed Amendment to Section 7 of MFLO 1961²:

“In the said Ordinance, in Section 7.-

(a) for sub-section (1). the following shall be substituted, namely:-

“(1) Any man who wishes to divorce his wife or any woman who exercises her right of talaq-i-tafveez, shall, within seven days of the pronouncement of talaq or talaq-i-tafveez, as the case may be, in any form whatsoever, give to the Chairman notice in writing of his or her having done so and shall supply a copy thereof to the other party.”; and

(b) after sub-section (1), substituted as aforesaid, the following new sub-section shall be inserted, namely:-

“(1A) Where a man who pronounces talaq in respect of his wife, in any form whatsoever, fails to give to the Chairman notice under sub-section (1), the wife may give notice of the same to the Chairman.,

(1B) Where a woman who pronounces talaq-i-tafveez in respect of her husband, in any form whatsoever, fails to give to the Chairman notice under sub-section (1), the husband may give notice of the same to the Chairman.”

6. Access to Justice:

Access to Justice: Lower the time period for the defendant to submit the written statement from 30 to 15 days

Brief Note: In Punjab the time period for the defendant to submit the written statement along with the other required documents has been reduced from thirty days (30) to fifteen days (15). This speeds up the trial process and prevents the defendant from unnecessarily delaying the trial proceedings.

²Draft Bill Muslim Family Laws (Amendment) Act, 2021 National Assembly of Pakistan,
https://na.gov.pk/uploads/documents/1618561845_174.pdf

Extract from the Relevant Law (FCA 1964):

Section 9 - Written statement:

(1) On the date fixed under Section 8, the defendant shall appear before the Family Court and file the written statement, a list of witnesses and gist of evidence, and in case the written statement is not filed on that date, the Family Court may, for any sufficient reasons which prevented the defendant from submitting the written statement, allow the defendant to submit the written statement and other documents on the next date which shall not exceed fifteen days from that date.

Access to Justice: Shift the burden from the wife to the Judge for intimation of Arbitration Council after dissolution of marriage

Brief Note: In Punjab, through the Family Courts (Amendment) Act 2015, Section 21B has been added to the Family Courts Act 1964. Significantly, Section 21B shifts the burden from the wife to the family court for intimating the Arbitration Council upon the passing of a decree for the dissolution of marriage. This reduces the burden on the wife.

Extract from the Relevant Law (FCA 1964):

Section 21B - Intimation to Arbitration Council:

If a Family Court decrees dissolution of a Muslim marriage, the Family Court shall immediately but not later than three days from the decree send by registered post or other means a certified copy of the decree to the concerned Chairman of the Arbitration Council and upon receipt of the decree, the Chairman shall proceed as if he had received intimation of Talaq under the Muslim Family Laws Ordinance, 1961 (VIII of 1961).

Access to Justice: Inclusion of ‘any other matter arising out of the Nikahnama’ in Part I of the Schedule from the Family Courts Act 1964

Brief Note: In Punjab, through the Family Courts (Amendment) Act 2015, the family court’s jurisdiction has been increased to cover “any other matter arising out of the nikkahnama.”

Extract from the Relevant Law (FCA 1964):

Item No. 10 Part I of Schedule

10. Any other matter arising out of the Nikahnama.

Access to Justice: Enact special measures for access to justice in family matters, such as audio & video recording for witnesses.

Brief Note: In Punjab, unlike the other three provinces and the ICT, the family court can record evidence through audio or video recording.

Extract from the Relevant Law (FCA 1964):

Section 11 (1A) - Recording of Evidence:

(1A) The Family Court shall record or cause to be recorded, the substance of the statement of a witness or may record or cause to be recorded, the statement of a witness through audio or video recording.

Conclusion

The above proposed recommendations for Sindh contained in this Policy Paper derive from best practices applicable to the existing legal context in Sindh. These recommendations are an achievable target, in the sense that there is already a precedent for reform on these specific provisions in other provinces of Pakistan. The reforms would serve the dual purpose of addressing existing gaps in protections afforded under the law, especially for marginalized groups such as women and children, and pave the way for more effective implementation and enforcement of existing provisions protecting women's marriage rights in Sindh.