

**Muslim Family Laws Ordinance 1961: An
Archival Study in Context of Women Rights in
Pakistan’’**

**BY
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**MUSLIM FAMILY LAWS ORDINANCE 1961: AN
ARCHIVAL STUDY IN CONTEXT OF WOMEN RIGHTS IN
PAKISTAN**

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ABSTRACT

The thesis analyzes the legal, historical, and social impacts of the Muslim Family Law Ordinance (MFLO) of 1961 in Pakistan, particularly during Ayub Khan's government. This regulation, a historic change in Muslim individual regulation, tried to handle significant issues concerning, marriage, inheritance, divorce, and women's rights. It analyzes the main parts of the Ordinance, including the rules governing polygamy, inheritance rights for orphaned grandchildren, the requirement for marriage registration, as well as the debated interpretations within Islamic law. The study employs qualitative analysis to survey how successfully the MFLO safeguards women's rights, as well as limits coming from social resistance and insufficient execution. It examines the wider impact on gender, equality and societal advancement in Pakistan while offering a basic evaluation of changes, including the movement and difficulties looked by the general set of laws. This thesis assesses the ordinance effectiveness and its weaknesses in safeguarding women's rights using qualitative research that consolidates both primary and secondary sources, like academics' articles, legal documents, and historical records. It further analyzes the reactions from religious scholars, political figures, supporting for women's rights.

Key Words: Muslim Family Law Ordinance, Family Law Reforms, Women Rights.

1 Contents

THESIS AND DEFENSE APPROVAL FORM.....	i
AUTHOR'S DECLARATION	2
ABSTRACT	3
LIST OF ABBREVIATIONS.....	8
ACKNOWLEDGEMENTS	9
1. INTRODUCTION	11
1.1 Statement of Problem.....	14
1.2 Significance and Scope of the Study	15
1.3 Theoretical Framework.....	16
1.3.1 Legal Feminist Theory	16
1.3.1.1 Feminist Theorist.....	16
1.3.1.2 Evaluation of Feminism.....	17
1.3.2 Constitutional Measures	18
1.3.3 Evaluation of Feminism in Pakistan	19
1.4 Research Objectives.....	20
1.5 Research Questions	21
1.6 Literature Review.....	21
1.6.1 Arbitration Council	22
1.6.2 Registration of Marriages.....	22
1.6.3 Procedure for Divorce	22
1.6.4 Polygamy	22
1.6.5 Fees and Records	22
1.6.6 Enforcement and Complaints	23
1.6.7 Books	24
1.6.8 Articles.....	27
1.6.9 Newspapers	37
1.7 Methodology	39
1.8 Organization of the study.....	39
2 HISTORICAL BACKGROUND.....	41
2.1 Pre-Islamic Arabia	42
2.2 British Colonial Rule and the Law upon Independence	44
2.2.1 Section 493 cohabitation caused by man deceitfully inducing belief of lawful marriage ...	45
2.2.2 Section 494 marrying again during lifetime of husband or wife.....	45

2.2.3	Section 495 same offences with concealment of former marriage from person with whom consequent marriage is contracted.	45
2.2.4	Section 496 marriage ceremony fraudulently done through without lawful marriage	45
2.2.5	Section 498(A).....	45
2.2.6	498 (A) Prohibition Against Preventing Women from Inheriting Property	46
2.2.7	498 (B) Ban on Forced Marriage	46
2.2.8	498 (C) Restriction on Wedding with the Holy Quran.....	46
2.3	Muslim Personal Law 1937	48
2.4	Marriages	51
2.4.1	Karo-Kari or Honor Killing	51
2.4.2	Selling of Bride	51
2.4.3	Dowry Custom	52
2.4.4	Acid Attacks	52
2.5	Post 1947.....	53
2.6	Family Laws Reforms	55
2.7	Declarations of martial law	59
3	MUSLIM FAMILY LAWS ORDINANCE 1961	68
3.1.	West Pakistan under Muslim Family Laws Ordinance 1961	69
3.1.1.	Preliminary.....	69
3.1.2.	Council for Arbitration.....	70
3.1.3.	Registration of marriage.....	76
3.1.4.	History of Polygamy before Islam	79
3.1.5.	In pre-Islamic Arabia	80
3.1.6.	In Islamic era	80
3.1.7.	Polygamy	81
3.1.8.	Revision	82
3.1.9.	Records and their Inspection	82
3.1.10.	Payment of fees	84
3.1.11.	Complaints.....	84
4	REACTION OF ULAMA ON MUSLIM FAMILY LAWS ORDINANCE 1961	85
4.1	Maulana Maududi response on Divorce	88
4.2	Ayub ask Ulama to move with the time.....	90
4.3	Text of Ayub reply	91
4.4	Polygamy.....	91
4.5	Iqbal view	92
4.6	M. Alvi	92
4.7	Begum Fida Hussain.....	93

4.8	Qari Nazir Ahmad.....	93
4.9	Maulvi Siraj.....	93
4.10	Begum Shahnawaz.....	94
4.11	Begum Asma Qureshi.....	94
4.12	Begum K. Anwar	95
4.13	Maulana Abdul Hamid Qadri Badayuni.....	95
4.14	Views of Islamic scholars on divorce and nikkah and critical debate of judicial activism.....	96
4.15	Opinion from Religious Scholars about Marriage and Divorce in Pakistan.....	96
4.16	Perspectives on Family Law from Judicial Activism and Religious Scholars Converging:	97
5	SHORT TERM AND LONG TERM IMPACT OF MUSLIM FAMILY LAW ORDINANCE 1961	100
5.1	Social Impact of Khula and Divorce Laws	101
5.1.1	Agency and Empowerment:	101
5.1.2	Financial independence.....	102
5.1.3	Parental responsibilities and child custody	102
5.1.4	Social pressure and challenges of stigma	102
5.2	Impact During Ayub Khan Regime	104
5.3	Usage of Ordinance After Ayub Regime	106
5.4	Women Hold Rally to Back Family Laws	109
5.5	Ayub Interview	109
5.6	Women Rallies Deviation from Quran and Sunnah	111
5.7	Painful	111
5.8	Women's League Urges its Appeal	112
5.9	Hidden Hands	113
5.10	Resentment Over the Move to Repeal Family Laws	113
5.11	Economic Freedom	114
5.12	Joint appeal by three MPs.....	114
5.13	Telegrams.....	115
5.14	Repeal of family laws demanded.....	115
5.15	All Pakistan Women Association (APWA) Criticized	115
5.16	Polygamy.....	116
5.17	Example of Muslim Family Law Ordinance During and After Ayub Regime	117
5.17.1	Kurshida Bibi v Baboo Muhammad Amin PLD 1967 SC 97	117
5.17.2	In Muhammad Nawaz vs. Mst. Khurshid Begum	118
5.17.3	Amina Bibi v Mirza Allah Ditta alias Mirza Javed Akhtar 2004 YLR 239 (lah)	118
5.18	Criticism During and After Ayub Regime.....	119
5.19	Challenges Posed by Ulama and Other Legal Bodies.....	121
5.19.1	Family Laws Ordinance-V Divorce Procedure.....	121

5.19.2	The Third Time	122
5.19.3	Three Pronunciation.....	122
5.19.4	Ulama's View	123
5.19.5	Objection	124
5.19.6	Age of Consent.....	125
5.19.7	Muslim Family Law Ordinance (III) Problem of Polygamy	125
5.19.8	Conditional Problem	126
5.20	Support and Criticism of the Recommendation	127
5.21	Answering the Objection.....	128
5.22	Quranic Injunction	128
5.23	Context and meaning should not be separated	129
5.24	Press Release from Joint Action Committee	133
5.25	Human Rights Commission of Pakistan (HRCP) is Shocked by Family Law Challenge	134
5.26	Contribution to Women Rights in Pakistan.....	134
5.26.1	Regulation of Polygamy.....	135
5.26.2	Inheritance Rights	136
5.26.3	Mandatory Registration of Divorces and Marriages	137
5.26.4	Role of Arbitration Council	138
Conclusion.....		129
Bibliography.....		132

LIST OF ABBREVIATIONS

APWA	All Pakistan Women Association
BDS's	Basic Democracy System
FSC	Federal Shariat Court
HRCP	Human Right Commission of Pakistan
MEC	Muhammadan Education Conference
MPL	Muslim Personal Law
NAP	National Assembly of Pakistan
PPC	Pakistan Penal Code

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CHAPTER 1

1. INTRODUCTION

Pakistan witnessed its first martial law in 1958 which suspended democratic process and curtailed political stakeholders in limbo. The purpose of martial law was described as revolution for the masses and betterment of the state. Gen. Ayub initiated reform packages for country to improvise the situation and to fulfill his raison d'être of martial law as revolution. Ayub Khan had decided to introduce some reforms such as land reforms, educational reforms, medical reforms and political reforms. In the politics of Pakistan Ayub Khan's basic democracy was new system. He introduced Basic Democracies System to bring politics to the grassroots level in Pakistan to empower himself. Property rights in Pakistan are governed by mix of civil law, Islamic law, customary law, which are administered by common law court system. Women were hesitant to claim their right through court system and government policy avoids the issue of implementation of land rights.¹

At the time of independence, personal status like marriage and divorce was used to be maintained under the laws formed during colonial rule. The old legal status of marriage and divorce remained in practice up till Ayub Khan's regime. It was Ayub Khan who appointed a commission for recommendations over marriage registration and divorce to ease the public and to institutionalize social status. The Muslim Family Law Ordinance was issued in 1961 that became subject of criticism by the religious elite and some other social circles. The new ordinance was directly related to the Basic Democracies System which was an effort to devolve

¹ Mehr-Un-Nisa and Hadia Ahsan, "Critical Analysis of the Ayub Khan's Basic Democracies: An Era from 1958-1969," *Journal of Social Sciences and Humanity*, vol. 1 issue. 2 (July-Dec 2022): 50-66, 52. <https://irjssh.com/index.php/irjssh/article/view/19>.

arbitration powers at grassroots level.² The main legitimate improvement in the field of family law in Pakistan was the marriage regulation commission report of 1956 and the resulting authorization of the Muslim Family Law Ordinance in 1961. In 1955, the public authority of Pakistan laid out the marriage regulation commission to propose changes in family law. The advisory group prescribed a few measures to safeguard women's rights, including raising the marriage age for girl to 16, limiting polygamy, and making marriage and separation enlistment obligatory.³ However the commission's discoveries were profoundly referred to by most of religious people. In the appearance of administrative change, they named it an endeavor to westernize the society. the study started extreme contentions among innovators conservatives with each side communicating their viewpoint to the general population through books, papers and pamphlet.

A few years after the fact, the MFLO which was generally founded on the report, was declared by the strong legislature of Ayub khan, the tactical despot. Although the Muslim Family Law Ordinance did exclude the commission's all suggestions, strictest researchers referred to it as un-Islamic. The MFLO's proclamation says the main legitimate advancement in regard to Islamic family law in Pakistan right up to present day.⁴

Women were the majority of Pakistan population and deserve equal opportunities to develop in social, political and economic sector. Still patriarchal societies like Pakistan have failed to meet the required standard. To enable Pakistani women, many laws had been introducing, including the Muslim Personal Law of Sharia (1937) Muslim Family Law Ordinance (1961)

² Altaf Hussain Langrial and Syed Abrar Hussain Shah, 'A Critical Review of Pakistani Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Laws,' *Journal of Research Gomal University* 30, no. 1 (June 2014), <https://www.researchgate.net/publication/270647013>.

³ Muhammad Zubair Abbasi and Shahbaz Ahmad Cheema, '*Family Laws in Pakistan*,' Oxford University Press No.38, Sector 15, Korangi Industrial Area, (Second Edition,2024), 9.

⁴ Zubair, Shahbaz, '*Family Laws in Pakistan*,' 10.

Hudood Ordinance (1979) Women Protection Bill (2006). Muslim Family Law Ordinance 1961 is most important reforms in the domain of Muslim Personal Laws in Pakistan and prepared by all Pakistan women's association to call the unlimited rights of polygamy and talaq exercise by men. To set up a committee to reforms marriage, divorce, custody of children and inheritance laws. The Muslim Family Law Ordinance 1961 was a major effect in promoting the position of women in Pakistan. It was hailed as innovative legislation by advanced educated women, but faced staunch protests from the Ulama.⁵

The law of inheritance in Islamic jurisprudence is complex and significant and is emphasized by Allah almighty in the Quran, with a share for men and women. The inheritance rights of orphan's children in Pakistan and the controversy surrounding in sec 4 of the Muslim Family Law Ordinance. The commission on marriage and Family Laws in Pakistan recommend that children of the predeceased son or daughter, living at the time of succession, receive a share equivalent to share they would have received if alive.⁶

The Federal Sharia Court ordered the president of Pakistan to amend the Muslim Family Laws Ordinance 1961 to conform to Islam but certain provision will cease to have effect from march 2,2000. It includes extracts from four government commission on women's status including the 1956, 1976, 1985, and 1997 commissions.⁷

The objective of this ordinance is to give an intensive comprehension of Nikkah, "Dowers," "Guardianship," and "Dowry". This ordinance has various specialized legal terms and is

⁵ Ahmad Hassan et al., "The Muslim Family Law Ordinance: Pioneer of Women Empowerment in Pakistan," *Journal of Research Society of Pakistan JRSP* vol, 58 no. 1 (Jan-Mar 2021).

⁶ Zafar Iqbal Kalanauri, "The Law of Inheritance in view of sec 4 of the Muslim Family Law Ordinance (MFLO) 1961," <https://zafarkalanauri.com>.

⁷ "Women Rights in Muslim Family Law in Pakistan :45 Years of Recommendation vs FSC Judgement" (January 2000); Special Bulletin February 2000.

separated into thirteen sections. Punishment and disciplines are workable for disregarded it. Rather than utilizing ‘‘ criminal system’’ the courts interaction includes civil legal formalities.⁸

1.1 Statement of Problem

The Muslim Family Law Ordinance was the first step of the state to provide space to women’s voice through Islamic social engineering in public policies. Contemporary legal scholars condemned the provision of succession as violating Islamic injunctions favors’ a provision on marriage registration and discourage the insertion of a penal clause. The most controversial issue was the lack of clarity on types of divorce and post-divorce rights of women. It is time to conduct pre research legislations on Muslim family laws to ensure effective implementation of women’s and children’s rights. The courts have attempted to favors women, but have suggested progressive concepts such as joint ownership of marital property or recognized the contribution of women in acquiring the marital property.

There was a need pass a law requiring all unregistered marriage to be registered within three years and a time of 30 days and adequate number of women should be appointed Nikkah registrar. Child marriages of minors should be raised to 18, liable to be dissolved or annulled and made a punishable offence under Pakistan Penal Code. The Muslim Family Laws Ordinance 1961 in Pakistan, though introduced with the intention of reforming family laws in accordance with Islamic principles has faced criticism and challenges in its implementation. The study is needed to assess the impact of this ordinance on women’s empowerment in Pakistan, focusing on its effectiveness in safeguarding women’s rights. One of the problems that this study can address is lack of awareness among women about their rights under the Muslim Family Laws Ordinance. Moreover, archival study is required to assess its implications

⁸ Muhammad Ahmad et al., ‘‘ Stylistic Analysis of the Muslim Family Laws Ordinance 1961’’ *Journal for the Study of English Linguistics* 3, no. 1 (Feb 2015): ISSN <https://www.researchgate.net/publications/277636550>.

for the society and the women in particular to understand its role and significance in women empowerment and their rights in Pakistan.

1.2 Significance and Scope of the Study

The Muslim Family Law Ordinance 1961 is a significant piece of legislation in Pakistan that governs family matters and Personal Law for Muslim. It contributes to a better understanding of legal framework and its implication for women's rights. Muslim Family Law Ordinance is important reforms in Pakistan in the sphere Muslim personal law. The ordinance introduced key reforms in Muslim Family Laws, such as Divorce, Inheritance and Marriage. It provides insights into the legal rights and protection available to Muslim women in context of family matters, helping evaluate whether these laws empower women or have limitation. The study can examine various indicators of women's empowerment, including economic, social, and political aspects, to determine the effectiveness of the ordinance in improving their status during Ayub Era only. Understanding how the ordinance has affected women's lives can inform policy makers, NGO, s and activists further reform to enhance women's empowerment. The finding of such a study can guide potential amendment to family laws, ensuring they align more effectively with the goal of women's empowerment. A study of Muslim Family Laws Ordinance 1961 in Pakistan, in the context of women's empowerment, is crucial for evaluating the legal framework impact on women's right, gender equality and overall societal development.

1.3 Theoretical Framework

1.3.1 Legal Feminist Theory

1.3.1.1 Feminist Theorist

A feminist theorist is a scholar who analyzes societal structures and power dynamics through a feminist lens, focusing on gender inequality and its intersections with other forms of oppression.⁹

- **Talita Syamanta** – Gender, law, and postcolonial analysis
- **Rubina Saigol** – Feminism in Pakistan and critique of Islamic patriarchy
- **Cassandra Balchin** – Muslim family laws and women's rights.

1.3.1.2 Evaluation of Feminism

Feminist evaluation is rooted in feminist theory, which itself arises from feminist research. Feminist researchers argue that when research focuses only on men's experiences, it leads to an incomplete and biased understanding of the world. To truly understand how society works, we must also include women's everyday experiences, because these are shaped by social and gender-based inequality. Based on this idea, feminist evaluation focuses on empowering marginalized groups, supporting social justice, and using participatory methods that include the voices of those who are usually ignored. Denise Seigart (2005) draws attention to the women's movement's influence on the history of feminist evaluation. Feminist research emphasized women's unique perspectives and moved away from traditional empiricism to standpoint theory. Recognizing the diversity of women's experiences across race, class, and culture, postmodern feminism emerged. Feminist evaluation developed as a method centered on justice, inclusion, and the empowerment of marginalized voices through these stages.

⁹ https://en.wikipedia.org/wiki/Feminist_theory.

Different feminist evaluation theorists frequently identify six essential principles that constitute the core components of feminist evaluation.

1. Feminist evaluation primarily concentrates on the gender disparities that contribute to social injustice.
2. Discrimination or inequality occurring because of gender is both systemic and structural.
3. Assessment is inherently a political endeavor; the environments in which assessments take place are influenced by politics; and the personal experiences, viewpoints, and traits that evaluators contribute to evaluations (and with which we engage) lead to a specific political perspective.
4. Knowledge is a potent tool that serves a clear or subtle objective.
5. Knowledge ought to be a resource owned by and intended for those who create, possess, and disseminate it. As a result, the process of evaluation or research can have notably positive or negative impacts on the individuals involved in it. Knowledge and values depend on cultural, social, and temporal contexts. Furthermore, knowledge is interpreted through the lens of the individual knowing it.
6. There exist diverse modes of understanding some of these modes are favored over others.¹⁰

Advocates for equal rights and opportunities for women through constitutional measures, focusing on individual freedom and autonomy. Talita Syamanta (2024) presented theory liberal feminist legal theory feminist viewpoint aim to challenge and change patriarchal interpretations of Islamic texts and lawful conventions that have generally minimized women and limited their organization. This involves advocating

¹⁰ Donna R. Podems, "Feminist Evaluation and Gender Approaches: There's a Difference," *Journal of Multidisciplinary Evaluation*, vol 6, no. 14 (Aug 2010): ISSN 1556-8180 <http://www.jmde.com/>.

for the acknowledgements of women's key privileges and qualifications inside Islamic legal frameworks, covering regions like marriage, separate, legacy, care, property freedoms. Women's activist appraisals of Islamic regulation underscore the significance of setting legitimate choices in their socio-authentic settings and adjusting them to align with contemporary real factor to guarantee fairness and equality for all, regardless of gender. This method highlights the significance of extensive and inclusive policies that address the diverse needs and experience of women in societies where Islam plays a predominant role.

Women's rights encompass a broad range of legal, social, aimed at ensuring women's full involvement, respect, and autonomy in society. These rights include but not limited to the rights to access education, participate in the workforce, engage in political processes, exercise bodily autonomy, and live free from violence and discrimination.¹¹

1.3.2 Constitutional Measures

1.3.2.1 Equal Rights Amendments

Constitutional provisions that guarantee equal rights and opportunities for women, such as the equal rights amendment in the united states

1.3.2.2 Quotas and Reservations

Constitutional provisions that reserve seats for women in legislative bodies, such as the Indian Constitution's Article 243D.

¹¹ Talita Syamanta, " Towards Feminist Justice: Reforms and Challenges in Islamic Courts for Gender Equality and Women's Rights, " *SYRIAT: Akhwal Syaksiyah, Jinagah, Siyasah and Maumalah* 1, no. 1 (2024).

1.3.2.3 Special Protections

Constitutional provisions that provide special protections for women, such as laws against domestic violence and sexual harassment.

1.3.2.4 Social and Economic Rights

Constitutional provisions that guarantee social and economic rights, such as the right to education, healthcare, and social security.

Ahmad Hassan (2021) explores that the women's rights organization regarded step viewed this legislation, as a significant step towards women's economic, social, and political freedoms in Pakistan. However, it sparked debate between modernist Muslims traditional Ulama and fundamentalists over its origins. The ordinance praised by educated women as progressive legislation confronted resistance from the Ulama. It exemplifies the state's capacity to enact Islamic understandings and challenge Ulama authority over Muslim Family Regulations, showing its capacity to challenge conventional strict foundation authority.¹²

1.3.3 Evaluation of Feminism in Pakistan

The evaluation of feminism in Pakistan involves a critical analysis of how feminist ideas, movements, and activists have developed within the unique social, religious, and political context of the country. It examines the progress achieved in terms of legal reforms and women's rights, such as the Muslim Family Laws Ordinance 1961, protections against domestic violence, and enhanced inheritance rights. Feminist organizations like Women's Action Forum (WAF), Shirkat Gah, and the Aurat Foundation have played a pivotal role in mobilizing resistance against patriarchal laws and promoting women's rights in the public sphere. However, the movement has also faced significant resistance—from religious

¹² Hassan et al., "The Muslim Family Law Ordinance: Pioneer of Women Empowerment in Pakistan,"

orthodoxy that labels feminism as a Western or anti-Islamic agenda, to state suppression, especially during General Zia-ul-Haq's regime. Furthermore, internal limitations such as class bias and urban elitism have led to a disconnect between elite urban feminists and rural or working-class women. In recent years, the feminist narrative in Pakistan has shifted from a purely legal rights-based approach to more intersectional and inclusive activism, addressing issues of bodily autonomy, workplace harassment, and gender identity. This shift is particularly visible in movements like the Aurat March, which utilizes digital platforms to amplify feminist demands and challenge both state and societal patriarchal. Saigol and Chaudhary (2021) emphasize that this fourth wave of feminism is marked by contradictions and internal tensions—such as those between secular and Islamic feminists, older and younger activists, and grassroots versus elite advocacy. Despite these complexities, feminism in Pakistan continues to evolve, offering both a critique of patriarchal norms and a reimagining of gender justice within the country's legal and cultural frameworks.¹³

1.4 Research Objectives

1. To explore the colonial and post-independence laws regarding marriage and divorce.
2. To examine reaction from the religious and social segments on Muslim Family Laws Ordinance.
3. To assess implications and working of this ordinance during Ayub Regime in securing women rights in the state and society.

¹³ Rubina Saigol and Nida Usman Chaudhary, *Contradictions and Ambiguities of Feminism in Pakistan: Exploring the Fourth Wave* (Islamabad: Friedrich-Ebert-Stiftung Pakistan, 2020), 5–11.

4. To evaluate working of the law, its outcomes and impacts over status of women in the society.
5. To analyze the significance and implementation of Muslim Family Laws Ordinance in context of women rights in Pakistan.

1.5 Research Questions

2. What was legal status of marital cases and related issues before introduction of Muslim Family Laws Ordinance?
3. Why Muslim Family Laws Ordinance faced resistance from religious social, political stakeholders?
4. How it empowered the women in family system of the society and provided legal protection to the women?
5. How far Muslim Family Laws Ordinance 1961 succeed in protecting and promoting women's rights in Pakistan?
6. In which way implementation of Muslim Family Laws Ordinance empowered the women and secure their rights?

1.6 Literature Review

“The West Pakistan Muslim Family Laws Ordinance 1961” legal documents explain that the West Pakistan regulations established under the Islamic Family Law Ordinance of 1961 framework the structure for implementing the Islamic Family Law Ordinance. These regulations address the registration of marriages, divorces, polygamous associations and impartial and steady practices in familial issues within west Pakistan.

1.6.1 Arbitration Council

The union council acts as the arbitration council, possessing the power to oversee matters related to marriages approval (including polygamy), financial support, divorces. The council also holds hearings and intervenes clashes to elevate goal before any lawful activity.

1.6.2 Registration of Marriages

People who lead marriages should submit a license application to become Nikkah Registrars centers. These registrars get official registers and seals to record relationships, it is accurately kept to guarantee that all documentation. The guidelines frame the charges for enrollment and detail the system for recording relationships, including those that occur beyond Pakistan.

1.6.3 Procedure for Divorce

In the case of a separation, spouses should inform the union council, which is liable for dealing with the conveyance of the notification. In the event that the whereabouts of the spouse are unknown, different choices for telling her, like distribution in papers, can be considered.

1.6.4 Polygamy

The rules give the arbitration council the authority to audit petitions for new marriages, assessing everyone's need and fairness in light of factors like the current wife's consent or health. Both an expense and a formally composed application are vital.

1.6.5 Fees and Records

People in general can see the union councils thorough records of every enrolled wedding and separation for a charge. Cost for various administration and records duplicates are recorded.

1.6.6 Enforcement and Complaints

To guarantee that infractions are managed through the legitimate channels, just the Union Council is approved to submit a question about infringement of the ordinance.

These rules offer a deliberate technique for uploading the Muslim Family Laws Ordinance, ensuring legitimate Muslim Family Law Ordinance, ensuring legitimate documentation, fair goal of family clashes, and security of women's rights in examples of polygamy and separation.¹⁴

“Pakistan Penal Code, ”The Pakistan Penal Code is a crucial set of guidelines for legal systems set of guidelines for legal systems, covering crimes against the state, military offences, public offenses, murder, kidnapping, property crimes, rape, marriage, religion, cruelty and slander. It is essential for the systematic operation of the legal framework in each country. In chapter XX discuss about the different section such as section 493, 494 related to marrying again during lifetime of husband or wife, section 495 discuss about the offences with concealment of former marriage from person whom consequent marriage is contracted etc.

“The Pakistan Penal Code” legal document 1860, enacted during British colonial rule is the country's primary criminal code, defining offences prescribing punishments, categorizing crimes in to cognizable and no- cognizable, and determining available or non-bailable offenses. The PPC covers sexual offenses, public morality offenses, and offenses like rape and adultery. Penalties range from fines to death with defenses like self-defense and insanity. Severe offenses

¹⁴ *West Pakistan Muslim Family Laws Ordinance*, Government of Pakistan, National Documentation Wing, Cabinet Division, Islamabad., (2 March 1961), Updated (10 March).

may face death penalties. In chapter XXV discuss about of offences against women. In this chapter discussing different section 498A, 498B, 498C explain the restriction on wedding with the Holy Quran. The Pakistan Penal Code is a crucial set of guidelines for legal systems set of guidelines for legal systems, covering crimes against the state, military offences, public offenses, murder, kidnapping, property crimes, rape, marriage, religion, cruelty and slander. It is essential for the systematic operation of the legal framework in each country. In chapter XX discuss about the different section such as section 493, 494 related to marrying again during lifetime of husband or wife, section 495 discuss about the offences with concealment of former marriage from person whom consequent marriage is contracted etc.¹⁵

The Joint Action Committee has expressed concern over the Federal Shariat Court's decision to declare certain provisions of the Muslim Family Laws Ordinance 1961 un-Islamic. The court's decision has raised hurdles to effective leadership, ignoring the desires of children, women, peasants, and religious minorities. The decision has also eroded provisions requiring divorce registration. If the court orders an amendment to the MFLO, it could invalidate the entire set of laws regarding divorce procedure and registration, leading to a situation where talaq registration is unnecessary. The Human Rights Commission of Pakistan (HRCP) is shocked by the Federal Shariat Court's decision to challenge the Muslim Family Law Ordinance 1961, which effects 50% of Pakistani population. The HRCP claims that any changes to the four sections of the ordinance would be significant blow to the rights of all girls and women in Pakistan.¹⁶

1.6.7 Books

¹⁵ “The Pakistan Penal Code, 1860,” Last Amended (16 Feb 2017). <https://sherloc.unodc.org>.

¹⁶ “Women Rights in Muslim Family Law in Pakistan: 45 years of Recommendation vs. the FSC Judgement (January 2000).

John L. Esposito wrote in his book, ‘ ‘ *Women in Muslim Family Law* ’ ’ explores the legal status of women in Islam, specifically in Egypt and Pakistan. It covers the starting point of Islamic regulation, family life guidelines marriage, divorce, polygamy, inheritance and custody. The concentrate additionally talking about societal changes techniques and proposed cultural changes highlighting Islam’s flexibility to current necessities. In light of the revival of fundamentalists. Islam within the political field, the author explores the foundations of cultural and religious legitimacy that Islam provides to social establishments grappling with modernization challenges. Family law plays a vital role in this conversation, as it is viewed by Muslims as the center of the Islamic practice. Hence, legitimate changes connected with everyday life risk being considered by some to be a repudiation of Islamic standards. However, in various districts, the family structure is moving from a drawn out configuration to a nuclear one, which is changing the jobs and obligations of all kinds of people. A lawful change is important to address these new friendly real factors and conceivably go about as a catalyst for additional advancement. The study suggests that Islamic jurisprudence can give dynamic sources to changes in family regulation.

The book discusses about Family law, including marriage, separation and succession is key to Shariah reflecting Quranic concern for women’s rights and family structure. The Quran presented critical changes influencing women’s positions framing the premise of old style family regulation. Wherever Quranic principles and values were incorporated they added to improving the situation with women and family inside Muslim society by characterizing the freedoms of relatives. To establish a context in which Quranic reforms and traditional influences can be perceived this section will start with an outline of women’s and day to day life in pre-Islamic Arabia. This is prevailed by an assessment of the key guidelines concerning

marriage, separation and legacy in traditional family regulation as framed by the Hanafi school, which is the perceived school of Islamic regulation in the central East and South Asia.¹⁷

Muhammad Zubair discuss in his book titled ‘*Family Laws in Pakistan*’ A short historical outline of the development of Islamic/ Muslim family regulation in Pakistan is given in this section. The chapter only focuses on historical processes that added to the improvement of Islamic family law in Pakistan, it doesn’t offer a far reaching representation of the legal advancements of legitimate teachings of Islamic family regulation.¹⁸

Mehr-un-Nisa, Hadia Ahsan discussed in her article “*Critical Analysis of the Ayub khan’s Basic Democracies: An Era from 1958-1969* (2 July-Dec2022) the system of Basic Democracies was introduced by President Ayub khan which kept people aloof from mainstream political activities through indirect electoral process. The study employs qualitative research method and focuses on Ayub Khan’s use of this system, its enforcement, and the authority for his political motives and reform process.¹⁹

Hasan Askari Rizvi, ‘*The Military and Politics in Pakistan 1947-1997*’ explores how the military influenced Pakistan’s political development. It looks at the approaches and administration methods of reasoning of military rulers as it graphs its development through a few phases. Rizvi condemns the failure of regular citizen administration to adjust military power and reinforce a majority rules system. The work offers an in depth examination of Ayub Khan’s military rule, assessing the two its accomplishments and deficiencies. Rizvi contends that although the regime facilitated immediate stability and economic advancements, it did so

¹⁷ John L. Espito, “*Women in Muslim Family Law.*”

¹⁸ Abbasi, Cheema, ‘*Family Laws in Pakistan*’.

¹⁹Nisa, Ahsan, “*Critical Analysis of the Ayub Khan’s Basic Democracies: An Era from 1958-1969,*”

by undermining democratic progress. This period set the military involvement in governance affecting the political course of Pakistan for a long time.²⁰

M. Rafique Afzal's significant work, '*Pakistan History and Politics (1947-1971)*' offers an in-depth assessment of the huge early long stretches of Pakistan's political and historical development. To some extent (1958-1969) the author focuses on a crucial time in Pakistan's set of experiences portrayed by the statement of military regulation, the Ayub Khan period, political strife. This period is fundamental for appreciating the underlying issues that affected the nation's turn of events. Ayub administration instituted the 1962 constitution, which substituted parliamentary majority rule government with a brought together official framework and laid out the contentious 'Basic Democracies' structure.²¹

1.6.8 Articles

Altaf Hussain Langrial and Syed Abrar Hussain Shah wrote in his article "A Critical Review of Pakistan Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Laws" The Muslim Family Laws Ordinance 1961 in Pakistan is critically reviewed in this article, which also compares and contrasts it with other Muslims family laws. Dr. Masud and other Muslim academics contend that the Pakistani Muslim Family Law Ordinance is in conflict with Islamic law. The Muslim Family Law Ordinance (1961) is a set of modification to British laws relating to divorce, marriage, and dowries; these changes frequently call for Shafi and Fiqah Hanfia

²⁰ Hassan Askari Rizvi, '*The Military and Politics in Pakistan: 1947-1997* (Lahore: Sang-e-Meel Publishers, 1996), 2013, ISBN: 9693511484.

²¹ M. Rafique Afzal, '*Pakistan History and Politics (1947-1971)*' (Ameena Sajid Oxford University Press, 2001), ISBN 0 19 579634 9 part 3 1958-1969.

solutions. According to research, the Pakistani MFLO has inconsistencies and needs to be improved.²²

Ahmad Hassan et al discuss in article “*The Muslim Family Law Ordinance: Pioneer of Women Empowerment*” The Muslim Family Law Ordinance of 1961 is analyzed in this paper as the first step toward the strengthening of Pakistani women. After around six years of fighting for Pakistani women’s rights, including the right to divorce and maintenance, as well as security from social minimization because of polygamous traditions, the law was at long last passed. However, the patriarchal Pakistani society, where women know nothing about their essential privileges and can’t use the power conceded to them by the mandate, implied that the law couldn’t achieve a lot. For most women, the ordinance stayed impossible, and just few instructed and present day modern women benefited from law.²³

Zafar Iqbal Kalanauri one of his article “The Law of Inheritance in Pakistan in view of sec 4 of the Muslim Family Laws Ordinance (MFLO) 1961” discuss about the inheritance laws in Pakistan, with particular emphasis on a topic that has generated a lot of discussion in the nation. Section 4 of the Muslim Family Law Ordinance (MFLO) 1961 and the controversy surrounding the said provision of the latter legislation being contrary to the set of injunction of Islam is the specific topic of discussion in this article, which specifically refers to discussion of inheritance laws in Pakistan. The law of inheritance in Islamic jurisprudence is complex and emphasized

²² Langrial, Shah, “ A Critical Review of Pakistani Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Laws,”

²³ Ahmad Hassan et al., “ The Muslim Family Law Ordinance: Pioneer of Women Empowerment in Pakistan,”

by Allah Almighty in the Quran, with a share for men and women. The court tried to favor women, but not suggested progressive concept such as joint ownerships of marital property. He also stated that women are hesitant to claim their right through court system and government policy to avoid the issue of implementation of land rights.²⁴

“Women’s Rights in Muslim Family Law in Pakistan 45 Years of Recommendations vs. the FSC Judgement (January 2000),” explain a comparative chart of recommendations regarding marriage and family laws. The special bulletins provide activist and those concerned with women’s rights within the family with a tool for lobbying and advocacy. Activists have long considered the ordinance to be one of the few pieces of legislation that safeguard women’s rights in the home. It includes extract from four major government commission on women’s status including the 1956, 1976, 1985, 1997 commission.²⁵

Sajida Shabbir discuss on ‘‘Struggle for Muslim Women’s Rights in British India’’ The aim of this article is to illustrate the unfortunate conditions faced by Muslim women in India during British colonial rule, as well as their efforts to assert their freedoms against both the patriarchal structures and government old Indian society. The British authorities, who positioned themselves as supporters of democracy and human rights, made no critical move to improve the situation with women in India. All things considered they tried to forced western goals and principles some of which clashed with conventional acts of Indian culture. The colonizers kept a façade of moral advancement and social prevalence, claiming to protect the

²⁴ Kalanauri, ‘‘The Law of Inheritance in view of sec 4 of the Muslim Family Law Ordinance (MFLO) 1961,’’

²⁵ Shirkat Gah, ‘‘Women Rights in Muslim Family Law in Pakistan :45 Years of Recommendation vs FSC Judgement.’’

rights of all citizen in India while advancing gender equality. In this specific situation, various British authorities introduced themselves as more civilized than Indians and more moderate in their approach to deal with giving women rights. Women's struggle for political educational and social freedom had significant impact on subcontinent. Everyone is aware of societal changes that took place at that time. However, few acknowledge that women were crucial in enacting these modifications.²⁶

Sara Gul, "Women's Political Empowerment: A Historical Overview in Pakistan" have highlighted that this paper gives a historical survey of Pakistan's women's political empowerment movement. In spite of the fact that women in Pakistan are completely granted political rights, they relay defy various political and social cultural boundaries that make it challenging for them to participate in the political process. Given the idea of the examination the article's foundation is optional information that takes the conclusion that despite the pattern towards women's political strengthening and support over Pakistan's time, both when freedom and especially during the last ten general elections, it was very hard for women's to practice their equal political rights in standard governmental issues in contrast with men. Despite the fact that most of women entered governmental issues after 1999, they had a tiny impact in the shift towards women's political strengthening.²⁷

Shehar Bano Khan and Shirin Gill in their work "The Criminalization of Rape in Pakistan" in which Pakistani laws relating to women must be interpreted with regard stop a tangled political economy with conflicting viewpoints. The social design of Pakistan simply doesn't acknowledge women as equal numbers of society. These strict understanding not just placed women in a lower status than men, however, they likewise cut off valuable open doors for

²⁶ Sajida Shabbir, 'Struggle for Muslim Rights in British India (1857-1947)' *Pakistan vision* 12, no. 2 (2011).

²⁷ Sara Gul, "Women's Political Empowerment: A Historical Overview in Pakistan," *Journal of Languages, Culture and Civilization* 2, no. 2(Dec 2020).

which would somehow permit women to scrutinize the current quo. Pakistan's history of intentional activism has led to labeling of progressive voices as radical. The process of islamisation began in 1979. In a meeting with activist Asma Jahangir said, "All moderate campaigning gatherings strict fundamentalist security-disapproved gatherings and I was unable to stand preachers who went against local harmony and freedoms. Both the law, and the institutional systems that helps it should be improved for long-term change to occur. The effectiveness of Pakistan High Court, lowers courts, and governing body is weakened by parallel CII and FSC associations. Although the high court for violations under Hudood Ordinance. Pakistan's constitution specifies that they are the courts of interest for infringement of citizens fundamental rights. The FSC has jurisdiction over those requests."²⁸

Dr. Rubina Saigol and Friedrich Ebert Stiftung wrote in his paper "Feminist and the Women's Actors: Debates and Strategies" the methodologies of the women's movement show significant changes, transitioning from an emphasis on education and welfare to legal changes and at last to the political and financial privileges of women's. There has been a historically stable and progressing struggle between the women's development/ women's liberation and the state, alongside strains between the development and common society, which incorporate non-state actors originating from specific expressions of religion at different moments, that conflict with the longing for a mainstream climate.

Along these lines, freedoms were generally threatened and deliberated during most of the many years covered in this paper in the religion name. Frequently, culture and traditions were likewise used to dismiss traditions were likewise used to dismiss the uniformity and rights of

²⁸ Shehar Bano Khan and Shirin Gull, "The Criminalization of Rape in Pakistan," *CMI Working Paper Number* no. 1 (8 Sep (2017) www.cmi.no,

women. However, the most obstinate discussion about women was the one made according to strict point of view.²⁹

Muhammad Fazail Haque wrote in his article, “A Juristic Approach to Muslim Family Laws Ordinance 1961.” In his article states that the Family Laws in Pakistan comprise of a mix of codified regulations and standard practices that are upheld by strict standards and specific personal laws. These regulations, which draw from Shariah, meaning the Quran and Sunnah, give clear orders in regards to wedding matters. In Pakistan there are more than fifty family concerning the privileges of women and youngsters. This offers insight on the inadequate regulations connected with conjugal issues and feature the veritable hindrances to declaring marital privileges and the double-dealing that happens inside a free society. This paper explores the regarded codification of Muslim Family Laws known as “MFLO 1961” and present different sentiments. It examines the viewpoints of both Shariah and legitimate structure in regard to this regulation. This study emphasizes the areas of exploration important for proposing reasonable revisions and new regulation concerning family issues.³⁰

Naveeda Noreen and Dr. Razia Mussarat in their work, “Protection of Women Rights Through Legal Reforms in Pakistan” have highlighted that this paper examines the condition of women’s freedom in Pakistan and how they are defended by legal reforms. Following Pakistan’s freedom, women effectively participated in efforts to build the country and work on their social standing. The topic of women’s empowerment got specific consideration from global associations. The Muslim Family Law Ordinance of 1961, which laid out during Ayub era, is remembrance to have been an initial step toward the protection of women’s rights.

²⁹ Rubina Saigol, “Feminism and the Women’s Movement in Pakistan Actors: Debates and Strategies” (2016). <https://library.fes.de>.

³⁰ Muhammad Faizul Haque and Bilal Hussain, “A Juristic Approach to Muslim Family Laws Ordinance 1961,” *Al-Haqeeqah (Research Journal of Islamic Studies)* 1, no. 1 (July-Dec 2021): <https://www.researchgate.net/publication/369366151>.

Discriminatory laws were authorized during Zia dictatorship, disturbing the social harmony among people. The standing of women is adversely affected by these laws. Women's group showed against the Hudood Laws and required its repeal. Musharraf's reign is considered as a golden age of women's empowerment legislation since it saw the presentation of new laws safeguarding women's rights (Women Protection Act of 2006). Legal changes are currently being implemented. Women are in any case exposed to a few criminal offenses, like attempted rape, acid throwing, and workplace harassment. For the protection of women's rights, a productive implementation mechanism that conforms to the word and actual purpose of law should be created.³¹

Samera Batool, Feroz Batool, Anjum Zia and Robina Saeed discuss in his article, "The Struggle for Women Right's: A study of emergence of feminism in Pakistan (1947 to 2010)" highlighting the patriarchal institution that led to the rise of women's activist conversations in Pakistan, the review adds to the corpus of writing a women's issues.

The examination study centers around how Pakistan's women's privileges development have created. It likewise underlines the women's rights promoters and how, as the women's activist development has become more globalized the nearby climate has permitted women's activist to zero in on obvious issues. The impact of the women's activist development on the legal framework has likewise been examined. Involving the thought of transnational women's liberation with regards to Pakistan, the review makes sense of women's rights. Accordingly, to study findings, women's liberation created as a developed in Pakistan that planned to give

³¹ Naveeda Noreen and Razia Mussarat, "Protection of Women Rights Through Legal Reforms in Pakistan," *Journal of Public Administration and Governance*: ISSN 2161-7104 2013, vol .3, no .4 (December 27, 2013).

women a similar social, economic, legal and political rights as men. A lot of women's fought for women's equality.³²

Dr. Ghulam Mustafa, Hafiz Ayaz published an article on Journal of Historical Studies, "Analysis of Women Rights in Pakistan: Theory and Practice" discusses when Pakistan was established, its founders guaranteed that it would be an Islamic lab where all residents would have equal rights and be allowed to practice Islam without distinction based on religion, caste, race. Various laws and acts were made to concede freedoms to all networks and gender. However, the laws have not been applied really or as yet, hence women in the country, especially those living in provincial and tribal areas, are bound to their homes and denied their culture, social and political rights. This article will explain how honor killing, acid throwing, dowry system, bride selling, forced marriages and other social ills influence women in domestic violence. Despite making up more than country part of country's population, women participate extremely little in all sphere of life. To overcome any barrier among theory and practice, the public authority should find specific ways to engage and upgrade them and award them a recognized status.³³

Dr. Muhammad Ahmad and Dr. Munib Ahmed, "Objective Resolution Women Politics and Islamization of State in Pakistan" this paper explores the role of Objectives Resolution in Pakistan's constitution, focusing on its role in Islamization. It aims to understand why Objectives Resolution became a tool for constitution formation and how it affects women politics in Pakistan. Previous studies have mainly focused on socio-cultural foundations and Islamization processes.³⁴ Sarah Ansari discuss in his article, "Polygamy , Purdah and Political

³² Sumera Batool et al, "The Struggle for Women Rights, A Study of Emergence of Feminism in Pakistan, (1947-2010)", *Journal of Punjab University Historical Society* 31, issue no .1, (January –June 2018).

³³ Ghulam Mustafa, Hafiz Ayaz ul Qasmi, "Analysis of Women Rights in Pakistan: Theory and Practice", *Journal of Historical Studies* 3, no .1 (January –June, 2017): PP. 147-159,

³⁴ Muhammad Shakeel Ahmed and Munib Ahmed, "Objective Resolution, Women Politics and Islamisation of State in Pakistan," *Peshawar Islamicus* 12, issue 2 (July- Dec, 2021).

Representation : Engendering Citizenship in 1950s Pakistan'' since the establishment of state in 1947 till the present, conversation about Islam, citizenship, and women's rights have been firmly related in Pakistan. This article examines how much the 1950s campaign to change Muslim Personal Law-which were supported by the then-Prime Minister Muhammad Ali Bogra's clamor against the 1955 polygamous marriage were associated with more extensive endeavors by female activists to ensure women's rights as equal citizens of Pakistan with men.³⁵

The making of the constitution was the most crucial task following the development of Pakistan. Making a constitution was full of troubles. All through the Pakistani development, the expression "Islam" was abused. In any case, when the country was laid out, the Muslim league's westernized initiative started supporting for Pakistan to turn into a mainstream state. The Ulama were made aware of the circumstance and required an Islamic constitution. They guessed that westernized insight would separate religion and state from each other. Among the religious intellectuals, Maulana Maudoodi effectively added to the constitution's Islamization. He offered exceptional types of assistance consequently.³⁶

Zahir Hussain Soomro, Amir Ahmed Khuhro and Sadaf Ali, discuss in the article'' Women's Rights in Constitution of Pakistan'' The constitution is the essential document characterizing a state's strategies and aims to safeguard residents' basic privileges. Pakistan's constitution, in view of the Indian Demonstration 1935, presented ladies' honors, legal executive freedom, and civil rights. It likewise remembered minor honors and guaranteed

³⁵ Sarah Ansari, '' Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan,''
Modern Asian Studies 43, (2009) pp.1421-1461 2008 Cambridge University Press: s. Ansari @ rhul.ac.uk

³⁶ Fakhr-ul-Islam, Muhammad Iqbal, '' Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi, s,''
Al- Idah (December, 27, 2013).

women's' support for all areas of life, without discrimination in view of race, variety, sex, rank, religion, or spot of birth.³⁷

Muhammad Ahmad, Muhammad Tahir Nadeem, Prof. Tanzila Khan and Shehbaz Ahmad article ‘ ‘ Stylistic Analysis of ‘Muslim Family Law Ordinance 1961’ ’ discuss in Journal of Study of English Linguistic that this paper elaborately examines the Muslim Family Regulations Law 1961 from the Islamic Republic of Pakistan, considering different linguistic, literary, and context-oriented aspects. A detailed and cautious assessment of this ordinance uncovers that it has been made and organized according to the qualities of legitimate and constitutional texts. The statute utilizes mathematical repetition for numbering various areas and subsections. The examination indicates that different expressive strategies, including textual style type, passage structure, sensible associations among various words and sentences, and division into areas, have been used to create and detail the mandate. This marks the main drive of its sort, as earlier work has not been directed around here. It very well may be fundamentally gainful for legitimate experts in their expert exercises and for the Muslim people group to get a handle on their wedding privileges. Furthermore, it might help phonetics specialists, acquire a clear comprehension of authoritative records.³⁸

According to Muslim regulation, the idea of "maintenance" support a spouse's obligation to help his wife, which is a right that outcomes from their marriage. As per the well-established rule of Islamic Sharia regulation, a woman is qualified for upkeep for the duration of the marriage and for the iddat period following a separation. However, there are conflicts among Islamic researchers in regards to the choice about whether to allow post-separation from upkeep

³⁷ Zaheer Hussain Soomro, Amir Ahmed Khukhro, Safdar Ali, ‘ ‘ Women Rights in Constitution of Pakistan,’ ’ *Annals of Social Sciences and Perspective* 1, no. 2 (December 2020),

³⁸ Ahmad Muhammad et al., ‘ ‘ Stylistic Analysis of the Muslim Family Laws Ordinance 1961,’ ’

(maa'ta) beyond the iddat period, which prompts discussion when the proposition is made under Shariah law in Islam. Nonetheless, through legal activism, the legal executive in numerous countries is allowing such maintenance. The author of this paper focuses on how Islamic Sharia regulation is applied in court decisions relating to Muslim women's post-separation from support (maa'ta) in Bangladesh, Pakistan, and India. A few cases relating to post-divorce maintenance (maa'ta) from these countries are analyzed to decide if the courts there have a dynamic way of forming guidelines. That's what this paper's decision is because they comply with the Fiqh of customary legitimate schools; the legal authorities of Bangladesh and Pakistan have not gained a lot of headway around here, while the Indian legal executive has made progress by allowing separation from Muslim ladies to get post-separate from support (maa'ta) to resolve the issues of civil rights by allowing a liberal understanding of the Islamic Sharia regulation's arrangements.³⁹

1.6.9 Newspapers

The newspaper of National Archive of Pakistan cover the incidents, proceeding and protests regarding this act.

A large gathering of females in Rawalpindi fought against the proposed nullification of the Family Regulations Mandate, which protects women from husbands requiring second life partners without their consent. The women marched against the law, which was introduced by Mr. Abbas Ali and was implemented by President Ayub Khan a year ago. They gathered before

³⁹ M D Sadekur Rahman et al., ‘‘ Post –Divorce Maintenance (MAA’TA) for Muslim Women in Bangladesh, Pakistan and India: A Comparative Perspective,’’ *IQSR Journal of Humanities and Social Science* 23, no. 2 (2018).

a public gathering, reciting slogans and distributing handbills to support their cause. Dissenters, demonstrating against the Muslim Family Regulations law, pulled over vehicles of public gathering individuals to support their call on July 7. A dissent was held at president's home by busloads of women against the bill to revoke the statute. The president urged the demonstrators not to be insulted women from the Public gathering and Karachi APWA delegation, gathered at the Ayub corridor to protest the bill. The All-Pakistan Women Association director, Begum G, Ahmad, urged the law clergyman to allow women to address the committee of Islamic philosophy. The priest encouraged the dissenters to coordinate a nomination and call him at any time.

Secretary of MWL, Mahmooda Sultana suggested banning opposition to Family Laws Ordinance to avoid uncontrollable situations. Organizer of Jamat-i-Islami Zubair, discussed repeal while Kaniz Fatima condemned those in favor.⁴⁰

Ulama opposes the proposed divorce ordinance arguing that it is not in line with Quranic teachings and harmful to Muslim society. They believe that Islamic Law regarding divorce is found in Surah Baqrah, Sunnah-Ehzad, and Surah-At-Talaq where only the husband has the right to divorce his wife. The article's writer is unable to find any references for this Quranic legislation. They suggest that verse 25 and 34 of An-Nisa do not give absolute right to the husband, only explaining disputes between couples.⁴¹

Many researchers and historians have discussed the Muslim Family Laws Ordinance (MFLO) 1961. However, most existing research focuses on its legal provisions, implementation challenges or its broader implications for Islamic jurisprudence in Pakistan. These studies rarely utilize original records, such as government documents, debates, newspaper reports, to

⁴⁰ *Daily Dawn, Karachi*, 13 July 1962.

⁴¹ *Morning News, Karachi*, 18 July 1961.

understand how and why this law was enacted. Also, the voices of women and their role in the creation or criticism of this law have not been fully explored through historical evidence. This represent a major gap because without examining authentic historical documents, we cannot fully understand the social and political background of this law. This research addresses that gap by using original sources to study how MFLO of 1961 affected women's rights in Pakistan and how it was shaped by the people and politics of that time.

1.7 Methodology

The research methodology comprises the qualitative method to complete the respective study. Both the primary and secondary sources is used for respected study. Primary sources has included the Muslim Family Law Ordinance 1961 original document, Pakistan Penal Code(PPC) and newspapers in the national archive while the secondary sources will include the Articles, Journals, Books, Magazines etc. In this study also analyze the laws relate to the marriage, polygamy, maintenance, inheritance, divorce etc.

1.8 Organization of the study

The research study is divided into five chapters. The first chapter discuss the introduction of the study. The introduction chapter discusses the research problem and research questions and provide an outline of the thesis. The second chapter discuss about the historical background of the study. This chapter discuss the constitution of Pakistan discuss the literature collects from different articles, journal and books and also the constitution and family law ordinance. Third chapter discuss the Muslim Family Laws Ordinance 1961 section and it also discuss the process of marriage, polygamy before introduction of this ordinance. The four chapter discuss the reaction of Ulama on this ordinance. Data collection for this chapter from different newspapers and articles from national archive. In fifth chapter discuss the impact, usage and

implementation of this ordinance. At the end of the study conclusion is drawn along with the research gap for the upcoming researchers.

CHAPTER 2

2 HISTORICAL BACKGROUND

In Europe, at the time women were fighting for universal suffrage and human right. While certain voices were being raised in support of them, the Indian women were compelled by restriction and all norms. To advance the circumstances that existed at that point, various Hindu and Muslim reformers approached on the subcontinent. The education of women was one of the topics that was discussed. For women, to understand their Islamic rights and obligations many Muslim pursued the choice to teach them. There was a common argument that Islam gave women a high status.⁴²

The industrial revolution in Europe led to various development, including those that fought for rights of women, farmers, and politically minimized groups. Many groups were founded to safeguard women rights.⁴³ The British believed that veil represented a backward trend and associated it to Indian Muslims. Various people believed it to be anti-modern and a step backwards against civilized world. Since the veil is part of Islamic teachings, it was ordinarily expected in west at the time. Thus, there was a lot of conservation about Muslim women veil observance. In reality, purdah has been demonstrated to be a contributing factor in keeping women from participating in any political or social movement or public issues support. The perspective and reactions of Muslim women and men regarding the veil differed. Certain Islamic scholars viewed the veil as a symbol of a woman's honor and modesty. They accepted that this practice distinguished men from women.⁴⁴ Wedding has been defined as a lasting connection between husband and wife in the history of America. In these days, about married dissolution as familiar and everyone knows, and almost half of the first marriages are expected

⁴² Shabbir, "Struggle for Muslim Rights in British India (1857-1947)," 3.

⁴³ Shabbir, "Struggle for Muslim Rights in British India (1857-1947)" 4.

⁴⁴ Shabbir, "Struggle for Muslim Rights in British India (1857-1947)", 5.

to end in separation. Divorce has always been a reality of life, but most people don't understand it in American society.⁴⁵

2.1 Pre-Islamic Arabia

The status of women was illustrated by prevailing marriage contract, which firmly looked like an exchange wherein a woman became the husband's property. She was required to accompany him to his tribe and to have children recognized as belonging to him. By tolerating a price or gift known as Mehr (dower), the spouse's family relinquished its cases to her and her future offspring. There were major areas of strength for an on the woman's loyalty and potential for devotion. Thus, her family forced severe impediments on her lead to shield her standing and likewise, the family's honor. Since a woman ultimately withdraw from her family, her value was to a not entirely settled by the dower (Maher) her family got during her marriage transaction. The status of the married women within her new family became worse. As a spouse, she became completely subordinate to her husband and his relatives, depending completely on them for her support. The marriage dynamics in old Arabia made a situation where a woman was dominated by males, first her father, sibling or close male family members when she was single, and afterward by her significant other once she wedded. Traditionally, she was seen as little more than a piece of property. A woman had no nothing to do with her own marriage. Islam presented a change in the social establishment moving from dependence on blood connection to a feeling of having a place inside a local area (ummah) of believers and moving from ancestral dedication to an emphasis on the more distant family as the central unit.

²¹ Paul R. Amato and Shelly Irving, "Historical Trends in Divorce in the United States," In *Handbook of Divorce and Relationship Dissolution*, 41-57, Psychology Press, (2013).

The old style family regulation that was at last settled rose up out of a blend of Quranic changes and customary practices.⁴⁶

In the middle colonies, divorce policies and processes were more conservative, such as in Pennsylvania, New England, and New York colonies; however, these colonies some time allowed divorces in cases of leaving, adultery, and polygamy; in the southern colonies, divorce was not available because the authors of these colonies followed the guidance of the Anglican Church. Every colony has a distinct method for divorce. E.g., divorces were admitted by the colonial legislature, courts, and governors. It was admitting only defect reason, that one partner had to claim that the other partner had ignored his or her marriage bond. Generally, divorces were allowed for causes such as polygamy, cheating, further causes adding physical torture, declining to give importance, and threats to life. In earlier times, if someone was guilty between husband and wife, the court gave strict punishment such as a fine, jail, etc.⁴⁷

In the latter 19th century few Hindu and Muslim reformists started talking about women privileges especially corresponding to issues of Child Marriages, Polygamy, Sati, cover (Purdah) and limitations on the women's schooling, a positive change started to happen in Indian culture. The time span from 1869-1892, was especially important for women's rights. This was a response to the fight by women against traditional norms that restricted their strengthening. British government introduced traditional rules to Indian civilization and culture as well as special Marriage Act, Guardians and Ward act, Divorce Act Marriage Validation Act, Female Infanticide Act. The year between 1886 and 1917 one viewed and extra ordinary for Muslim women, as those from world class families started to get modern education and progressively participated in political exercise, uploading for social and political equity of

⁴⁶ John L. Espito, " *Women in Muslim Family Law*," 15.

⁴⁷ Amato Paul R, " Historical trends in Divorce in the United States," 42.

women. Regardless of experiencing huge obstruction from conservative and moderate Muslim groups during this time, a large number of organizations and schools were established in the subcontinent to protect women freedoms.⁴⁸

2.2 British Colonial Rule and the Law upon Independence

The Indian Penal Code, which the British forced on the Indian subcontinent in 1860, made rape a crime. Regardless, rape victims faced from British colonial jurisprudence, which normally accepted that any proof introduced by female victim was inconsistent. As a result, it was the obligation of the rape victim to help her change and show that she didn't agree to the sexual demonstration. High court generally expected all evidence of physically resistance to crime. (i) A protest that was all quickly recorded (ii) that victims had physically resisted the crime (iii) proof that the victims had never engaged in sexual relation and (iv) details regarding their rank and class. Under the age of 14 law did protect girl who were considered to be victims of rape regardless of consent.⁴⁹ In 1891, the Muhammadan Educational Congress (MEC) held its yearly gathering in Aligarh, where conversations regarding women's education were once again raised. At long last, in December 1896, because of tireless efforts of Sheikh Abdullah, a committed women's wing was laid out inside the Muhammadan Educational Conference, and within three years, a women's teacher training institute was opened in Calcutta. While education achieved a progressive social change in subcontinent, the speed of this change was very slow. Syed Mumtaz Ali launched a weekly publication called Tehzeeb-e-Niswan (Culture of Women) in 1896. In 1904, Moulvi Syed Ahmad delivered Akbar-e-Niswan (Women Newspaper), while Sheikh Abdullah presented a diary named Khatoon (Woman). Moulvi Muheeb-ul-Hussain published Moalam-e-Niswan (Instructor of Women) and Moulvi Mehboob

⁴⁸ Gul, "Women's Political Empowerment: A Historical Overview in Pakistan", 60.

⁴⁹ Khan, Gull, "The Criminalization of Rape in Pakistan," 10.

Alam created “Sharif Bibi” in Hyderabad. Many others also contributed their writings to these publications, focusing primarily on social issues, such as dowry, superstitious.⁵⁰

2.2.1 Section 493 cohabitation caused by man deceitfully inducing belief of lawful marriage

A man could spend up to 10 years in lock up for cheating a young woman into convinced she is legally married and having sex with him.

2.2.2 Section 494 marrying again during lifetime of husband or wife.

A person who weds a living wife or husband in case marriage is illegitimate because it was entered into during the wife or husband alive, will be fined with imprisonment for 7 years and also fine.⁵¹

2.2.3 Section 495 same offences with concealment of former marriage from person with whom consequent marriage is contracted.

In case a person hidden the reality of their past marriage from the person they thought to marry, they can face prison for up to 10 years and fine.

2.2.4 Section 496 marriage ceremony fraudulently done through without lawful marriage

A person arrest for up to 7 years and fine who dishonestly undergoes a marriage function except legal reason of marriage.⁵²

2.2.5 Section 498(A)

First place to keep safe women from harassment and harm by family members or partner has been misguide responsible for issues for his family and husband. Cruelty and dowry has

⁵⁰ Gul, “Women Political Empowerment: A Historical Overview in Pakistan” 61.

⁵¹ “Pakistan Penal Code,” Chapter XX, Offences Related to Marriage, 113.

⁵² “Pakistan Penal Code,” Chapter XX, Of Offences Relating Marriage, 114.

controlled by Supreme Court, which was once treated a security against judicial injustice can be abused to generate fear push and threaten marriage, eventually harming damage society's benefit.

Section 57 of Indian divorce act 1869 explained that a group may remarry 6 months later get the order of dissolution. The Indian British government put on a marriage act, assured that English clergymen cannot perform marriages or divorces for adultery.⁵³

2.2.6 498 (A) Prohibition Against Preventing Women from Inheriting Property

Any individual who through dishonest or unlawful strategies, prevents any woman from inheriting movable or immovable property when succession is started shall face imprisonment of one or the other kind for a duration of up to ten years, or a fine of one million rupees or both.

2.2.7 498 (B) Ban on Forced Marriage

Anyone who pressure or in any capacity powers a woman to wed with confront detainment of different kinds for a duration that can arrive at as long as seven years or for at least three years and will likewise too dependent upon a fine of 500,000 rupees.

(If the individual is a female child a determined in the Child Marriage Restraint Act of 1929, or a non-Muslim woman, the culprit will face imprisonment for a term going from five to decade, along a potential fine that might arrive at dependent upon one million rupees).

2.2.8 498 (C) Restriction on Wedding with the Holy Quran

Whoever powers, organizers, or aid the marriage of a woman to the Holy Quran will confront detainment of one or the other kinds, which might endure as long a seven years, with at least

⁵³ Shreya Rm, "Misuse of Section 498A by Women Under the Indian Penal Code, 1860," *Nyaayshastra L. Rev.* 3, no.2 (2022).

three years, and will likewise be dependent upon a fine of 500,000 rupees. A woman's commitment on the heavenly Quran to remain single for as long as she can remember, or to do without her qualification to legacy will be viewed as similar to wedding the sacred Quran.⁵⁴ In Muslim societies in India, the concept of women's status and roles in society changed between 1886 and 1917. The period of the upper Muslim classes access to education promoted the damaging of proper norms even more. Sir Muhammad Safi, at that time a Lahore resident and intense supporter of women's rights and liable for innovation of the first women's group. He favors the right of inheritance and against veils.⁵⁵

In order to promote the religious advancement of Muslim women established in 1908 by Sir Muhammad Shafi, the "Anjuman-e-Khawateen-e-Islam" (Muslim Women Organizations), had two essential objectives. First, to motivate the women of his family members participated in raising women's socio-political awareness about their rights, secondly, and he also stood up against two social evils; the dowry and women's share of inherit property.⁵⁶

This organization supplied social services to deprived village women. The first all India Muslim ladies conference in 1915, was follow by some upper class chosen female. This group gave a resolution in 1917 opposing polygamy, generating an important movement in Lahore. When a group conducted by begum Hasrat Mohani met with Montagu secretary of state demanded to improved health care and maternity foe women as well as also access to education. Under the upcoming Montague-Chelmsford changes the delegation necessary that women have equal voting right. The Indian national congress and Muslim league declared their support for women's suffrage in 1918. When the amendment was introduced in 1919, colonial authority

⁵⁴ "The Pakistan Penal Code," Chapter XXA of Offences Against Women.

⁵⁵ Saigol, "Feminism and the Women's Movement in Pakistan,"

⁵⁶ Gul, "Women's Political Empowerment: A Historical Overview in Pakistan,"

but declined claiming that India's climate was unfit for women suffrage and rather left the decision to provinces. Jahanara Shah Nawaz, Sir Muhammad Safi's daughter gave a report during a first round table conference in 1930-1931. Rights were forced for everyone except view to gender, creed or religion.⁵⁷

Moreover, the government of act 1935 set the idea of distinct electorates for workers and women agree them to select his representatives. To give equal representation, the act shows different electorate for sum of group such as laborers, scheduled castes, and women.⁵⁸

Maulana Ashraf Ali Thanvi considered the situation of women and expressed a fatwa or perspective a philosophical customs other than Hanafi. He distributed his book, "Al-Heela al Najiza" in 1936 and embraced the Maliki way of thinking, which empowers women. Without the support of government, the Arbitration Council opinion had no legitimate consequences. Maulana Thanvi composed a bill thus, and part Kazmi brought it before get together.⁵⁹

2.3 Muslim Personal Law 1937

The "Muslim personal law (MPL)" was enacted on September 10, 1937, this was a significant achievement as it conceded Muslim women their rightful share in inheritance. Despite facing significant analysis from different ways of thinking, which considered the standards regulation to be unacceptable, the legislation was highly valued by Indian Muslim women, who considered it to be an encouraging sign for working on their social and political status.⁶⁰

The first movement to battle for legal protection was the women's suffrage campaign. Acquiring the right to vote was an issue for women all over. The United Nations objective was to grant all women in its part expresses the option to cast a vote, yet women couldn't get this

⁵⁷ Saigol, "Feminism and the Women's Movement in Pakistan: Actors Debates and Strategies," 5.

⁵⁸ Muskan Sharma, "Government of India Act 1935, Features, Provision, Power, Importance," (October, 30, 2023).

⁵⁹ Haque, "A Juristic Approach to Muslim Family Laws Ordinance 1961," 2.

⁶⁰ Gul, "Women's Political Empowerment: A Historical Overview in Pakistan" 62.

right except if their own countries gave them lawful society. Despite the fact that social hindrances keep women from exercising this right, a country's lawful security of this right is viewed as critical. Subsequent to acquiring the capacity to cast a ballot, women started to look for social liberties. They called for social liberties in different circles of life, like social, property and economic rights. Pakistan joined the United Nations soon after its beginning. The determined dismissal for women's common liberties all over the world led to the creation of United Nations Commission on the Status of Women in 1946. The motivation behind this commission is to guarantee that women wherever have an equivalent access to a political, educational and economic outcome. The United Nations has accepted some conventions to defend women's rights, such as minimum age for marriage, political rights of women, registration of marriage nationality of married, consent to marriage.⁶¹

Under the advice of her elder brother Quaid-i-Azam, Fatima Jinnah came a light of hope for Muslim women in South Asia. In 1948 after Quaid-i-Azam's death, she became to express the hope and dream of Pakistani women which made her role as a woman leader even more significant. She did for the betterment of women's rights and privileges in Pakistan under severe circumstances. In Muslim social circumstances, women are viewed as women's activist Allah and are driven by progress in such manner. We believe women are generally private and erased through history. In the past, she has crumbled, accumulated and removed as a physically tortured woman. Fatima Jinnah expected to engage Pakistani women in monetary matters and end their financial reliance on men. She put stock in joint family obligation and common understanding among people. Jinnah emphasized the significance of women earning

⁶¹ Noreen, Mussarat, "Protection of Women Rights Through Legal Reforms in Pakistan," 120, 121.

money and men providing financial support. She also emphasized the role of women in improving domestic life and changing men's moods and habits.⁶²

Pakistani Muslim women represent an essential role in addressing the difficulties of independence as well as giving resources for economic participation and providing services to refugees. In 1949 Ra'ana Liaquat Ali introduced a craft colony in Karachi to enable women. Against second marriage women groups together raised their voices in 1955. Furthermore, in 1949, Fatima Jinnah worked with begum G.A Khan to help women through the Girl Guide Association and was worried about advancing wellbeing, diminishing poverty, and aiding refugees. Fatima Jinnah was perceived as a good example for women's political commitment. She was the first women to be selected as possibility for president. The Muslim league committee's female members actively participated in the assemblies for women's rights in political sphere.⁶³

Pakistani women have been faced some of violence such as religious, social, economic and political and also have faced inequality in various aspects of life. Women rights denied due to ignorance of legislation. The constitution of Pakistan provides equal opportunities for both gender without discrimination. The all Pakistan women association organized a country – wide agitation to protest Muhammad Ali second marriage and demand reform of Muslim family laws.⁶⁴

In whole human history, women have been in problematic situation facing poor attitude of their opposite sex that was in effective position. In every society weather they were Arab, Greek Persian, roman women were used and consider to be the cause of enjoyment buried alive and also sold to other hand by minimum amount. Women were not given their primary rights to

⁶² Kishwar Sultana, 'Women's Rights as Propounded by Fatima Jinnah,' *The Pakistan Development Review* 42, no. 4 (Winter 2003): 761-764,

⁶³ Batool et al, 'The Struggle for Women Rights, A Study of Emergence of Feminism in Pakistan, (1947-2010)', 212.

⁶⁴ Hassan et al, 'The Muslim Family Law Ordinance 1961: Pioneer of Women Empowerment in Pakistan'.

speaking against violence to live with their own will. Women's position is ignored and affected by male chauvinism in Pakistani culture, especially in rural areas with brutal attitudes. Women were considered as housekeeper, and their duty is to clean house and to take care of children and also have no right to get education. Islam gives equal rights to women but they usually live without them. In spite of these rights, women look at social evils such as brutal killing.⁶⁵

2.4 Marriages

2.4.1 Karo-Kari or Honor Killing

Regretfully, this malignant danger rules society under a few names. For instances, it is referred to as Karo-Kari in Sindh, Kala-Kali in Punjab, Siyah-Kari in Baluchistan, and Tor-Tora in tribal regions and Pakistan. The people who take part in such way of behaving which they view as exceptionally respectable and a wellspring of upgrading honor according to those in the general public who are ignorant that a particularly horrible wrongdoing is not welcome in Quran and Shariah, which deny such grievous and behavior. Forced marriage: mean at time of marriage the consent of one party is not accepted. In Pakistani society this evil is prevailing specially in tribal areas. Forced marriage considered top global criminal act with 1367 cases reported.⁶⁶

2.4.2 Selling of Bride

In older days, women were considered as a property or commodity girls are sold to other hands in return of money without viewing the character of person who purchase him. In Watta Satta prevailing a custom of Punjab in which groom has to get married his sister with bride relatives. In KPK Khoon-Baha and Sawara custom prevail in which return of killing women is given to that family whose person was killed.

⁶⁵ Mustafa, Qasmi, 'Analysis of Women Rights in Pakistan: Theory and Practice,' 148,149.

⁶⁶ Mustafa, Qasmi 'Analysis of Women Rights in Pakistan: Theory and Practice,' 153.

2.4.3 Dowry Custom

In Pakistani society like other social evils dowry system is also an evil, in which at the time of marriage the parents of bride make dowry and provide bride groom, otherwise after marriage bride will have to face violence and harsh attitudes.⁶⁷

Haq Bakshish: Haq Bakshish, or marriage to Quran which means “giving up the right to marry”, is another un-Islamic custom basically practiced in southern Punjab and Sindh in Pakistan. As per Pakistani regulation, this custom can bring about a punishment of as long as seven years in jail. The goal behind this injustice is to prevent female relatives their share from getting property. A few young girls even as newborn children, are marry to the Quran’s for their whole lives. This ceremonial marriage to the Quran mandates that the elaborate female stay abstinent. Through this unsafe practice, a woman is denied from wedding a man and is believed to be taken advantage of by male family members to keep up with their territory and riches.

2.4.4 Acid Attacks

The woman’s appearance is much of the time the focal point of these attacks since a woman’s worth is related with her looks, which in turn impacts her possibilities for marriage and her social standing. One notable aspect of Pakistan is the presence of different legal frameworks (Shariah courts, High courts and Ancestral courts,) which adds complexity to the member. Acid violence, a sort of gender-based violence, is restricted under both worldwide and homegrown regulations. In any case, it persists nearly without interference because of dug in man centric frameworks, a delicate policing and the minimal expense of corrosive in the commercial center.⁶⁸

⁶⁷ Mustafa, Qasmi, “Analysis of Women Rights in Pakistan: Theory and Practice,” 154.

⁶⁸ Sanchita Bhattacharya,” Status of Women in Pakistan,” *Journal of Research Society of Pakistan* 51, no. 1 (January-June,2014): 190-191.

2.5 Post 1947

Women of All India Muslim League's contribution to the political struggle before partition cannot be ignored. They also had an equal political role in the freedom struggle of Pakistan. Islam is such a vital component of the constitution of Pakistan that in 1949 made it clear in the target goal what will be the job of Islam, yet the Islamic nature of our constitution is so troublesome because of different translation and factions in religion. The objective resolution served as the preamble to all 3 constitutions of 1956, 1962, 1973. It was made piece of the constitution as Article 2-A of 1985 when our state was under the system of General Zia.⁶⁹

There is a long history of Islamization and women's politics in Pakistan since the frontier time frame. When objective resolution was placed in constituent Assembly of Pakistan, back in 1949, two women by the names of Begum Shaista Ikramullah and Begum Jahan Ara Shahnawaz. They embraced a view on targets goal of administering party. Especially this regulation equivalent compensation for equal work, fairness of status and equivalent open doors had given to women. These two worked for women's rights in various areas from assembly to writing. Shaista composed a book from Purdah to parliament for arousing women's consciousness and got it published.⁷⁰

September 28, 1950 the first interim report introduced by prime minister Mr. Liaquat Ali Khan in assembly. According to committee proposal, the objective resolution will be combine into constitution as directive principles of country policy. It also stated that Pakistan would be federation of provinces with house of people and house of units for parliament. House of people would be based on population, as the house of unit would have equal image from both units. On choosing the head of state the report command that the president be select by joined meeting of parliament and deal a 5-year term. The report suggested 3 list for power division in advance

⁶⁹ Ahmed, Ahmad, "Objective Resolution, Women Politics and Islamization of State in Pakistan," 18.

⁷⁰ Ahmed, Ahmad, "Objective Resolution, Women Politics and Islamisation of State in Pakistan," 22.

state provincial, concurrent and federal lists. Provincial list cover 35, concurrent list 37 and federal lists 67. The provincial head is selected for 5 years and language of state declared Urdu. In Pakistan, the first basic principle committee (BPC) was blamed for giving an unexecuted constitutional frame work, famous to public doubt and conflict from east Pakistan. The united head claim Bengali as official language, while west Pakistan balm the report for religious change and over-concentrated. Liaquat Ali khan interfere to assure that the report was not terminal, which cause political crisis. In November 1950, the interim report was discharge in according with suggested method. The state was requested to agree submission for discussion by January 31, 1951 from all over community in coming phase.

After reviewing the discussion committee handover its report 13 April 1951. Additional meeting held in November to study a long memo from Sir, Robert Drayton a chief draftsman of the assembly, and to explain a few notes on report that was suggested. With the points reviewed were the cut of the section reserving legislative seat for women. New prime minister Khawaja Nazimuddin finally deposit the final report.⁷¹ For Muslim women the charter required freedom, equality of status, pay, inheritance rights which came efficient in 1951, completed a long standing attempts for inheritance and agriculture.⁷²

The prime minister Liaquat Ali khan was murdered in October 1951. Some female activists related with APWA were indignant on this public loss due to their close relationship with their ruler wife. More people took part in joint depressed process, follow their verification with her privy regret over their chat on the sheet of supportive statement including over physically visiting grief custom at her home.⁷³

⁷¹ Muhammad Rizwan, Manzoor Ahmad and Usha Rahman, ‘‘ Basic Principles Committee Report: An Uneven Journey Towards Constitutionalism in Pakistan,’’ DOL: 10.31703/glsr. 2017[II.I]. 01 URL: [http://dx.doi.org/10.31703/glsr.2017\[II.I\].01](http://dx.doi.org/10.31703/glsr.2017[II.I].01).

⁷² Rubina Saigol, ‘‘ Struggle for Women’s Right Legislation,’’ (Dec, 2 2020), <https://lawyher.pk>, view.

⁷³ Ansari, ‘‘ Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan,’’ 143.

Two female members of constituent assembly of constituent assembly, one was Begam Jahanara by early 1950s while there were few women in the provincial legislative assemblies closely with begum Shaista Ikramullah. Since 1947-1966 two women, who came from eminent political families were included in politics. In the wake of acquiring freedom, they proceeded to effectively push for the 1948 Shariat Bill, which perceived women's property rights and was basically an symbolic victory encompassing agriculture.⁷⁴ 22 December 1952 presented the second constitutional draft in assembly; Ulama was fully criticized. On 11 January 1953, the Pakistan Times put the draft on the basis of a weak mash-up of distinct constitutional ideas, which required a setup suitable for Pakistan's unique scenario. The second draft of Maudoodi,s 8 points was approved by Muslim scholars at a convention with some reforms organized by Ulama.⁷⁵

2.6 Family Laws Reforms

In 1952, the Pakistan high court emphasized this position in the Sayeeda Khanam v. Muhamad Sami case. In a full seat managing that's what the court noticed,' the establishment of marriage would be useless as there would be no security joined to it assuming the spouses were permitted to break up their marriage without the assent of their husbands by basically surrendering their dowers paid or promised to be paid'. However, the High Court of Lahore changed its position in 1959 on account of Balquis Fatima v. Najm-ul-Qureshi. At the point when serious inconsistency prevented a blissful marriage, the court confirmed its power to issue a khula separate. A khula separate was extrajudicial in light of common assent, and most fundamentally expected the spouse's endorsement to be legitimate under Hanafi regulation. A woman must exhibit that her contradiction obstructed a peaceful marriage and return her dower to be conceded a separation. Mediators regulated to research and settle an instance of critical

⁷⁴ Ansari, " Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan," 144.

⁷⁵ Islam, Iqbal, " Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi,".

conjugal difficulty either by means of compromise or, if this demonstrated inconceivable have allowed a disintegration on indistinguishable grounds as per the Maliki school.⁷⁶

Muhammad Ali Bogra was made the prime minister of Pakistan after the removal of Khawaja Nazimuddin. In assembly, the third draft of the constitution was introduced in September 1953, which is usually known as the Bogra formula. So regarding the Islamic provision, this was not much distinct from the second draft. Islam was decline to a query of policy either than a process. In spite of a lack of enough resources about Islam, the Ulama described satisfaction with the report. Jamat-ul-Ulama-e-Islam and Jamat-e-Islamic grant constitutions. Day of Pakistan was followed on October 22, 1954, after their agreement of a draft constitution. In east and west Pakistan, the Bogra formula did not knock on Islamic provisions. The Jamait-e-Islamic and Ulama believed the updated draft of BPC Islamic'' in 1954, demanding instant adoption and celebrating Islamic Constitution Day on October 22. The first constituent assembly was almost to complete the system of drafting a constitution. But unfortunately, the Pakistan governor general, Ghulam Muhammad, abolished the assembly on October 24, 1954, and declared that the constituent assembly at present constituted has lost the faith of people and can no longer function.⁷⁷

The prime minister's first wife, Hamida Begum, promoted APWA, leading to a meeting on 15 April. Representatives of important women's organizations and social workers were present when Ali supported women to start a new group to favor their legal rights. From Karachi to other cities, the protest soon spread. On 26 April, the Hyderabad branch of APWA raised knowledge of the issue and called on women to start a forceful campaign to oppose polygamy. On 10 May, the Prime Minister met with a league delegation, and after a 90 minute interview,

⁷⁶ John L. Espito, '' *Women in Muslim Family Law*, ''

⁷⁷ Islam, Iqbal, '' Islamizing the Constitution of Pakistan: The role of Maulana Maudoodi, ''68,69.

the Prime Minister assured the press that he would carry on to act properly towards his first wife.⁷⁸

Against polygamy, a group of feminist leaders marched on an anti-polygamy report delivered to the prime minister. With many women's organizations, they also held a meeting demanding a law forcing polygamous husbands to marry a single and same treatment for all wives. On 22 April, a league was formed for the rights of women, with Begum Chaudhry Muhammad Ali as president and committees setup.⁷⁹

The second constituent assembly completed preparing the Pakistani constitution by January 9, 1956, without any female participation. Women activists criticize them after studying their content. Begum Shahnawaz raised her surprise and hurt at the law that special fundamental rights for women were eliminated. For ending sex-based discrimination the constitution had no provision. A large number of women during last week of January, to discuss constitutional right, to showing a variety of organization gathered.⁸⁰

In 1956, after nine years, the Pakistani upper class finally delivered in framing a constitution. 26 February 1956, the constituent assembly adopted it, and it was imposed on 23 March 1956. The Islamic Republic of Pakistan was confirmed to abolish Pakistan's status as a dominion. The Pakistan constituent assembly develops into an interim national assembly, with the first president as Governor General Iskandar Mirza. The constitution delivered a federal system with equality between west and east Pakistan. The constitutional liberties and rights, as well as freedom of movement, profession, association, and assembly, were all granted in the constitution. Civil rights were all granted in the constitution. Civil rights were prolonged along

⁷⁸ Ansari, "Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan," 1426, 1427.

⁷⁹ Ansari, "Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan," 1428.

⁸⁰ Ansari, "Polygamy, Purdah and Political Representation: Endangering Citizenship in 1950s Pakistan," 1454, 1456.

with traditional restriction and security, which included the rights of liberty, property, and life.⁸¹

People's fundamental rights are defined in the constitution of Pakistan. Since the formation of Pakistan, the 1935 Indian Act has resulted, and the governor commands state governance. In the form of objectives resolution, a new constitution was presented, and for the first time, female rights were joined. This constitution present women right to live easily, enjoy self-ruling rights, and have right to choose their fourth area. It also guarantees right to vote in public and equal right to property.⁸²

In West Pakistan, the political condition was very disappointing. With the help of President Iskandar Mirza, the Republican Party was found by Dr. Khan. Iskandar Mirza operates the new party as an instrument, with most members being defectors of the Muslim league. The party ruled to stay in power through manipulation, political bargaining, and corruption, never holding elections. In 1958, Pakistan was an extreme economic disaster, such as shortage of food, lack of consumer goods, large scale deficit, and rising prices. Crop failure and changeful weather situations address economic issues and evolve practical solutions.⁸³ General Ayub khan faced stress to control political confusion in Iraq, knowing a coup struggle was being prepared. The risk was that senior commanders might become anxious and support politicians or attempt a coup. The government generated an ordinance to take documents and actions that disabled the regulations of the armed forces.

⁸¹ Tahir Kamran, ‘‘ Electoral Politics in Pakistan (1955-1969), 86.

⁸² Soomro, ‘‘ Women Rights in Constitution of Pakistan, Annals of Social Sciences and Perspective’’ 99.

⁸³ Soomro, ‘‘ Women Rights in Constitution of Pakistan, Annals of Social Sciences and Perspective,’’103.

2.7 Declarations of martial law

Army agree to discipline the government, requesting the chief of the general staff to prepare a plan in September 1958 after the deputy speaker death.⁸⁴ October 7, 1958 President Iskandar Mirza abolish the constitution, removed cabinet, displaced assemblies, restriction on political parties, and selected as supreme commander of armed forces General Ayub Khan, enforcing martial law all over Pakistan.⁸⁵ All dealings were governed with great attention and privacy. The second phase started after 20 days when army generals forced Iskandar Mirza to quit the president's office. It was difficult to decide the connection between chief martial law administrator and president. Under the control of the armed force, the authentic political power had slipped with the dissolve of the constitution and the announcement of martial law.⁸⁶ Military mostly depended on the local government to run the state. It located a combined command of military and civil organization.⁸⁷

To run a country, it is primarily based on the civil administration. It established a single command for the civil sector and armed forces. The Deputy Chief Martial Law Administrator was the secretary general of the Pakistani government. Secretary general, the finance ministry, interior ministry, defense, commerce industries, economic and work ministry, and irrigation ministry supported the chief martial law administrator.⁸⁸

Pakistan's constitution until the new one will be governed as closely as possible in according to rule with the revoked e is promulgated, according to 1958 constitution in force order issued by the chief martial law administrator. Although the fundamental rights were postponed and no martial law order and no military court decision ruling may be contested in any legal forum,

⁸⁴ Rizvi, *"The Military and Politics in Pakistan: 1947-1997"*, 85.

⁸⁵ Rizvi, ' ' *The Military and Politics in Pakistan (1947-1997)* ' ' , 86.

⁸⁶ Rizvi, ' ' *The Military and Politics in Pakistan (1947-1997)* ' ' , 87.

⁸⁷ Rizvi, ' ' *The Military and Politics in Pakistan (1947-1997)* ' ' , 88.

⁸⁸ Rizvi, ' ' *The Military and Politics in Pakistan (1947-1997)* ' ' , 88-89.

the high, supreme and lower courts were permitted to continue operating. The Pakistani Supreme Court approved of the military administration on October 27, 1958, an internationally legal method. Pakistan's chief justice ruled that if a revolution fails to break a constitution, its sponsor is convicted of treason. However, if the revolution succeeds and establishes a new regime, it becomes a law creating fact, making it vice, which did not hold the real power when martial law was imposed through civil machinery. The new regime's brains were the army, and its hands were civil servants. To run the administration, the army was aware of the fact that it requires the support of civil servants.

Many civil servants had been retired and expelled by martial law authorities. The other government employees were aware that they may also be fired for disloyalty and poor management. Under the protection of martial law, the official in the army wanted their decision to be carried out, and civil workers hold the chance to rule more authority.

If the government employee had tried to weaken the army's preparation, the army would have undoubtedly responded to defend control of the circumstances. Because of his knowledge as commander in chief of the army, field marshal Ayub Khan agreed that Pakistan's problems could be solved through proper inquiry and enforcement of the decisions made. To consider the problem, he appointed an expert committee whenever there was a significant issue worrying the reorganization of the army. The necessary order was issued based on recommendations after receiving the report. To eliminate the evils of the political system of Pakistan, he adopted the same method. He appointed different commissions to discuss different subjects.⁸⁹

Due to claims of corruption and abuse of power, a number of famous politicians were arrested. In the last five months of martial law, there was another issue involving East Pakistan students. The protest was mostly due to their dissatisfaction with the educational system and

⁸⁹ Rizvi, *'The Military and Politics in Pakistan (1947-1997),'* 91-92.

the report of the educational commission, as well as the prominent upcoming Pakistani constitution. East Pakistan political leaders, especially the Awami Leaguers, made an effort to take advantage of students to put pressure on the martial rule administration to draft a constitution that would guarantee East Pakistan's complete autonomy. Student protests spread to different cities like Barisal, Dacca, Khulna etc. Dacca University students were arrested and classes postponed, demanding liberties, unexecuted arrest warrants, and civil liberties. Ayub Khan tried to safe public support and personally travelled both Pakistani regions. His west Pakistan whistle stop tour in December 1959, on special train and east Pakistan tour in January 1960 on the same train, contributed to the development of Ayub's reputation as a famous leader. Through the basic democrats Ayub Khan decided to organize referendum and get the power to frame a new constitution. On February 14, 1960 there was a referendum, the voters may indicate their opinion on the ballots by writing yes or no. A dialogue between the supporter of presidential and parliamentary system began in 1960 with the appointment of constitution commission. A number of former politicians took advantage of this opportunity to voice their opinion in public, publishing responses to the commission's question.⁹⁰

To defend their support of power Pakistan military leaders, discover enough material. They succeeded in giving the impression that they had come to power to remove Pakistan from evils that they had joined its social, political and economic sphere during previous few years, and that they introduce to implement a new form of government that would be suitable for the unique circumstances. If we examine Ayyub Khan and his ministers' statement, then we can fulfill three themes. First, the country was in danger of major destruction due to the selfish politicians. Second the parliamentary system of government under 1956 constitution was impassable and did not fit the circumstances and need of public. Thirdly the new regimes

⁹⁰ Rizvi, *'The Military and Politics in Pakistan (1947-1997),'* 95-97.

several action were design to improve the number of people and basically protect political and economic stability. Pakistan military leader introduce different measures such as;

- (a) Step to eliminate the evils in society such as favoritism in civil service, smuggling, corruption, black marketing etc.
- (b) To take action to make sure the superior level of living to people, economic development etc.
- (c) To make future political frame work.

First few days following the imposition of martial law saw the improvement from different regions of Pakistan of illegal goods other than food imported luxury goods bales of fabric value at 835,500 as well as imported textile of Rs 529 lakhs. Martial law rule fixed commodity prices, cheating, black marketing, selling goods at higher rate, punishing violations with 14- years imprisonment to death for hoarding. Manufacturers and trade associations have deliberate reduced goods price like ghee for general information, which were advertised in newspaper.⁹¹

Ayub economic and social reforms generate mixed outcomes. Everyone dislikes the colonial legal system that Pakistan inherited after discarding the commission established under Article 198 of the 1956 constitution to bring all laws into compliance with Islamic perception. Ayub Khan established a panel to amend the rules. The Laws Commission report had no innovative ideas just attempted to unify, simplify, and integrate the administration of justice. Later, the West Pakistan Criminal law was amended to include certain modifications to the Jirga system of the border crimes regulation.⁹²

The Basic Democracy system was established in 1958 when Ayub Khan entered politics according to which the voters assign their rights to select the president and delegates to the

⁹¹ Rizvi, *“The Military and Politics in Pakistan (1947-1997),”* 98-99.

⁹² Afzal, *“Pakistan History and Politics (1947-1971)”*

provincial and national assemblies who are known as basic democrats from 80,000 representatives. According to Ayub, in Pakistan democracy should be a government run by a bureaucratic elite for the people. During the end of 1959, and early 1960, the first election was held under this system. To seek a vote of confidence cabinet advised Ayub Khan from 80,000 elected basic democrats. He received on powerful vote of confidence from basic democrats. After the ballot was cast on February 14, the result was declared on February 15, 1960. 95.6% vote were confirmed out of roughly 80,000 votes cast. However, basic democracy system was unable to create a generation of self-reliant leaders. Due to basic democracies order of 1959, which gave sufficient authority to bureaucracy to run these institutions they were obeyed to Ayub government.⁹³

The Basic Democracy system develops from lowest level of economic and political ladder, so that it brings strong roots among people founding at Mohalla level in town and village level in rural areas.⁹⁴ The President issued the Basic Democracy Order 1959 on October 27. The system established the function and structure of the institution. It provided a five-tiered hierarchy of local government boards, with an elected majority in the lowest tier repeating 16 statutes relating to local government in the former provinces in their entirety. Union councils for rural areas and town committees and union committees for urban areas are at the lower level of the five- tier hierarchy. At first, there was a number of members who were directly elected by public members and a number of members who were appointed who must make up no more than half of the total number of elected numbers.

President issued the basic democracies order 1959 on October 27, the system established the function and structure of institution. It provided a five tiered hierarchy of local government

⁹³ Kamran, '' Electoral Politics in Pakistan (1959-1969),''

⁹⁴ Zaharul Islam Choudhry, ' ' *Roots of Dictatorship in Pakistan (1954-1971)*, '' Chapter VIII, Progress Under Martial Law 1958-1969 Land Reforms in West Pakistan, 132.

boards, with an elected majority in lowest tier repeating 16 statutes relating to local government in the former provinces in their entirety. Union councils for rural areas and town committee and union committee for urban areas are at the lower level of five tier hierarchy. At first, there was a number of members who were directly elected by public members and number of members who were appointed who must makeup no more than half of total number of elected number.

Each town committee, union council, and union is required to have a total of ten of 15 members. Many tasks have been given to the lowest council to complete. It is able to perform all or any of the tasks listed in the 37-item schedule. Among the items on the list are such things as civic areas, playgrounds, mountains, public roads and walkways, relief, promoting education, and many other duties as determined by the government. With the commissioner's previous approval, the union council may charge taxes on any of twenty-nine listed items, which include building value taxes, annual taxes, occupations, transfers of real estate, and marriage. All cash was collected and paid to the council fund. The council has a ready and accepted budget, but the governance has the power to change it.⁹⁵

On 15 January 1959, he informs the Karachi High Court Bar Association that he restated his plan to form a constitution commission comprised of the best brain in the country. The coming constitution should be suitable for nation requirements and situation and should never permit for political stability. A strong political system can prepare the foundation, which is why changes were proposed.⁹⁶

In country politics, Pakistan stayed under Ayub Khan's martial law, which prohibits political parties from operating, and was allowed to participate. The political life of Pakistan was very

⁹⁵ Choudhry, '*Roots of Dictatorship in Pakistan (1954-1971)*,' ' 133.

⁹⁶ Choudhry, '*Roots of Dictatorship in Pakistan (1954-1971)*,' ' 137.

complex; the electoral bodies disqualification order of 1959 established the court to arrest thousands of politicians. Pakistan was facing serious political uncertainty when Ayub Khan restrained all political powers and enforced martial law. The provincial and national governments were dissolved and suspended.

He gave educational reforms and social and medical reforms for that purpose. For the politics of Pakistan, Ayub Khan's basic democracy was a new system. Under the Basic Democracy Ordinance 1960, Ayub Khan introduced the basic democracy system. Ayub Khan introduced this system to rule politics from the foundation of Pakistan, and he wanted to empower himself.

Basic Democracies (BD) are purposed to facilitate national and local leaders, nurture government mass communication, and provide electoral college for higher institutions. It supplied a four-tier structure, with the fifth tier dropped at the initial stage.⁹⁷

The two-tier functions, divisional council and tehsil/Thana, were essentially of coordination. On the other hand, district and union councils were accountable for industrial maintenance of law and order through rural police, agriculture, and community development. Ayub Khan laid the foundation of the basic democracies structure after the first non-party election of BDs from December 22, 1959, to 7 January 1960. He issued the presidential order on January 13, 1960, asking that the BD influence a referendum to demonstrate their support for him as president and to issue him the power to draft a constitution. 78,720 BDs cast their vote in the referendum.⁹⁸

Ayub Khan stopped all issues related to public which generally favored parliamentary system because he wanted a presidential system. When the report was finalized, it was handled

⁹⁷ Afzal, '*Pakistan History and Politics (1947-1971)*,' ' 231.

⁹⁸ Afzal, '*Pakistan History and Politics (1947-1971)*,' ' 232-233.

as a restricted document in comparison to Ayub Khan's proceedings assurance, discussion took place behind the camera July 2, 1960. For effective check and balance on the pattern of US system.⁹⁹

The following councils were established under basic democracies system.

(1) In rural areas, a town committee for town and union council for a union.

(2) A tehsil council in west Pakistan and a Thana council for each Thana.

(3) Divisional council

(4) District council

(5) For east and west Pakistan, two provincial developments advisory councils.

Union council is not significant element of basic democracies, a group of villages, covered with a total population of 10 to 15000 people. Ayub Khan established a constitution commission on February 17, 1960 to investigate the failure of reason of parliamentary government. The commission was to provide constitutional amendments aimed to give the nation, with stable and strong government, as well as to prevent president from arbitrarily using his inclusive power without party deliberation or proper planning.¹⁰⁰ The following reasons were mentioned by constitution commission when it causes that the parliamentary system of governance has failed.

(1) Lack of fault and appropriate election in late constitution.

(2) Inappropriate mediation by state heads with political parties and ministries and by the federal government in provincial government operation.

(3) Lack of disciplined parties, and well-organized leaderships as well as lack of moral integrity in politicians and their excessive meddling in the government affairs.

⁹⁹ Afzal, "Pakistan History and Politics (1947-1971)".

¹⁰⁰ G.W. Choudhry, 'Constitutional Development in Pakistan,' 'Second Edition Revised and Enlarged 1969, First Published 1959, S.B.N. 582 780071, 139-140.

The commission said that the last seen of reason was mainly to responsible for Pakistan's purported failure of parliamentary democracy. Politicians discuss that Pakistan had no tried the parliamentary system, the issue of its failure was not relevant.¹⁰¹

Conclusion

This chapter described how women's rights and social standing have evolved overtime in South Asian and Western countries. Women had little rights in pre-Islamic Arabia and were viewed as property. Positive changes were brought about by Islam, which granted women the right to marriage, inheritance, and social respect. But in British India, women, particularly Muslim women, were subject to several legal and social limitations, including being denied an education, being forced to wear veils, and being married off as children. Women rights were promoted by reformers and various organizations during colonial rule. To curb harmful practices like dowry-related violence, forced marriage, and limiting inheritance rights, regulations were enacted. Women's education, political participation and equal rights were promoted by newspapers, women's organizations, and social activists. Pakistan's women's rights continued to be challenged after independence. Despite the fact that the constitution guaranteed equality, numerous women continued to face difficulties as a result of ingrained customs and ineffective legal measures. In some areas, disturbing customs like honor killing, forced marriage and acid attacks continue. In spite of the creation of laws to protect women, insufficient awareness and enforcement have allowed numerous issues to persist.

¹⁰¹ G.W Choudhury, ' *Constitutional Development in Pakistan,* ' ' Second Edition (1969) S.B.N 582 780071.

CHAPTER 3

3 MUSLIM FAMILY LAWS ORDINANCE 1961

Enforcing the Muslim Family Laws Ordinance 1961 to control the divorce pattern and number of wives was another reform that had an important effect on society. The report of the Family Laws Ordinance and marriage, which was first recognize on August 14, 1954, served as its basis. 1st June 1956, report submitted by commission. The commission suggested a minimum age limit for female as well as male and granting maintenance payment to divorce women and their kids.

Every marriage solemnizes had to be registered with union committee/union council of relevant place by Family Law Ordinance. Nikkah registrars were appointed to union committee/or union council. Without informing to union council/union committee, the ordinance also provided that nobody was permitted to subsequent or second marriage.¹⁰²

Under the Muslim Family Laws Ordinance 1961, divorces and marriages are registered and allowed to appear in court for second and subsequent marriages. After approved by the court, divorce can only be effective. For women, the minimum age for marriage is 14 years and 16 years for men. Grandson of a departed son may inherit grandfather property. Ayub Khan developed resistance to Islamic laws and passed them in 1963, improving women's status. The commission of national educationists report focusing on integration and national growth suggests changes in educational structure for developing society.¹⁰³

¹⁰² Rizvi, *“The Military and Politics in Pakistan (1947-1997),”* 102.

¹⁰³ Afzal, *“Pakistan History and Politics (1947-1971),”* 229.

Pakistan is a republic of Islam. Islam's spirit shows the creation of its institution and laws. Family is treated as the primary institution in Islam. In the Islamic system, a family is created within marriage system. The marriage endures nikkah between female and male partners. The Muslim Family Laws Ordinance announced by Islamic republic of Pakistan's government in 1961, which created marriage system. The ordinance is brief but complete written text. It consists of thirteen paragraphs and thirteen sections.¹⁰⁴

3.1. West Pakistan under Muslim Family Laws Ordinance 1961

There was no proper Form for nikkah before Muslim Family Laws Ordinance which created so many ambiguities in process of divorce or separation. Muslim Family Laws Ordinance make it mandatory introduce nikkah registration Form with valid clauses to protect women legally or to provide legal protection into the women.

3.1.1. Preliminary

“(1) Under the Muslim Family Laws Ordinance 1961 these regulations may be called as west Pakistan rules.

(2) Unless there is something objectionable about the context or topic in these regulation. The term “Form” and “Ordinance” indicated the Muslim Family Laws Ordinance. “Section” and “Register” mean specific section of ordinance, the nikkah register names, describe under the rule 8 and form added to these rules.”¹⁰⁵

In matters of family, the arbitration process and dispute was solved through traditional Islamic practices and traditions. Disputes associated with family matter like divorce, marriage, maintenance, inheritance resolved by elders or respected community leaders. In resolving family disputes local traditional and customary practices played an important role. The Muslim

¹⁰⁴ Ahmad et al., “Stylistic Analysis of the Muslim Family Laws Ordinance 1961,” 29.

¹⁰⁵ West Pakistan Muslim Family Laws Ordinance, Clause no.1,2, Section (a) (b) (c) (d).

Family Laws Ordinance also introduced the structured and formalizes arbitration process in Pakistan. The ordinance also established the arbitration council at District level. Each arbitration council was composed of members appointed by government including legal experts, religious scholars, qualified individual.

3.1.2. Council for Arbitration

“For the purpose of clause (d) of section 2, the union council which shall have authority over matter is as follows:”¹⁰⁶

The process of obtaining permission for another marriage before the Muslim Family Laws Ordinance 1961 was governed by Islamic law and traditional customs, regional and individual circumstances. Husband also seek to permission from existing wife or community elders and his family before proceeding with a second marriage. But in 1961 the ordinance brought changes related to second marriage such as strict regulation on another marriage and certain requirements for obtaining permission from arbitration council before entering into another marriage. The clause 3 of section A also provided;

“(a) Should an application be made to contract into second marriage under subsection (2) of section 6 it shall be the town or union council of union where the applicant’s current wife lives or in the event that husband has multiple wives, the wife with whom the husband was married recently, at that time, the application is made.

As long as the applicant wife does not currently reside in any part of west Pakistan at the time of application, the union council shall have right would be as follows:¹⁰⁷

¹⁰⁶ West Pakistan Muslim Family Law Ordinance, clause 3.

¹⁰⁷ West Pakistan Muslim Family Laws Ordinance, clause 3, section a.

“(i) If the wife was living at any time along with applicant, in any portion of west Pakistan , the town or union council of union, where applicant’s wife last lived there and (ii) In any other situation the applicant is permanently staying in west Pakistan of town or union council of union”.¹⁰⁸

Three talaq announcement in a single instance were regarded as one during the period of Prophet (PBUH) and early years of Hazrat Umar caliphate. For those, who misuse the talaq, Hazrat Umar (RA) made it irreversible offering three talaq. Divorce was the most unpleasant according to hadith. Three talaq given at one time were viewed by all jurists as Talaq-e-biddat or undesirable innovation. Therefore, the idea that declaring three times in a row amounted to declaring divorce only once and that such a divorce had no bearing whatsoever on ending a marriage should be given legislative effect.

On the grounds that all four imams had established that three talaq declaration in one circumstances constituted an irreversible talaq. The commission suggested that divorce registration become legally required for the same reasons as those mentioned in the registration case. A copy of this divorce deed should be sent to registrar of marriage and divorce by standard talaqnama or divorce deed specifying how talaq had been affected. Without the consent of matrimonial and family laws court, no one should be able to declare a divorce until he paid full dower, and suitable provisions for the maintenance of his first wife and her children. It wouldn’t be necessary to provide for registration of divorces if the court participation was deemed necessary for divorce. The commission also suggested that spouses’ family and friends try to mediate a reconciliation between them in accordance with the Quranic injunctions. The formal divorce procedure should only be started when these attempts were unsuccessful.¹⁰⁹

¹⁰⁸ West Pakistan Muslim Family Laws Ordinance, clause 3 section (a) subsection I, ii

¹⁰⁹ Hassan et al., “The Muslim Family Laws Ordinance 1961,” 214.

The divorce process was bit different before introduction of Muslim Family Laws Ordinance as there was no proper legal protection for the female in the process of divorce. Particularly in case of return of dowry, the amount for Haq Mehr and her future expenses. Muslim family laws ordinance makes it according to Islamic laws that the women must be given due protection in case of her separation.

“(b) The union council of union or town, where wife against whom talaq has been pronounced was residing at the time of talaq pronouncement shall be consulted in the case of talaq notice under subsection (1) of section 7;

With the warning that union council will have power in the event the wife did not reside in any section of west Pakistan at the time of talaq pronouncement is as follows: ¹¹⁰

“(i) In case the wife was living with the person pronouncing the talaq at any time and wife was not resident of any part of west Pakistan at the time of pronouncement of talaq.

(ii) In any other situation in west Pakistan, the union council of union or town where the person giving the talaq is permanently residing.”¹¹¹

Pakistani criminal law and Islamic law both addressed maintenance payment to divorced Muslim wives before 1961. Under section 488 of the code of Criminal procedure 1898, judges would then award maintenance to deserted wives. The Pakistani judiciary addressed the question of wife’s maintenance for the first time in 1959 in the case of SH. Azmatullah vs. MS. the wife was granted maintenance in that case but only until the end of her iddat period (PLD 1959 Lahore 167). The court also set a pitiful sum of Rds. 90 as maintenance during that time. A maintenance award of Rds. 30 per month was also given to the wife in the state vs. Muhammad Nabi khan (PLD 1961 WP Karachi) case until the end of iddat period. It follows

¹¹⁰ West Pakistan Muslim Family Laws Ordinance, clause 3, section (b).

¹¹¹ West Pakistan Muslim Family Laws Ordinance, clause 3, section (b) subsection i, ii

that it is evident that judges denied Muslim women who had divorced the right to receive maintenance in full, even during the iddat period.

The commission suggested that the wife should be able to sue her husband for maintenance and that court's decision should be enforceable as soon as possible as arrears of land revenue. The commission adopted ijtiḥād and attempted to interpret the Quran and Sunnah injunction liberally for the benefit of women who have been arbitrarily divorced and left penniless, as opposed to adhering to the views of any one orthodox school of law. The commission also suggested that matrimonial courts should have the authority to require or husband to provide maintenance to his divorced wife for the remainder of her life in certain situations.¹¹²

“(c) The union council of the union or town in which the spouse is living at the time of her application for maintenance under section 9 will conduct cases and under that section, if multiple wives apply, the town or union council of union, will handle the application. The union or town where wife resides at the time.”¹¹³

13-A When the husband cannot or will not locate the wife who is to find out a copy of talaq notice under section (1) of section 7 of the ordinance, he, may if chairman permit notifies talaq to wife through her mother, father, adult sister, or brother, or if the husband are not able to find out wife. If he finds out diligence, he can perform her the notify of talaq by having it publication in newspaper that chairman has confirmed and that divided in the area where he and his wife last lived. This is permitted as long as the chairman concede his consent.¹¹⁴

¹¹² Shahid, “Post –Divorce Maintenance (MAA’TA) for Muslim Women in Bangladesh, Pakistan and India, 6.

¹¹³ West Pakistan Muslim Family Laws Ordinance., Clause no. 3, Section (c).

¹¹⁴ West Pakistan Muslim Family Laws Ordinance., Clause no.13-A.

4. For the aimed of ordinance where if chairman were elected as Non- Muslims of Union Council, the council must choose a Muslim member as chairman, following the procedures outlined for choosing a union council chairman.¹¹⁵

5.(1) Except the chairman instruct otherwise with the party consent, all Arbitration Council proceeding must take place before close doors.

(2) The Arbitration Council's proceeding shall be conducted over by the chairman as quickly as feasible.

(3) In accordance with subsection (4), the Arbitration Council vacancy will not invalidate the proceedings regardless of reason for vacancy, to nominate a representative or for any other reason.

(4) The chairman shall demand a new nomination, if vacancy occurs for any other reason than a failure of nomination.

(5) An Arbitration Council member cannot be a party to proceeding before one of these council.

(6) Every choice made by Arbitration Council must be approved, by majority in the event that vote cannot be held the decision of chairman will automatically become the council decision.

(7) All parties included in the proceedings a copy of Arbitration Council's decision duly attested by chairman will be provided without any charges.¹¹⁶

6. (1) The chairman shall by written order call upon each of the parties to nominate a representative within seven days of receiving an application under subsection (4) of section 6 an application under subsection (1) of section 9 or a notice under subsection (1) of section 7.

¹¹⁵ West Pakistan Muslim Family Laws Ordinance., Clause no.4.

¹¹⁶ West Pakistan Muslim Family Laws Ordinance., Clause no.5, Section 1,2,3,4,5,6,7.

The nomination to the chairman each parties shall within 7 days of receiving order, nominate a representative in writing and order or mail it to him, via registered mail.¹¹⁷

(2) If a party nominate a representative who is not able to deal Arbitration Council meetings due to illness or other situation or who intentionally skip such meetings or who has missed the truth of party, the party may, with chairman prior consent in writing, cancel the nomination and deliver a new nomination as soon as chairman permits.

(i) Provided that in cases where the party to whom the order is to be served resides outside of Pakistan, the order may be served on the party by way of Pakistani consular officer in or for that nation.¹¹⁸

(3) Except the chairman instruct otherwise in writing for reasons to be documented, it shall not be needed to start Arbitration Council proceeding from scratch when new nomination is made under sub-rule (2).¹¹⁹

^{26-A.} (1) When the collector is informed either through an application from a party included in the proceeding or through his own information that chairman is prejudice against or concerned in supporting a party included in any Arbitration Council proceedings or that chairman interesting in illegal activity. In such cases, any other member of union council as the chairman for the aim of this ordinance after informing each partly involved. The proceeding of Arbitration Council may be remained undecided the passing of such orders.

(2) A collector issuing an order in accordance with this rule must document in writing.¹²⁰
According to the Islamic law, the validity of contract marriage, does not in any way based on the performance of any documentation or recorded ceremony under traditional Islamic law.

¹¹⁷ West Pakistan Muslim Family Laws Ordinance., Clause no. 6, Section 1

¹¹⁸ West Pakistan Muslim Family Laws Ordinance, clause no.6, section, 2 subsection i.

¹¹⁹ West Pakistan Muslim Family Laws Ordinance., Clause no. 6, Section,3

¹²⁰ West Pakistan Muslim Family Laws Ordinance., Clause no. ^{26-A}, Section 1,2.

The only requirements needed to make contract legal and binding are the presence of witnesses on the occasion, mutual consent and ability. In case of foreign weddings marriage certificate can prove challenging without any supporting paperwork, especially if you are trying to establish the fact of marriage. According to Islamic law, a marriage can be assumed to be valid if there is no written evidence from Qazi confirming the union, no written documentation of the union, and no other available evidence. If marriage is contested in an area without a legal presumption of its existence, it would have to be demonstrated by evidence in normal manner and in these situations any written documentation would be very useful.¹²¹

In Pakistan, there was no proper or uniform system for marriage registration before 1961. The Muslim Family Laws Ordinance introduced the compulsory registration of marriage and it also brought important reforms to Muslim family laws such as provision related to divorce, marriage.

3.1.3. Registration of marriage

“(1) Under section 5 Union Council may issue a license to act as nikkah registrar to any individual competent to perform a marriage ceremony according to Islamic law. (2) After conducting any investigation it deems necessary the Union Council may, subject to the required outlined therein, grant the applicant a license in Form I if it decides that he is appropriate for issuing a license.”

“(3) Under this rule, a license conceded will be continuing and will only be cancel in case that any of its terms are broken.”

¹²¹ Langrial, Shah, ‘‘ A Critical Review of Pakistan Muslim Family Laws Ordinance 1961 in the light of Islamic Family Laws,’’

“(4) Under this rule any individual who offended any of term of a license issued faces punishment in the form of either simple prison for a term that may increase one month or fine of up to two hundred rupees or both.”¹²²

Registration of marriages was not necessary before the announcement of this ordinance. But after the promulgation of this ordinance, marriage registration was made compulsory and the union council was given authority to grant a license to one or more person to be called nikkah registrar.

“8. (1) Every nikkah registrar shall receive from Union Council on paying of fee set by Provincial Government, a legal register of Nakahnamas in Form II and a seal with inscribed the seal of Nikkah registrar of district. (1)

(x).....(y).....

(2) The chairman will certify leaves quantity in each register, which will have fifty leaves with continuous numbers and Nakahnamas on each leaf in fourfold/multiple.

(3) The seal and register shall remain the Union Council property in spite of payment of cost under sub-rule (1).”¹²³

For marriage there was no standardized registration fee before the Muslim Family Laws Ordinance 1961 in Pakistan. There was no uniform law related to marriage registration and it was also depending on local customs and administrative practices. The specific registration fee associated with marriage registration after the implementation of Muslim Family Laws Ordinance.

“9. (1) Under section 5, the representative or bridegroom must pay the registration fee of two rupees for registration of marriage, if the dower increase two thousand rupee, the fee is

¹²² West Pakistan Muslim Family Laws Ordinance., Clause no. 7, Section 1,2,3,4.

¹²³ West Pakistan Muslim Family Laws Ordinance., Clause no.8, Section 1,2,3.

computed at rate of one rupee for each thousand or section of thousand rupees of such dower with 20 Rs fee maximum applicable.

(2) The nikkah registrar will retain eighty percent of fee collected under sub-rule (1) for himself and remaining twenty percent will give the union council.

(3) The value of property shall be the amount concede upon by the married parties for the motive of fee under sub-rule (1) in cases where dower comprise of property other than money or partially of such property and partially of money.”¹²⁴

Before the Muslim Family Laws Ordinance 1961 in Pakistan, there was typically one copy of the nakahnamas issued. This single copy was usually issued with the parties involved in the marriage, commonly with the bride’s family or in secure location as determined by the mutual agreement. There were not specific regulations mandating multiple copies for marriages at that time. Muslim family laws ordinance introduced reforms to secure marriage for women protection and mandating multiple copies for nikkah.

“10. (1) In case, the solemnization of a marriage nikkah registrar fill out Form 12, in quadruplicate in the register. The individuals whose signature are essential on the form then sign, and nikkah registrar sign the document and seal it putting the original sealed in the register.

(2) After the payment of fifty paisa each the bridegroom and the bride will get triplicate and duplicate of Nakahnamas filed in the above manner, while the quadruplicate will be sent to Union Council.

(3) Any person who against this rule and reject to sign register faces a loss of either a simple jail or fine of up to two hundred rupees, which may increase one month or both.”¹²⁵

¹²⁴ West Pakistan Muslim Family Laws Ordinance., Clause no. 9, Section 1,2,3.

¹²⁵ West Pakistan Muslim Family Laws Ordinance., Clause no. 10, Section 1,2,3.

11. (1) In Pakistan, if individual other than nikkah registrar execute a ceremony of marriage they must fill Form 2, which they will upon paying a fee decides by provincial government. The individuals whose signature are essential on the form will sign, and person who executing the ceremony will after which he signs the marriage license Form and make sure it is provided to the nikkah registrar of the ward where the marriage is assigned as soon as possible along with the fee registration.

(2) Anyone who refuses this rule and is force to sign the Form they risk being punished with either a simple jail which increases to one month or a fine of up to two hundred rupees.¹²⁶

12. (1) If a citizen of Pakistan, marries someone outside of Pakistan, they must ensure that Form 2 completed in line with Rule 11 necessary and the registration fee are delivered to the Pakistani consular officer in for the nation where marriage is executed for continued delivery to ward of nikkah registrar in which the bridegroom resides, if the bride is not a citizen of Pakistan, and if the bride permanent resident.

(2) When the bridegroom is not a citizen of Pakistan and marriage was solemnized outside the country, the bride will be considered the person who performed the marriage under sub-rule (1) for purposes of filling out Form 2, to the extent possible.¹²⁷

13. When the nikkah registrar receives Form 2 in accordance with Rule 11 or 12, he or she will act in accordance with Rule 10 as he had performed marriage ceremony. The nikkah registrar won't need to get the required signatures from the relevant parties if marriage has been performed under this authority.¹²⁸

3.1.4. History of Polygamy before Islam

¹²⁶ West Pakistan Muslim Family Laws Ordinance., Clause no.11, Section 1,2.

¹²⁷ West Pakistan Muslim Family Laws Ordinance., Clause no. 12, Section 1,2.

¹²⁸ West Pakistan Muslim Laws Ordinance., Clause no. 13.

in the Ancient, Far East, Near East, Europe, United Kingdom and Mediterranean countries. Polygamy has been practiced since the beginning of time. In addition to marriage legally polygamous men also busy in other activities like war profit and prostitution. Polygamy was wide spread among native tribes in America and Africa according to document kept by teachers and travelers during the Christians era.

First wife was protected from second wife by certain ancient social orders. Exceptional circumstances like disease or former wife misbehavior, fertility the current wife must first consent to the second union according to Babylonian Code of Hammurabi. A mistress was a female slave who lived with a man in order to easier customary sexual relations in non-Jewish societies and the children of these union were consider as nurture.

3.1.5. In pre-Islamic Arabia

Pre Islamic Arab societies was no restriction on wives, and children separated deceased father's wives from other property. Women were owned by men. In Islam, polygamy is rigidly prohibited. The teaching of Islam was not a part of polygamy. In all eastern countries, polygamy was common. Polygamy a practice among Babylonians, Persian and Assyrians was retained by Islam. Men could have multiple wives even in Rome and Greece. During the pre-Islamic Arab period polyandrous and polygamous marriage ceremony was practiced. Before Muhammad (PBUH, s) came, woman lived with her tribe, man is allowed to stay with her and kids grow up with the mother tribe. After the Quran revelation, women status improved after spread of Islam and Islam allowed limited polygamy.

3.1.6. In Islamic era

Islam does not encourage or prohibit polygamy, but allow it if necessary.¹²⁹ According to the Islamic concept of polygamy Quran is the only known global scripture that clearly forbids polygamy and imposes many regulations based on its implementations.

Marry women of your choice, two or three or four, but if you fear that you shall not be able to deal justly with them, then only one (Quran 4:3)

The Quran prohibits having more than four wives, and Islam abolish polygamy by mandating that each wife receive the same treatment regarding expenses, food, time and other responsibilities. Muslim cannot differentiate between wives. Discrimination between children or wives was forbidden by the prophet Muhammad.¹³⁰

Polygamy was an ordinary custom before the Muslim Family Laws Ordinance 1961. It also accepted in various communities. Men might take multiple wives for different reasons such as to establish alliance between families' desire for more children take care for divorce or widows. In 1961 some reforms also introduced by MFLO related to polygamy. Husband must submit an application to union council and also pay a fee prescribed to union council in order to obtain permission for contracting a polygamous marriage. The purpose of this ordinance is to provide safeguard, protection right for women.

3.1.7. Polygamy

“Without limiting its whole authority to determine what is necessary and fair, the Arbitration Council may consider effective conditions such as physical unfitness, disability, sterility,

¹²⁹ Sara Qayum et al., “Practices and Reforms in the Legislation of Polygamy in Pakistan,” *Journal of Humanities, Social and Management Services (JHSMs)* 3, no .1(January-June 2022), 300-311.

¹³⁰ Langrial, Shah,” A Critical Review of Pakistan Muslim Family Laws Ordinance 1961 in the Light of Islamic Family Law.”

willful disregard of a marital decree, or insanity of the existing wife, when evaluating whether a second marriage is necessary and just.”¹³¹

15. Under subsection 1 of section 6 of the MFLO 1961, a man must apply in writing, disclosing whether his current wife or wives have granted permission. The application must also explain the necessity of the second marriage, bear the applicant’s signature, and include a fee of 100 rupees.¹³²

From a legal feminist perspective, these requirements attempt to place minimal checks on the patriarchal practice of polygamy. However, the decision-making power still rests largely with men and state-appointed councils. Legal feminist theory, particularly the liberal feminist viewpoint, argues for restructuring such frameworks to ensure women’s agency and consent are not symbolic but substantively respected.¹³³

3.1.8. Revision

1) Within the decision of thirty days or certificate issuance’s as applicable, an application for revision of Arbitration Council decision, under sub-section (4) of section 6 or certificate under sub-section (2) of section 9 must be submitted. It also be included Rds. 2 fee.

(2) The application must be submitted in writing, include the signature of applicant’s and identify the reason why certificate or decision needs to be revised.¹³⁴

3.1.9. Records and their Inspection

¹³¹ West Pakistan Muslim Laws Ordinance., Clause no. 14.

¹³² West Pakistan Muslim Family Laws Ordinance., Clause no. 15.

¹³³ Syamanta, ‘ ‘ Towards Feminist justice: Reforms and Challenges in Islamic courts for Gender Equality and Women’s Rights’ ’ 37.

¹³⁴ West Pakistan Muslim Family Laws Ordinance., Clause no. 16, Section 1, 2.

Under rule 6, following the Arbitration Council decision, the chairman shall forward the record of proceedings in which decision was made to the union council office, as soon as possible. The record will be kept there for five years following the date of decision.¹³⁵

18. (1) The nikkah registrar quadruplicate of nakahnamas, which is delivered in under sub-rule (2) of rule 10 will be remain in union council office until the nikkah registrar deposit the original register in that office.

(2) The completed register will be kept on file preserved indefinitely.

(3) Every register contained will be compose and kept up to date in office of union council. After the nikkah registrar each entry in the index will be made and enter information in the registrar as soon as possible.

(4) Every marriage registered within town or union council, as applicable must include the residences, father of parties and name involved along with registration and date of marriage. This information mentioned in the aforementioned index.¹³⁶

19. (1) Any individual requesting to view the register and index may do so at any reasonable time to the union council office, subject to prior payment of fee specified in sub-rule 2 and 3. Copies of the entries in the index and register, sealed and duly signed by chairman to each individual requesting one of these copies.

(2) Register or index examined will cost fifty paisa.

(3) The following amount must be paid to acquire a certified copy of all or any of entries relating to marriage. (a) Fifty paisa reward for those in the index. (b) Two rupees for individual who have registered.

¹³⁵ West Pakistan Muslim Family Laws Ordinance., Clause no. 17.

¹³⁶ West Pakistan Muslim Family Laws Ordinance., Clause no. 18, Section 1,2,3,4.

(4) Under this rule, council will receive credit for any fee that are due.¹³⁷

3.1.10. Payment of fees

Non-judicial stamps must be used to cover all costs linked with these rules with the exception of those payable to the nikkah registrar who must be paid in cash.¹³⁸

3.1.11. Complaints

Under the ordinances or these rules, no court may find that an offence has been committed unless the union council files a written complaint outlining the specifics of the offense.¹³⁹

Conclusion

The Muslim Family Laws Ordinance of 1961 brought about significant changes in Pakistan, and Chapter 3 focuses on defending women's rights in areas like polygamy, divorce, and marriage. Women had limited legal protection during separation prior to this legislation, and there was no appropriate procedure for registering marriages. Women were granted the right to maintenance under the law, which also mandated marriage and divorce registration and established official regulations for second marriages. It also regulated polygamy by requiring official approval and justification. Arbitration committees were established to fairly resolve family disputes. In general, the goal of the law was to strengthen family structures and offer women Islamic-based legal protections.

¹³⁷ West Pakistan Muslim Family Laws Ordinance., Clause no. 19, Section 1,2,3,4 (ab).

¹³⁸ West Pakistan Muslim Family Laws Ordinance., Clause no. 20.

¹³⁹ West Pakistan Muslim Family Laws Ordinance., Clause no. 21.

CHAPTER 4

4 REACTION OF ULAMA ON MUSLIM FAMILY LAWS ORDINANCE 1961

Due to country wide Ulama'' silent objection and their conflict with the report's supporters the commission's report was dormant until march 1961.¹⁴⁰ All Pakistan women association (APWA) has fought ardently for the commission report adoption in February 1949. However, Ayub khan made the decision to put suggestion into practice as they simply provided a method for the judicious and proper implementation of Islamic principles of marriage and in any way did not interfere. National press and several women's organization praised the law, referring to it as a great step forward for the social change conducted by revolutionary regime.

But most of "Ulama" opposed of Muslim family law ordinance, saying that its instruction was against the Ijma'' the Qur'an and Sunnah. They also called them unreasonable and unrealistic generated by modernist and Westernized minds and an open intervention into Muslim family and private life. According to them, not even the government could modify or change the Shariah laws, included MFL, s. The MFLO, s clause about the inheritance right of a predeceased son or daughter kids to inherit from their grandfather was also objected by the "Ulama."

In Lahore, March 13, 1961 fifty "Ulama" of various religion released a unified statement. They were against the MFLO, s limitation on polygamy, the union council mediation of divorce cases the inheritance rule, the need that nikkah be registered and age restriction on marriage. The demand made by the Ulama to change or remove the ordinance's section that are the care

¹⁴⁰ Mujeeb Ahmad, "Ulama and the Muslim Family Laws in Pakistan" *Islamic Studies* 59: 1 (2020) pp 51-78, 58-59.

principles of Fiqh-I-Hanafi, the Qur'an and Sunnah as well as practical and social rules. In addition to the above mentioned joint declaration of the Ulama 127 from Peshawar and 82 from east Pakistan delivered statement supporting the same. The Nizam-al-Ulama, Magrabi Pakistan rejected to MFLO in 1961, leading to a vigorous protest movement.¹⁴¹

During an emergency meeting in Lahore on July 11, 1962 the Bareilvi "Ulama" officially announced the law to be anti-Islamic and recommended its repeal. On march 7-8 1963, conference in Lyallpur between prominent Bareilvi "Ulama" and mashaikh, there was a demand made that the MFLO be changed to align with the instruction of Ulama, since the current outfits was not Islamic. In Lahore from august 1-6, the Majlis-I-Shura of the Jama'at-i-islami (IJI) made various demands, especially the repeal of the MFLO. In Bhera, an annual conference in march 1963 the Majlis Markaziyyah Hizab l-Ansar significantly opposed the MFLO and called for cancellation of these un-Islamic laws. Ayub khan policies have been supported by Maulana Muhammad Abd al Hamid Badayuni. July 30, 1962, marked his appointment as member of advisory council of Islamic ideology. But, when it came to the MFLO, he agreed with the "Ulama" as well.¹⁴²

As a member of the third National assembly of Pakistan (NAP) elected in April 1962, Mufti Mahmud expressed his harsh disapproval of MFLO. He examined its several clauses and released that it opposed a hadith Ijma" and Qur'an. On assembly floor, he also made a motion to void the MFLO. Although he believed that the nikkah should be registered, he was against the suggested fine for failing to register it, much as majority of other Ulama. Mufti Sayyah al-Din Kaka hail also supported the punishment that was being recommended for not having the nikkah documented, granted that the nikkah legitimacy was not contested. July 3, 1963 at the assembly, Maulana Ghulam Gauth Hazarvi (1896-1981) the west Pakistan assembly member

¹⁴¹ Ahmad, "Ulama and the Muslim Family Laws in Pakistan" 60.

¹⁴² Ahmad, "Ulama and the Muslim Family Laws in Pakistan" 61.

opposed the MFLO and said it breached both the spirit and word of Shariah. Mufti Muhammad Sharif stated the MFLO contradictory to the rules and spirit of Islam and highly criticized it.

143

The part 4,5,6,7 (a), (b), (c) and (d), 12 and 13 were especially criticized by Mufti Shafi. He called for the repeal of ordinance and the creation of a new commission with member who were skilled in both Islamic and modern topics. In response, president Ayub Khan stated that these regulations were not connected with Islam and called polygamy. Perhaps the only Barelvi Alim to accept the ordinance and release a fatwa in its favor was Mufti Ahmad Yar Khan Naimi (1906-1971). Maulana Sayyid Muhammad Daud Ghazvanid (1895-1962) Amir of the Markazi Jamiyyat-I-Ahl-I-Hadith(MJAH) did not completely accept the MFLO. The idarah-i-Tulu-i-Islam, Lahore, supported MFLO, particularly its rules prohibiting marriage between minors and proclaiming a triple divorce at once as invalid and void.¹⁴⁴

The MFLO of 1961 was the most important step of Pakistan toward giving men and women equal rights. But the reason of failure of MFLO was the reforms were weakened and effective the recommendation of marriage commission report. In achieving its two main aims, the MFLO also changed inheritance, marriage registration and maintenance, restricting polygamy and controlling divorce. The report suggestion for legislative reform and traditionalist forces were consistently balanced by the ordinance. A compromise between report's modernist authors and traditionalist resistance can be seen in each of the ordinance divorce sections. The divorce analysis divided into two sections. First three point of view on each topic are given as proof of the interest influencing each issue. Included are the perspective of commission traditionalist Maulana Islahi.¹⁴⁵

¹⁴³ Ahmad, 'Ulama and the Muslim Family Laws in Pakistan'' 62.

¹⁴⁴ Ahmad, 'Ulama and the Muslim Family Laws in Pakistan'' 64.

¹⁴⁵ Sarfraz Hussain Ansari, Naila Maqsood and Rifaqat Islam, 'Muslim Family Laws Ordinance 1961: Modernist and Traditionalist Perspective,' *Journal of Positive School Psychology* 6, no .17 (2022): 332.

4.1 Maulana Maududi response on Divorce

The majority of the jurists and four imams believe that three divorces pronounced at once will be considered final and valid. Maulana Maududi supported this traditional view and stated that he could not suggest any legal changes to it. However, he acknowledged that although it may be technically legal, it remains morally questionable because it differs from the procedure of divorce taught by the Prophet (peace be on him).¹⁴⁶

From a legal feminist perspective, this practice reflects an imbalance of power where men historically had the unilateral right to end marriage, leaving women vulnerable and without legal recourse. Feminist legal theory argues that any law giving absolute control to one gender especially in matters as life-changing as divorce creates structural inequality and undermines women's autonomy. Maududi suggested the following reforms to address this issue.¹⁴⁷

(1) The proper Islamic procedure of divorce should be widely taught to the public. Moreover, the public should be made informed of this through press and radio included in course instruction and reference in the rules that follow Nikkah Namas.

(2) Stamp writers should be prohibited from preparing documents for issuing three divorces simultaneously, and legal accountability should be imposed on those who facilitate such practices.

(3) The public announcement of three divorces in one sitting should be banned. In this regard, Maududi referred to the example of Caliph Umar (May God bless him), who upheld the enforcement such divorce declarations and punished the individuals involved when the practice was misused.¹⁴⁸

¹⁴⁶ Ansari, "Muslim Family Law Ordinance 1961: Modernist and Traditionalist Perspective" 33.

¹⁴⁷ Syamanta, "Towards Feminist justice: Reforms and Challenges in Islamic courts for Gender Equality and Women's Rights"

¹⁴⁸ Ansari, "Muslim Family Laws Ordinance 1961: Modernist and Traditionalist Perspective" 333.

These suggestions, while based in traditionalist frameworks, represent a partial move toward legal reform that indirectly acknowledges the harm caused by patriarchal divorce practices. Feminist scholars interpret these steps as early attempts to reduce male dominance in marital relationships and to introduce fairness into a system where women have historically had little power or legal protection.¹⁴⁹

The Hanafi, Shafi, Maliki's, Sunni sect member generally consider talaq(divorce) to be mubah, or legally permitted. However, in the view of reformist scholars like Syed Amir Ali, the unrestricted use of this right is spiritually and ethically objectionable. He argued that divorce should only be used under serious circumstances, such as when the wife is abusive in words or behavior, or when the husband is physically unfit or incapable of fulfilling marital duties. Classical texts like Hedaya emphasize that a divorce issued by a husband is valid as long as he is of sound mind and mature age.¹⁵⁰

From a legal feminist perspective, these interpretations reveal a deep imbalance in power between husband and wife. The fact that right to divorce rest almost entirely with the husband regardless of the wife's consent or situation shows how patriarchal authority has been embedded into legal structures.¹⁵¹

Feminist legal scholar argue that such frameworks deny women equal standing in marriage and fail to recognize their emotional and legal rights. The conditional permission for divorce based only on the husband's judgement positions women as passive dependents, rather than equal

¹⁴⁹ Syamanta, "Towards Feminist justice: Reforms and Challenges in Islamic courts for Gender Equality and Women's Rights"

¹⁵⁰ Abbasi, '*Family Laws in Pakistan*,' chapter 2.

¹⁵¹ Syamanta, "Towards Feminist justice: Reforms and Challenges in Islamic courts for Gender Equality and Women's Rights"

partners. Legal feminism calls for a more reciprocal approach, where both spouses have equal rights to end a marriage based on dignity, safety, and fairness.¹⁵²

Marriage, Widowhood, Divorce and Paternity were considering the more significant changes to Muslim Family Law. These were legislative efforts to make women live better by adopting laws that went over the four pillars of Qur'ans. By creating the theory of irreversible and written law, the British supported the traditionalist cause. Regulating and formalizing laws that were claimed to be beneficial to women's rights British supported the modernist cause.¹⁵³

The child marriage restriction act of 1929 put minimum ages of eighteen for boys and sixteen for girls. Punishment were stipulated in the act for males over 21 who married children, and even as far as guardians or parents who allow or neglect to stop this kind of marriage. A decree restricting such as marriage could also be issued by courts. Women's right to better status and legal relief were provided for in 1939 with the dissolution of Muslim marriage act. According to the act women could file for divorce if they could prove their partner satisfied one of eight criteria mentioned in the dissolution of marriage act (DMA).¹⁵⁴

4.2 Ayub ask Ulama to move with the time

President Ayub Khan on 10 June analyzed that the Family Law Ordinance, which concluded indiscriminate polygamy, did not conflict with holy book order or hadith explanation. In reply to a letter from Mufti Muhammad Shafi, who chairs the ruling committee of Darul Uloom, the president asked the Ulama to change with the times.

¹⁵² Saigol, "Struggle for Women's Right Legislation"

¹⁵³ Nadya Haider, "Islamic Legal Reform; The case of Pakistan and Family Law," *Yale Journal of Law and Feminism* 296.

¹⁵⁴ Haider, "Islamic Legal Reform: The Case of Pakistan and Family Law" 297.

“Islam is unchangeable and constant if there is a gap between our life and our beliefs, it is not the fault of Islam, it’s our own fault. The speaker claims that it is unethical and goes against their values to delay fundamental reforms in order to win brief popularity.”¹⁵⁵

4.3 Text of Ayub reply

The letter explain the points contained in the detailed note, which are currently being looked into and will be properly considered by the relevant ministry. Your letter emphasis the urgent need to change destructive social norms, especially those that are related to marriage and family, as these practices are undermining the basis of society. As a result of indiscriminate polygamy, which effects thousands of families and leads the moral, economic and social collapse of many children and women. Hinduism has long been linked with the disrespectful practice of sati. But in reality, modern day marriage fraud is far crueler and harsher than sati. In sati, only one innocent woman is burnt into flames and thrown into fire. But a large number of women in our society are compelled to live with severe pain that is better than actual. I just can’t close my eyes to it all as the head of state. I believe that there are two kinds of rulers, according to my understanding of the Holy Qur'an. One group comprises those who are given power and misuse it unfairly and improperly. Even more horrible than them are people who, although holding positions of power, fail to take responsibility for removing injustice, violence, and crimes.

4.4 Polygamy

The only effective approach to end marriage malpractice, in my opinion is to set up such a system and reply to you in more detail on the specific problems you came up. I want to emphasize one last time that those who God has given the knowledge and awareness of our belief carry an immense load of responsibility. It is our obligation to free religion from the

¹⁵⁵ *Daily Dawn, Karachi*, 11 June 1961, 1.

ruins of stereotypes and superstition and to make sure that it keeps up with the times. If there is a gap between our faith and our lives today, it is not the fault of Islam, actually it is our own issue, not that of Islam. I believe that will be enough to give serious thought to what I have tried to clarify in this letter, in my humble point of view, as man of great human sympathies and understanding.¹⁵⁶

The Ulama views of the Muslim Family Law Ordinance 1961 suggest that many people are unaware of its provisions and that Pakistani Muslim law does not have a significant change. The ordinance is a step in the development of Muslim personal laws to fulfill changing social structure rather than a radical one. The 1929 child restraint act and 1939 dissolution of Muslim marriage act marked the beginning of this process in India. A law departing from the Hanafi school granted women the right to refuse Khyar-ul-Bulugh, which was previously recognized only for guardianship marriages. It also removed a widely abused ground for instant divorce previously considered apostasy.

4.5 Iqbal view

Allama Iqbal criticized the apostasy in Punjab, arguing that it contradicts the aims of the missionary work. The Spanish jurist imam Shatibir, s AL-Muwafiat aims to safe guard five element, Din, Nafs, Aql, Mal and Nasl. The Indian judiciary strict adherence to standard works may cannot protect the interest of the faith in India.¹⁵⁷

4.6 M. Alvi

¹⁵⁶ *Daily Dawn, Karachi*, 11 June 1961, 9.

¹⁵⁷ *Daily Dawn, Karachi*, 23 June 1961.

Makhtib, Jamia, Masjid, Gawalmandi Maulana Ferozuddin Alvi stated that the revolutionary governments measure to stop the improper use of polygamy were fully in accordance with Islamic principles.

4.7 Begum Fida Hussain

The A.P.W.A president of west Pakistan, Begum Fida Hassan congratulated the new leadership for adopting the correct way of action to enforce the findings of commission about family laws and marriage. The previous government had the wisdom and courage to carry out the commission's recommendations. She hoped that when the ordinance was enforced it would offer relief to Muslim women and children who had suffered cruelly for generations. The All Pakistan Women Association expressed great concern that Pakistan should not fall behind in this regard.

4.8 Qari Nazir Ahmad

Expert in Muslim jurisprudence and past president of Rawalpindi district bar association Qari Nazir Ahmad welcomed the law for addressing many centuries old problems held by women in this nation. He said that there was a time when it was a thought that our marriage customs and laws oppressed specific groups of people and gave a man an overly powerful position in opposed to the Shariat rules. According to him, it is possible that the experiment may result in certain operational problems or issues with the new provisions after a year or two, but that will not make alteration or modification difficult in light of actual results.

4.9 Maulvi Siraj

The president of the Rawalpindi district bar association, Maulvi Siraj ul-Haq explained that this is the first time in history a legal measure has incorporated the Holy Quran rule that an effort should be made for reconciliation before "talaq". It is very remarkable and the ordinance

authorized approach is easy. The regulation significantly reduces the hardship that women endure. According to him, the changes made to the laws relating to succession and child marriage are particularly appreciated.

4.10 Begum Shahnawaz

A female leader, Begum Jahan Ara Shahnawaz welcomed the martial law government Monday for their effective decision to put some limitations on the growing evils of polygamy in Lahore. In a speech to the press upon the imposition of family law ordinance, she added that Pakistani women expressed their profound thanks to Ayub Khan and his government for enforcing Islamic law, which defend first wife and their children from mistreatment.

According to her, the women were hoping and to request that the family laws commission recommendation- which suggested for the formation of separate family law courts managed by the judges and not recognized by the government, be enacted. They also demanded that specific courts be established to follow the methods specified in the commission's report regarding marriage, remarriage and divorce. Begum Jahan Ara Shahnawaz had a view that responsible chairmen and judges of basic democracies shouldn't decide a woman future. For it to protect women's interest and rights and to properly their cause, distinct family courts need to be established.

4.11 Begum Asma Qureshi

The head of Bant-e-Islam, Begum Asma Qureshi, welcomed the family laws ordinance approval and called it a bold step towards the liberation of Muslim women in the nation. After being missing a sense of security under the prior judicial rule, married women will soon be granted fair and justice play under new law that has been implemented. The president of Banat

emphasized that women have won the first battle for Islamic right renovate, but now it's up to democrats to execute this decision, resisting sexual discrimination and men's influence.¹⁵⁸

4.12 Begum K. Anwar

The general secretary of APWA and province development advisory board member, stated her appreciation to the Pakistani president for implementing the family laws ordinance in an address issued to the media. The announcement also stated that for the first time in the Muslim social history of subcontinent, the illegal use of polygamy has been recognized and measure to reduce it have been implemented. She also express that the government would set up family law court soon, as proposed by the issues facing Pakistani women.¹⁵⁹

4.13 Maulana Abdul Hamid Qadri Badayuni

The family law ordinance was approved by Maulana Abdul Hamid Qadri Badayuni. In order to solve the problems and issues relating to legislation he asked the president to talk with experts in religion. He also stated that Islamic law never violates women their rights in case of multiple marriage and divorce. Yet, he noted that some people were using this freedom improperly. Despite the reality, that the Holy Quran, makes it very clear that if a person cannot defend justice, they cannot get married more than once.

Maulana Abdul Hamid Badayuni, the president of Jamiatul Ulama, Pakistan praised the president for introducing beneficial ordinances on numerous marriage noting that they were correct in every way. The Muslim Family Laws ordinance was welcomed by the senior ladies of Dacca city, who attributed its success to social awareness and responsibility of union council to ensure justice.

¹⁵⁸ *Civil and Military Gazette*, Lahore, 4 March 1961.

¹⁵⁹ *Civil and Military Gazette*, Lahore, 5 March 1961.

4.14 Views of Islamic scholars on divorce and nikkah and critical debate of judicial activism

Judicial activism and its impact on both politics and law have been widely discussed in Pakistani debates. Some believe judicial activism has brought important changes and secured rights, while others are concerned that it undermines the separation of power and democratic ideals. Advocates claim that judicial activism is essential to maintain the rule of law and protect human rights, especially in a country where political institutions are corrupt or weak.¹⁶⁰

However, from a legal feminist perspective, this activism may reinforce patriarchal frameworks if courts interpret family laws without considering women's lived realities. It emphasizes the need to challenge traditional male-dominated interpretations of Islamic laws and to recontextualize them within male gender-equal frameworks.¹⁶¹ The judicial handling of high-profile cases, such as the November 2023 marriage case involving Imran Khan and Bushra Bibi, may overlook deeper gender-based concerns, public scrutiny, and religious morality standards, revealing how judicial power can sometimes sideline women's perspectives rather than center.¹⁶²

4.15 Opinion from Religious Scholars about Marriage and Divorce in Pakistan

The opinion of religious leaders has a crucial role on family law in Pakistan, particularly in issues involving nikkah and divorce. Recently a Pakistani court asked religious experts for their views on whether Islamic law supports a woman's right to a divorce. The woman's divorce was approved by the court due to the opinion of scholars on this issue indicating the significant

¹⁶⁰ Akbar Ali et al., "Contemporary Challenges to the Concept of Nikah and Divorce in Pakistan, Critical Discourse of Judicial Activism and Religious Scholars," *Al-Qantara* 10, issue, 2 (2024), 58.

¹⁶¹ Syamanta, "Towards Feminist justice: Reforms and Challenges in Islamic courts for Gender Equality and Women's Rights"

¹⁶² Ali et al., "Contemporary Challenges to the Concept of Nikah and Divorce in Pakistan, Critical Discourse of Judicial Activism and Religious Scholars," 58.

effect of religious beliefs on family law in the country. Islamic scholars usually highlight the importance of and purity of nikkah as a religious agreement and emphasize the importance of following Islamic rules in family matters. The emphasis on Islamic principles in family affairs has given rise to a complicated relationship in Pakistan between legal rights and religious faith. Divorce in Islam, or talaq is a strictly prohibited tradition in Pakistan that one must have to perform to proper processes as stated by Islamic law. This has created problems for those looking for divorce because the religious and legal requirement of nations may be difficult for them to understand and follow responsibilities. There is a discussion on whether right of women's in marriage could be restricted to Islamic principles rights to divorce or whether it's essential to maintain nikkah purity due to religious views. Pakistani relationship between families are affected by the interplay between legal reforms and religious outcome in court. The contentious topic of instant divorce, or triple talaq has generated inspiring discussion.

4.16 Perspectives on Family Law from Judicial Activism and Religious Scholars Converging:

The perspective of religious experts and judicial activism usually connect particularly those related to divorce and nikkah. Religious laws which support gender equality may be implemented by judges in some countries, even if they go against the traditional views held by religious scholars. According to religious values of equality and justice, for example a judge can give women additional rights during a divorce instruction. Some religious experts may argue that these interpretations are not consistent with the original meaning of basic principles. A complex situation may occur when judicial action conflicts with spiritual beliefs. Family law procedures involve hurdles and legal discussions. Judges usually create a balance between protecting basic integrity as well as respecting the customs of religion. As it is important to protect fundamental rights like freedom from discrimination, religious tradition, and gender equality should have to be taken into account in family law issues. It can be hard to get a

balance between these conflicting goals, but the court has to prioritize promoting constitutional values over religious beliefs.¹⁶³

Legal Feminist theory, as articulated by Cassandra Balchin, challenges the idea that Islamic law is fixed and patriarchal. She argues that many interpretations are historically male-centered and fail to reflect the lived realities of women. Balchin emphasizes that reforming Muslim Family Law requires not just legal amendments but also rethinking how Islamic jurisprudence is applied to achieve justice for women. In her view, legal strategies must confront the gender bias inherent in traditionalist readings of religion and promote equality within the law itself.¹⁶⁴

Conclusion

The Muslim Family Laws Ordinance (MFLO) of 1961 is described in Chapter 4 as being fiercely opposed by many Ulama—Islamic scholars—who believed that it violated Islamic customs, the Sunnah, and the Quran. They rejected important provisions regarding polygamy, divorce, marriage registration, inheritance and age restrictions, claiming that the modifications were anti-Islamic and based on Western ideas. Despite this opposition, a number of female leaders, lawyers and academics supported the ordinance on the grounds that it was an important step toward modernizing family law and protecting women's rights. President Ayub Khan urged scholars to remain faithful to Islam while making adjustments over time in his defense of the decree. The chapter's overall stark contrast between conventional and reformist

¹⁶³ Ali et al., "Contemporary Challenges to the Concept of Nikah and Divorce in Pakistan Critical Discourse of Judicial Activism and Religious Scholars Viewpoint,"

¹⁶⁴ Cassandra Balchin, "Family Law in Contemporary Muslim Context: Triggers and Strategies for Change," *Wanted and Equality Justice in the Muslim Family* 211-213.

perspectives demonstrates Pakistan's struggle to find a balance between shifting societal needs and religious beliefs

CHAPTER 5

5 SHORT TERM AND LONG TERM IMPACT OF MUSLIM FAMILY LAW ORDINANCE 1961

To enhance marriage customs transparency and legal accountability, the Muslim Family Law Ordinance 1961 was introduced. It set a minimum marriage age of 16 for females and 18 for males, giving specific safeguards for women getting married. Rules relating to unilateral oral divorce by rejection (talaq), marriage contracts had to be registered, and punishment for having child marriages were introduced.¹⁶⁵

Within the passage of previous laws women now have into more options for obtaining a divorce without facing extraordinary hardship. Women can now file for khula more easily and have their cases heard more quickly due to procedural changes made to family court processes. More women are capable of exercising their right to khula and seeking justice through family courts, thanks to increased public awareness and the availability of legal aid services. In order to assure justice and fairness for every party in Khula and divorce cases in Pakistan, these amendments indicate current attempts to strike a balance between trendy legal standards and traditional Islamic principles.¹⁶⁶

This position has been genuinely addressed in the cutting edge time as Muslim social orders have attempted to coordinate industrialization and present day advancements. Huge cultural changes have been achieved by these new developments, most prominently moving the job and status of women in the public eye as well as the cosmetics of families. Their headway has been

¹⁶⁵ Filomena M. Critelli, ‘‘ Between Law and Custom: Women, Family Law and Marriage in Pakistan,’’ *Journal of Comparative Family Studies* 43, no .5 (September-October 2012): 675.

¹⁶⁶ Hafiz Falak Shair Faizi et al., ‘‘Divorce and Khula: A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia,’’ *Pakistan Journal of Life and Social Sciences*, www.pjlss.edu.pk; Pak.j.life soc.sci (2024), 22(1): 1105-1117, 1109.

adequate, despite the fact that they don't yet envelop the whole society, to legitimize changes to the principles relating to legacy, separation, and marriage to all the more likely address the use of Qur'anic goals to present day lives.¹⁶⁷

Marriage registration should continue within the present system according to the council of Islamic ideology. A partner does not have to ask his first wife permission before marrying a second time, according to a report by the council of Islamic ideology. It is also legal for a male to have four wives at once. The council of Islamic ideology also said that the husband is not required to ask for permission from the court or reconciliation council.¹⁶⁸

5.1 Social Impact of Khula and Divorce Laws

5.1.1 Agency and Empowerment:

Women are given the legal authority to dissolve marriages and fight for their rights by khula and divorce laws, which increases their powers and independence in decision- making.¹⁶⁹

Feminist legal scholars argue that providing women with legal tools like khula challenges the structural imbalance embedded in conventional family laws, which historically prioritized male authority in matters of marriage and divorce. As Rubina Saigol point out, "Pakistani women's rights within the legal structure have always been circumscribed by a patriarchal interpretation of religion and law. The ability to initiate divorce disrupts these patterns of control and signifies legal resistance",¹⁷⁰

¹⁶⁷ Mufti Muhammad Anas Rizwan, "Reforms in Muslim Family Laws with Special Reference to Pakistan," *AL-Meezan Research Journal* 4 issue .1 (Jan 2022). Anas.rizwan@iiui.pk.

¹⁶⁸ Musferah Mehfooz, Farhat Aziz, " Legal Efforts of Council of Islamic Ideology & Muslim Family Law Ordinance 1961: Application and Outcome in Pakistan," *Al-Qawarir* o2, issue 1, (oct-dec2020), 31.

¹⁶⁹ Shair Faizi et al., "Divorce and Khula; A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia," 114-115.

¹⁷⁰ Saigol, "Feminism and the Women's Movement in Pakistan: Actors Debates and Strategies," 36.

5.1.2 Financial independence

Being allowed to file a divorce is related for many women, especially those who started khula, to the ability to take control of their resources and become self-sufficient.

5.1.3 Parental responsibilities and child custody

Women's rights as mothers remain secure, and the best interest of their children is protected, through khula laws and clear legal structures for parental duties and custody under divorce.

5.1.4 Social pressure and challenges of stigma

Separated or divorced women may experience social disapproval, stigma, and isolation in traditional cultures despite legal protections, which may affect their social standing and opportunities.¹⁷¹

The Muslim family law regulation's only pertinence lies in the way that it was the primary significant move by the state to give women's voices a stage by bringing Islamic social design into public strategies. Accordingly, it began Pakistan's excursion toward women strengthening and keeps on being at the groundwork of all regulations and drives pointed toward enabling Pakistani women.¹⁷²

The 1961 Muslim Family Laws Ordinance was the outcome of this opportunity. By controlling marriage and prohibiting polygamy and divorce, the Muslim Family Law Ordinance gives women legal and economic protection. Abolition of divorce by easy repudiation (talaq), registration of all the marriages, written permission from a man's wife to be presented before an arbitration council to find out if the man can marry again, and other

¹⁷¹ Shair Faizi et al., "Divorce and Khula; A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia," 114-115.

¹⁷² Ahmad Hassan et al., "The Muslim Family Laws Ordinance 1961: Pioneer of Women Empowerment in Pakistan," 217.

protection for women in the case of divorce are all required. The Pakistani state first secured women's rights in the nation through legal protection with the Muslim Family Law Ordinance.¹⁷³

In 1961, the Muslim Family Law Ordinance was passed and gave women the right to vote. This law made gave women the ability to file for divorce on their own, divorce more difficult for men, enable women to officially inherit agriculture property and created a system for registering marriages. The family laws implementation protected the rights of politically active and educated women. It's benefits to working class women in urban areas were only mediocre. Rural women's situation was mostly unchanged, despite their isolation from the political scene and their central points. At this time, there were a few women's organization.¹⁷⁴ The law empowered the union council to nominate the nikkah registrars and required the council to provide a register of the nikahnama in a prescribed form and a seal for the nikkah registrar. A double copy of the nikkah would be submitted to the union council, and the nikkah registrar is mandated to provide the nikkah to the groom and bride. This ordinance eliminated the irrevocable triple talaq. Section 9 of the ordinance stated that any man wanting to divorce his wife must notify the chairman by letter as soon as possible after the talaq became final in any form and provide a copy to her. Failure to follow this rule could result in a fine of up to 5,000 or a year in prison. Through this ordinance, the traditional practice of the word talaq three times with regard to divorce was abolished. Under this ordinance the 90-day period begins after the copy is sent to the chairman. During this period, an arbitration council was established to facilitate interaction among parties. The divorce became final when the time frame ends.

¹⁷³ Anita M. Weisis, "Moving Forward with the Legal Empowerment of Women in Pakistan," United States Institute of Peace www.usip.org Special Report: 2301 Constitution Ave, Washington, DC 20037.202.451.1700 fax 202.429, 4.

¹⁷⁴ Shahnaz Rouse, "Pakistan: Women's Movement in Pakistan: State, Class, Gender," 11.

Protecting women's rights to Haq was the primary aim. If the amount is specified in the Nikahnama Mehr (dower) helps to ensure that the amount would be paid whenever demanded. The power to resolve disputes by providing the arbitration council the capacity to grant maintenance; in retrospect formerly, the courts were the sole means of pursuing maintenance issues. Also, the 1961 ordinance allows children of parents who died to acquire property from their grandparents, but it restricted wives from receiving a share of inheritance. They showed gratitude to Pakistani President Ayub Khan for this ordinance. Pakistani religious leaders severely denounced this ordinance.¹⁷⁵

In Pakistan, a major step for women's political, economic, and social freedom the law was regarded as the women's right. But it also created conflict between a conservative Ulama and a fundamentalist Ulama, who claimed had no backing of traditionalist Muslim jurists and instead were influenced by western ideas. However, educated women favored the ordinance; the Ulama opposed it. The ordinance's aim was to change Pakistan's religious establishment. It proved the state's ability to overturn the Ulama Shariah code and implement Islamic policies. The ordinance gives religious authorities control over marriage, maintenance, divorce, and in heritance.¹⁷⁶

5.2 Impact During Ayub Khan Regime

Some experts believe that the 1961 Muslim Family Law Ordinance (MFLO) was Pakistan's biggest step in granting "men and women" freedoms. However, the MFLO failed because its remedies were inadequate and undervalued the Marriage Commission Report's recommendations. Specifically, its progressions were not through restrictions on unambiguous

¹⁷⁵ Naveeda Noreen and Razia Mussarat, "Women's Struggle for Legal Empowerment in Pakistan Historical Overview," *Journal of Public Administration and Governance* 4, no. 1 doi: 10.5296/jpag. v4i1.5460 URL=<http://dx.doi.org/10.5296/jpag. v4i1.55460>, 143-144.

¹⁷⁶ Ahmad Hassan et al., "The Muslim Family Law Ordinance 1961: Pioneer of Women Empowerment in Pakistan," *JRSP*, vol. 58, issue no 1 (Jan-March 2021), 216.

exercises but rather rules for procedural insurances. The pioneer and conservative viewpoints on family regulation that won in Pakistan were the reason for this lack. Taking everything into account. The Muslim Family Law Ordinance reflected a split the difference. The MFLO remembered changes for the fields of maintenance, legacy, and marriage registration; however, its significant goals were to prevent polygamy and control separation. Throughout, the mandate made compromises to both conservative forces and the report's formal reform recommendations, which naturally caused a rift. The report's modernist authors and conservative resistance reached compromises, as seen by the following specifics of the statutes pertaining to polygamy and marriage enrolment..¹⁷⁷

The child marriage limitation act and disintegration of Muslim marriage act were passed in 1961, notwithstanding the statue. Ayub Khan was basically ready to get the laws authorized by the public gathering by out maneuvering the Ulama. The modernization objective was widely battled by the strict portions of society. The change of Ayub Khan was seen by strict pioneers as an immediate danger to the Ulama's memorable job as the defenders of Islam and guides to Muslim states. The Ulama went against both the removal of their more conventional, strict perspective and capability and power. The Muslim family regulations specifically estrange the Pakistani society's strictly disposed sections, who were unglued about being avoided with regard to the legitimate state system, which just appropriated them.¹⁷⁸

There were obvious contrasts in the reactions to the Muslim Family Law Ordinance. While strict areas cruelly denounced it. Women campaigners hailed it as milestone regulation they believed it to be infringing upon strict lessons. Women dismissed this proclamation, as being made with terrible goals and settled on the choice to begin a mission on the side of the statue,

¹⁷⁷ Nadya Haider, "Islamic Legal Reform: The Case of Pakistan and Family Law," *Yale Journal of Law and Feminism* 12 (2000), 308.

¹⁷⁸ Sarfraz Hussain Ansari, "Forced Modernization and Public Policy: A Case Study of Ayub Khan Era (1958-69)," *Journal of Political Studies* 18, issue .1, 45-60, 54,56.

referring to it as a change that could save their privileges and guarantee their strengthening. After 1961, women disputable centered around three principle goals because of a solid feeling of consolation and enthusiasm.

(1) Focusing on regulative bodies political portrayal.

(2) Teaching women about their privileges and current worries including family arranging and fighting provocation and a few types of oppression.

(3) Expanding public information on women 'privileges and their sacredness.¹⁷⁹

5.3 Usage of Ordinance After Ayub Regime

As far as Ayub Khan, the Mandate's reception despite solid resistance had an enduring effect on its target group, the Ulama, of the Islamic strategies he wished to see did. As far as he might be concerned, similarly as huge was the way that the pervasive traditions were being dismissed for these adjustments to Islamic regulation. This contention might have been utilized in Pakistan without precedent for a piece of regulation supporting changes to family regulation design, and it was made by a legitimate group whose knowledge of Islam was no more prominent than that of qualified experts in the subject.¹⁸⁰

Despite the fact that the rivals and allies of the family regulations have recognized and particular contrasts in the "Islamic" content of the regulations, endeavors to rescind them have been fruitless. In 1963, Abbas Ali Khan of East Pakistan presented a bill in the gathering to rescind the Muslim Family Regulations Law. The fundamental larger part was not gone after

¹⁷⁹ Muhammad Mumtaz Ali Khan et al., "Legal Protection of Women Rights: An Inquisitive Study into their Struggle During Ayub and Zia Regime," *Journal of Arts and Linguistics Studies* 2 issue .2, 2024, pages 919-929, 924-925.

¹⁸⁰ Ali Usman Qasmi, "God,s Kingdom on Earth? Politics of Islam in Pakistan,1947-1969," *Modern Asian Studies* 44, no. 6 (4 May 2010), 1232.

the Bill. During the Zia ul-Haq organization, the Service of Regulation gave an emphatic suggestion for the cancelation of the family regulations, which introduced a more serious test to them.¹⁸¹

In Muslim societies in the advanced period, family regulation has been perhaps of the most controversial political and social point. There have been benefits and detriments to this. From one perspective, it has made it conceivable to discuss issues and power elements that were once remembered to be exclusively private. Then again, women's independence has periodically been under danger in a field that is vital for the acknowledgment of their freedoms in each feature of their life. Women's have forever been at the front of endeavors to safeguard or work on the privileges of Muslim families under the law, however they are likewise driving a development to reevaluate relational peculiarities considering all the more expressively communicated thoughts of equity and uniformity. Criminal and family regulations are firmly connected with one another for some worries influencing women's life. For example, when sex beyond a legitimate marriage is made unlawful by hudood regulation, the enlistment prerequisite for relationships — which is generally seen as a positive move toward change endeavors — may never again be as favorable to ladies. Certain overall sets of laws additionally make it against the law to abuse family regulation regulations (like those relating to polygamy, kid and early marriage, and support). From a more extensive perspective, family regulation is habitually connected with protected regulation, which might lay out evident irregularities between the right to strict opportunity and orientation correspondence, or perceive the situation with standard or potentially strict regulation, particularly in family concerns. It is critical to take note of that while women's aggregate getting sorted out for their freedoms has helped

¹⁸¹ Qasmi, "God's Kingdom on Earth? Politics of Islam in Pakistan, 1947-1969," 1235.

family regulation changes in Muslim nations, not all upgrades can be exclusively owing to their endeavors. In recent years there have been significant improvements in the Muslim family's justice and equalities; however, there have also been serious obstacles to the rights that women currently enjoy under-family law. These have been emerged from post-colonial nation-buildings defects and issues as well as identity politics progress that has highlighted religion as an essential part of an individual identity. The state severely restricted or reversed women's right to justice in several Muslim conditions during the 1980s and 1990s.¹⁸²

On June 24, 1980 the council granted the ministry its opinion after agreeing with the dissenting views of 3 members about amendment. According to FSC, and subsequent forms discussion was then started was cited by Maulana shah Muhammad Abdulhamid Al- Bdewani he condemned the section on polygamy and divorce that locked grouping, succession and nikkah hurdles pre-reconciliation duration and waiting period etc. Age restriction on marriage, according to him, are against divine and natural law. Absent categories pre-reconciliation waiting periods etc., he condemned the section on divorce, polygamy, nikkah obstacles and succession. A note in support of succession section was also composed by Maulana Abdul Hashim, however Maulana Abdulhamid Al-bdewani later opposed it. While Maulana Waliyat Hussain stated that the current ordinance violated the teaching of Quran, she agreed that women's right is being violated. The husband was considered the judge in polygamy justice in Muhammad law, but present system upsurb that role. Also there is a lot of confusion in the divorce section. Amendment will be introduced to section 6 and 7 however not in other section.¹⁸³

¹⁸² Cassandra Balchin, "Family Law in Contemporary Muslim Context: Triggers and Strategies for Change," *Wanted and Equality Justice in the Muslim Family*.

¹⁸³ Muhammad Faizul Haque, "A Juristic Approach to Muslim Family Laws Ordinance 1961," *AL-Haeeqah* (Research Journal of Islamic Studies), (July-Dec 2021), vol. 1, issue. 1, 4-5.

5.4 Women Hold Rally to Back Family Laws

Rawalpindi, July 4: A huge get-together of females fought before the Public Gathering today, addressing all features of society, against the proposed nullification of the Family Regulations Mandate. This law shields women from their husbands requiring second life partners without their authorization.

Well before the Get together meeting started, transports brimming with women showed up and recited trademarks pushing for the insurance of their freedoms and honors. Moreover, they conveyed handbills to fight the proposition to upset the Family Laws Ordinance. A private bill introduced by Mr. Abbas All on Monday plans to nullify the Family Regulations Law, which was placed into impact by President Ayub Khan very nearly a year prior. Spouses of pastors and the girls of General Musa and President Ayub Khan joined the female marchers. The Law Pastor, Muhammad Munir, and the Business Priest, Mr. Wahiduzzaman, were likewise seen by a designation of ladies pioneers. Mr. Wahiduzzaman gave them his statement that the public authority will really bend over backward to watch out for the Mandate. President Ayub, he guaranteed, was there to safeguard their privileges. In the early evening, the women likewise figured out how to snag Mr. Mohammed Ali, the Clergyman of Outer Issues, who communicated his help for the annulment of the Ordinance. Mr. Mohammed All gave the women's laborers his assertion that he upheld their objective. Furthermore, he promised that his mate, Mrs. Aliya Mohammed All, would go with them. In the impending dissent, which is planned for July 7. Dissenters contradicting the arranged bill with signs in Bengali and Urdu pulled over various Public Gathering individuals' vehicles and implored them to back their call to keep the Muslim Family Regulations Law set up.

5.5 Ayub Interview

Hence, a comparative dissent was held at the President's Home by busloads of ladies. The Public Gathering's vote for the bill to revoke the Statute was presented, and the President mentioned the individuals not to be insulted by this turn of events and educated them to enroll the Individuals' help. The President was cheered by the demonstrators as he gave them his statement that he will attempt his hardest to help them. Driving the dissent were a few of the female individuals from the Public Gathering. Pre-sent were additionally individuals from the Karachi APWA delegation who hustled from Karachi to go against the proposition to cancel the law. First thing in the morning, women's started flooding into the Gathering area, and by seven to thirty, many individuals, including men and burqa-wearing women, had assembled at the entry door. Young women from schools and universities additionally lined the road that prompted Ayub Corridor, yelling mottos against the Bill. To deal with the group that was winding the Ayub Lobby entrance entryway, the ladies police force was assembled in full. The demonstrators were given the affirmation that the public authority will attempt its hardest to help them by the law serve, Mr. Muhammad Munir, who was rescued once again from the Ayub Corridor to pay attention to their grievances. The All-Pakistan Ladies Affiliation's director, Begum G. Ahmad, begged the law clergyman to permit ladies to be addressed on the Warning Committee of Islamic Philosophy. They may be allowed to address the House, she suggested Mr. Munir: "We'll surrender you to Maulvis? You squabble with them. For what reason do you send us to Maulvis, Begum Sirajunnisa (MP)? Begum G. Ahmad requested that the Priest consider the dissenters' grievances. The Priest encouraged them to coordinate a nomination and call him at any second over the course of the evening. The bulletin said: "Islam pulled our ladies from embarrassment and gave them their legitimate spot in the public eye quite a while back however by sluggish degrees' women's were again made a defenseless creature." With the reception of the Family Regulations Statute, President Muhammad Ayub Khan's progressive government gave ladies their legitimate job once more. These guidelines

safeguarded us from the haughtiness of people. "We approach our family to apply impact to maintain the Muslim Family Regulations Law, an Islamic decide that shields ladies from being constrained into the very frail place that it once held. "The Family Regulations Law gives the right Islamic mandates to the ladies to guarantee their satisfaction and thriving."¹⁸⁴

5.6 Women Rallies Deviation from Quran and Sunnah

On July 6 in Lahore, four assembly members of west Pakistan and three local editors presented a statement to the Press strongly condemning the attempt made by few women to save Family Laws Ordinance from getting repelled by National Assembly. Text of the statement was as follows. Soon after the issuance of Family Laws Ordinance, prominent Ulama from different school of thoughts collectively pointed out clear cut differences which are beyond the teachings of Quran and Sunnah. Their argument was so solid that National Assembly on the occasion called for a proposal to repeal the Ordinance. Some womenfolk's instead of letting the issue being resolved after serious and a cool consideration, in accordance with the teaching of Quran Sunnah, were attempting to get it decided in their favor by demonstrating and other same like strategies.

5.7 Painful

One among the most painful was that some of the earnest personages in Government was backing these and even their posters are said to have been dropped from airplanes. The adaptation of such types of ways make it clear that these women and their supporters have force and have high connections to convince members of honorable assembly. They were willing to make it clear to people responsible for this situation, that if they want to decide it by demonstration general Muslim population could favor it much better and would generate great

¹⁸⁴ *Daily Dawn, Karachi*, 5 July 1962.

momentum. In favor of high benefits of nation demanded that these type of issues should be dealt with cool mind and reasonable consideration according to Quran and Sunnah. They also requested for a calm atmosphere, and no tension between the two genders. Among the signatories of statement, MPAs, Rai Khurshid Ali Khan, Maulana Abdul Haq, Ch. Muhammad Ibrahim, Malik Nasrullah Khan Aziz, editor of weekly “Asia”, Maulana Kausar Niazi, editor weekly “Shihab”, Naeem Siddiqui, editor monthly “Sayyara”, and secretary general of Old Jamat-i-Islami, Tufail Muhammad were included.¹⁸⁵

5.8 Women’s League Urges its Appeal

Women’s League in Karachi appealed in front of President of Pakistan to replace all those laws which are un-Islamic with those ones which are according to teaching of Quran and Sunnah. About 200 women including Beghum Ihteshamul Haq Thanvi attended the meeting which was headed was Allama Shabbir Ahmad Usmani. They all agreed upon a resolution in this meeting. The resolution was stating that Family Law Ordinance was not only beyond Islam but it also against the teachings of Islam in word and spirit. It also interrupted upon the Islamic laws of marriage, divorce, and inheritance. They also appreciated Maulana Abbas Khan for opposing the imposition of Family Laws Ordinance and presenting a bill repelling it. The meeting also congratulated a group led by Messrs Najmuddin Valika, for starting a move to make amendments, in order to state adultery as a cognizable offense. This meeting opposed and condemned the activities carried out by Westernized women in support of Family Laws Ordinance. Begum Allama Shabbir Ahmad Usmani requested young girls to protect their values and traditions. She also requested then to not get influenced by Westernizes women. She further added that Islam has given all the rights to women and depriving those rights will only lead to imbalance and disharmony. She stressed upon the protection of Islamic rights. She

¹⁸⁵ Daily Dawn, Karachi, 7 July 1962.

stated that Prophet Muhammad (S.A.W) has directed all the aspects of living, and only the directions told by him, were the Universal and Real Laws.

5.9 Hidden Hands

Miss Mahmooda Sultana, Secretary of MWL, suspected the presence of hidden hands who were in favor of Family Laws Ordinance. She suggested the government to ban all such kinds of opposition in order to remain safe from a difficult and uncontrollable situation. Organizer of Jamaat-i-Islami (Ladies Wing), Begum Umme Zubair, discussed in favor of repeal, that all of us should think of it, keeping our sentiments beyond, in a cool manner before leaving on any decision. Begum Kaniz Fatima also condemned those who were in favor of Family Laws Ordinance and were opposing the Ulama. Begum Qamar Irshad, Miss Najma Sabri, and Miss Firdous also spoke in the occasion. Although the meeting was fixed for 4pm but it started an hour late.¹⁸⁶

5.10 Resentment Over the Move to Repeal Family Laws

Dacca Women hold public meeting July 12; A meeting was held by women expressing strong sentiments for the move repealing family laws ordinance. They agreed upon a resolution, requesting the Members of Parliament all the men and women to resist the damaging and deplorable efforts to repeal the Ordinance. APWA and other women's Organizations conducted a meeting in the auditorium of Fazlul Haq Muslim Hall. The meeting was chaired by Mrs Selima Ahmad of East Pakistan APWA. They decided to go in-front of MPs upon their arrival at airport, and to inquire for their views regarding the Family Laws Ordinance and the move started to repeal it. They also condemned in their resolution for the offensive attempt by Some members of National Assembly in order to repeal the Family Laws Ordinance as stating it as

¹⁸⁶ *Daily Dawn, Karachi*, 19 July 1962.

un-Islamic. The resolution continues for convincing the women that ordinance was fully according to Quran and Sunnah. Mrs Salema Ahmad explained that there is no political move behind this movement and it is truly a social problem. The issue of repealing the Family Laws was of a social nature.

5.11 Economic Freedom

Beghum Nurjahaan Murshed was also present on the occasion, she stated that politics and social life could not be separated. She said that for the complete and absolute freedom of women they need to be financially and economically stable. He also requested for the equality of women among all spheres of life. She further regretted by stating that although women are 50% of whole population but they are far behind men and are struggling for their rights. Mrs. K Salahuddin said that women would have to come out as a strong political force, if necessary, in order to get their needs addressed. She also demanded for 50% representation of women in Islamic Ideology Council. Bengali poet, Begum Sufia Kamal, and Begum Hashimuddin also spoke on the occasion.¹⁸⁷

5.12 Joint appeal by three MPs

Dacca July 17, Three Parliamentarian appealed to serious authorities of APWA to conduct a neutral study of Muslim Family Laws. They also appealed to have a study without keeping in consideration the ideas which are taken from West. as it is one belonging to our faith, and it should be dealt with quietly and calmly. Maulana Abbasi Ali, Mr. Shamsur Rehman and Maulana Yusuf Ali, upon their arrival from Rawalpindi addressed a press conference stating that they are not willing to have a clash with weaker sex but they obviously make clear that they will took all the efforts into consideration to solve this problem either on political grounds

¹⁸⁷ *Daily Dawn, Karachi*, 13 July 1962.

or academic. They said that in order to support their arguments, they will keep into consideration all the teachings and guidance from Quran and Sunnah, upon which both of them have common belief. They suggested that protest and conferences are unable to solve this problem.

5.13 Telegrams

Maulana Abbas Ali was moving the repeal for Muslim Family Law Ordinance, he claimed that he has received thousands of telegrams from general public congratulating him for repealing against Muslim Family Laws Ordinance. In their telegrams public asserted that a handful of Westernized women are not the representative of womenfolk's of country. Maulana Abbas Ali told a journalist that, after the existing Ordinance was repelled, he look into Family Laws Ordinance according to teaching of Holy Quran and Sunnah.¹⁸⁸

5.14 Repeal of family laws demanded

On July 20 at Mochi Gate Lahore a public meeting was held which demanded for rejection of family law ordinance, announcing it as against the teaching of Quran and the idea of Pakistan. Maulvi Mufti Mahmud, Parliamentarian, stated that this law was previously imposed by Military authorities. He felt extremely sorry that a state which was based on Islam, in a state like this the movement against such ordinance was carried out free of any sort of trouble. He also answered a query of Pakistan being not a secular state, he extended upon it by stating that it is a state based on Islam, and the teaching and guidance provided by Quran. He further expressed that anyone who thinks he is not fit in this state is free to move toward a place of his own choice.

5.15 All Pakistan Women Association (APWA) Criticized

¹⁸⁸ *Daily Dawn, Karachi*, 18 July 1962.

Mufti Mahmud also took a harsh eye on All Pakistan Women's Association, the tension which is being spread by them in support of the ordinance. He made it clear that if the things will go according to APWA's demand Pakistan will become an immoral and licentious country. He further made it clear that almost all the Ulama of Pakistan condemned this ordinance and they are not in support of it, because it is totally against what Islam teaches. It is against the Quran, Sunna and Ijma-i-Ummat. He further said that 80 prominent Islamic representatives have published a poster against this Ordinance.

5.16 Polygamy

Upon the issue of Polygamy Maulana stated was in favor that Islam allows polygamy to men. To keep more than one woman in normal circumstances is not against the teaching of Islam, although it is the true soul of Islam. Maulana said that during the past 1400 years it had never been happened that someone had interrupted upon Islamic teaching regarding the marriage. This happened in Pakistan that Islam discourages or disallows polygamy in normal circumstances. He further demanded that in Islamic Advisory Council only well-known Ulama should be included. He further explained that these type of Ordinance are being carried out by West in order to support West minded people. He informed that hardly one among one thousand man has more than one wives. He left an ironical comment for women who were against the repelling of Family Laws, that they have no concern with the alarmingly increasing prostitution going on in country. Lastly, he stressed on limited influence of APWA, by stating it as not being the representative of 85% women living in the rural areas of Pakistan.¹⁸⁹

¹⁸⁹ *Daily Dawn, Karachi*, 21 July 1962.

5.17 Example of Muslim Family Law Ordinance During and After Ayub Regime

5.17.1 Kurshida Bibi v Baboo Muhammad Amin PLD 1967 SC 97

This one describes a case of a couple where one demands of separation from his partner and also it provides some details regarding the right of khula, which women have. Khurshida Bibi was the female partner who demands of separation from his husband Muhammad Amin. At first court didn't gave decision in favor of wife but later on she again filed a case and this time the court favored the wife and the marriage was dissolute on the basis of khula. This decision was although overturned when the husband appealed again. When went in High court, they referred to judgment and differentiated the instant case. They found that sister of husband was married to the brother of wife who appealed for khula and for that reason husband has restrained himself because of fear of reprisal. On appeal in Supreme Court, it was found that although husband was not agreed on divorcing her wife but the women has the right to attain khula, if there are no chances of their living together. Full bench including 5 judges answered by explaining the contractual nature of marriage in Islam, whereby both partners have equal rights, as of talaq by husband, and khula for wife. They said that there are also different opinions regarding this issues among jurists. Justice S.A. Rehman held that, there are two situations, one is whereby khula takes on the basis of mutual consent of both partners, also known as 'mubarat'. In this case reference to Qazi is not necessary. Other one is where the husband disputes the right of wife for khula. In this case some third party has to interfere and to decide the matter. At last on the issue of consent of husband it describes that women have the right to attain khula, or get her release if she is not willing to continue, in turn having an independent right, where she is liable to decide.¹⁹⁰

¹⁹⁰ Muhammad Zubair Abbasi, Shahbaz Ahmad Cheema, ‘*Family Laws in Pakistan*,’ Oxford University Press No.38, Sector 15, Korangi Industrial Area, Second Edition2024, 139-140.

5.17.2 In Muhammad Nawaz vs. Mst. Khurshid Begum

The Arbitration Council ruled on December 7, 1968, that the husband must provide maintenance to his wife, who had been evicted from the marital residence with two children, at the rate of Rs. 80 per month starting on May 1, 1962. The Lahore High Court maintained the order based on Sardar Muhammad. On appeal, the Supreme Court upheld the Lahore High Court's ruling and noted that, in contrast, Section 9 of the MFLO, 1961 did not forbid the payment of past maintenance. Section 488 of the CrPC, 1898, makes it quite evident that the wife must receive support as of the date of the court application or the day the decree was granted. Despite being aware of the wording of Section 488, the architects of the MFLO, 1961 did not include any limitations on the Arbitration Council's authority to provide previous maintenance. Thus, subject to the statute of limitations, the Arbitration Council may provide previous maintenance under section 9.¹⁹¹

5.17.3 Amina Bibi v Mirza Allah Ditta alias Mirza Javed Akhtar 2004 YLR 239 (lah)

This case discusses about whether the registration of Nikkah is mandatory and its effectiveness if it is registered or not. Wali Muhammad owned a house and a shop Mr. Allah Ditta filed a petition in the court and claimed that he had purchased the shop and house from Wali Muhammad. On the call of court, Amina Bibi, wife of Wali Muhammad claimed that her husband gave her the house and shop in term of dower and now she is the one who owns them. Allah Ditta was claiming for the possession of property that he had purchased. Amina Bibi was claiming that it is a fraud deal as she owns the property and his husband has no right to sale the property that show owns. She also demands the petitioner Allah Ditta to not interfered in her property. But the suit was decided in favor of petitioner Allah Ditta. The Respondent, Amina Bibi appealed in High Court, the counsel for Allah Ditta claimed that the Nikkah of Wali

¹⁹¹ Hafiz Muhammad Siddique, "Women's Right to Maintenance in Legal System of Pakistan with Special Reference to Judgement of Superior Court," *MA'ARIF-E-ISLAMI(AIOU)*, vol, 18, issue .2, (July-Dec 2019), 29.

Muhammad and his wife is yet not registered. Court after observing issued that at this stage the registration of Nikkah is fore mostly important. Amina Bibi and his husband take an oath that their marriage was performed on that particular date and they also provide eyewitnesses to support their term. Court than decided that Nikkah was performed and the registration of Nikkah is not mandatory for a marriage to be valid. Court claims that two witnesses are mandatory but they attach a presumption proving the validity of marriage, which both of the spouses acknowledged and that there is no more need to present the witnesses.¹⁹²

5.18 Criticism During and After Ayub Regime

Muslim Family Law Ordinance was published on recommendation of some serious competitive committee, which are not less competent than those sitting in our national assembly. All were agreed upon those recommendations, except a few, but now even numbers of national assembly are repealing it. There are some vague and unclear allegation on his ordinance to be un-Islamic but no one has still pointed out any specific provision to be un-Islamic or against Shariah. Holy Quran is the main source of Shariat. Before Holy Quran, other holy books were revealed upon specific nations but the holy Quran was revealed upon our holy Prophet with a universal message for all the mankind not for a specific tribe or for some specific group. Holy Quran is not specific to any particular thing or group; it was revealed for universal purpose of the guidance of mankind. It contains all the provision regarding each and every matter of human life, from most basic to the highest one. Islam is a highly progressive and national one and it's because of this rational and progressive nature that its spreads vastly during its early period. Some of the members of assembly regarded the behavior of women as Un-Islamic in it. In Holy Quran(XXIV:30,31) regarding purdah, it requires to cover up the body, and not the face, and for women who are too old, there is no requirement for purdah at

¹⁹² Zubair, Ahmad, '' *Family Laws in Pakistan*, ''52-53.

all. (XXIV:60). But some honorable and respectable are stroked on idea of separation and pardah to consider minor presence of women beyond their house as simply shocking. The Ulama have presented areas of strength for the issue of Fatwa in both the public get together and common place regulative bodies. luckily for Islam and Muslim country, the courteous fellows who go by the title of Ulama have not just confused the unmistakable stanzas of the Quran or different inquiries, however they have likewise contributed bogus customs to our reversed Prophet (S.A.W) either to suit their own closures or those of strong benefactors for the present.” This is the sort of thing that each family acquainted with recent developments and previous history knows about. Here a couple of notable ones may be relevant. Nizam-e-Islam party demanded for fatwa from Ulama regarding provision of rupees six lakhs for family planning and declared it as un-Islamic. Contributing to Dawn on 5-4-57, the writer by referring to Quran and Sunnah, shown the un-soundness of that view. The ancestors/predecessor of our modern Ulama, during the time of Akbar, in order to please him, issued an infamous fatwa, attributing him as Mujahid and supporting him in his un-Islamic teachings of Din-e-Elahi. In Quran II: 219, 266, we are ordered to think and reflect on its teaching. In one particular verse we are asked to use all our capabilities attributed to us by Allah. Those who are unable to do so are compared to cattle or even more worse (Quran.VII;179). It is stupid for anyone or any organization to state that they have the right to make religious decisions and hold them in high regard in light of these clear instructions. It is crucial to keep in mind that Islam views governance as a type of managed democracy that should be designed to the particular requirements of citizen of each nation rather than as religious dictatorship. Consequently, it is unfortunate that national assembly has started its work by proposing legislation to revoke a well-considered beneficial ruling. This decision may also needless costs to an already suffering nation. Already, we pay high taxes with little in return in order to preserve the western democratic system. In west, nearly everyone has an education and it is able to make an informed

decision, whereas the vast majority of voters in our nation are illiterate, making it impossible for them to exercise their right to vote intelligently. One can hope that we not returning to terrible patterns of the past after hearing the speeches that have been fed to us on daily basis both outside and inside the national assembly.¹⁹³

5.19 Challenges Posed by Ulama and Other Legal Bodies

5.19.1 Family Laws Ordinance-V Divorce Procedure

Maulana Maududi in reply to the questions asked by commission, either misinterpreted them and write on ill reply, saying, Majority of the jurists and the four imams agreed upon that if the three divorces are pronounced at a time, then they will be considered as three. He suggested for no change in it and also that to him this is a correct one. But he agreed on fact that, although it is considered as legal but it goes against the way taught by God and his Prophet (S.A.W). so, he asked for a review to this wrong practiced, carried out and considered legal in country. There is a confusion in this thing than an activity which is considered as legal and appropriate can be sinful and inappropriate at the same time. Although school of thought regarding this issue, views this matter not only on account of an individual or only an absolute right of a man. They think that court of some other agency can interfere in this. They consider then both man and women have equal rights to decide on their marital relations. The Holy Quran divides this method of divorce into three step. Quran insists on that whenever there happens a dispute or issue between partners leading them to divorce, at first they have to reconsider the matter and the representatives from both sides need to interfere in matter in order to solve it. If they fail to solve the problem, then it should be presented in front of court. At first, court also need to reconciliation and resolve the matter, but if court fails in doing so, then the court will make divorce between them and from here the period of iddat will begin. During the time span of

¹⁹³ *Daily Dawn*, Karachi, 20 July 1962.

iddat parties have the option to re-unite if they want so. If they are not in favor of re-union even during this time, then the divorce will finally be considered as effective and absolute, if they reunite during the iddat, and after some time again raise some dispute for separation, it will then be a second divorce.

5.19.2 The Third Time

In order to reunite during the iddat parties need to ask for the permission of court. But if, although after the second union, there happens some quarrel between them, this time they have no other option, although if they both are willing to unite. This time, which is the third one, even if they are not willing for divorce, after going through the whole process, it will be considered as a divorce. This method of divorce, as has been discussed, taking it place in different phases in coherent and in accordance with the teaching and spirit of Islam, as told by God and his prophet. In this matter, commission didn't completely favor Maulana Maududi, and they suggest that even if three divorces are called upon at a single time, it will be taken as one. So, one need to pronounce at three different stages in order to make it effective. Then moving further, they favored on the involvement of court in order to make it effective. But the question is that, if court fails to resolve the matter, and reconciliation between the parties, then the pronouncement of divorce in one session or in three different periods didn't held any importance.

5.19.3 Three Pronunciation

Maulana Amin Ahsan Islahi in review to the report, criticized the recommendations suggested by the commission. He observed that all the imams and most of Muslim jurist, except Ibne-Hazm, Ibne-Taimiya and Ibne Quayyem, are in favor of three divorces in a time as effective. He took into consideration Hadis and traditional aspects. He claims that no one is certain on the practice at the time of Holy Prophet (S.A.W) regarding this matter. He further explained

that during the reign of Hazrat Umar (R.A) when he noticed that this issues of divorce is arousing disputes, he ordered to consider three divorces at a time as absolute. It was also agreed upon by Ijma-e-Umat. It basically has two types or division. One is Talaq-e-Bida, three divorces at one time, and the other is Talaq-e-Ahsan, pronouncing it at three different periods. He made criticism on recommendation suggested by the commission. He said that if one pronounced it hundred time and then said that he didn't mean it, it would seriously become a play thing. He respected the opinion of four Imams and Muslim Jurists, three divorces at one time as effective. But, he suggested that one must be fined or put in prison, acting upon this. He suggested that different schools of thought should be held free to decide upon it, regarding their own laws, thought or even sects. Summing it upon, he is not in favor of new law, and suggested for proper education and a proper and correct law and procedure.

5.19.4 Ulama's View

As the ordinance out, and law and procedure are also laid down. Ulama seems to opposing the ordinance and it looks like, they were of view that the law of divorce, as proposed in the ordinance is not according to teaching of Quran, and is harmful for Muslim society. As per Ulama, the Islamic law regarding divorce, is revealed in Surah Baqrah (verse 227-242), Sunnah-Ehzad (verse 49) and the first seven verses of Surah-At-Talaq. As per these verses, only husband doesn't have the right to divorce his wife. Although the involvement of court or some committee is needed. They further said that one of 'Ayah' is confirming the right of husband, regarding this matter. The writer of the article considered himself unfortunate as he is not able to found any reference where this Quranic legislation can be found. Writer suggested that, in his opinion, in verse 237 of Baqrah, is referred to this matter, but it does not allow a husband to held an absolute authority who can break the ties. This verse only explains that husband hold the marriage ties. He suggested that it require interpretation by some careful people who are able to do so. He further writes that people framing the ordinance seems to be

unaware of verse 25 and 34 of An-Nisa, which doesn't give any absolute right to the husband only. These verse are only explaining the disputes between the couple. The arguments of Ulama, are in favor of husband, having the absolute authority or right regarding divorce. Writer suggested that all of the verses which are dealing with disputes between couple should be read together in order to reach at a meaningful point.

5.19.5 Objection

Objection were put upon a number of provisions.

(1) As per ordinance, "iddat" begins from the time, after the union council chairman receives a notice regarding the divorce. Now, if they notice arrives on the same day of pronouncement, or even after one month of pronouncement, "iddat" will begin once chairman receives the notice. In contrast, according to Quran, "iddat" begins from the very pronouncement of talaq. Writer of the article, considering "iddat" as a serious matter, propagates his view that it should not be left on to the postal deliveries, although as per the teachings of Quran, it should start from mere pronunciation of "talaq".

(2) Second point is that for a non-pregnant woman, the ordinance sets the duration of "iddat" for fix 90 days. On the contrary, Quran look into it in three periods. In some cases, it may be more or ever less than 90 days. Writer suggested in this opinion in favor of taking into account the divorced women's words. Her explanation regarding the end of three periods should be consider as reasonable in this regard.

(3) Third point is regarding the pregnant women and in this case the points of ordinance are in accordance with the Quranic teachings. In this case period of "iddat" is limited till the delivery of the child. It can be even more or less than three months. The three months' duration of "iddat" is effective for women not having no periods at all. Next points or objection is regarding the provision explaining the involvement of chairman of union –council. Although

Quran ask for conciliation between two points involving representatives of both sides. Writer consider it as an important and necessary one. He thinks that sometimes the involvement by third party is quite effective, when there exist some serious disputes. He thinks that Quran has only shown a proper way and it doesn't set any limitations in this regard. So, this point doesn't go beyond the spirit of Quran. The law of divorce framed by the ordinance, keeping into consideration the changings suggested by Ulama, is coherent with the spirit of Quran. Although it may be disregarded by some sects, as they have their own beliefs, but in general it seems much coherent to Quranic injunctions.

5.19.6 Age of Consent

In respect of fixing the age of marrying on 16 years for girls, Ulema's consider it as against the obvious teaching of Quran. As Quran, regarding the "iddat" sets the duration of three periods, so whether this doesn't suit in this case as well. Writers opinion was that one interpretation of verse no 4 of 'talaq' could also be applied on girls below 13 or 14 as well, if they start having periods. There are some exceptional cases, when a girl may not have periods even after 16, in that case her physical and mental maturity should be taken into account. Beyond this all, verse 65/4 has not fixed any specific age for marriage.

An Appeal: Concluding the work, he suggested the government to reconsider the law regarding the divorce by keeping into consideration the amendments suggested by Ulama.¹⁹⁴

5.19.7 Muslim Family Law Ordinance (III) Problem of Polygamy

Commission inquired for two questions regarding polygamy, in order to have the opinions of the Ulama and all those who are interested in reforming society.

¹⁹⁴ Morning News, Karachi, 18 July 1961.

Q1; Verse III of Surah An-Nisa is about the protection of orphans rights. So the question is that if the protection of orphans is the core objective will the polygamy be allowed or prohibited beyond it?

Q2; Is it necessary for a man to get the approval of a court for second marriage, if his first wife is alive?

Maulana Maudoodi, s was not in favor of this commission. He was arguing that it is not only limited to all the rights of orphans. He claimed that this verse was not the only occasion when the polygamy is allowed, although it was practiced much before in Arabia, as Prophet (S.A.W) and his companions had more than one wives at their time. Battle of Uhad resulted into existence of many widows and orphans and this verse, at that time was revealed upon as a solution, setting a limit of four wives for a Muslim at a time.

5.19.8 Conditional Problem

Another point of view regarding polygamy was that the permission is needed under specific circumstances and it can only occur in the presence of these conditions. Except Maulana Ihteshamul-Haq Thanvi, the commission came to the point that this verse is not a blanket permission of polygamy, either it was revealed to solve the problems related to widows and orphans. There are some restrictions like ‘justice’ among the wives. They recommended that anyone who want to marry in presence of first wife, needs to justify hid decision in front of the court. They were thinking that this will reduce the practice of polygamy, which is causing chaos and the disturbance in families.

5.20 Support and Criticism of the Recommendation

When these recommendations were made public, the reformist supported them but they had question regarding the interpretation of verse. They were of view that it is revealed for specific circumstances. They were of view that Quran was provided a specific circumstance for polygamy. This condition was that, when there are many women in society, only then polygamy can be practiced. The commission went through a strong criticism due to its extremist views on Ijtihad and the Quran, while neglecting the Sunnah. Amin Ahsan Islahi and Maulana Islahi also criticized on viewpoints of the commission. They were in favor of Maulana Maudoodi, s in this case and his interpretation and understanding of the worse. They discuss that polygamy was practiced in pre-Islamic times and it continued after Islam. Quran suggested the polygamy at the time when there were too many widows and unmarried women left, and Quran also limited the number of marriage to four, thus it provide a solution to the problem at that time. Beyond the rights of orphans, there are other circumstances/instances favoring polygamy, Islahi argued. He was of view that such type of instances should not be left on part of others of court to discuss. Regarding the abuse of polygamy, Islahi said that this problem could be solved with proper Islamic education. The main cause behind abuse of polygamy was lack of religious teaching and knowledge. He also criticized All Pakistan Women Association (APWA) and other, for misinterpreting the Quran and for not guiding and promoting Islamic values among women. He thinks that these women organizations were against the traditional order of Muslim society. He also directed his gaze toward the importance of Family Law Courts as the presence of such courts would help in resolving the issues. He thinks that in order to prevail happier and religious and Islamic education is necessary. Regarding virtual abolition of polygamy, Islahi was not in favor of commission recommendation and he opposed it, calling it unnecessary interference in Islamic religion. He thinks that forcing a man not to conduct a second marriage will worsen the situation. He warned that forcing him or monogamy will result

in disturbance of his relation with first wife, even it could lead him to divorce his wife. If court will not allow him for polygamy, he would be frustrated and could leave out his anger on his first wife, disturbing their existing relation, disturbing their existing relation. Even this situation would lead him to establish illicit relation outside to house, thus promoting immoral and unethical behavior. He believed that some people have biological problems as well and they need more than one to satisfy their wants. If it will not happen, they would go to any extent, like getting false reports about their existing wife's health or her being fertile. They would do so in order to justify their need for a second marriage.

5.21 Answering the Objection

After carefully considering all these objections, the commission agreed on regulating Muslim divorce laws, in order to prevent divorce, which can even be misused by men. Everyone is aware of their rights, either men or women. Today is not a world when minor issues like having too much salt in food would result in divorce, as women are now well aware of their rights. When a man desires for second marriage, it simply suggests that his love for first wife has faded away. Even if the love between them still exists, there are strong chances that the women will not receive some affection like before, when his man will conduct a second marriage. On account of polygamy being a way to satisfy natural urges, it is not proven scientifically that a men need more than one wife. Even if it is so, there are others as well but Islam and morality have control on them. If all of human desires are allowed free and, what will be the importance of Islam and morality. Islam and morality prevails on nature whenever there is a conflict.

5.22 Quranic Injunction

Regarding the interpretation of verse in Quran about polygamy (An-Nisa III), the Quran states that its lesson are simple and straight forward. However, the interpretations of this verse are not always satisfactory by the experts. One could wonder why the Quran needed to provide

guidance on polygamy if it was already allowed. Actually, the verse puts a cap on number of wives at four, as opposed to the previous undefined number. Ancient philosophers and jurists established universal guideline for principles and how to apply them. Scholars adopt Ijtihad when the Prophet's example and Quran's guidance are confusing. However, the Quran must be interpreted according to widely recognized principles where it is clear. These ideas were stated in a ruling by Justice Muhammad Shafi (Rashida Begum vs Shahab Din, PLD 1960, P. 1142). These are the guidelines he provided for understanding the Quran. Although this section of the judgement was not binding on the courts, it is still important to pay attention to these points made by respected judge. Some Quranic instructions are crucial and must be followed accurately; others are flexible and must be considerably followed. When using words with exact meanings, one must carefully stick to their grammatical meaning. The entire Quran is clear and free of ambiguities.

5.23 Context and meaning should not be separated

It is unsafe to read the Quran purely in light of events surrounding its revelation. Reasonable interpretation that takes into consideration the times and human behavior are necessary. Sadly, this portion of judgement was applicable by law; otherwise it would have become an important case. Justice Muhammad Shafi concluded by saying that legislation governing whether and under what circumstances a Muslim may marry more than one wife must be made by the representatives of the people. Polygamy is permitted by the Quran as a choice, not a compulsion, and it can be enforced by the state. The goal of this simplified version is to make it easy to read without neglecting the original intent.¹⁹⁵

Modern women of Pakistan who are running fast toward western culture, what are some of the restrictions imposed upon them? Muslim family laws ordinance is silent on this. Any proud

¹⁹⁵ *Morning News, Karachi*, 16 July 1961.

Muslim will never bear such a violation of moral values and will obviously end up the marriage without hesitating, but he will have to pay the fine as presented in family laws ordinance. The arbitration council as constituted under the ordinance is the only authoritative body to issue a clearance certificate to someone to contract another marriage, after becoming satisfied that first wife or wives is not against it. This council is totally different from the one as mentioned in the Holy Quran. It is important to quote the verses of Quran asking the believers to resolve the issue. In Quran, such council should contain individuals from both the sides. The verses discussing the foundation of such a council is as follows.

“And if you fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah, then make them of one mind. Lo; Allah is ever knower Aware.” (4:35).

According to holy Quran, such council must contain the falls of both the sides and no outsider should be allowed. Family Laws Ordinance, in this case, suggests that people representing the two sides should meet under supervision of chairman of union council and the judgement provided by chairman is to be considered as final and authoritative. At this stage a question arises that whether the chairman should be a well-qualified Islamic scholar or not? If the answer is no, then the Muslims required to obey the decision imposed by an unjust and unfair judgement. There are such minds who may argue that in above quoted verse Allah has ordained the ruler of country to constitute such a council and appoint any person to pass the judgement. But the case is not same. Allah hasn't ordained the rulers or government, although this is for the believers, who have faith on Allah. Hence such type of Arbitration council is not Islamic. Although the steps taken by the council to stop indiscriminate divorce and regulating family laws are admirable but the penalties presented in the ordinance exceeds the limit of Islam. The relevant clause of ordinance in this case suggest that immediately after commencing divorce, man has to send a copy of it, written by him, to the chairman of council and to his wife as well.

Quran is clear in this se and Muslims are also capable enough to understand and decide the matter in light of Quran, unless the person concerned seeks helps from any third party. Holy Quran had laid down the regularities in Surah II: 226,230,241; regarding divorce. Surah LXV Al-Talaq 'Divorce' contains on amendment regarding divorce which are set forth in Surah-Al-Baqrah. Readers interested to have more details may refer to this surah.

“O Prophet; when ye (men) part away women’s put them away for their legal period and reckon the period and keep your duty to Allah your Lord. Expel them not from their houses not let them go forth unless they commit are the limits (imposed by) Allah and he who transgressed Allah’s limits, he verily wronged his soul. Thou knowest not: it may be that Allah will afterward bring some new thing to pass” (Holy Quran Surah LXV-I).”

Allah has addressed his Prophet in these verses and through him, he addressed all the Muslim to not expel the women out of houses before fulfilling every moral and legal right in favor of women. Divorced wife should not be treated brutally, but carefully and she has complete right to pursue her future. Above all men are in charge of women and Allah has given him the right to excel women.

“Men are in charge of women, because Allah hath made one of them to excel the other and because they spend of their property (for support of women). So good women are the obedient guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion admonish them and banish to beds apart and scourge them. Then if they obey you seek not a way against them. Allah is ever High Exalted, Great.” (The Holy Quran-IV ;34).

In these day, the situation is quite different. no one follows the teachings of Islam. Women’s are disobeying Islamic teaching. They are found in parties, dinners clubs and everywhere else

where they are not allowed. From above explanation, it is clear that Muslim Family Laws Ordinance is not Islamic. Government should declare its social one designed to protect rights of fair sex, as it will end up the controversies regarding it. There are many other laws as well, which are accepted although they are non-Islamic.¹⁹⁶

Since women's in Pakistani society are commonly jobless and miss the mark on abilities to find work, they are generally subject to their own families, who likewise hold the watchfulness to choose whether or not to acknowledge them. The common conviction is that a woman no longer has a place with her folks' family once she moves out to reside with her significant other. Besides, a woman is seen as a weight and separation is dishonorable, which makes numerous families won't support or help the one who has separated. Despite changes to the thought of a characteristic guardian, the Guardianship runs similarly place the mother in a subordinate situation as the programmed guardian in case of the dad's nonattendance. For women's to become single guardians, they should get a court's assent. Men are subsequently allowed one-sided freedom by the law, yet ladies are left helpless and dependent. In addition, significant worries that should be tended to incorporate the requirement of regulations against polygamy, child marriage, the base age at which a young lady can wed, and citizenship for unfamiliar companions.

Any helpful endeavor for moderate regulation or alteration is reliably affected and really hindered by strict ideological groups and gatherings that get backing from moderate strict teachers. Subsequently, it is in any case a fact that women are currently in danger under the current arrangement of Muslim family regulations, which incorporates both legal and casual

¹⁹⁶ *Daily Dawn, Karachi*, 1 September 1962.

individual principles that are molded by social standards, male centric strict translations, and customs.¹⁹⁷

5.24 Press Release from Joint Action Committee

The decision by the federal Shariat court to declare specific provisions of the Muslim Family Laws Ordinance 1961 un-Islamic causes significant concern for the Joint Action Committee for people's rights. In order to get interfere with orphan's children and women's rights family matters, the Federal Shariat Court lacks jurisdiction to make decision about personal law. It was necessary to reinforce instead of weaken the Muslim Family Law Ordinance 1961. The objective and spirit of Muslim Family Law Ordinance, which has been one of few pieces of law promoting children's right and women's within the family, will be completely undermined by any effort to change it in light of this opinion.

Many hurdles to the country's effective leadership were added by Federal Shariat Court. The desires of children women, peasants and religious minorities have all been ignored. Its announcements have made it easier benefit from weaker segment of the population. More injustice comes from proposed amendments that will significantly raise the present litigation pressure on the court. The MFLO clauses mandating registration of marriage were upheld by this court decision, it has even ordered their strengthening emphasizing the role of state to protect registration. But even through the defensive goal of registration is the same in both cases, it has eroded provisions which require divorce to be registered. If the Federal Shariat Court (FSC) orders an amendment to the MFLO there may be many major consequences. The whole set of laws in section of regarding the divorce procedure and registration are essentially invalidated by striking down Sc 7(3) and 7(5). This will lead to a situation where registration

¹⁹⁷ Rukshanda Naz, Maliha Nia, " Muslim Family Laws in Pakistan: Research Translation and Custom.

of talaq is not necessary. Courts decision to eliminate section 4 of MFLO shows an awareness for the rights of orphans, because courts are usually viewed as guardian instead of usurpers.¹⁹⁸

5.25 Human Rights Commission of Pakistan (HRCP) is Shocked by Family Law Challenge

The Federal Shariat Court's decision to challenge the Muslim Family Law Ordinance 1961 was unexpected for the human rights commission of Pakistan. Any change to the four sections of the ordinance have been challenged in court according to a statement issued by the HRCP have on Thursday, would be an immense blow to the rights of all girls and women in Pakistan. All Pakistani women are impacted by family laws, in spite of establishing 50 % of the population, their opinion have not been heard or considered during the process. After a decade of struggle for women's right the 1961 ordinance was implemented, but the orthodoxy has continuously tried to weaken its provision Pakistani's traditionalist promoting a policy of hatred, oppressing women and suggesting doing away with the marriage registration and divorce, keeping every woman in the confusion about her marital status. A separated woman cannot get maintenance, a man can verbally divorce a woman and they deny it when she remarries exposing her to zina,s allegation.¹⁹⁹

5.26 Contribution to Women Rights in Pakistan

In the last part of the 1950s and mid 1960's including women's organizations like the United Front for women's rights and the All Pakistan Women Association focused their energies around passing a new regulation that would reconsider women's rights according to legacy, polygamy, divorce and marriage. The development's class division were apparent; the changes were led by high society often educated women. They had affected the participation and

¹⁹⁸ Shirkat Gah, "Women Rights in Muslim Family Law in Pakistan: 45 years of Recommendation vs. the FSC Judgement (January 2000) Special Bulletin February 2000," Dawn, 14, 63.

¹⁹⁹ Shirkat Gah, "Women Rights in Muslim Family Law in Pakistan: 45 Years of Recommendation vs the FSC Judgement, 64.

authority of the commission and upheld its foundation. For example, Chief Justice Abdur Rashid of the supreme court, whose female members had place with the Women's Action Forum managed the commission. The 1961 Muslim Family Law Ordinance (MFLO) in Pakistan was a step towards equivalent privileges for women and men, however its powerless changes were impacted by the Marriage Commission Report's suggestions. The MFLO aimed to discourage polygamy and regulate divorce, yet additionally presented changes in support, marriage enrollment and legacy.

The Muslim Family Law Ordinance (MFLO) 1961 is considered as an essential achievement in promoting women's rights in Pakistan. Executed during Ayub Khan system, it handled enduring disparities in family regulation and played a vital role in improving women's legal and social status.

5.26.1 Regulation of Polygamy

Pakistan, a former British colony, follows the Anglo-Saxon Legal System, influenced by legal law. However, its impact is limited, and the legal landscape is shaped by standard and Islamic regulation, including polygamy, making Pakistan a mixed legal system. Pakistan marriage regulation, represented by the Muslim Family Law Ordinance (MFLO) established in 1961, gives a legal system to devotees of various religion outside the U.K. Pakistan has a very strong stance regarding marriage regulation. Taking part in polygamy without the consent of the Arbitration Board is considered a criminal offence. The severe marriage rules, especially concerning polygamy, have been impacted by various voices from women's rights activist in Pakistan, who argue that polygamy is an infringement of women's rights. The issue became particularly prominent after independence, acquiring critical public attention and prompting discussions within the Pakistani parliament. Consequently, the marriage regulations in Pakistan

are completely characterized with regards to polygamy, particularly as framed in Article 6 of the Pakistani constitution.²⁰⁰

According to the MFLO, a man who wanted to take a second wife needed to have an Arbitration Council approval beforehand. This condition tended to an irregularity in marital authority and restricted unreasonable polygamy giving the first wife the ability to influence the choice.

5.26.2 Inheritance Rights

During the Jahiliyyah (Period of ignorance), families often killed newborn girls out of fear that they would eventually claim a share of the family wealth. These girls were considered a source of dishonor to the family's standing in society. As Allah (SWT) makes reference to in the Quran with respect to these occasions:

“And do not kill your children for fear of poverty. We shall provide for them as well as for you. Surely, the killing of them is great sin (Sūrah al-Isrā’ 17: 31; Al-Hilali, & Khan, 1434 H). When the news of (the birth of) a female (child) is brought to any of them, his face becomes dark, and he is filled with inward grief! He hides himself from the people because of the evil of that where of he has been informed. Shall he keep her with dishonor or bury her in the earth? Certainly, evil is their decision. (Surah al-Nahl, 16: 58-59, Al-Hilali, & Khan, 1434 H).”

Before Islam, in the Arabian Peninsula, inheritance was restricted to men who could fight in battles and provide for the family, while women and children were excluded. For example, in Judaism, women are excluded from inheritance rights, regardless if they are daughters, mothers, or wives. This regulation is framed in the Book of “Ashah,” specially in Genesis Chapter 21. They also hold the belief that women serve a gateway for evil through which Satan can invade the human body and undermine the law of God. Moreover, in Babylonian practices

²⁰⁰ Dinda Difia, Madina, Ahmad Rezy Meidin and Anwar Zein, “The Dynamics of Polygamy and Divorce in Muslim Countries,” *EL-Aqwal Journal of Sharia and Comparative Law* (2023) 139-140.

and social design, women were not qualifying for legacies from their folks. A woman was only eligible for inheritance if there were no male relatives in her family. Moreover, in Mesopotamia, women were regarded a curse in the holy book of Torah. Islam ensures all kinds of people the option to acquire. Preceding the appearance of Islam, women did not have the right to inherit. In this sense, the Quran portrays no orientation bias. Because he is the guardian, a man receives a twofold piece of legacy, of the family who should utilize his assents to help his awards, including his significant other, kids, older guardians, and close relatives.²⁰¹

From a legal feminist perspective, the denial of inheritance rights in pre-Islamic Arabia and other ancient traditions reflects deeply patriarchal legal structures that viewed women as passive dependents. The arrival of Islamic inheritance laws marked a rupture in this narrative by recognizing women as autonomous legal subjects. However, as Cassandra Balchin points out, the application of these laws in modern Muslim societies has often been filtered through male-dominated interpretations that restrict women's access to their rightful share.²⁰²

Section 4 of the MFLO ensured that orphaned grandchildren could get the part their late parent would have been qualified for. This changed was particularly significant for women, as it offered legal protections for their youngster freedoms to acquire privileges that had much of the time been disregarded in conventional readings of Islamic regulation.

5.26.3 Mandatory Registration of Divorces and Marriages

In Pakistan, girls and women continue to be insufficiently safeguarded from sexual and different types of gender-based violence, including early and constrained relationships. In

²⁰¹ Muhammad Faizul Haque, "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business & Management* 4, no. 1 (2020), 17, 21.

²⁰² Farida Shaheen, Sohail Akbar Warraich, Cassandra Balchin, and Aisha Gazdar, "Shaping women's lives, Laws, Practices and Strategies in Pakistan," *Shirkat Gah* 1998 51.

Pakistan, different signs of violence address a significant infringement on women's rights. Domestic violence manifest both overtly and subtly, complicating efforts to ascertain the actual number of victims. Recently, protective laws against domestic violence have been established at the provincial level in Pakistan, however, the rates of prosecution for their offences remain alarmingly low, as women often face intimidation preventing them from reporting crimes or dissuading them from pursuing complaints.²⁰³

Before this ordinance was authorized, marriages conducted according to Muslim law didn't need to be recorded with state authorities. The ordinance established a legal commitment to register all marriages solemnized under Muslim law with local authorities. Officials at the local government level were engaged to give license to marriage recorders for this inspiration. The mandate expressed that neglecting to conform to this arrangement would bring about punishments.²⁰⁴

The MFLO required the registration of marriages and divorces. This change gives women official evidence of their marital status, which was fundamental for declaring legal rights like maintenance, inheritance, or custody during disputes.

5.26.4 Role of Arbitration Council

In order to ensure value and safeguard women's rights in issues relating to financial help, divorce, and polygamy, the council served as a mediator in family conflicts. The consideration of unbiased organizations to safeguard women's interest was a good move.

²⁰³ Ayesha, Shahid, "Post-Divorce Maintenance Rights for Muslim Women in Pakistan and Iran: Making the case for Law Reform," *Muslim World Journal of Human Rights*, 15. No. 1 (2018), 5.

²⁰⁴ Mumtaz Ahmad, "The Muslim Family Law Ordinance of Pakistan," *International Journal on World Peace*; 10, no. 3 (1993), 40.

The women's movement in Pakistan has been crucial in advocating for women's rights and upgrading their situation in both public and private sectors. In Pakistan, activists for women's rights have taken part in coordinated conversations and discussions, aiming to focus on women issues on the public plan. Different organizations have confronted tension after some time to abrogate prejudicial regulation and to lay out regulations and arrangements that guarantee the security of women.²⁰⁵

These changes, while focusing criticism from conservative groups, signified a major change in handling gender inequality in Pakistan. They laid out an establishment for later legal and cultural changes focused on enhancing women's status in the community. Through the implementation of protective measures, the MFLO looked to blend customary Islamic qualities with contemporary overall sets of laws, giving women further developed assurances and amazing open doors for strengthening.

Conclusion

According to Chapter 5, Pakistan's Muslim Family Laws Ordinance of 1961 was a significant step forward for women's rights. It tried to reconcile Islamic principles with the needs of today's society by enacting significant reforms regarding marriage, divorce, maintenance, and inheritance. The ordinance established safeguards like a minimum age for marriage, the requirement to register marriages and divorces, and restrictions on polygamy. It also gave women more legal rights, like the ability to get a khula, or judicial divorce, and get custody of their children. Women's rights organizations saw the law as a crucial step toward empowerment and justice, despite the fact that many traditionalists and religious scholars opposed it, calling

²⁰⁵ Shahid, Ayesha, "Post-Divorce Maintenance Rights for Muslim Women in Pakistan and Iran: Making the case for Law Reform," 7.

it anti-Islamic. The ordinance laid the groundwork for subsequent reforms and marked the beginning of legal safeguards for women in family affairs in Pakistan, despite opposition from political and social groups.

Conclusion

The Muslim Family Law Ordinance (MFLO) of 1961 is regarded as one of the most crucial and contentious pieces of family legislation in the legal and political narrative of Pakistan. Established during General Ayub Khan's military rule, the ordinance was an innovative effort to reform Muslim Personal law through state intervention while striving to reconcile Islamic values with contemporary demands for gender equity, justice and social change.

This thesis examines the MFLO's development, public reception, enforcement and wider impact on Pakistani women's rights from a historical and legal perspective. By utilizing an archival method and drawing upon both primary and secondary materials-such as historical documents, articles, newspaper, judicial decisions, and academic works the research presents a multifaceted view of how this ordinance has influenced and continues to shape the socio-legal environment.

The thesis carefully examines the religious and political resistance faced by the ordinance. Leading religious authorities, particularly Maulana Maududi and other conservative clerics, viewed the MFLO as a deviation from Islamic law, particularly criticizing the state's intervention in matters like triple talaq and inheritance. In toward gender justice, with organizations like APWA (All Pakistan Women Association) leading mass mobilization in favor of reforms.

Chapter wise, the study presents the historical context of women's legal status in pre-Islamic Arabia, colonial India, and post-independence Pakistan. It draws attention to the fact that, before the MFLO, family affairs were regulated by patchwork of colonial laws and customs, which give Muslim women little protection when it came to marriage and property. The MFLO changed the conversation from private custom to state-approved civil laws by codifying family law. However, the ordinance also had significant limitations. The mechanism for enforcement

were inadequate, and many women, especially in rural and conservative regions, had low awareness of their rights.

As examined in the thesis, the 2000 ruling by Federal Shariat Court, which deemed certain provisions of MFLO un-Islamic further complicated its standing, potentially diminishing the protections it provided for women. The HRCP and advocates for women's rights voiced significant worry regarding these judicial setbacks, fearing a regression of hard fought legal safeguards.

The research further emphasizes the judicial interpretations and difficulties faced by the MFLO in legal proceedings, citing significant cases like *Khursheeda Bibi vs Baboo Muhammad Amin* (PLD 1967sc 97) and *Muhamamd Nawaz vs Mst.Khurshid Begum*. These cases demonstrate the changing judicial perspective on women's rights and the evolving interplay between Shariah and Statutory law. In evaluating the consequence of the MFLO, the thesis indicates that the ordinance produces immediate and lasting effects. Initially, it strengthens urban, educated women and heightened awareness regarding legal rights. Over the years, even in the face of opposition, the ordinance became a pivotal point in discussions about gender justice in Pakistan. It played a role in gradually altering the legal framework by motivating additional reforms, such as the Women Protection Bill (2006) and ongoing advocacy for gender-sensitive law.

This thesis utilizes a legal feminist theoretical lens, particularly informed by liberal feminist legal theory, to assert that the MFLO represented a significant advancement in confronting patriarchal interpretations of Islamic law. The ordinance sought to align Islamic principles with contemporary standards of justice and equality, a delicate compromise that is still controversial but essential within the Pakistani context.

Notably, this thesis sets itself apart by employing an archival research method, drawing on original government documents, newspapers, and current analyses to reconstruct the socio-political climate surrounding the enactment and discussion of the MFLO. This approach provides a detailed understanding of the key players their motivations and the opposition encountered.

Not only is the MFLO a piece of legislation however it likewise fills in as proof of Pakistan's advancement in integrating common freedoms and Islamic standards into family regulation. In a culture where religion essentially affects both private and public life, the law represents the troubles and conceivable outcomes of regulative changes through a perplexing transaction among custom and innovation. In outline, the MFLO's heritage is tracked down in its capability as an energizer for proceeding with conversations on civil rights, women's right and the mission for a fair and adjusted society within an Islamic system.

This thesis concludes that law reform can be a practical means of achieving gender justice in Muslim nations, provided it is grounded in both Islamic principles and constitutional rights. To support legislation like the MFLO, however, institutional procedures, judicial clarity, societal awareness, and political will are required. The way a law is implemented, made accessible and understood by the general public are just as important to its success as its original formulation. Future advancement depend on modernizing current legislation, educating women about their rights, promoting judicial responsiveness and engaging in dialogue to confront conservative opposition. In a culture where women's rights are frequently challenged, the MFLO remains both a significant legal achievement and a testament to the continuing struggle for equality.

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