



THE MUSLIM FAMILY LAWS ORDINANCE, 1961

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THE MUSLIM FAMILY LAWS ORDINANCE, 1961

ORDINANCE NO. VIII OF 1961

[2nd March, 1961]

An Ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws

WHEREAS it is expedient to give effect to certain recommendations of the Commission on Marriage and Family Laws;

Now, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:—

1. Short title, extent, application and commencement.—(1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) It extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.

(3) It shall come into force on such date ¹as the ²[Federal Government] may, by notification in the official Gazette, appoint in this behalf.

2. Definitions.—In this Ordinance unless there is anything repugnant in the subject or context,—

(a) “Arbitration Council” means a body consisting of the Chairman ³[* * * *] and a representative of each of the parties to a matter dealt with in this Ordinance ⁴[:]

⁵[Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council;]

⁶[(b) ‘Chairman’ means the Chairman of the Union Council or a person appointed by the ⁷[²[Federal Government] in the Cantonment areas, or by the Provincial Government in other areas,] or by an officer authorized in that behalf by any such Government, to discharge the functions of Chairman under this Ordinance:

¹The 15th day of July, 1961, *see* Gaz. of P., S.R.O. 56 (R), 1961, Ext., p. 1128.a.

²Subs.by F.A.O., 1975, Art. 2 and Table, for “Central Government”.

³The words “of the Union Council” omitted by the Muslim Family Laws (Amdt.) Ordinance, 1961 (XXI of 1961), s. 2.

⁴Subs., *ibid*, for semi-colon.

⁵Proviso added, *ibid*.

⁶Subs *ibid*, for the original clause (b).

⁷Subs. by A.O., 1964, Art. 2 and Sch., for “Central or a Provincial Government”.

Provided that where the Chairman of the Union Council is a non- Muslim, or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of Chairman, the Council shall elect one of its Muslim members as Chairman for the purposes of this Ordinance;]

- (c) “Prescribed” means prescribed by rules made under section 11;
- (d) “Union Council” means the Union Council or the Town or Union Committee constituted under the Basic Democracies Order, 1959, and ¹[having in the matter jurisdiction as prescribed];
- (e) “Ward” means a ward within a Union or Town as defined in the aforesaid Order.

3. Ordinance to override other laws, etc.—(1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with those provisions.

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

4. Succession.— ² [(1)] In the event of the death of any son or daughter of the *propositus* before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall *per stripes* receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

²[(2) If a Muslim male from *Ahl-e-Teshih* dies, the share of a widow in the immovable property left behind by her deceased husband shall be as follows:—

- (a) one-fourth share of the fixed price or value of the property, if there is no child left behind the deceased husband; and
- (b) one-eighth share, if there is child left behind.

(3) If there are two or more widows, the share, as mentioned in sub-section (2), shall be divided equally among them.

(4) The price or value of the property shall be the price or value existing at the time of payment and not the price or value which existed at the time of death of the husband:

Provided that if the legal heirs of the deceased do not give the widow her share in the above terms, she shall become entitled to her due share in the corpus of immovable property.

(5) A widow is entitled to her share in the corpus of movable property of her deceased husband provided that the provisions of sub-sections (2) and (3) shall *mutatis mutandis* apply.

¹Subs. by the Muslim Family Laws (Amdt.) Ordinance, 1961 (XXI of 1961), s. 2, for “having jurisdiction in the area concerned”.

²Renumbered as sub-section (1) and added new sub-sections from (2) to (8) by Act, XXVIII of 2021, s. 2.

(6) *Fiqah-e-Jafri* recognizes right of a husband to get his share from the property left by his deceased wife, either movable or immovable, as follows:—

- (a) one-half share, if there is no child left behind; and
- (b) one-fourth share of the property, if there is child left behind.

(7) In case of dispute, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the *Mujtahid-e-Alam* from the panel maintained by the Council of Islamic Ideology. The decision of *Mujtahid-e-Alam* shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation.—The expression “*Mujtahid-e-Alam (Faqih-e-Azam)*” means a juris-consult, religious scholar or doctor of *Shia* school of thought well versed with *Shariah* having international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of *Mujtahid-e-Alam* having aforesaid qualifications.

(8) As enshrined in Article 227 of the Constitution of the Islamic Republic of Pakistan, the inheritance rights of *Ahl-e-Tashih* and matters connected therewith or ancillary thereto shall be decided according to their personal law interpreted by *Fiqah-e-Jafria* (*Shia* school of thought).]

5. Registration of marriages.—(1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

(2) For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

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

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

(5) The form of *nikah nama*, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of *nikah nama* shall be supplied to the parties and the fees to be charged thereof, shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

6. Polygamy.—(1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

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

(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, ¹[to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall——

- (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
- (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

7. Talaq.—(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife ²[:]

²[Provided that where the parties belong to *Fiqah-e-Jafria*,——

- (a) the man may voluntarily and with his free will pronounce himself or through duly authorized attorney (Vakil) Talaq uttering in literal Arabic words (seegha) in the physical presence of at least two witnesses qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No. 1 of 1984);
- (b) the pronouncement of Talaq shall be ineffective if it is done jokingly or under anger, intoxication, insanity, duress or coercion of any kind and from any corner whatsoever; and
- (c) in case of dispute, with reference to clauses (a) or (b) arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the “*Mujtahid-e-Alam*” and the decision of *Mujtahid-e-Alam* shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation.—The expression “*Mujtahid-e-Alam (Faqih-e-Azam)*” means a juris-consult, religious scholar or doctor of *Shia* school of thought well versed with *Shariah* having international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of *Mujtahid-e-Alam* having aforesaid qualifications.]

¹Subs. by F.A.O., 1975, Art. 2 & Sch., for certain words.

²Subs. and ins. by the Muslim Family Law (Second Amendment) Act, 2021 (XXIX of 2021), s. 2.

¹[(1A) As enshrined in Article 227 of the Constitution of the Islamic Republic of Pakistan, the divorce and matters connected therewith or ancillary thereto shall be decided according to the personal law interpreted by *Fiqah-e-Jafria* (Shia school of thought).]

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

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

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in sub-section ²[(3)] or the pregnancy, whichever be later, ends.

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

8. Dissolution of marriage otherwise than by *talaq*.—Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq*, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

9. Maintenance.—(1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking, any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, ³ [to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.

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

10. Dower.—Where no details about the mode of payment of dower are specified in the *nikah nama*, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand.

¹Ins. new sub-section (1A) by the Muslim Family Law (Second Amendment) Act, 2021 (XXIX of 2021), s. 2.

²Subs. by the Muslim Family Law (Second Amendment) Ordinance, 1961 (XXX of 1961), s. 2 for “(2)”.

³Subs. by F.A.O., 1975, Art. 2 and Sch., for certain words.

11. Power to make rules.—(1) The ¹[²Federal Government] in respect of the Cantonment areas and the Provincial Government in respect of other areas] may make rules to carry into effect the purposes of this Ordinance.

(2) In making rules under this section, the ¹[such Government] may provide that a breach of any of the rules shall be punishable with simple imprisonment which may extend to one month, or with fine which may extent to two hundred rupees, or with both.

(3) Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Ordinance.

12. *[Amendment of Child Marriage Restraint Act, 1929 (XIX of 1929).] Omitted by the Federal Laws (Revision and declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.*

13. *[Amendment of the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939)]. Omitted by the Federal Laws (Revision and declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.*

¹Subs. by A.O., 1964, Art. 2 and Sch., for “Provincial Government”.

²Subs. by F.A.O., 1975, Art., 2 and Table, for “Central Government”.