

**Amendment of Section 10 of the
W. Pak. Family Courts Act, 1964**

Report No.73

Amendment of Section 10 of the W. Pak. Family Courts Act, 1964.

Section 5 of the West Pakistan Family Courts Act, 1964 provides that the Family Courts established under Section 3 shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule which are as follows:-

1. Dissolution of marriage, including "Khula".
2. Dower.
3. Maintenance.
4. Restitution of Conjugal Rights.
5. Custody of children, and the visitation rights of Parents to meet them.
6. Guardianship
7. Jactitation of marriage.
8. Dowry.
9. Personal property and belongings of wife.

A woman married under Muslim Law is entitled to obtain a decree for dissolution of her marriage under the Dissolution of Muslim Marriages Act, 1939 on any one or more of the following grounds.

- (i). that the whereabouts of the husband have not been known for a period of four years;
- (ii). that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii). that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv). that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v). that the husband was impotent at the time of the marriage and continues to be so;
- (vi). that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

- (vii). that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated:

- (viii). that the husband treats her with cruelty, that is to say—
 - (a) habitually assaults her or make her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
 - (b) associates with women of evil repute or leads an infamous life, or
 - (c) attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or
 - (e) obstructs her in the observance of her religious profession or practice, or
 - (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur'an;
- (ix) on any other ground which is recognised as valid for the dissolution of marriage under Muslim Law:

Provided that--

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree;
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

From various ¹judgments of the superior courts it is deduced that like the right of a husband to pronounce Talak on his wife, a wife has a right to get the marriage dissolved on the basis of Khula if she could satisfy the conscience of the court that she was unable to live with her husband and prepared to return the benefits received from him.

¹ PLD 1967 SC 97.

Section 2 of the Dissolution of the Muslim Marriages Act, 1939 does not specifically provide that a wife can seek dissolution of the marriage on the basis of Khula but clause (ix) of the foresaid section states that the wife can seek dissolution on any other ground which is recognized as valid for the dissolution of marriage under the Muslim Law. As in Muslim Law “Khula” is one of the recognized methods for dissolving the marriage if the wife is prepared to return the benefits of marriage, including amount of Mehar, ornaments etc, then this ground is covered under clause (ix) of the Dissolution of Marriages Act, 1939.

The Law & Justice Commission of Pakistan vide Report No. 33 recommended that in a suit for dissolution of marriage on the ground of “Khula” the court shall determine marriage benefits and pass decree for dissolution of marriage and suggested that in West Pakistan Act No XXV of 1964, in section 10, after sub-section (iv) 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.”

Contrary to the recommendation of the Law & Justice Commission that the court will determine and restore to the husband benefits derived by the wife in consideration of marriage when the dissolution of marriage is sought on the sole ground of Khula, the following proviso has been added in section 10 of the West Pakistan Family Courts Act, 1964 vide Ordinance No. LV of 2002.

“Provided that notwithstanding decision or judgment of any court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr receive by the wife in consideration of marriage at the time of marriage”.

By inserting the above proviso it is now mandatory for a wife to restore to the husband the Haq Mehr in case of dissolution of marriage on any ground mentioned in section 2 of the Dissolution of Muslim Marriages Act, 1939. The recommendation of the Commission was confined only to dissolution of marriage on the basis of Khula in which case she has to return the marriage benefits and not on other grounds. It is therefore proposed to amend suitably the proviso added after sub-section (4) of section 10 of the West Pakistan Family Court Act, 1964 to confine the return of Marriage benefits only in case the marriage is dissolved on the basis of Khula. Draft bill follows:-

A
Bill

further to amend the W. P. Family Court Act, 1964

Whereas it is expedient further to amend the W. P. Family Court Act, 1964 for the purpose hereinafter appearing;

It is hereby enacted as follows.

1. Short title and commencement. - (1) This Act may called the W. P. Family Court (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Amendment of Section 10, XXXV of 1964. - In the W. P. Family Court Act, 1964 (XXXV of 1964), in section 10, in the proviso, after the word "marriage" appearing for the first time, the words "on ground of Khula" shall be inserted.

Commission's deliberation on 20.8.2005

The above working paper was considered by the Commission in its meeting held on 20.8.2005 and the following are the deliberations :-

The Secretary explained that the Law & Justice Commission of Pakistan in its Report No. 33 had recommended that in a suit for dissolution of marriage on the sole ground of "Khula" the court shall determine the marriage benefits derived by the wife from husband for return to him and pass a decree for dissolution of marriage and sent it to the Federal Government to amend Section 10 of the West Pakistan Family Court Act 1964 accordingly. The amendment proposed as addition of a new Sub-section (5) of Section 10 of the said Act reads as follows:-

“(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.”

Contrary to the recommendation of the Commission, the Federal Government while amending Section 10 of the West Pakistan Family Court Act 1964 by Ordinance No. LV of 2002 inserted a proviso therein that if a reconciliation between the spouses fails the Family Court shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife. The aforesaid proviso reads as follows:-

“Provided that notwithstanding decision or judgment of any court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage”.

By inserting the above proviso it has now become mandatory for the Family Court to order for restoration of Haq Mehr to the husband irrespective of dissolution of marriage claimed by the wife on any ground as contained in Section 2 of the Dissolution of Muslim Marriage Act 1939 other than ‘Khula’. The Commission was therefore, invited to reiterate its earlier recommendation made in Report No. 33 of the commission. A Member pointed out that in cases, where dissolution is sought after a lapse of considerable time, the marital contracts is performed, hence, the husband is not entitled to the return of whole amount of Mehr. It was further observed that the law should be sensitive to the plight of those women who seek dissolution of marriage on the ground of Khula but have no means to return the amount of Mehr. It was, however, responded that the dissolution of marriage on the ground of Khula is an Islamic right but subject to the return of benefits derived by the wife out of the marriage contract. Furthermore, the provision should be so worded that there is no scope for abuse/misuse of the provision by the vested interest. The Commission, therefore, recommend that the Secretary, Ministry of Law, Justice and Human Rights may, in keeping with the observations of the Commission, suitably rephrase/amend the provision.