

**The Family Courts (Amendment)
Ordinance 2001**

Report No. 33

The Family Courts (Amendment) Ordinance 2001

Introduction

Realising the hardships faced by litigant parties in adjudication of matrimonial disputes in the civil courts, the Government of Pakistan, in 1955, constituted a Commission on Marriage and Family Laws, headed by Justice Mian Abdul Rashid, former Chief Justice of Pakistan. The Commission was assigned the task of reviewing the existing laws governing marriage, divorce, maintenance and other ancillary matters among Muslims to see as to whether any modification thereof is required in order to give women their proper place in the society according to the fundamentals of Islam. The Commission submitted its report to the Government on 11 June 1956, suggesting therein, inter alia, the establishment and procedure of special courts for expeditious disposal of suits relating to family laws. The Commission rationalized, as follows, its recommendation for establishing special courts following special procedure for resolving family disputes:

There is a consensus of opinion that the complexity of our Procedural Laws prevents a large number of citizens, especially women, from claiming their legitimate rights in courts of law. We have adopted English Procedural Law with its archaic, cumbersome and dilatory methods, and have failed to realize that the English Procedural Law is entirely unsuitable for our state of society. We have completely ignored Islamic, European and American achievements in this field, with the result that every civil suit once started, lasts almost for a generation, and causes enormous waste of time and money. The decree of order obtained by a successful party often becomes a dead letter when execution is taken out, as the

procedure for the execution of decrees is so complex and antiquated that it enables a dishonest litigant to prolong proceedings to such an extent that the successful party terminates the process in disgust. It has often been remarked that involvement in a civil suit is the greatest misfortune that can befall a human being short of sickness and death. At present all cases relating to Marriage and Family Laws are tried in civil courts as ordinary civil suits. Married women, orphans, sisters and daughters are generally short of funds. The result is that the Shariat Act and the Dissolution of Muslim Marriages Act have become completely infructuous, and women have gradually realized that it is hopeless for them to institute civil suits in order to establish and secure their rights. No amount of beneficent legislation in favour of married women, widows, orphans, daughters and sisters is going to be of the least assistance to them if rights secured to them under such legislation are to be enforced by the ordinary civil courts. In order to find an effective remedy for this sorry state of affairs this Commission makes the following recommendations:-

(1) One Matrimonial and Family Laws Court should be established in each Commissioner's Division to deal with cases relating to Marriage and Family Laws. This court should be presided over by an officer of the rank of a District and Session Judge.

(2) It should be definitely enacted that a Matrimonial and Family Laws Court shall not follow the Civil Procedure Code and the Evidence Act. These

enactments should be entirely scrapped in respect of suits relating to Marriage and Family Laws. The Legislature should lay down a few fundamental principles for the guidance of Matrimonial and Family Laws Courts, and the remaining procedure should be regulated by simple rules framed by the High Court. The object should be to grant substantial and natural justice to the litigants in Marriage and Family Laws Courts and to dispense with all technicalities. "Legislative- made" procedure leads to an unwise division of responsibility for the administration of justice between the legislature and the law courts. The legislative-made practice and procedure is highly inflexible and that is the worst feature of our Procedural Laws. The advantages of judicial rule-making for the Matrimonial and Family Laws Court are obvious. As soon as the court finds that certain rules hinder expeditious disposal, these rules can be modified or eliminated. Eighteen States in the United States of America have delegated complete supervisory rule making power to the highest courts of those States. It has been provided in the authorisation of rule-making powers that the rules of court shall not make any changes in substantive laws and rights but shall be confined merely to Procedural Laws. This provision is sufficient to safeguard the rights and liberties of the subject.

(3) The next reform that this Commission would suggest is that the right of second appeal and revision should be entirely taken away so far as decision of Matrimonial and Family Laws Court are concerned. During the Mughal period no litigant was allowed to prefer more than one appeal from an adverse decision

and no remands were allowed. Once a decision was given at the appellate stage it was final and conclusive as between the parties. As the presiding officer of a Matrimonial and Family Laws Court would be a person of the rank of a District and Session Judge, and appeal should lie against his decision directly to the High Court, and the decision of the High Court should be final and conclusive. Suits relating to human relationships must be expeditiously decided, and it is infinitely better to take the risk of an erroneous decision in one in a hundred cases rather than to allow a hundred suits to drag on indefinitely until the man and the woman involved therein are either dead or too old to reap the benefit of the litigation. All human courts are likely to go wrong sometimes, and even if as many as five appeals are allowed in five different forums, the final court of appeal will still be reversing some decisions of the court immediately below. Finality of an appellate judgment at the earliest possible time is conducive to the welfare of the subject in a far greater degree than avoidance of a possible mistake in one out of hundred cases.

(4) It should be enacted that every suit in a Matrimonial and Family Laws Court shall be decided within a period of three months. Some persons who are fully acquainted with the intricacies of modern Procedural Law would consider this to be an impossible accomplishment. This objective was, however, fully realized in pre-war Austria and litigations with even two appeals were finally determined within six months. Some indications may be given as to how it can be accomplished :-

- (a) Whenever a suit is instituted personal service should be effected by means of a registered letter simultaneously with substituted service by advertisement in the press. The despatch of the registered letter by the court and advertisement in the press shall be taken to be conclusive proof of the fact that the defendant has been informed of the suit pending against him.
- (b) The plaintiff shall be required to submit copies of his entire documentary evidence and a précis of his oral evidence in typed form with the plaint. The defendant shall be required to submit a written statement and also attach therewith, typed copies of his entire documentary evidence and a précis of this oral evidence.
- (c) The judge after studying the record and the evidence of both the parties should hold a pre-trial hearing where the entire dispute should be discussed in an informal manner with the parties. Efforts should be made by the judge to induce both parties to abandon all frivolous and unnecessary objections. Thereafter the judge should frame one or two basic and central issues for trial.
- (d) Formal proof of all documents should be eliminated. If any party insists on the production of the original when the judge is of the opinion that there is

no reason to doubt the authenticity of the copies, the party so insisting should be burdened with heavy costs.

- (e) The examination of the witnesses, as it is prevalent at the present time, is done in a most unsatisfactory manner. After the court has studied the whole case the witnesses whose testimony is necessary should be called as court witnesses. Everyone should be given a chance to give his deposition in his own words without unnecessary interruption. The judge should examine the witnesses and after he had done so regarding the main facts of the case the lawyers of the parties, if they appear, should be allowed to ask additional questions to bring out the facts more clearly. Substance should not be sacrificed to form and an effort should be made to make the proceedings intelligible to the parties concerned.

- (f) The suggestions made above should be embodied in the rules framed by the High Court with the express purpose of expediting the disposal of the cases in Matrimonial and Family Laws Court. The court shall be given large discretionary powers to regulate its own procedure to suit the circumstances of each case. It must be remembered that expeditious disposal does not mean summary disposal, the trials in Matrimonial and Family Laws Court would be expeditious but not summary.

The trials in Matrimonial and Family Laws Courts should be made as cheap as possible. We, therefore, propose that no court-fee and other charges shall be payable in such courts. No frivolous or vexatious litigation is likely to result by abolishing the court-fee as cases concerned with human relationships stand on an entirely different footing from suits in respect of lands, houses and other property.

In cases relating to Matrimonial matters, it is suggested that one male and one female adviser shall be associated with the judge. The female adviser shall be chosen by the wife and the male adviser by husband. These advisers will stand on an entirely different footing from the assessors in session cases. The experiment of assessors has no doubt been a failure. We, therefore, do not recommend the appointment of assessors chosen by the court.

In order further to reduce the cost of litigation in Matrimonial and Family Laws Courts we recommend that the presiding officer of the court shall hold a session of the court in each district headquarters by turn. We further recommend that the parties should be allowed to be represented by agents or relations and not necessarily by legal practitioners.

The orders and decrees of Matrimonial and Family Laws Courts should not be executed in the same manner as orders and decrees of ordinary civil courts. All moneys payable by any party as a result of an order of a Matrimonial and Family

Laws Court shall be realizable as arrears of Land Revenue. Obedience to other orders, shall be enforced by the court by committing the defaulting party to imprisonment for contempt of court. Summary powers to punish for contempt of court should be conferred on the Matrimonial and Family Laws Courts on the same basis as they vest in the High Courts.

We do not consider it feasible to recommend that all cases where a woman is a plaintiff shall be cognizable by the Matrimonial and Family Laws Court. We consider that women and men shall be placed on an equal footing in this respect. All cases relating to Matrimonial and Family Laws shall be heard and decided by special courts as suggested above, irrespective of the sex of the parties.

The recommendation however, was not promptly acted upon. Subsequently, a Law Reform Commission was constituted on 23 November 1958, which also examined the issue of creating special courts for disposal of family suits. Its report called, S. A. Rehman Law Reform Commission Report, was published in 1959. The recommendations contained therein emphasised upon the need for inexpensive and speedy remedy to be made available in suits between spouses. Accordingly, The Family Courts (W.P.) Act 1964 was enacted to adjudicate matters relating to dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of children and guardianship. Subsequently through an amendment in 1969 to the said Act, the subject of "jactitation of marriage" was also added to the Schedule.¹ Later on, following the recommendations of Pakistan Law Commission Report No 12 on Reform of Family

¹ West Pakistan Act No 1 of 1969

Laws that the subject of “dowry” should also be added to the Schedule of the Act, the proposed amendment was carried through in 1997.²

Notwithstanding the enactment of the Family Courts Act, the civil courts were authorised to deal with family matters, in addition to exercising their general civil jurisdiction. These courts did not deal exclusively with family matters, as envisaged in the Act, because of which the objective of expeditious disposal could not be realised. Later on, through an amendment to the said Act, a period was fixed for the disposal of suits for dissolution of marriage. Section 12-A, was added to the Act in 1996³, which fixed a period of 4 months for the disposal of cases of dissolution of marriage as well as appeals in such cases. Nevertheless, the problem of delays persisted.

Besides delays, which result in the suffering of litigant spouses and their children, there still remain some issues and disputes, which are not covered by the Schedule to the Family Courts Act and, therefore, are a source of hardships for the family members. Such hardships include non-execution or delayed execution of decrees relating to maintenance, recovery of dower/dowry, etc. Furthermore, relations between spouses get deteriorated due to altercation or minor criminal acts e.g. assault, illegal confinement, criminal intimidation and simple bodily injuries, etc which are registered and tried by ordinary criminal courts.

² . Act No VII of 1997

³ . Act No X of 1996

As regards complaints against delays in trial, it may be clarified that following the decisions/directions of the Chief Justices' Committee in its meeting held on 26 February 2000 for quick disposal of family cases including suits for dissolution of marriage, maintenance, custody of children, etc a large number of such suits were disposed of by the courts and the situation has considerably eased off. However, the problems relating to the restricted jurisdiction of the courts and non/delayed execution of decrees still linger on and require appropriate measures to address the same.

In this respect, certain NGOs, operating in the field of women and children and earlier Commissions/Committees constituted by the Government, from time to time, suggested amendments to improve the status of women through expeditious disposal of family disputes, timely execution of decrees and effective measures to provide for interim maintenance, pending family suit in the Court. The most common recommendations were to the effect:

- 1- Number of family court judges be increased;
- 2- Unnecessary adjournments be avoided;
- 3- There is an immediate need for empowering the Family Court to grant interim maintenance to the wife and children;
- 4- The Court should have power to restrain the husband/father from disposing of his property/assets during the pendency of a family suit;
- 5- For easier recovery of dower, summary proceedings be carried out;

- 6- The Family Judge should be empowered to continue the cases of execution after issuing the decree of maintenance. No fresh application should be required to be filed by the decree holders.

The Commission on the Status of Women 1985 also made certain recommendations, as under:

- (1) When the husband fails to maintain his wife adequately, whether living together or separately, the wife should be given interim maintenance immediately on the institution of suit for maintenance;
- (2) The maintenance awarded by the court to the wife should be deposited by the husband in the court within a period not exceeding 30 days. In case of default, the husband should be liable to confinement of simple imprisonment for upto 6 months; and
- (3) Criteria for maintenance of wife be laid down which must include food, clothing, accommodation, medical care, educational expenses and other benefits appropriate to the financial status of the family.

Similarly, the Commission of Inquiry for Women 1997 recommended as follows:

- (1) Provision for grant of maintenance to minors till they reach the age of 21 years regardless of whether they are married or have become financially independent prior to that time; and

- (2) Provision for grant of interim relief in favour of maintenance both to wife and children if the suit is not decided within six months.

It is worth mentioning that these and similar other issues/problems have already been considered and appropriate recommendations finalised by the Pakistan Law Commission (vide Report No 12 of 1992) on the subject. Summary of its recommendations, both statutory and administrative, is as under:

- (1) In suits for dissolution of marriage all matters relating to dower, maintenance, dowry and custody of children shall be decided by the court without filing a separate suit for this purpose;
- (2) In case of a suit for dissolution of marriage, written statement shall be deemed as a plaint for restitution of conjugal rights, and no separate suit shall lie;
- (3) Where suit for maintenance is not decided within six months, the Family Court shall pass an interim order in the matter and if maintenance is allowed, it shall be payable by the 14th of each month, failing which the suit shall be decreed;
- (4) An amendment in the Schedule of the Family Court Act 1964 by insertion therein of recovery of dowry or its value in money;

- (5) A separate Division should be constituted in each High Court to deal exclusively with appeals in family matters. Each case to be heard by a bench consisting of not less than two Judges.
- (6) In each District, a District or an Additional District Judge be designated as Judge Family Court, and in case it is not possible, a Civil Judge First Class be appointed as Judge Family Court;
- (7) A uniform Code relating to family matters on the pattern of other Muslim countries be enacted;
- (8) In subjects of Pakistan Studies and Islamic Studies at the Higher Secondary School and College level, topics relating to human rights, especially rights of women and children should be introduced;
- (9) Information on women rights and on the forums where redress can be sought should be given wide publicity, utilising the print and electronic media;
- (10) Family Court Judges must be given training in family laws at the Federal Judicial Academy;

- (11) Courts hearing family cases should be housed at appropriate places within court premises, keeping in view the dignity of women litigants;
- (12) Family laws should be included in Adult Education Programmes;
- (13) All family cases should be decided on priority basis within a maximum period of six months after their institution in courts, failing which an order for maintenance shall be passed for children and/or wife involved therein.

So far as the question of delay in execution and restraining the husband from disposing of his property/assets is concerned, these are, undoubtedly, grave situations hampering the administration of justice. It involves a tiresome exercise causing untold miseries to decree holders. Delays in execution of decrees are an old and common complaint. The Privy Council, as far back as 1872, while delivering judgment in the Maharaja of Darbhanga's case, said, "the difficulties of a litigant in India begin when he has obtained a decree". (Quoted in the Report of the Law Reform Commission 1967-70).

It may be stated that the Family Courts Act prescribes the procedure for enforcement of decrees in family suits (section 13) and the said Court also has the power to execute its own decrees. However, it quite often happens that the dispute property is disposed of during the pendency of the suit in the Family Court and, therefore, by the time the decree is passed, the property is already alienated and the decree holder is without

remedy.⁴ To avoid alienation of suit property during trial, it is proposed that the Family Courts should have the power to grant injunction, restraining the husband/father from disposing of any movable or immovable asset during pendency of the suit. This will help in ensuring the effective enforcement of maintenance decrees. It is worth mentioning that in the Code of Civil Procedure 1908, such like safeguard is already available in Rules 5 & 6 of Order XXXVIII thereof, wherein in case of an apprehension that the defendant may dispose of his assets to avoid prospective decree, the Court may order the attachment of property to ensure the execution of decree. Thus, an amendment may be made in the Family Courts Act to empower the Family Court to issue an injunction to secure the execution of decrees for maintenance, dower, etc.

The appellate jurisdiction initially fixed for recovery of dower and maintenance respectively was rupees one thousand, and twenty five per month, which was enhanced in 1994 to rupees fifteen thousand, and five hundred respectively. In view of ever-rising inflation rate in the country, the appellate jurisdiction in respect of dower and maintenance needs to be further enhanced. It is, therefore, suggested that Section 14 of the Family Courts Act 1964 may be amended as under to rationalise such appellate jurisdiction:

- (b) for dower not exceeding rupees thirty thousand;
- (c) for maintenance, rupees one thousand or less per month.

⁴ . Rule 5, Order XXXVIII of the CPC.

At times, spouses involved in family disputes or otherwise commit excesses, which constitute criminal offences under the Pakistan Penal Code 1860, and accordingly, FIRs or complaints are lodged against each other. Sometimes such complaints are the result of ongoing litigation between parties. Such offences, usually or minor in nature including kidnapping, abduction of children from the custody of guardian, illegal detention of wife, threats/criminal intimidation, assault, defamation, and minor bodily injuries, etc. Such offences may also be given as grounds for dissolution of marriage. Therefore, the Family Court may be authorised to try all such minor offences in which one of the spouses has accused the other, and on failing in reconciliation/compromise proceedings under sections 10 and 12 of the Act, proceed to consider it as grounds for dissolution. Thus, an amendment in the Schedule of the Act is proposed to provide certain minor offences to be tried by the Family Court and conferring power upon the High Court to amend the Schedule with approval of Government to add more subjects thereto and also to make rules in this regard whenever needed to make role of the Family Court more effective.

The Secretariat of the Commission, obtained data from the High Courts as to the number of Family Courts, the level of judicial officers presiding over such Courts, pendency, and the number of additional judges required for expeditious disposal of family suits. The information is contained in the following table:

FAMILY COURTS

Sr.No.	Name of Province	No.of Family Courts.	Places where these are Working	Judicial Officers who preside these Courts.	No of Female Judges	No.of Courts which deal exclusively with Family Matters.	Additional Judges required.	No. of Total Pending Cases.
1.	Punjab	239 Family Courts	Distt & Tehsil levels.	Senior Civil Judge/Civil Judge I & II	5	8 Courts	54	30979
2.	Sindh.	104 Family Courts	Distt & Tehsil levels.	Additional District Judge/Senior Civil Judge/Civil Judge.	17	-	3 Additional District Judges + 6 Senior Civil Judge/Civil Judges.	2355
3.	N.W.F.P.	109 Family Courts.	District & Sub-Division level.	Senior Civil Judge/Civil Judge/Judge Family Court.	9	-	-	No Pendency has been given in these Courts.
4.	Balochistan.	44 Family Courts.	District & Tehsil level.	Senior Civil Judge/Civil Judge/Qazi	-	-	-	122

Commission's Deliberations

Keeping in view the issues/problems discussed above, the Secretariat prepared a draft statute for consideration of the Commission. The Commission considered the draft

proposals in its meeting held on 9 September 2000 and approved the same in principle. The Commission further resolved that the draft bill be published for eliciting public opinion/comments.

The draft amendments in the Family Courts (W.P) Act 1964 were therefore, published in the national press and also made available on the Commission's Website for inviting public opinion. Special references were made to the Attorney General for Pakistan and the Advocate Generals of the four Provinces, Ministers and Secretaries of the Federal Ministries of Interior, Finance, Information, Woman Development, Provincial Secretaries of Law, and Home Departments of the four Provincial Governments, some serving and retired Judges of the Supreme Court and the High Courts as well as subordinates courts, Pakistan Bar Council, four Provincial Bar Councils and selected Bar Associations for inviting their comments upon the draft amendments.

The response from the general public was fairly enthusiastic. A large number of individuals and organizations responded. The representatives of some NGO's and certain individuals also personally visited the Secretariat of the Commission and made presentations. The practicable suggestions received in this connection were incorporated in the draft amendments which were later discussed with sitting and retired Judges of the superior and subordinate courts; and the final draft amendments in the Family Courts (W.P) Act of 1964 were placed before the Pakistan Law Commission. The Commission approved the proposed amendments with consensus (names of members of the Commission at the time are at Annex IV). Meanwhile, on expiry of tenure of non-ex-officio members, the Government reconstituted the Commission. The

draft bill was again placed before the Commission in its meeting on 17 March 2001, and after due deliberation, was unanimously approved. The salient features of the proposed amendments are:

Salient Features

- (1) A wife seeking dissolution of marriage shall also claim in the plaint her dower, dowry, personal property, maintenance, custody of children and right of visit to meet children to avoid multiplicity of suits.
- (2) A husband while defending a suit for dissolution of marriage may claim decree for restitution of conjugal rights and no separate suit shall lie for it.
- (3) A defendant wife may claim for any right to which she is entitled to claim in reply to suit for restitution of conjugal rights by the husband.
- (4) No document can be relied upon by any party unless it has a relevancy to the claim or defence made in the plaint or written statement.
- (5) In a suit for dissolution of marriage on the sole ground of 'Khula' the Court shall pass decree on restoration of marriage benefits as determined by the Court.
- (6) The Family Court shall dispose of all family suits within a period of four months.

- (7) The non-appealable limit of decrees is enhanced from rupees fifteen thousand to rupees thirty thousands in respect of dower and rupees five hundred to rupees one thousand per month in respect of maintenance.
- (8) A Family Court may pass an interim order to grant maintenance or to preserve and protect any property to secure the enforcement of decree and no appeal or revision shall lie against it.
- (9) An appeal against decree of maintenance by the family Court is exempted from payment of Court fee.
- (10) The punishment of fine on contempt of Family Court is enhanced from rupees two hundred to rupees one thousand.
- (11) A Family Court is empowered to issue Commissions to examine any person, to make a local investigation or to inspect any property or document.
- (12) A Family Court shall have all the powers of Judicial Magistrate of the First Class to try minor criminal offences where one of the spouses is victim of offence committed by the other.

- (13) The High Court may, with the approval of the Provincial Government, make rules for the effective functioning of the Family Court and to add any other family matter to the Schedule,

The draft amendment Bill as approved by the Commission follows:

Family Courts (Amendment) Ordinance 2001

An Ordinance further to amend the Family Courts Act, 1964

WHEREAS it is expedient further to amend the Family Courts Act, 1964 (W.P. Act XXXV of 1964), for the purposes hereinafter appearing;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provincial Constitution Order No. 1 of 1999;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement.- (1) This Ordinance may be called the Family Courts (Amendment) Ordinance, 2001.

(2) It shall come into force at once.

2. Amendment of section 5 W.P. Act XXXV of 1964.- In the Family Courts Act, 1964 (W.P. Act XXXV of 1964), hereinafter referred to as the said Act,-

(a) section 5 shall be renumbered as sub-section (1) of that section and in sub-section (1), renumbered as aforesaid, for the words “the Schedule “ the words “Part I of the Schedule” shall be substituted; and

(b) after sub-section (1) amended as aforesaid, the following new sub-sections shall be added, namely:-

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

(3) The High Court may, with the approval of the Government, amend the Schedule so as to alter, add or delete any entry thereto”.

3. Amendment of section 7, W.P. Act XXXV of 1964.- In the said Act, in Section 7,-

(a) in sub-section (2), before the existing proviso the following proviso shall be inserted, namely :-

“Provided that a plaint for dissolution of marriage shall contain all claims relating to dowry, maintenance, dower, personal property, custody of children and right of visit to meet children;”

- (b) in the second proviso, after the word “Provided” the word “further” shall be inserted;
- (c) in sub section (3) in clause (ii) after the word plaint, the full stop shall be omitted and the words “giving reasons of relevancy to the claim in the plaint” shall be added.

4. Amendment in section 8, W.P. Act XXXV of 1964.- In the said Act, in sub-section (6) after comma and the figure “19” the comma and the figure “20” shall be inserted.

5. Amendment of section 9, W.P. Act XXXV of 1964.- In the said Act, in Section 9, after sub-section (1),-

- (a) the following new sub-sections shall be inserted, namely:-

“(1A) A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it.

(1B) A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make any claim provided in Part I of the Schedule, which shall be deemed as a plaint.”.

- (b) in sub-section (3) at the end, the full stop shall be omitted and the words “giving reasons of relevancy to the defence in the written statement” shall be added.

6. Amendment of section 10, W.P. Act XXXV of 1964.- In the said Act, in section 10, after sub-section (4) the following new sub-section shall be added, namely :-

“(5) In a suit for dissolution of marriage on the sole ground of *Khula*, the Court shall determine and restore to the husband benefits, derived by the wife in consideration of marriage and pass decree of dissolution of marriage.”.

7. Amendment of section 12, W.P. Act XXXV of 1964.- In the said Act, in section 12, after sub-section (2) the following new sub-sections shall be added, namely:-

“(3) The Family Court shall, while passing decree of dissolution of marriage, determine the remaining claims in the plaint.

(4) The Family Court may, while dismissing the suit of the wife for dissolution of marriage, pass a decree for restitution of conjugal rights in favour of husband, if such claim is established.

(5) The Family Court may, while dismissing the suit of the husband for restitution of conjugal rights, pass a decree in respect of any claim made by the wife in the written statement.”.

8. Substitution of section 12A, W.P. Act XXXV of 1964.- In the said Act, for section 12A, the following shall be substituted, namely :-

“12A. **Cases to be disposed of within a specified period.**- A Family Court shall dispose of any case under this Act within a period of four months.”.

9. Amendment of section 14, W.P. Act XXXV of 1964.- In the said Act, in section 14,-

(a) In sub-section (2),-

(1) in clause (b),-

(i) after the word “dower” the coma and the words “dowry and personal property” shall be inserted; and

(ii) for the words “fifteen thousands” the words “thirty thousands” shall be substituted; and

(2) in clause (c) for the words “five hundred” the words “one thousand” shall be substituted; and

(b) after sub-section (2), the following new sub-section shall be added, namely :-

“(3) No appeal shall lie against an interim order.”.

10. Amendment in section 16, W.P. Act XXXV of 1964.- In the said Act, in Clause (c), for the words “two hundred” the words “one thousand” shall be substituted.

11. Amendment in section 17, W.P. Act XXXV of 1964.- In the said Act, in section 17, after the word “Court” the full stop shall be omitted and the words “in respect of Part I of the Schedule” shall be added.

12. Addition of new sections 17A and 17B, W.P. Act XXXV of 1964.- In the said Act, after section 17, the following new sections shall be added, namely:-

“17A. Interim order for maintenance.- At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.

17B. Power of the Court to issue Commissions.- Subject to such conditions and limitations as may be prescribed, the Court may issue a Commission to,-

- (a) examine any person;
- (b) make a local investigation; and
- (c) inspect any property or document.”.

13. Substitution of section 19, W.P. Act XXXV of 1964.- In the said Act, for the section 19, the following shall be substituted, namely.-

“Court-fees.- Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court-fees to be paid on any plaint or memorandum of appeal shall be rupees fifteen for any kind of suit or appeal under this Act.”.

14. Substitution of section 20, W.P. Act XXXV of 1964.- In the said Act, for section 20, the following shall be substituted, namely :-

“20. Family Court to exercise the powers of the Judicial Magistrate.-

A Family Court shall have and exercise all the powers of a Judicial Magistrate of the First Class under the Code of Criminal Procedure, 1898 (Act X of 1898).”.

15. Insertion of new section 21-A, W.P. Act XXXV of 1964.- In the said Act, after section 21, the following new section shall be inserted , namely :-

“21A. Interim order pending suit.- The Family Court may pass an order to preserve and protect any property in dispute in a suit and any other property of a party to the suit, the preservation of which is considered necessary for satisfaction of the decree, if and when passed.”.

16. Amendment of section 26, W.P. Act XXXV of 1964.- In the said Act, in section 26, for sub-section (1) the following shall be substituted, namely :-

“(1) The High Court may, with the approval of the Government, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.”.

17. Amendment of Schedule, W.P. Act XXXV of 1964.- In the said Act, in the Schedule,-

- (a) before serial number 1 and entry relating thereto the word and letter “Part I” shall be inserted;
- (b) in serial number 5 after the word “of” the words “and meeting” shall be added; and
- (c) after serial number 8, the following new serial number shall be added, namely :-
“9. Personal property”.
- (d) after serial number 9 and entries relating thereto the following shall be added, namely :-

“Part II

Offences and abetment thereof under sections 337A (i), 337F (i), 341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code (Act XLV of 1860).”.

Statement of Objects and Reasons

These recommendations of the Pakistan Law Commission seek to amend the Family Courts Act 1964 (W. P. Act XXXV of 1964) to empower the said Court to determine all family matters in a single suit to avoid multiplicity of suits, ensure the quick disposal of suit for dissolution of marriage on the sole ground of Khula, prescribe a time frame for disposal of suits and appeals, raise the non-appealable limit of decrees of recovery of dower and maintenance, make provision for interim maintenance during pendency of such claim, exempt appeals from levy of court fees, invest powers under the Code of Criminal Procedure 1898 upon the Court to try minor criminal offences involving

spouses, enable the Court to issue injunction for protection of suit property and empower the High Court to amend, with approval of the Government, the Schedule and make rules.

(Comparative Statement Showing Existing Law and Proposed Amendments)

FAMILY COURTS ACT, 1964
(W.P. ACT XXXV OF 1964)

<u>S.No</u>	<u>Existing Provisions</u>	<u>Proposed Amendments</u>
	<p>Preamble. Whereas it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith;</p> <p>It is hereby enacted as follows:-</p>	<p>No Amendment</p>
1.	<p>Short title, extent and commencement.-(1) This Act may be called the Family Courts Act, 1964.</p> <p>(2) It extends to the whole of Pakistan</p> <p>(3) It shall come into force in such area or areas and on such date or dates as Government may, by notification in the official Gazette, specify in this behalf.</p> <p>(4) Nothing in this Act shall apply to any suit, or any application under the Guardians and Wards Act,</p>	<p>No Amendment</p>

1890, pending for trial or hearing in any Court immediately before the coming into force of this Act, and all such suits and applications shall be heard and disposed of as if this Act were not in force.

(5) Any suit, or any application under the Guardians and Wards Act, 1890, which was pending for trial or hearing in any Court immediately before the coming into force of this Act, and which has been dismissed solely on the ground that such suit or application is to be tried by a Family Court established under this Act, shall, notwithstanding anything to the contrary contained in any law, on petition made to it in that behalf by any party to the suit or application, be tried and heard by such Court from the stage at which such suit or application had reached at the time of its dismissal.

2. Definitions. (1) In this Act unless No Amendment
the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-
- (a) "arbitration council" and

“chairman” shall have the meanings respectively assigned to them in the Muslim Family Laws Ordinance, 1961;

(b) “family court” means a court constituted under this Act;

(c) “government” means the Provincial Government;

(d) “party” shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute;

(e) “prescribed” means prescribed by rules made under this Act.

(2) Words and expressions used in this Act but not defined, shall have the meanings respectively assigned to them in the Code of Civil Procedure, 1908.

3. Establishment of Family Courts.- (1) No Amendment
Government shall establish one or more Family Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Courts:

Provided that at least one Family Court in each District, shall be

presided over by a woman Judge to be appointed within a period of six months or within such period as the Federal Government may, on the request of Provincial Government, extend:

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

(3) Government shall, in consultation with the High Court, appoint as many woman Judges as may be necessary for the purposes of sub-section (1).

4. Qualifications of Judges.- No person shall be appointed as a Judge of a Family Court unless he is or has been or is qualified to be appointed as a District Judge, an Additional District Judge, a Civil Judge or a Qazi appointed under the Dastural Amal, Diwani Riasat, Kalat. No Amendment
5. Jurisdiction. Subject to provisions of Jurisdiction. (1) Subject to

the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the Schedule.

provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule.

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

(3) The High Court may, with the approval of the Government, amend the Schedule so as to alter, add or delete any entry thereto.

6. Place of sitting.- Subject to any general or special order of Government in this behalf, a Family Court shall hold its sittings at such place or places within the District or area for which it is established as may be specified by the District Judge. No Amendment
7. Institution of suit.- (1) Every suit

before a Family Court shall be instituted by the presentation of a plaint or in such other manner and in such Court as may be prescribed.

(2) The plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and a brief summary of the facts to which they would depose.

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

Provided that a plaint for dissolution of marriage shall contain all claims relating to dowry, maintenance, dower, personal property, custody of children and right of visit to meet children.

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

(3) (i) Where a plaintiff sues or

relies upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time, deliver the document or a copy thereof to be filed with the plaint.

(ii) Where he relies on any other document, not in his possession or power, as evidence in support of his claim, he shall enter such documents in a list to be appended to the plaint.

(ii) Where he relies on any other document, not in his possession or power, as evidence in support of his claim, he shall enter such documents in a list to be appended to the plaint giving reasons of relevancy to the claim in the plaint.

(4) The plaint shall be accompanied by as many duplicate copies thereof including the Schedule and the lists of documents referred to in subsection (3), as there are defendants in the suit, for service upon the defendants.

8. Intimation of defendants. (1) When a plaint is presented to Family Court, it—
- (a) may fix a date ordinarily of not more than thirty days for the appearance of the defendant;
- (b) shall issue summons to the

defendant to appear on a date specified therein;

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

(i) to each defendant, by registered post, acknowledgment due, a notice of the suit together with a copy of the plaint, a copy of the schedule referred to in sub-section (2) of section 7 and copies of the documents and a list of documents referred to in sub-section (3) of the said section; and

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

(2) Every summons issued under clause (b) of sub-section (1) shall be accompanied by a copy of the plaint, a copy of the schedule referred to in sub-section (2) of section 7, and copies of the documents and list of documents referred to in sub-section (3) of the

said section.

(3) On receipt of the notice under clause (c) of sub-section (1), the Chairman shall display the notice on the Notice Board of the Union Council for a period of seven consecutive days, and shall, as soon as may be, after the expiry of the said period, inform the Family Court of the notice having been so displayed.

(4) Service of the plaint and its accompaniments in the manner provided in clause (b) or clause (c) of sub-section (1) shall be deemed to be due service of the plaint upon the defendant.

(5) Every notice and its accompaniments under clause (c) of sub-section (1) shall be served at the expense of the plaintiff. The postal charges for such service shall be deposited by the plaintiff at the time of filing the plaint.

(6) Summons issued under clause (b) of sub-section (1) shall be served in the manner provided in the Code of Civil Procedure, 1908, Order V, Rules 9, 10, 11, 16, 17, 18, 19, 21, 23, 24, 26, 27, 28 and 29. The cost of such summons shall

(6) Summons issued under clause (b) of sub-section (1) shall be served in the manner provided in the Code of Civil Procedure, 1908, Order V, Rules 9, 10, 11, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28 and 29. The cost of such summons

be assessed and paid as for summons issued under the Code of Civil Procedure, 1908.

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

shall be assessed and paid as for summons issued under the Code of Civil Procedure, 1908.

9. Written statement.- (1) On the date fixed under clause (a) of sub-section (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith a list of his witnesses alongwith a précis of the evidence that each witness is expected to give.

Newly Added

(1-A) A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written

statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it.

Newly Added

- (2) Where a defendant relies upon a document in his possession or power, he shall produce it or a copy thereof in the Court along with the written statement.
- (1-B) A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make any claim provided in Part I of the Schedule, which shall be deemed as a plaint.

- (3) Where he relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents in a list to be appended to the written statement.

- (4) Copies of the written statement, list of witnesses and précis of evidence referred to in sub-section (1) and the documents referred to in sub-section (2) shall be given to the plaintiff, his agent or advocate present in the Court.
- (3) Where he relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents in a list to be appended to the written statement giving reasons of relevancy to the defence in the written statement.

If the defendant fails to appear on

the date fixed by the Family Court
for his appearance, then--

(a) if it is proved that the summons or notice was duly served on the defendant, the Family Court may proceed ex-parte; provided that where the Family Court has adjourned the hearing of the suit ex- parte, and the defendant at or before such hearing appears and assigns good cause for his previous non-appearance, he may upon such terms as the Family Court direct, be heard in answer to the suit as if he had appeared on the day fixed for his appearance; and

(b) if it is not proved that the defendant was duly served as provided in sub-section (4) of section 8, the Family Court shall issue fresh summons and notices to the defendant and cause the same to be served in the manner provided in clauses (b) and (c) of sub-section (1) of section 8.

(6) In any case in which a decree is passed ex-parte against a

defendant under this Act, he may apply within reasonable time of the passing thereof to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree as against him, and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also.

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

(2) On the date so fixed, the Court shall examine the plaint, the

written statement (if any) and the précis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties, and their counsel.

(3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.

(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording evidence.

Newly Added

(5) In a suit for dissolution of marriage on the sole ground of Khula, the Court shall determine and restore to the husband benefits, derived by the wife in consideration of marriage and pass decree of dissolution of marriage.

11. Recording of evidence.- (1) On the date fixed for recoding of the evidence, the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

(2) The Court shall not issue any summons for the appearance of any witness unless, within three days of the framing of issues, any party intimates the Court that it desires a witness to be summoned through the Court and the Court is satisfied that it is not possible or practicable for such party to produce the witness.

(3) The witnesses shall give their evidence in their own words:

Provided that the parties or their counsel may further examine, cross-examine or re-examine the witnesses:

Provided further that the Family Court may forbid any question which it regards as indecent, scandalous or frivolous or which appears to it to be intended to insult or annoy or be needlessly offensive in form.

(3-A) The Family Court may, if it so deems fit, put any question to any witness for the purposes of elucidation of any point which it considers material in the case.

(4) The Family Court may permit the evidence of any witness to be given by means of an affidavit:

Provided that if the Court deems fit it may call such witness for the purpose of examination in accordance with sub-section (3).

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

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

Newly Added

(3) The Family Court shall, while passing decree of dissolution of marriage, determine the remaining claims in the plaint.

Newly Added

(4) The Family Court may, while dismissing the suit of the wife for dissolution of marriage, pass a decree for restitution of conjugal rights in favour of husband, if such claim is established.

Newly Added

(5) The Family Court may, while dismissing the suit of the husband for restitution of conjugal rights, pass a decree in respect of any claim made by the wife in the written statement.

- 12A. Certain cases to be disposed of within a specified period.- Notwithstanding anything contained hereinbefore, a suit for dissolution of marriage shall finally be disposed of within a period of four months from its institution:
- Cases to be disposed of within a specified period.- A Family Court shall dispose of a case under the Act within a period of four months.

Provided that where an appeal lies against the dissolution of marriage, such appeal shall be disposed of within four months.

13. Enforcement of decrees.- (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.
- No Amendment

(2) If any money is paid, and any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment and the

delivery of property, as the case may be, in the aforesaid register.

(3) Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court, the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.

(4) The decree shall be executed by the Court passing it or by such other Civil Court as the District Judge may, by special or general order, direct.

(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.

14. Appeal.—(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable –

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

(b) to the District Court, in any other case.

(2) No appeal shall lie from a decree passed by a Family Court:-

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower not exceeding rupees fifteen thousand;

(c) for maintenance of rupees five hundred or less per month.

(b) for dower, dowry and personal property not exceeding rupees thirty thousand;

(c) for maintenance of rupees one thousand or less per month.

(3) The appellate court referred to in sub-section (1) shall dispose of the appeals filed under this section within a period of four months.

Newly Added

(4) No appeal or revision shall lie against an interim order.

15. Power of Family Court to summon witnesses. (1) A Family Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document. No Amendment

Provided that--

(a) no person who is exempt from personal appearance in a Court under sub-section (1) of section 133 of the Code of Civil Procedure, 1908, shall be required to appear in person;

a Family Court may refuse to summon a witness or to enforce a summons already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or

inconvenience as in the
circumstances would be
unreasonable.

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

16. Contempt of Family Courts.- A person shall be guilty of contempt of the Family Court if he, without lawful excuse--
- (a) offers any insult to the Family Court; or
 - (b) causes an interruption in the work of the Family Court; or
 - (c) refuses to answer any question put by the Family Court, which he is bound to answer; or
 - (d) refuses to take oath to state the truth or to sign any statement made by him in the Family Court;

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

17. Provisions of Evidence Act and Code of Civil Procedure not to apply.-(1) Save as otherwise expressly provided by or under this Act, the provisions of the Evidence Act, 1872, and the Code of Civil Procedure, 1908 (except sections 10 and 11) shall not apply to proceedings before any Family Court.
- (2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts.
- Provisions of Evidence Act and Code of Civil Procedure not to apply.-(1) Save as otherwise expressly provided by or under this Act, the provisions of the Evidence Act, 1872, and the Code of Civil Procedure, 1908 (except sections 10 and 11) shall not apply to proceedings in respect of Part I of the Schedule before any Family Court.
- (2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts.

Newly Added

17-A. Interim Order for Maintenance.- At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the

fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.

Newly Added

17-B. Power of the Court to issue Commissions.- Subject to such conditions and limitations as may be prescribed, the Court may issue a Commission to.-

- (a) examine any person;
- (b) make a local investigation;
and
- (c) inspect any property or document.

18. Appearance through agents.-If a person required under this Act to appear before a Family Court, otherwise than as a witness, is a pardahnashin lady, the Family Court may permit her to be represented by a duly authorized

agent.

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| 19. | Court-fees.- Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court-fees to be paid on any plaint filed before a Family Court shall be rupee fifteen for any kind of suit. | Court-fees.- Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court-fees to be paid on any plaint or memorandum of appeal shall be rupees fifteen for any kind of suit or appeal under this Act. |
| 20 | Investment of powers of Magistrate on Judges.- Government may invest any Judge of a Family Court with powers of Magistrate First Class to make order for maintenance under section 488 of the Code of Criminal Procedure, 1898. | Family Court to exercise the powers of the Judicial Magistrate.- A Family Court shall have and exercise all the powers of a Judicial Magistrate of the First Class under the Code of Criminal Procedure, 1898 (Act X of 1898). |
| 21 | Provisions of Muslim Family Laws Ordinance, 1961 not affected.- Nothing in this Act shall be deemed to affect any of the provisions of Muslim Family Laws Ordinance, 1961, or the rules made thereunder. | No Amendment

<u>Newly Added</u>
21-A. Interim order pending suit.- The Family Court may pass an order to preserve and protect any property in dispute in a suit and any other property of a party to the suit, |

the preservation of which is considered necessary for satisfaction of the decree, if and when passed.

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| 22 | Bar on the issue of injunctions by Family Court.- A Family Court shall not have power to issue an injunction to, or stay any proceedings pending before, a Chairman or an Arbitration Council. | No Amendment |
| 23 | Validity of marriages registered under the Muslim Family Laws Ordinance, 1961, not to be questioned by Family Courts.- A Family Court shall not question the validity of any marriage registered in accordance with the provisions of the Muslim Family Laws Ordinance, 1961, nor shall any evidence in regard thereto be admissible before such Court. | No Amendment |
| 24 | Family Courts to inform Union Councils of cases not registered under the Muslim Family Laws Ordinance, 1961.- If in any proceedings before a Family Court it is brought to the notice of the Court that a marriage solemnized under the Muslim Law after the | No Amendment |

coming into force of Muslim Family Laws Ordinance, 1961, has not been registered in accordance with the provisions of the said Ordinance and the rules framed thereunder, the Court shall communicate such fact in writing to the Union Council for the area where the marriage was solemnized.

- 25 Family Court deemed to be a District Court for purposes of Guardian and Wards Act, 1890.- A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall in dealing with matters specified in that Act, follow the procedure prescribed in that Act. No Amendment
- 25A Transfer of cases.- (1) Notwithstanding anything contained in any law the High Court may, either on the application of any party or of its own accord, by an order in writing; No Amendment
- (a) transfer any suit or proceeding under this Act from one

Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district; and
(b) transfer any appeal or proceeding under this Act from the District Court of one district to the District Court of another district.

(2) A District Court may, either on the application of any party or of its own accord, by an order in writing, transfer any suit or proceeding under this Act from one Family Court to another Family Court in a district or to itself and dispose it of as a Family Court.

(3) Any Court to which a suit, appeal or proceeding is transferred under the preceding sub-sections, shall, notwithstanding anything contained in this Act, have the jurisdiction to dispose it of in the manner as if it were instituted or filed before it:

Provided that on the transfer of a suit, it shall not be necessary to commence the proceedings before the succeeding Judge de novo

unless the Judge, for reasons to be recorded in writing, directs otherwise.

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

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

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

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

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

(1) Powers to make rules.- (1) The High Court may, with the approval of the Government, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

Schedule

(See Section 5)

1. Dissolution of marriage.
2. Dower.
3. Maintenance.
4. Restitution of Conjugal Rights.
5. Custody of children.
6. Guardianship.
7. Jactitation of marriage.
8. Dowry.

5. Custody of and meeting children.

9. Personal property.

Part-II

Offences and abetment thereof under sections 337-A(i), 337-F(i), 341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code, 1860. (Act XLV of 1860).

Statement of Objects and Reasons

These recommendations of the Pakistan Law Commission seek to

amend the Family Courts Act 1964 (W. P. Act XXXV of 1964) to enhance the jurisdiction of the said Court to determine all family matters in a single suit to avoid multiplicity of suits, ensure the quick disposal of suit for dissolution of marriage on the sole ground of Khula, prescribe a time frame for disposal of suits and appeals, exempt appeals from levy of court fees, raise the non-appealable limit of decrees of recovery of dower and maintenance, make provision for interim maintenance during pendency of such claim, invest powers under the Code of Criminal Procedure 1898 upon the Court to try minor criminal offences involving spouses, enable the Court to issue injunction for protection of suit property and empower the High Court to amend, with approval of

the Government, the Schedule and
make rules.