

PAKISTAN



Muslim jurisprudence was introduced in Pakistan as early as 712 CE; the legal system based on *Shari'ah* and *fiqh* was established at the end of the twelfth century CE. During British rule, Muslim jurisprudence continued to be used for formal administration of justice. At present, family laws are a mixture of codified law and customary law based on religious norms.

Women began demanding law reform in the mid-twentieth century. The Muslim Family Laws Ordinance was promulgated in 1961, based loosely on recommendations of a 1955 Commission on Marriage and Family Laws. The law provided important (though limited) protections, but did not grant women any substantive rights. Commissions in 1975, 1985 and 1994 proposed further recommendations, but no attempt was made to address the issues comprehensively. More positive change came in amendments to the Family Courts Act in 2002, which made it easier for women to get a *khul'* divorce and required courts to complete divorce cases within six months. There are now fifteen laws relating to Muslim family issues.

Equality in the Family is Necessary

- ▶ Laws related to families have highly patriarchal overtones and a discriminatory effect on women and children. Varied verdicts in judgements result in confusion and leave space for manipulation and violation of rights.
- ▶ The husband has a dominating position in the family as the sole provider and head of household. Women are often completely dependent on their husbands, which gives husbands incredible power over them and makes them vulnerable to abuse.
- ▶ Contentious and discriminatory clauses in the laws include:
 - Polygamy remains legal. The sole condition is that the husband must inform and receive consent from the first wife, but failure to do this does not invalidate the marriage and carries only a nominal punishment.
 - Conflicts exist between requirements to apply to the Arbitration Council for divorce certificates and the 90 days *iddat* period. This has resulted in two streams of case law with no final and clear indication as to which should prevail. A Supreme Court judgement on the issue has been delayed for a number of years.
 - Maintenance for the wife lasts only for three months, which is not adequate in a country in which many women cannot attain an education or work outside the home. Unless their families are willing or able to support them, they are left distraught and penniless.
 - A woman's work in the home is not recognised as 'labour' and is not considered measurable for compensation purposes.
 - The right of inheritance, especially regarding agricultural land, depends on the prevailing traditions of the families. Many women are robbed of their rightful inheritance even when they try to follow Muslim procedures.
 - Guardianship is often awarded to the father based on the argument that he has the means to maintain the children, since women often do not work for compensation. If guardianship is awarded to the mother, it is often challenged and given to the father if the mother remarries.
- ▶ Religious political parties and groups supported by conservative religious scholars consistently influence and effectively block attempts for progressive legislation or amendments.

Equality in the Family is Possible

- ▶ The 2002 amendments to the Family Courts Act, which came after years of struggle from the women's movement, represent some positive change.
- ▶ In 2008, the Aurat Foundation re-initiated a movement for reform of family laws. A number of recommendations were developed in national working group meetings held in August and October 2008 with some of the country's most eminent lawyers and jurists. These include:
 - No exclusions for the Tribal Areas in the laws;
 - A quota for women judges in family courts and specific qualifications for family court judges;
 - Provisions for simplifying and combining issues in divorce proceedings;
 - Increased restrictions on polygamy, including that the judge must meet with the existing wife to ensure that her consent has been freely and voluntarily given, right to remain in the residence, financial issues and dower;
 - Increased restrictions on permissions for contracting child marriages; punishment for solemnising a child marriage that was not granted permission and for parents or guardians concerned;
 - Specific provisions regarding maintenance awards, payments and penalties;
 - Women's rights to divorce for cause; and
 - Details on *khul'* procedures.
- ▶ The Council of Islamic Ideology, a constitutional body responsible for giving advice on Islamic issues to the Government and Parliament, published recommendations relating to Muslim family laws in November 2008. These recommendations included: deadlines for issuing divorces in *khul'* cases; compulsory registration of divorce papers; required declaration of assets upon the first and subsequent marriages; addition of a clause in the *nikahnama* by which the husband will assign the right of divorce to the wife; removal of restrictions on women's rights to travel for the Hajj and elsewhere; and recognition of the woman's right of *mata* (maintenance of the wife until re-marriage or death) as an Islamic concept. These recommendations were based on research papers and Islamic texts, though religious parties have claimed that they are un-Islamic.
- ▶ Civil society in Pakistan has made significant headway working with the Government on pro-women bills such as the Family Courts (Amendment) Act 2002, Criminal Law (Amendment) Act 2004, the Honour Killings Act, the Protection of Women Act 2006, and amending the Hudood Ordinances. Although these were not complete successes, women's issues are being recognised and the voice of civil society has created pressure on the Government to act.