

MUSLIM FAMILY LAWS ORDINANCE, 1961

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THE MUSLIM FAMILY LAWS ORDINANCE, 1961

[ORDINANCE NO. VIII OF 1961]

[15th July, 1961]

Preamble. 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) Its 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 as the Central 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 and representative of each of the parties to a matter deal with in this Ordinance:

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;

(b) 'Chairman' means the Chairman of the Union Council or a person appointed by the Central or a Provincial Government, or by an officer authorized in that behalf by any such Government, to discharge the functions of Chairman under this Ordinance:

Provided that where the Chairman of the Union Council is 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 select 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 Committee constituted under the Basic Democracies Order, 1959 (P.O (No, 18 of 1959), and having in the matter jurisdiction as prescribed;

(e) 'Ward,' mean 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 these 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. 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.

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 nikahnama, the registers to be maintained by Nikah Registrars, the recorders to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikahnama 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 existing wife or wives has been obtained thereto.

(3) On receipt of the application under Sub-section (3), 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, in the case of West Pakistan to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer 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 a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(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) 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 conciliation 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 effect until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying 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 dissolves 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, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court.

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

PUNJAB AMENDMENT-PUNJAB ACT XI OF 1975

Amendment of Section 9 of Ordinance VIII of 1961. In the Muslim Family Laws Ordinance, 1961 in section 9, in sub-section (2), the full-stop occurring at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely: -

'Provided that the Commissioner of a Division may, on an application made in this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a Collector to any other Collector, or to a Director, Local Government, or to an Additional Commissioner in his Division'.

10. Dower. Where no details about the mode of payment of dower are specified in the nikahnama or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

11. Power to make rules. The Provincial Government may make rules to carry into effect the purposes of this Ordinance.

The rules made under this section in the former Province of West Pakistan are given at page 28 (infra) in this Manual. (Deleted by Ordinance XXVII of 1981.

12. Amendment of Child Marriage Restraint Act, 1929 (XIX of 1929).
In the Child Marriage Restraint Act, 1929 (XIX of 1929)-

(1) In section 2; --

(a) in clause (a) for the word 'fourteen' the word 'sixteen' shall be substituted ;

(b) in clause (c), the word 'and' shall be omitted, and

(c) in clause (d), for the full-stop at the end, a comma shall be substituted and thereafter the following new clause (e) shall be added, namely :-

(e) 'Union Council' means the Union Council or the Town Committee constituted under the Basic Democracies Order, 1959 (P.O. No. 18 of 1959), within whose jurisdiction a child marriage is or is about to be solemnized.'

(2) Section 3 shall be omitted.

(3) In section 4, for words 'twenty-one' the word 'eighteen' shall be substituted.

(4) In section 9, after the words 'under this Act', the words 'except on a complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe, and such cognizance shall in no case be taken' shall be inserted ; and

(5) Section 11 shall be omitted.]

Scope and object. The amendment of Child Marriage Restraint Act, 1929 has made the following changes in existing law :-

(1) A female under 16 years age shall be a child under the Act and it would be an offence to marry her.

(2) Previously male who married a child was liable to punishment under the Act if he was above 21 years of age. Now that age has been reduced to 18 years, so that a male of 18 years marrying a girl under 16 years of age would be liable to punishment under section 4 of the Act.

(3) Under section 9 offences under the Act would be cognizable only on the complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe.

(2. Deleted by Ordinance XXVII of 1981.)

I3. Amendment of the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939). In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2:

(a) After clause (ii), the following new clause (ii-a) shall be inserted, namely (ii-a) that the husband has taken any additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961'; and

(b) In clause (vii), for the word 'fifteen' the word 'sixteen' shall be substituted.]