

REFORMATION OF FAMILY LAWS

Following complaints received from the general public as to the severity as well as complications caused by the existing provisions of family laws, the Pakistan Law Commission decided to review the legislation in question, with a view to remove the bottlenecks and make recommendations for their reform/ improvement. We understand that the family laws, though revolutionary in spirit and having gone a long way in ameliorating the conditions of women in our society, have of late become the victim of inertia and stagnation thus inflicting untold sufferings on the female gender. It would, however, be highly exaggerated to say that the list of victims is confined to women alone as in numerous instances the application of these laws are found to be equally detrimental to the interest of male litigants. Because of the fact that these laws have not been systematically reviewed in the past, their application is resulting in hardships to the litigant parties. These laws are unable to meet the needs of time and requirements of present day society. The Commission, therefore, thought it appropriate to carry out a comprehensive review of the legislation pertaining to family matters and suggest suitable amendments to the same. To start with the Commission reviewed the Family Courts Act, 1964 and the Dowry and Bridal Gifts (Restriction) Act 1976.

THE FAMILY COURT ACT, 1964

This law was enacted in 1964 following the recommendations of S.A.Rehman's Commission, constituted in 1958. This Commission was indeed a second Commission on family matters, the earlier one, Commission on Muslim Family Law was formed in 1956 and its report led to the enactment of Muslim Family Laws Ordinance, 1961, dealing with the matters of marriage, divorce, dower, maintenance and custody of children etc. This law was considered to be a considerable improvement on the traditional family code then prevailing, as several new and advanced concepts and provisions of law were introduced into the statute. This statute was followed by the Muslim Family Courts Act, 1964 which as earlier stated was framed following the recommendations of S.A.Rehman's Commission Report. This Act provided for the establishment of separate family courts dealing with all the relevant issues pertaining to family matters. Ever since its adoption in 1964 no significant change had been introduced to the law with the result that some of its provisions are unable to cater to the modern needs and changing circumstances of the society. The Pakistan Law Commission, therefore, in its meeting held on December 5, 1991 and December 26-31, 1992 examined the Family Courts Act, 1964 and suggested various amendments to this statute.

While examining the statute the Commission confined its observations towards achieving the following objectives:

- 1- provide inexpensive and expeditious justice;**
- 2- consolidate the various causes and claims into a single unit;**
- 3- suggest appropriate forum for filing suit as well as appeal against the judgment; and**
- 4- devise a method whereunder in the eventuality of proceedings being unnecessarily prolonged, maintenance for wife may be fixed and regularly paid.**

Accordingly, the Commission suggested the following amendments to the Family Courts Act, 1964:

- 1- Section 4.- The Commission noted with concern the appointment of junior Civil Judges as Family Judges in many parts of the country. Family matters by their very nature are sensitive and delicate matters which need deft, sympathetic and persuasive handling on the part of the Judges. The need therefore is that these matters should be handled by experienced and seasoned hands i.e. Judges who could play their role effectively as envisaged under the Family Courts Act. The Commission recommends that so as to expedite the proceedings in family suits the present composition of the court may be changed and instead of a Civil Judge, such cases be decided by a District Judge or an Additional District Judge. However, in areas where such arrangements are not available, a Civil Judge 1st Class may perform as Judge Family Court.

- 2- Sections 7,9 & 12.- Family squabbles in majority of the cases in our society result in frustration and disillusionment of the parties. They tend to employ and deploy all resources available to them to settle scores with each other. The approach is to belittle and malign the other side. Litigation loaded with such intrinsic hostilities and fueled by the expertise of opposing counsels result not only in prolonging the agony of both sides but also multiplying the dispute into many other suits in different courts and sometimes in different cities. The Commission, therefore, thought it appropriate to amend the law so that all the possible claims between the parties may be consolidated into a single suit to be decided by one court. Accordingly, the Commission recommends the following changes which may be introduced in the statute:
 - (i) all family matters such as dissolution of marriage, dower, past and future maintenance, dowry, custody of children jactitation of marriage should be decided by the same Court in the same suit;

- (ii) in case of dissolution of marriage, the parties in their pleading shall state their position on matters of dowry, maintenance, dower, custody of children etc. If parties fail to state their position, the Family Court, in order to help the parties, shall record their better statement in all respects; and
 - (iii) in case of dissolution of marriage the written statement, where the suit is contested, shall be deemed to be a suit for restitution of conjugal rights and no separate suit shall lie.
- 3. **Section 14.-** In line with the amendments suggested to section 4 of the Act the importance of family matters can be further emphasised by stating that their expeditious disposal at a proper level will result in reducing bitterness between the parties thereby protecting the institutions of marriage and family in the country. The Commission feels that it is a cardinal principle of dispensation of justice world over that a person should at least have one opportunity of appeal as a matter of right. This should be the case in all family matters. The appeal would now lie to the High Court as the original suit will be heard by a District Judge or an Additional District Judge. Furthermore, in order to restrict the unnecessary prolongation of proceedings the Commission also recommends that no revision or appeal shall be permissible against an interim order of the Family Court.
- 4. **Section 17A.-** It is a common observance that in the eventuality of separation or pending divorce proceedings in the Court, the husband devises various methods and techniques in order to avoid the payment of maintenance to his wife. Proceedings in divorce cases may prolong for years and during all this time the wife remains deprived of any maintenance allowance, so very essential for her survival during the difficult interim period of separation/litigation. This state of affairs, the Commission thinks, is undesirable and calls for remedial measures to mitigate the suffering of separated/would-be divorced wives. Therefore, the Commission recommends the addition of a new section, namely

Section 17A, to the Act whereunder in situation when the suit for maintenance is not decided within 6 months time, the Family Court shall pass an order of fair maintenance for the wife to be payable regularly by the husband by the 14th of each month, failing which the suit shall be decreed against him.

- 5. Section 25-A. The Commission examined the anomalies relating to transfer of cases under the Act, specially, lack of any provision providing for inter provincial transfer of family cases, and, the ensuing hardship caused due to such vacuum, to the Women. Another fact which was viewed with concern by the Commission was that there is no uniformity of law as it is presently applicable to various provinces in the country as far as transfer provisions are concerned. For example, in Punjab new ameliorating provisions (Section 25-A & 25-B) were inserted through Punjab Act No. XXIV of 1971 providing for intra-provincial transfer of cases. The Commission wondered as to why such beneficial provisions have not been extended to other provinces after lapse of over 20 years. This anomaly has not only added to the misfortune of litigant parties, but also resulted in conflicting points of view from various High Courts. (Peshawar High Court view 1993 MLD 2070; Sind High Court view 1993 CLC 1354).**

The Commission, therefore, recommends that:

- i- On the line of Punjab amendment, all other provincial Governments should incorporate similar amendments to the Act in order to empower the High Court to transfer within the province, a family suit from one family court to another;**
- ii- A new sub-section 1-A should be added to Section 25-A of the Act as applicable in Punjab, providing for inter-provincial transfer of family suit on the application of a wife in appropriate cases.**

- 6. Schedule.- The present schedule of the Family Courts Act does not include the claim of recovery of dowry by the wife. Therefore, such a suit**

is filed in an ordinary civil court. This undoubtedly causes unnecessary hardships to the wife as due to heavy pendency in the civil courts the proceedings last for years. Since the recovery of dowry is an issue relevant to family matters the Commission decided that the schedule to the Family Court Act may be amended and the "recovery of dowry" be added to it.

Besides recommending changes to the law, the Commission also approved certain new measures of administrative nature so as to make the application of the law more effective and meaningful. The suggested measures are:

- (i) 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;**
- (ii) 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;**
- (iii) a uniform code relating to family matters on the pattern of other Muslim countries be enacted;**
- (iv) 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;**
- (v) information on women rights and on the forums where redress can be sought should be given wide publicity, utilising the print and electronic media;**
- (vi) Family Court Judges must be given training in family laws at the Federal Judicial Academy;**

- (vii) courts hearing family cases should be housed at appropriate places within court premises, keeping in view the dignity of women litigants;**
- (viii) Family laws should be included in Adult Education Programmes;**
- (ix) 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.**

Based on the recommendations of the Commission the following draft (amendment) Act is suggested:

THE WEST PAKISTAN FAMILY COURTS (AMENDMENT) ACT, 1993

Act further to amend the West Pakistan Family Courts Act, 1964. Whereas it is expedient further to amend the West Pakistan Family Courts Act, (XXXV of 1964), for the purpose hereinafter appearing.

It is hereby enacted as follows:

1. **Short title and commencement.-** (1) This Act may be called the West Pakistan Family Courts (Amendment) Act, 1993.
(2) It shall come into force at once.
2. **Substitution of Section 4, Act XXXV of 1964.-** In the West Pakistan Family Courts Act, 1964 (XXXV of 1964), hereinafter called the said Act, for Section 4, the following shall be substituted, namely:

"4. **Qualification of Judge.-** No person shall be appointed as a Judge of Family Court unless he is or has been District Judge or an Additional District Judge".

Provided that when a District Judge or an Additional District is not available in a place, a Civil Judge First Class shall be appointed as Judge Family Court.
3. **Amendment of Section 7, Act XXXV of 1964.-** In Section 7, in sub-section 2, after the word "and" occurring for the first time, the words, "in suit of dissolution of marriage all matters relating to dowry, maintenance, dower and custody of children" shall be inserted.
4. **Amendment of Section 9, Act XXXV of 1964.-** In the said Act, in Section 9, after sub-section (1), the following new sub-section (1A) shall be inserted, namely:

"(1A) Where a written statement is filed by defendant husband, it shall be deemed a plaint for restitution of conjugal rights and no separate suit shall lie for it".

- 5. Amendment of Section 12, Act XXXV of 1964.- In the said Act, in Section 12, after sub-section (2), the following new sub-sections (3) and (4) shall be added:**

"(3) The Family Court while pronouncing judgment and passing decree of dissolution of marriage shall determine all the matters regarding dower, dowry, maintenance, custody of children, whether claimed about or not by the parties in their pleading and no separate suit shall lie for it".

"(4) A Family Court while pronouncing its judgment and dismissing the suit of the wife for dissolution of marriage, shall pass a decree of restitution of conjugal rights in favour of husband".

- 6. Amendment of Section 14, Act XXXV of 1964.- In the said Act, in Section 14, for sub-section (1) the following shall be substituted namely:**

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

(b) after sub-section (2) the following new sub-section (3) shall be added, namely:

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

- 7. Insertion of a new Section 17A, Act XXXV of 1964.- In the said Act, after Section 17, a new Section 17A be added, namely:**

"17A. Interim Order for Maintenance.- Where the 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".

8. **Amendment of Section 25-A, Act XXXV of 1964.-** In the said Act, in section 25-A, after sub-section (1) a new sub-section (1-A) shall be added, namely:

"(1-A) A High Court may, either on the application of a wife or of its own accord, by an order in writing, transfer any suit or proceeding under this Act from a family court in a province to a family court in another province in which any suit or proceeding by a wife is pending."

9. **Amendment of Schedule, Act XXXV of 1964.-** In the said Act, in the Schedule, after entry (7), the following entry (8) shall be added, namely:

"(8) Recovery of dowry or its value in money".

STATEMENT OF OBJECTS AND REASONS

These recommendations of the Pakistan Law Commission seek to amend the West Pakistan Family Courts Act, 1964 to provide for qualification of a Judge of the Family Court and determination of all matters relating to restitution of conjugal rights, dower, dowry and maintenance of children in a single suit to avoid separate litigation between the parties in various Courts.

THE DOWRY AND BRIDAL GIFTS (RESTRICTION) ACT, 1976

The payment of dowry despite being generally regarded as an evil practice and a legacy of colonial domination still persists in our society. Legal prohibition on payment of excess dowry notwithstanding, such dowry is given and openly displayed and exhibited. Indeed the present trends and indicators speak of this evil taking deeper roots in our culture and spreading its tentacles into new horizons. The practice, previously an urban problem and confined to upper and middle classes only, has now seeped deep down the rural belt and is commonly practiced in all strata of the population.

The present practice is undoubtedly a legacy of the domination of Hindu culture in the pre-partition days. Islam is certainly opposed to this evil practice which involves extravagance and subjects the families to severe pain and suffering, besides containing harmful connotations for the bride as several instances have come to light wherein the bride being unable to bring an adequate amount of dowry was subjected to torture and cruelty by the in-laws. Islam fully recognises the right of women to inheritance and receiving general gifts from the family members, however, it does not favour a custom which in its application brings untold sorrows and sufferings to families. Instances are available in Muslim history when the Prophet of Islam and other pious Caliphs granted a modest amount of dowry/bridal gifts to their daughters/wards. Similarly Islam is not against the solemnisation of marriage through celebrations including serving meals, provided that such arrangements are unpretentious and moderate. The following verses of Quran may be quoted in support of this assertion:

Those who, when they spend
are not extravagant and not
niggardly, but hold a just
(Balance) Between those
(extremes) XXXV:67.

Make not thy hand tied (like a
niggard's) to thy neck nor
stretch it forth to its utmost

reach so that those become
blame worthy and destitute.
XVII:29.

The Commission having discussed the issue in detail and analysing the problems/issues involved therein, came to the conclusion that the present law of dowry and bridal gifts needs review and reformation. The Commission, therefore, suggested the following amendments to the Dowry and Bridal Gifts (Restriction) Act 1976:

1. The present limit of marriage expenses, marriage presents and bridal gifts which were fixed earlier in 1976 should be rationalised. However, all forms of extravagance in the shape of illumination, 'mujras' and serving several dishes in all marriage functions should be prohibited.
2. Guest attending such marriage ceremonies which are patently extravagant and therefore prohibited under the law should be fined.
3. With a view to avoid future disputes with regard to the amount of dowry and bridal gifts given by the parties to each other, a list of such items should be prepared and exchanged at the time of 'Nikkah' verified by the 'Nikkah-Khawn' and witnesses of 'Nikkah'.

Accordingly, the Commission recommends the following draft (Amendment) Act on the subject.

THE DOWRY AND BRIDAL GIFTS (RESTRICTION) (AMENDMENT) ACT, 1993

An Act further to amend the Dowry and Bridal Gifts (Restriction) Act, 1976.

Whereas it is expedient further to amend the Dowry and Bridal Gifts (Restriction) Act, 1976 (XLIII of 1976), for the purposes hereinafter appearing;

It is hereby enacted as follows:

- 1. Short title and commencement.- (1) This Act may be called the Dowry and Bridal Gifts (Restriction) (Amendment) Act, 1993.
(2) It shall come into force at once.**

- 2. Amendment of Section 3, Act XLIII of 1976.- In the Dowry and Bridal Gifts (Restriction) Act, 1976 (XLIII of 1976) hereinafter called the said Act, in Section 3,-**
 - (a) in sub-section (1).-**
 - (i) for the words "five thousand rupees" the words "fifty thousand rupees if the marriage ceremony is held in urban area and twenty thousand rupees if such ceremony is held in rural area" shall be substituted; and**

 - (ii) in the explanation for the words "five thousand rupees" the words and commas "fifty thousand rupees and twenty thousand rupees, respectively", shall be substituted; and**

 - (b) after sub-section (2), the following new sub-section (3) shall be added namely:**

"(3) No bridegroom or any person on his behalf shall demand dowry, gift or give any indication of such demand in any manner whatsoever".

3. **Amendment of Section 4, Act XLIII of 1976.-** In the said Act, in Section 4, for the words "one hundred rupees" the words "four hundred rupees if the marriage ceremony is held in urban area and two hundred rupees if the marriage ceremony is held in rural area" shall be substituted.
4. **Amendment of Section 6, Act XLIII of 1976.-** In the said Act, in Section 6.-
 - (a) for the words "two thousand five hundred rupees" the words "twenty five thousand rupees if the marriage is ceremonised in urban area and ten thousand rupees if such ceremony is held in rural area" shall be substituted; and
 - (b) after the section amended as aforesaid, the following explanation shall be added, namely:

"Explanation:- All forms of extravagance, unnecessary illumination, firing or fire cracking, 'mujras' of any kind and serving food more than one dish at all marriage functions shall be avoided".

5. **Insertion of a new Section 6A, Act XLIII of 1976.-** In the said Act after Section 6, the following new Section 6A shall be inserted, namely:

"6A. Restriction of Attendance.- Whoever knowingly and wilfully attends a marriage function which is so extravagant that it is patently far beyond the limits specified by this Act shall be punished with fine amounting to rupees five hundred".

6. **Amendment of Section 8, Act XLIII of 1976.-** In the said Act, in Section 8, after sub-section (2), the following new sub-section (3) shall be added, namely:

"(3) The parents or guardians of each party to a marriage shall prepare and exchange complete list of dowry duly signed by all the witnesses of 'Nikkah' and by the 'Nikkah Khawn' at the time of 'Nikkah'.

STATEMENT OF OBJECTS AND REASONS

These recommendations of Pakistan Law Commission seek to amend the Dowry and Bridal Gifts (Restriction) Act, 1976 in order to curtail extravagance in expenditure in marriage functions, to impose ban on demand of dowry and to protect the rights of brides in respect of their belongings and to resolve future disputes between the spouses.