

**AMENDMENT IN SECTIONS 5 AND 7 OF THE  
MUSLIM FAMILY LAWS ORDINANCE, 1961**

**Report No.74**

## **AMENDMENT IN SECTIONS 5 AND 7 OF THE MUSLIM FAMILY LAWS ORDINANCE, 1961**

The Muslim Family Laws Ordinance 1961 was promulgated inter alia for the proper registration of marriages and divorces, so as to safeguard and protect the rights of women including their right to maintenance, etc. This Ordinance has been subjected to criticism not only from the point of view of Shariah but the women rights activists are also not fully satisfied with it. This law has been reviewed, time and again, by the Council of Islamic Ideology and the Secretariat of the Law and Justice Commission of Pakistan, and amendments have been proposed to certain provisions thereof. Some of its provisions have been declared by the Federal Shariat Court as repugnant to the injunctions of Islam and appeal against the judgment is pending in the Supreme Court. However, sections 5 and 7 of the Ordinance need to be reviewed and reformed. Section 5 is reproduced as follows:

**Section 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 marriage under this Ordinance, the Union Council shall grant licence to one *or* more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one ward.

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

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

(5) The form of Nikah-nama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which 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.

This section is intended to regulate procedure of Nikah and to keep record of marriages to avoid possible complications such as the paternity of children etc. Nothing in this section seems to be objectionable, however, non-registration of Nikah under sections 5 does not invalidate the Nikah, if otherwise such Nikah has been performed in accordance with the requirements of Shariah. This is also the view of the Federal Shariat Court in the case of Allah Rakha v Federation of Pakistan, PLJ 2000 (36). For effectual compliance with this provision, the punishment prescribed in sub-section 4 of section 5 needs to be enhanced, as also proposed by the Federal Shariat Court in the same case as follows:

"Non-registration of Nikah under Section 5 of the Muslim Family Laws Ordinance, 1961 as held by this Court in the cases..... does not invalidate marriage/Nikah itself merely on account of non-registration of Nikah, if otherwise Nikah has been performed in accordance with the requirements of Islamic Shariah. We in view of the above feel inclined to recommend that the Government should clarify this position in the provision itself.

We may also observe that for having effectual compliance of the provision it would be desirable that the punishment prescribed by sub-section (4) of the Section 5 be suitably enhanced as that prescribed presently' is not adequate to attract strict compliance of the provision".

With regard to the Court's observation that the law be clarified, it is submitted that there exist no judgment of any court leading to the conclusion that non-registration shall render the marriage invalid or void. On the other hand, such a clarification may undo the object of the penal clause altogether. Thus, the penalty of fine prescribed in sub-section (4) of section (5) may be enhanced from Rs.1,000/- to RS. 1 0,000/- as follows:

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

### **Section 7 of the Ordinance is reproduced as follows:**

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

(2) 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 subsection (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation, between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *Talaq* is pronounced, *Talaq* shall not be effective until the period mentioned in subsection (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by *Talaq* effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless

such termination is for the third time so effective.

This section gives the procedure for keeping, the record of talaq to block not only the way of unnecessary litigations and exploitation of divorced women but prevent hasty dissolution of marriages by giving a procedure for determining time when the talaq is to become effective and prescribes a form for initiating reconciliation efforts between the estranged husband and wife. The purpose of this section is also to restrain the husband from pronouncing talaq in an arbitrary manner.

According to sub sections (1) a notice of Talaq to the Chairman Union Council is mandatory for giving effect to divorce as was held in judgments in the cases of Syed Ali Nawaz Gardezi v Lt. Col. Muhammad Yousuf ( PLD 1963-SC-51) and Abdul Mannan v Safurun Nessa (1970 SCMR-845). The subsequent judgments however rendered such mandatory requirement of notice of talaq as directory and it seems to have become practically a somewhat redundant provision. Thus the husband can easily blackmail, torture and harass the divorced wife by withholding this notice, especially in cases of remarriage by the divorced women. It has often been observed that the validity of such marriage is challenged by the ex husband on the ground that he had not divorced the wife or that she has contracted a second marriage without going through the process under section 7 of the Ordinance 1961. Resultantly in several such like cases, women are involved in Hudood Cases, as for example the case of Allah Dad v Mukhtar (1992 SCMR 1273) where the verbally divorced wife was later on involved in Zina under sections 10 and 16 of the offence of Zina (Enforcement of Hudood) Ordinance 1979. The Court held;

It is now evident that a notice of talaq to the Chairman is not

mandatory under the injunctions of Islam and any divorce pronounced or written by a husband cannot be ineffective or invalid in Shariah merely because its notice has not been given to the Chairman. -----

In the case of *Mirza Qamer Raza v Mst Tahira Begum* (PLD 1988 Kar 1697) also it was held that ineffectiveness of talaq in absence of notice to Chairmen, as envisaged by section 7 of the Muslim Family Laws Ordinance, is against the injunctions of Islam. This view was also upheld and affirmed by the Federal Shariat Court in the case of *Muhammad Sarwar v State* (PLD 1988 FSC 42).

Furthermore, no time limit for giving a notice of talaq to the Chairman has been provided in sub-section (1). A time limit of seven days may be prescribed.

The Aurat Foundation had long before proposed a new sub-section (2) after subsection (1) for giving safeguard to the verbally divorced wife which may be adopted alongwith providing a same safeguard to the husband in the case of verbal talaq-i-tafveez. The proposed new sub-section (2) and (3) are as under;

(2). Where a man who pronounces talaq on his wife, in any form whatsoever, fails to give the Chairman notice under sub-section (1), the wife may give notice of the same.

(3). The provision of subsection (2) shall mutatis mutandis apply to the woman enforcing talaq-i-tafveez.

In view of the above observations of the High Court, Federal Shariat Court and the Supreme Court, Section 7 of the Muslim Family Laws Ordinance, 1961 needs to be properly amended so that the law may not be abused against the women who are either verbally divorced or notice of talaq is held up for ulterior motives.

It is, therefore, proposed that;

1. Sub section (1) may be amended as under;

(1) Any man who pronounces talaq on his wife or any woman who exercises her right of talaq-i-tafveez shall, within seven days of the pronouncement of talaq or talaq-i-tafveez, as the case may be, in any form whatsoever, give the Chairman notice in writing of his or her having done so, and shall supply a copy thereof to the other party.

2. The following new sub-sections (2) and (3) may be added after sub-section (1).

(2). Where a man who pronounces talaq on his wife, in any form whatsoever, fails to give the Chairman notice under subsection (1), the wife may give notice of the same.

(3). The provision of subsection (2) shall mutatis mutandis apply to the woman enforcing talaq-i-tafveez.

3. Sub-sections 2 to 6 may be renumbered as 4 to 8.

Comparative table showing existing provisions and proposed amendments follows:

### Comparative Table

Existing Provision	Amended Provision
Section 5 Registrations. of Marriages. (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.	No amendment

<p>(2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licence to one or more persons, to be called Nikah Registrars, but in no case shall more than one.Nikah Registrar be licensed for anyone ward. .</p>	<p>No amendment</p>
<p>(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.</p>	<p>No amendment</p>
<p>(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.</p>	<p>(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 ten thousand rupees, or with both.</p>
<p>(5) The form 0 Nikah-nama, the registers to be maintained y Nikah Registrars, the records 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.</p>	<p>No amendment</p>
<p>(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. Section 7. "Talaq." (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.</p>	<p>No amendment</p> <p>Section 7 Talaq. (1) Any man who wishes to divorce his wife or any woman who exercises her' right of talaq-i-tafveez shall, within seven days of the pronouncement of talaq or talaq.i-tafveez, as the case may be, in any form whatsoever, give the Chairman notice in writing of his or her having</p>

<p>(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.</p> <p>(3) Save as provided in subsection (5) <i>Talaq</i> unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman.</p> <p>(4) Within thirty days of the receipt of notice under subsection (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation, between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.</p> <p>(5) If the wife be pregnant at the time <i>Talaq</i> is pronounced, <i>Talaq</i> shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever later, ends.</p>	<p>done so, and shall supply a copy thereof to the other party.</p> <p>(2). Where a man who pronounces talaq on his wife, in any form whatsoever, fails to give the Chairman notice under subsection (1), the wife may give notice of the same to the Chairman.</p> <p>(3). The provision of subsection (2) shall mutatis mutandis apply to the woman enforcing talaq-i-tafveez</p> <p>Sub-sections 2 to 6 may be renumbered as 4 to 8.</p> <p>No amendment</p> <p>No amendment</p> <p>No amendment</p>
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(6) Nothing shall debar a wife whose marriage has been terminated by *Talaq* effective under this section from re-marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

No amendment

Draft Bill follows:

A  
Bill

further to amend the Muslim Family Laws Ordinance 1961

**WHEREAS** it is expedient further to amend the Muslim Family Laws Ordinance 1961 (Ord VIII of 1961) for the purposes hereinafter appearing;

It is hereby enacted as follows:

**1. Short title and commencement.-** (1) This Act may be called the Muslim Family Laws (Amendment) Act, 2005.

(2) It shall come into force at once.

**2. Amendment of section 5, Ordinance VIII of 1961.-** In the Muslim Family Laws Ordinance, 1961 (Ordinance VIII of 1961), hereinafter, referred to as the said Ordinance, in section 5, in sub-section (4) for the word "one" the word "ten" shall be substituted.

**3. Amendment of section 7, Ordinance VIII of 1961.-** In the said Ordinance, in section 7,

(a) for sub-section (1), the following shall be substituted, namely;

"(1) Any man who wishes to divorce his wife or any woman who exercises her right of talaq-i-tafveez shall, within seven days of the pronouncement of talaq or talaq-i-tafveez, as the case may be, in any form whatsoever, give the Chairman notice in writing of his or her having done so, and shall supply a copy thereof to the other party.

(b) the existing sub-sections (2) to (6) shall be renumbered as sub-sections (4), (5), (6), (7) and (8); and

(c) before the aforesaid renumbered sub-sections the following new sub-sections shall be inserted, namely;

"(2). Where a man who pronounces talaq on his wife, in any form whatsoever, fails to give the Chairman notice under subsection (1), the wife may give notice of the same to the Chairman.

(3). The provision of subsection (2) shall mutatis mutandis apply to the woman enforcing talaq-i-tafveez".

### **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 :-

While explaining the proposal, the Secretary stated that Sub-section (1) of Section 5 of the Muslim Family Laws Ordinance 1961 provides that every marriage solemnized under the Ordinance shall be registered in accordance with provisions of Ordinance. The Sub-section (4) of the said Section further provides that a person other than the Nikah Registrar, solemnizing a marriage is required to report the marriage for registration to the Nikah Registrar, failure to do so leads to punishment 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. It was explained to the Commission that because of devaluation of the rupee and inflation in the economy the existing punishment of fine amounting to rupees one thousand has lost its deterrence value, therefore, the amount of fine may be enhanced from rupee one thousand to rupees ten thousand and the Commission approved the proposal.

The Commission was further informed that Section 7 of the Muslim Family Laws Ordinance 1961 provides that a husband who wishes to divorce his wife shall as soon as may be after the pronouncement of Talaq in any form whatsoever, give the

Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife on which the Chairman shall proceed for reconciliation amongst the spouses. The Commission was informed that by holding the aforesaid provisions of law as directory by the courts, there has developed a tendency of not giving notice of Talaq to the Chairman of the Union Council by the husband. However, if such wife contracts marriage after passing of 'Iddat' period, the husband makes a report to the police against her for contracting the marriage in the existence of earlier marriage, and also alleges against her committing the offence of Zina. To avoid this eventuality, it was proposed that the Commission may approve that if no notice of Talaq is given to the Chairman by the husband, the wife may give such notice of the facts of pronouncing Talaq by the husband to the Chairman and send a copy of it to the husband and the Chairman shall initiate reconciliation proceedings on it as in case a notice sent by the husband. Further, a wife while exercising her right of 'Talaq Tafveez', should also give a notice of it to the Chairman and send a copy of it to the husband. And if she fails, the husband may give such a notice to the Chairman with a copy to the wife. The Commission after deliberations approved the proposal.