
Reforms in Muslim Family Laws with special Reference to Pakistan

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Abstract

In the Muslim world, Family law reforms have been ongoing since last century. The main focus of these reforms has been on Muslim women's rights in terms of marriage and divorce. Family law has remained an important topic of Shariah, which is the part of Islamic law that has remained in force to regulate the lives of nearly 500 million Muslims around the globe. The review of the research revealed the general impression that relates to the significant social and economic changes occurring in the majority of Muslim countries. These changes have demanded legislation to protect Muslim women's rights, particularly in the areas of marriage and divorce. The research will investigate the reforms in three Muslim countries namely; Egypt, Algeria and Pakistan and would provide concrete steps that would help bring practical changes in ensuring safeguard of women in their family life spheres. Muslim women's rights, which were formerly curtailed, are now secured thanks to the Muslim Family Laws Ordinance, which was passed in Pakistan in 1961. Family Law Courts appear to be urgently needed in order to ensure the full benefits of reform. Since the creation of Pakistan in 1947, the tedious system governing divorce suits under the Anglo-Muhammadan Law has remained intact. However, the promulgation of Muslim Family Laws Ordinance, which was enacted in response to the Law Reforms Commission's recommendations, is a step in the right direction and offers a lot of optimism for the future in terms of streamlining the legal process. A legislation of Muslim Personal Law in Pakistan, taking into account the change, would be a valuable undertaking. Such legislation could address the shortcomings of Anglo-Muhammadan Law as well as some of the redundancies of the cumbersome legal process. It is almost mandatory to conduct extensive research and study on the subject in order to estimate the

extent of the difficulties before designing solutions. A long-felt need has been met in Pakistan's Muslim Family Laws Ordinance.

However, more effort is needed to generate greater and longer-term effects from this reform. Algeria's Code *Morand* and Egypt's Code of Personal Law could serve as useful prototypes in this regard. Although, a lot of reforms are brought about and still some are pending in the Assemblies to be adopted, proper implementation is the first and basic step to ensure the right way forward especially for women. Strict government supervision is a must in such regard that can act as a watchdog.

Keywords: Muslim Family Laws, Legislation in Pakistan, Reforms in Muslim Personal Laws, Marriage and Divorce, Contemporary Muslim World

INTRODUCTION:

The twentieth century is as important a period in history as any that Islam has yet to face. Modernization is the major issue of our century, and the key problems revolve around the phenomena of change on all levels: political, economic, social, and legal. From the perspective of Islamic modernism, the reform of Muslim family law has been the most pressing practical problem. The family law is the essential part of Shari'ah, and it is the part of it that has stayed in force to govern the lives of nearly 500 million Muslims around the world. Classical Muslim family law offered a complete approach to the major areas of family life, such as marriage, divorce, and inheritance that was in line with mediaeval Muslim civilization. Islamic law could generally suit the needs of the times as long as the framework of Muslim society remained intact. Thus, over a ten-century period, the classical view of law dominated Muslim civilization, and Muslim family law remained in effect until contemporaries.

However, in the contemporary era, when Muslim societies strove to utilize modern technology and industrialization, this status has been drastically challenged. These new innovations have resulted in significant societal changes, including changes in family structure and, most notably, changes in women's standing and function in society. Although they have not yet pervaded the entire society, their progress has been sufficient to warrant

modifications in the laws of marriage, divorce, and inheritance in order for the law to better reflect the application of Qur'anic ideals to contemporary societal requirements.

In Muslim-majority countries, family law has changed dramatically over the last century, and the process is still ongoing, with both intensity and controversy. In general, this transformation has been referred to as "reform," which is roughly defined as the modification of existing family laws that are founded on or supported by Islamic legal principles in order to better women's and children's rights. The reform was implemented in one of two ways: either Islamic personal law was modified, or it was totally destroyed and replaced with western laws, as in the cases of Turkey and Albania.¹ Advocates for Muslim family law reforms frequently use legal arguments based on Islamic law, tacitly or openly accepting the Islamic classification of family law. In recent years, this "reform from within" strategy has gained traction, and the arguments have grown more ambitious, particularly as women's groups have become more prominent and vociferous. As a result, in most regions of the Muslim world, Islamic legal considerations tend to dominate discussions of family law. As a result, reform efforts must generally be backed up by an Islamic legal argument in order to succeed.

While the intensity of Islamic criminal penalties such as amputation, whipping, and stoning make for compelling news when they occur, only a few countries have kept or restored these harsh punishments, the most notable of which being Iran, Pakistan, Sudan, and Nigeria's northern states. Rather, the most common form of Islamic law, as enacted by national legislation around the world, is in the area of family law, which includes marriage, divorce, child custody, and inheritance. In most Muslim-majority nations, the state presents Muslim family law as Islamic law in the form of national law, which is widely accepted by the populace. In addition, family law is sometimes seen as the only branch of Islamic law that has effectively withstood secularization and westernization. Religious experts, legislators, and major portions of Muslim societies continue to emphasize the preservation of an Islamic framework for family law.

The theological basis of family law in Muslim nations do not imply that it has remained unchanged or is immune to change. In Muslim-majority nations, on the other hand, family law has changed dramatically over the

last century, and the process is still ongoing, with both intensity and controversy. In general, this development has been referred to as "reform," which is roughly defined as the modification of existing family laws that are founded on or supported by Islamic legal principles in order to better women's and children's rights. Some reformers express openly that full equality between men and women is their ultimate aim, while others do not specify a precise end result other than to improve the current situation. Restricting polygamy, limiting a husband's right to unilaterally declare his wife divorced, raising the marriage age, expanding a wife's access to divorce, extending a mother's right to child custody, and limiting a wife's duty of obedience toward her husband are all examples of common reform efforts.

This research paper aims to investigate the reforms in Algeria, Egypt and Pakistan along with the gaps that need to be filled which are the real reason for many ambiguities and unclear nature of some family laws. Also, the detailed paper will spot light on the impacts of such reforms in family laws on the lives of people living in such territories. Nonetheless, it will also suggest concrete suggestions and practical steps on how to cover such gaps that are the real bone of contention in family laws reforms. Special analysis will be provided in Pakistani perspective.

Muslim Family Law Reforms in Egypt:

We'll now look at the key characteristics of Egypt's Muslim Family Laws and the reforms that have been implemented in recent years. Mohammad Kadri Pacha oversaw the creation of the Egyptian Code of Family Law in 1875.²

Any man or woman over the age of 15 is regarded as a major and competent to engage into a marriage contract, according to the Egyptian Code of Personal Law. In 1909-1910, under the influence of European rules, a change was made to the law that required all marriages to be registered.³ All marriages must be completed with the aid of qadis or madhuns (who are chosen by the qadis), chosen by the Ministry of Justice to perform their tasks. Only marriages performed before the qadis are deemed valid, according to the Code. At the marriage ceremony, the presence of 02 male witnesses or 01 male and 02 female witnesses (Muslims and major) is required. A legitimate Muslim marriage also

requires the traditional exchange of offer (ijab) and acceptance (qabul). The offer and acceptance must be performed while the witnesses are present.⁴

The kafaah (equality) idea seems to be still quite influential in Egypt. One of the prerequisites for a valid Muslim marriage is this. Despite the fact that every Muslim woman above the age of 15 is legally permitted to enter into a binding marriage contract, either directly or through an intermediary, her ability to wed is constrained by the dowry requirement and the equality regulations outlined in the Code. The woman's parents or guardians have the right to request the annulment of the marriage if either of these conditions is not satisfied.⁵ Generally speaking, a Muslim woman shouldn't engage into a marriage contract with a husband who has a lower social rank than she has since doing so would result in the divorce because the marriage will be regarded to be incompatible.

The husband's status should be essentially equivalent to that of his wife in the following categories, per the Egyptian Personal Code:⁶

- a) Birth, if they are both of Arab origin ;
- b) Islamic ancestry ;
- c) Fortune ;
- d) Virtue ; and
- e) Professional or social status.

Whether or not they are of Arab descent, the following four qualities are necessary for both parties. Due to the fact that Arabia served as the birthplace of Islam and that Prophet Muhammad, a member of the noblest Arab tribe known as the Bani Hashim, received the Qur'an in Arabic, the first characteristic, in terms of merit —equality in birth—, is regarded as being superior to the other four.

It suffices if the husband's great-grandfather practiced Islam. He will receive the same treatment as his wife, who comes from a Muslim background. One cannot compare a Muslim whose father is a Muslim to a Muslim whose parents are not Muslims. A person with non-Arab heritage can become a nobleman because of his understanding of religion and other personal qualities. This nobility is seen as higher to that of the ancestors. Even while it is important, equality of fate is not fully necessary. The intellectual skills of a spouse might balance out the wealth of his wife. Moral ideals underpin virtue equality.⁷ This suggests that just a man's and a woman's unique merits should be taken into account; good men should

only be with good women, and bad men should only be with bad women, even if they are derived from good parents.

Gender equality in the workplace is not something Abu Hanifah values highly. In contrast to his student Abu Yusuf, the Egyptian Code holds that a man working in a low trade cannot be treated equally with a woman engaged in a noble profession and holding a high standing in society.⁸

In Egypt, the mock dower is not inflexible. The main plan of action is to pick a sizable payment that is proportionate to the socioeconomic status of the marriage. In Egypt, it is customary to state that a portion of the dowry must be paid at the time of the wedding and the other amount must be paid over a period of time that varies by location. A typical arrangement is for two thirds of the dowry to be paid before or (at the latest) at the time of marriage, with the final third being paid when the marriage is dissolved—whether via the death of one spouse or through repudiation. In Egypt, the two-thirds of the dowry are typically paid before or at the time of marriage, despite the fact that there is no such prescription in the Qur'an or the Sunnah.⁹

According to the Egyptian Personal Code, the stipulation of the dowry is not an essential need in a marriage contract. The wife has the right to demand mahr al-mithl, or customary dower, which is calculated depending on the use and social standing of the woman's family, unless otherwise specified. If the minimum dowry amount has been set, the husband must pay it right away. The woman is entitled to the customary dowry if it is less than the minimum. In addition to its significance to regional custom and usage, the woman's social standing, age, financial situation, virtue, intelligence, attractiveness, virginity, and other factors that are important in judging a match's attraction are determined.¹⁰

When a marriage is arranged without a dower clause, it is assumed that the wife had no objections to the type or quantity of the dower or had left it up to her husband to decide at a later time. The wife has the right to request that the husband fix the customary dower before the marriage is consummated in this situation. If the husband objects, the wife has the right to complain to a magistrate, who may order the husband to decide the amount of dower jointly with the wife; if not, the magistrate will determine the customary dower in line with the law.¹¹

In situations when the wife has been rejected before the consummation of a marriage without a predetermined dower, jurists disagree on the acceptable amount of (customary) dower. According to one viewpoint, the wife lacks the legal authority to request the customary dower. This is based on a Qur'anic verse's interpretation:

If ye divorce them before ye have touched them and ye have appointed them a portion then (pay them) half of that which ye appointed unless they (the women) agree to forgo it in whose hand is the marriage tie. To forgo is nearer to piety. And forget not kindness among yourselves. Allah is seer of what you do. (II: 237)¹²

Those who disagree assert that the previously stated clause does not intend to establish a rule governing a woman's loss of dower rights following a divorce in which no dower sum has been determined.

The Egyptian Code does not specify a maximum amount of dower. The set amount of dower can be increased if both spouses agree. No husband's dower can be paid to the husband in full or in part by the wife's paternal guardian. The wife, on the other hand, retains the right to remit the entire amount of dower, or a portion of it, if it has been determined in monetary terms or gold. It is not necessary for the husband's approval to such a remission. The wife or her guardian must formally accept any formal augmentation of the specified sum of dower.¹³

The right of a Muslim woman to claim dower payment is often invoked in Egypt. She keeps her claim's precedence over all other creditors. A guarantor for the payment of the dower may be either spouse's father, the husband's grandpa, guardian, or a common guardian in marriage.

According to the Egyptian Code, conditional dower exists when the wife must fulfil certain requirements, such as attaining a certain level of education, before the amount of dower is paid.¹⁴ If her husband does not carry out the dower agreement, the wife might accept compensation as long as the thing is not illegal or contrary to Islamic teachings, such as hogs or wine. The husband and wife may legally designate a dower for a lesser sum than the customary one if the husband pledges something else in exchange. The husband and wife may also decide on a higher dower sum than the

customary dower, with the additional sum being contingent on the wife fulfilling certain requirements.

According to the Egyptian Code, a wife is typically entitled to maintenance from her husband when residing with him or with her parents, provided that she agrees to do so when he requests it.¹⁵ She is also entitled to maintenance if she refuses to fulfil her marital obligations in exchange for not receiving the entire part of the dower or if she refuses to travel with her husband for a period of time longer than three days. Whether a woman lives with her husband or her parents, she is entitled to a maintenance allowance if she becomes ill before or after marriage and is declared unfit for cohabitation. She has every right to live with her parents if her health prevents her from visiting her spouse. If she has the resources to travel but chooses not to, she forfeits her entitlement to maintenance and is regarded as disobedient.¹⁶

Even if one spouse is incarcerated, he is still liable for his wife's maintenance. A husband who refused to pay his wife's maintenance costs when she was legally entitled to them could face imprisonment prior to the enactment of Law No. 25 of 1920. The law did provide that if the husband persisted in refusing to provide for his wife, the judge could declare the marriage to be null and void.¹⁷

A disobedient wife, on the other hand, loses her entitlement to maintenance solely for the duration of her disobedience. In the following situations, the wife will be regarded legally disobedient:¹⁸

- a) If she departs the marital home without her husband's consent and without good cause;
- b) If she obtains employment without her husband's consent and is unable to spend the night at the marital home;
- c) If she lives with her spouse in a home that she owns and prohibits him from entering.

A woman who has her marriage annulled or consummated due to a human error is not qualified to maintenance.¹⁹ The merits of each maintenance case will be considered, and maintenance expenses will be determined in accordance with Islamic law.

The Hanafi Law and the Egyptian Code of Personal Law both accept some categories of divorce. There are a few noteworthy aspects of Egyptian divorce law worth mentioning.

It is revocable if a husband declares divorce once or twice (*raji*). For three menstrual cycles, the woman must observe *'iddah*. The following are the essentials of such a divorce:²⁰

- a) The husband should be competent to pronounce divorce;
- b) The intention to divorce must be clearly expressed;
- c) A proper pronouncement of divorce should be made;
- d) The wife should be in a state of purity (*tuhr*).

Revocable divorce merely separates a married couple from one another for the duration of the *'iddah*. If the husband so chooses, he can cancel the divorce during this time by starting up again with his spouse. In the case of an irreversible divorce (*bain*), the Egyptian Code distinguishes between a perfect and an imperfect divorce.²¹

If a divorce is declared three times in plain and unambiguous language, it is completely irreversible and ideal. However, when a husband makes a pronouncement without using the word *talaq* but nonetheless indicates that he intends to divorce his wife, it results in an incomplete irreversible divorce. In this case, it is legal for a divorced couple to get married again. They must go through the entire marriage process and set up a new dower. The husband must pay the wife if an unfinished divorce is granted before the union is completed. The husband, however, is required to pay the entire amount of dower if the divorce is granted after the marriage has been consummated. In the case of an imperfect irreversible divorce, a judge must order the separation of a husband and wife.²²

The *talaq al-tafwid* marital contract, in which the husband granted his wife the right to divorce, is recognized by the Egyptian Code. The husband could then assign such a right after that. Either the wife is given full permission to divorce herself on the terms set forth by the husband, or it is optional and may only be used with the husband's approval. The scope of the husband's delegation of authority will determine when and how the wife can exercise her delegated right to divorce. To put it another way, the parties must agree on how the wife will exercise her allotted rights.²³

In the following situations, the wife's right to divorce, which has been assigned by the husband, may become infructuous:

- a) on the expiration of a time limit set for the wife to exercise her privilege;
- b) through an act of renunciation, whether express or implicit, or through the restarting of previously broken intimate relationships;
- c) On the dissolution of the marriage.²⁴

If the couple remarries after the divorce, the wife loses her right to divorce, which was given to her by the husband (by consent) after the first marriage.

The Egyptian Code allows for divorce by agreement between the spouses or through a court process. In addition, mutual imprecation, either spouse's apostasy, or a life-threatening disease are all grounds for divorce.²⁵

The Egyptian Code stipulates the following requirements for a legitimate divorce:

- a) The divorce must be express. It is necessary to utilize the word talaq or its derivatives. To put it another way, the statement should be simple and straightforward.
- b) The word talaq must be written down in a clear and unambiguous manner. It must demonstrate the husband's obvious intention to divorce his wife.
- c) The husband's intention to reject the wife must be stated unambiguously.
- d) She must be in a state of (repudiation or) purity (tuhr).²⁶

Jamal al-Din al-Afghani's teachings and their impact in the social and political spheres, Muhammad Abduh has been highly influential in modern Egyptian political movements. These may include Egypt's feminist movement, which began in the 1930s, has been noted, which acted as a catalyst for women's emancipation. Qasim Amin's ideas, as well as those of Madame Shaarawi and others, were crucial in the successful battle for Egyptian women's independence.

The new Egyptian Constitution, which took effect in June 1956, guaranteed women the right to vote. In this way, the Egyptian suffragettes' battle has been won. A clause permitting a Muslim wife to apply for divorce if her marriage becomes unworkable is fairly customary in Egypt.²⁷ Recent

legislation makes it possible for a spouse to be imprisoned if he fails to pay alimony on time.²⁸

The long-awaited polygamy reform in Egypt was put into effect in 1960, and since then, men who wanted a second wife had to obtain a judge's permission by proving to the judge that he could support the first wife and her children. Egyptian women's rights in marriage and divorce seem to have been upheld.²⁹ It is too early to assess the reform's outcomes, but it is obvious that Egyptian legislation now fully recognizes women's rights in family law.

Muslim Family Law Reforms in Algeria:

No one, not even Islamic militants, has questioned the King of Morocco's decision to authorize revisions to the Moudawant to in his capacity as leader of believers. According to Nadia Yacine, a representative for Al Adl wal Ihsane, Islamists even believe the new code to be the outcome of an intellectual study of holy texts (Justice and Development).³⁰

This modification to the Moudawant to has been welcomed by a portion of the Algerian women's movement, which has been fighting for the past 20 years against discrimination affirmed by the current family law, which was approved in 1984. Algerian women are enraged at being left behind in the process of legislative change, which has languished in their own country due to the nation's demagogical policies, while congratulating their Moroccan sisters on this great accomplishment.³¹

In August 2004, the Council of Ministers reviewed the first draught of proposed changes to Algerian family law. The elimination of the norm of "matrimonial guardianship," as well as the fact that polygamy should be subject to prior approval by a judge, enraged Islamic extreme parties. Despite this, a debate took place in society at large over these concerns. When it was first revealed that the Council of Ministers would review the drafted amendments to the Act, there was no reason to think that additional language revisions were in the works. The Council of Ministers actually discussed a proposal for a legal ruling. The subsequent revelation that adult women would be kept under "matrimonial guardianship" was a shock. Women's groups reacted angrily, claiming that too many concessions had already been given to orthodox Islamic groups, the latter of which were

plainly pleased with the new draught proposal. The Algerian parliament dutifully ratified the legislative decree amending family law on March 14th.³²

The reforms to Algerian family law are similar to those in Morocco's Moudawant to. The new legislation in both nations is based on a vision of the family institution that differs from the traditional vision presented in this type of writing.

Legislators in Morocco and Algeria have leveled the playing field for husband-and-wife relationships. The shared responsibility of husband and wife replaces the ideas of submission and "head of the family." In Morocco, the legal age of marriage for both men and women is 18, therefore females as young as 15 cannot get married. When young individuals achieve the legal adult age in Algeria, the minimum age for marriage is set at 19.³³

The concept of "matrimonial guardianship," or the custom that a woman is invariably placed under the guardianship of a male family member throughout the course of her marriage ceremony, has been abolished by Moroccan law, and adult women now have the authority to act on their own behalf. As a result, women take responsibility for their own actions and have the freedom to exercise this right as they see fit. This actually means that a woman has the freedom to ask for or refuse a guardian's help when preparing for marriage.

The modifications to the Algerian disposition do not abolish the role of the matrimonial guardian. An adult woman can now sign her own marriage contract in front of her wali (guardian), who can be her father, a close relative, or anybody else of her choosing. One could wonder why the guardian's presence is so crucial and what would happen if the guardian missed the wedding. Is the lady still eligible for marriage? This is one of several issues brought up by the new law that is being suggested.³⁴

Legislators in Morocco and Algeria have established the equality of rights and obligations of husband and wife, placing the family under the shared responsibility of both partners. As a result, the idea of the "head of the family" and the idea that a wife should submit to her husband are abandoned. A marital regime does not exist under Moroccan or Algerian

law. Each partner keeps their own property under a legal arrangement known as a division of property. Nowadays, husband and wife pool their earnings to cover family expenses, consumer goods purchases, and long-term investments. Husband and wife are given the choice to form an agreement on how to manage and profit from the property they have amassed over the course of their marriage through a document that is separate from the marriage contract.³⁵

If there is a dispute, they must go before a judge, who will determine each partner's contribution to the total amount of property accumulated throughout the marriage using the general standards of the evidence at hand.

In Algeria, polygamy is still permitted, but only with strong legal limits and a judge's direct consent. The husband can treat the second wife in a way that is exactly comparable to how he treats the first wife, providing that both women live in the same conditions. The judge must be persuaded that there is no grounds for differential treatment. The acceptance of such an institution, even if restrictions are placed on its operation, lowers the impact of the idea of shared responsibility between husband and wife in the family.

The practice of contentious divorces is another fundamental component of Algerian society. Repudiation is still a common practice, although it is now only permitted with a court's permission. It should be mentioned that in this regard, repudiation is the unique right of the husband in Muslim law, and it is a privilege that is not subject to any other limitations or prohibitions. The husband might express his objection verbally without worrying about legal ramifications before requesting a court's permission. On the other hand, when the woman requests a divorce, which is characterized as the severance of the marital ties, it is considered as such. Repudiation cases are now included in the scope of this idea. It has also been suggested that women have the right to file for divorce due to mistreatment (in the case of wives who have experienced physical abuse, neglect, or abandonment without means); in such circumstances, the judge will approve the divorce at the wife's request. In Arabic, the terms "talaq" and "tatliq" denote the husband's and wife's respective rights to dissolve the marriage.

A new scenario for severing marriage ties has been added to Moroccan law: divorce by mutual consent. The legislation in Algeria already permits this kind of severing of marriage relations. The possibility of rejecting the wife's request for divorce on the grounds of neglect had been introduced in order to preserve the Algerian family institution and to ensure fairness and equality between husband and wife. This is true even if it can be demonstrated that the wife has the resources to meet her needs while the husband does not. The opening of specialized family procedures courts and the creation of a family support fund are two actions done to enable the effective application of family law. Such a law has not been taken into consideration by Algerian lawmakers.³⁶

The ability offered to a woman to preserve custody of her kid even after re-marrying or moving to an area different than the husband's place of residency is the novelty and departure from Muslim law in Algeria. It should be emphasised that a woman who remarries loses her right to custody of her children under previous Moroccan law, as well as current Algerian law, and may even lose her right to custody if she moves more than 120 kilometres from her husband's residence. Because he has paternal power, the husband will be the guardian of the children. It's unfortunate that the modifications haven't extended to the issue of shared parental duty between husband and wife, or the prospect of shifting guardianship to the woman in the event of a divorce. Similarly, the concept of parental responsibility is not mentioned, despite its inclusion in the Convention on the Rights of the Child.

According to Algerian law, the mother's side of the family has priority when it comes to child custody, with the father coming in sixth. The contemporary theories contest this tenet and advocate a system in which parental responsibility is rotated between the mother's and father's sides of the family, with the mother always receiving priority.

According to the child's socioeconomic status prior to the divorce, he will be raised in a suitable home. Since the husband regained control of the marital house in Algeria, this issue has become much more complicated. Currently, the parent who has custody of the kid retains the right to the conjugal residence. If this individual is the mother, the father must provide her with a good home, or pay the rent to pay for one if she does not have one. The woman who has been granted custody must remain in the marital

home until the father implements the judicial decision about accommodation.

The international world paid less attention to Algeria's change of the Family Code than it did to Morocco's reform. Indeed, Algeria's failed democratic transition and deadly civil war rendered the country's fragile political situation a more pressing concern than women's rights, drawing international attention away from family law reform. The proposed amendments to Algeria's Family Law are being greeted as excessively revolutionary by some. It is true, however, that it is hard to believe that the proposed law completely emancipates women from all forms of guardianship until they have acquired all legal ability to exercise their civic rights.³⁷

The Impact of Family Law reforms on Women's Empowerment in Egypt and Algeria:

This topic examines key reforms in Algeria's and Egypt's family codes, as well as the extent to which these provisions are consistent with the equality and non-discrimination principles enshrined in international conventions to which both countries are signatories and which are incorporated, to varying degrees, into their respective constitutions. The chapter looks with women's freedom to make their own marriage decisions, male guardians' role in this, men's right to have several spouses, and juvenile marriage. It also looks at rights and responsibilities in terms of family roles and decisions, such as the right to work or leave the house. The chapter also considers gender differences in wealth, divorce, filiation, and heritage.

Women's Autonomy:

Women's well-being and ability to shape their own life, including their ability to work, are influenced by laws relating to personal status, marriage, and family. Men's roles are likewise defined by these regulations, which have a significant impact on women's autonomy.

Egypt and Algeria are both signatories to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (UNCEDAW) (CEDAW). "States Parties shall ensure, on the basis of equality of men and women: (a) the same right to enter into marriage; (b)

the same right freely to choose a partner and to enter into marriage only with their free and complete consent; (c) the same rights and responsibilities during marriage and at its dissolution” according to Article 16.1 of the Convention.

The right of women to select who they marry, what form of marital arrangement they accept, the date of their marriage, and their age at marriage are all important. There are still significant disparities between countries in terms of how women and men participate in family decision-making. These issues have a long-term and short-term impact on women's autonomy and agency, especially if they are cumulative.

Guardian’s Consent:

Women's and men's legal competence to contract their own marriages is one of the cornerstones of autonomy. However, guardianship can limit a woman's ability to contract her marriage. A guardian is a person who has the legal authority to care for and make decisions on behalf of another person, in the person's best interests. Men are typically the guardians of minors, however in some states, they may intervene after the age of majority.

In the countries under consideration, women are still submissive to men to varying degrees; for example, the term "minor" may apply to a woman who has reached majority but is not married. In Morocco and Tunisia, matrimonial guardianship has been abolished. While a woman's permission to her marriage is essential in theory in all countries, silence could be construed as consent.

- In Egypt, a young woman's guardian is not required to approve to her marriage. In theory, a father's guardianship ceases when a child reaches the age of majority (21 years), but for a daughter, it usually ends when she marries or becomes economically self-sufficient, even if she is legally an adult.
- In Algeria, the job of the guardian has taken on symbolic significance because he cannot compel a woman to marry against her will or prohibit her from marrying whom she chooses. In the event of a disagreement with her guardian, the lady has the option of going to court.

Polygamy:

Polygyny refers to a type of polygamous marriage in which a man can have multiple wives. Men in Islam are permitted to have up to four wives at the same time.

Polygamy is a violation of the principle of equality between men and women, according to the CEDAW Committee's General Recommendation No. 21 of 1994. "States Parties' reports also reveal that polygamy is practised in a number of countries," the report noted. Polygamy violates a woman's right to equality with males and can have such devastating emotional and financial effects for her and her dependents that it should be avoided and outlawed. The Committee is concerned that certain States Parties, whose constitutions guarantee equal rights, allow polygamous marriages under personal or customary law. This is a violation of women's constitutional rights and a violation of the Convention's article 5 (a)."

- Algeria has attempted to curtail polygamy by needing a judge's prior approval. Husbands who want to marry another wife must demonstrate that they have sufficient financial resources to support several marital houses at the same time. They must also explain an objective rationale for their marriage intentions (for example, a man's first wife is sterile and he refuses to divorce her).
- The first wife or previous spouses must be informed of the new marriage in Egypt. To reduce the likelihood of the husband entering polygamous marriages without the wives' knowledge, the marriage notary is required to record the husband's marital status.

Women's ability to make decisions within the family is significantly impacted by polygamy, according to focus groups in Egypt and Algeria. Sharing a husband's earnings with more than one wife and her children has an impact on women's and children's financial prospects as well as their psychological well-being. Furthermore, polygamy makes asset sharing harder throughout marriage. This approach appears to be more common in impoverished and rural places.

Early-Age Marriage:

Early marriage can have a significant impact on a woman's ability to make independent decisions, especially family decisions. Women's educational attainment and job market qualifications are limited when they are compelled to drop out of school before completing their studies. It has a long-term impact on their economic prospects, not to mention the negative health effects of early marriage and pregnancy.

“The betrothal and marriage of a child should have no legal effect,” says CEDAW (Article 16.2). “All appropriate action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of weddings in an official registry compulsory.” The CEDAW Committee decided that the minimum age for marriage should be 18 years for both men and women, despite the fact that the agreement does not specify what constitutes an appropriate minimum age (CEDAW 1994).

Egypt and Algeria have both made progress in raising the marriage age to 18 years in Egypt and 19 years in Algeria. A judicial dispensation can allow a younger woman to be married, except in Egypt, where early age marriage is prohibited in all cases.

Egypt has a high rate of minor marriages, despite the fact that the practise is illegal. Such weddings go unreported and unrecognised by the law, raising concerns about the wife's rights being protected. Furthermore, a law enacted in 2000 allows for divorce from these unregistered marriages, further legitimising the practise.

Polygyny and early marriages, as well as male guardianship of women and their involvement in marriage decisions, limit women's autonomy and ability to choose how and with whom to live their lives. These circumstances limit their ability to define their own economic and other futures without fear of force.

The marriage contract:

In both Egypt and Algeria, financial terms are agreed upon before to marriage during lengthy prenuptial discussions between the families of the two spouses. The dowry is a contribution made to the bride by her

prospective husband, which becomes her legal property after they marry. The quantity of the dowry and the relative contributions of the two families to the couple's future home and furnishings are the main topics of discussion. A portion of the dowry is paid when the marriage contract is signed, and the rest, sometimes a greater percentage, is provided to support the woman in the event of a marital termination (divorce or death of the husband). The dowry is not legally claimed by the bride's parents or her husband.

Both Egyptian and Algerian family laws allow spouses to add restrictions to the marriage contract. Both the bride and the groom can write such conditions in theory, but in fact, only the bride needs to do so to strengthen her rights. She may be able to negotiate the inclusion of contractual stipulations such as her right to leave the couple's house or pursue a career. If you don't follow these rules, you'll get divorced.

- The notion of obedience has been abolished in Algeria, and joint responsibility has been embraced, making this type of provision obsolete; nonetheless, it may still be in the wife's best interests.
- In Egypt, where the husband can terminate the wife's financial support if she leaves the house or works, including a phrase in the marriage contract allows the wife to continue her studies, seek employment, or travel abroad without having to ask permission.

The power to incorporate extra clauses in a marriage contract is rarely used in practise. The future bride seldom requests clauses like the right to work, according to focus group discussions. Women are frequently unaware of their rights, and even when they are, tremendous social pressure prevents future brides from bringing up the subject during prenuptial discussions. Furthermore, civil service officers who meet with the engaged couple – almost invariably men – tend to be uninterested in such clauses and rarely raise the possibility of including them. Even if a bride is successful in having these conditions incorporated, it might take several years of court proceedings to ensure that they are followed and that any violations are punished.

Due to established social beliefs, the legal protections granted in a marriage contract are not usually observed, according to focus group talks. A woman

going to work could be interpreted as proof that her husband is unable to support the family on his own.

Focus group members in Egypt said that attitudes are progressively changing, with some spouses supporting their wives to work and contribute to the household's financial obligations. Working before marriage, on the other hand, may impair a woman's prospects of finding a husband in the lower strata of society, since it is seen as a sign of poverty and her need for financial resources. Women from the lower social levels frequently labor to pay for their trousseau and then leave the workforce after marriage.

Decision making: reciprocity versus duty to obey:

A woman's aptitude to think and perform both inside and outside the home is influenced by her function and position in the family.

States Parties should ensure that men and women have "the same rights and responsibilities during marriage and at its dissolution," as well as "the same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation," according to CEDAW Article 16.1.

Both Egypt and Algeria's personal status laws define women's agency inside the family in different ways. The notion of women's obedience has been repealed in some countries, while it is upheld in others.

- Egypt believes that a wife's duty to follow is in exchange for her right to financial support. This means that if a husband believes his wife has been rebellious and has left the house without permission, or if he can show that her work is damaging to the family's interests, he can discontinue supporting her.
- Algeria eliminated the wife's duty of obedience in 2005, replacing it with a set of reciprocal rights and responsibilities for husband and wife:
 1. To preserve conjugal ties and the duties of life together;
 2. To cohabit in harmony, mutual respect and kindness;
 3. To contribute jointly to the preservation of the family's interests, the protection of their children, and the provision of a sound education for them;

4. To ensure mutual agreement in the management of the family's affairs, and the spacing of births;
5. To respect their respective parents and other family members, and visit them;
6. To preserve the ties of kinship and good relations with parents and other family members;
7. To enjoy the right to visit and receive visits from parents and other family members in kindness.

A husband who puts pressure on his wife to sell her possessions or financial resources faces a six-month to two-year prison sentence.

Property rights and ownership of marital assets:

States Parties must secure "equal rights for both spouses in regard of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration," according to CEDAW Article 16.1(h).

Separation of property is the default matrimonial rule in both Egypt and Algeria. Respective ownership of assets brought into the marriage is retained by each spouse, while assets acquired during the marriage are recorded in their individual names. Women and men have equal rights when it comes to acquiring, managing, and owning property. If the wife possesses assets prior to marriage, she can administrate and manage them freely and independently afterward. The husband has no administrative rights over his wife's assets, according to the Tunisian personal status code.

In actuality, however, women's financial security remains limited despite these safeguards. For starters, the wife frequently has few or no assets. After then, property, including the family house, is usually recorded in the husband's name throughout the marriage.

- In 2005, Algeria made the option of joint ownership available. In Algeria, a clause establishing the community of assets might be incorporated in the marriage contract or written subsequently in a separate document.
- In Egypt, spouses have the option of including community assets in their marriage contract.

Freedom of movement:

Women's ability to engage in economic life is contingent on their ability to move freely. It gives them access to markets, jobs, commercial activities, and services. Women's ability to work might be hampered by a lack of geographic mobility, particularly in high-responsibility positions that require travel.

Women, on the other hand, continue to face limits on their mobility imposed by a variety of national regulations as well as family influence over their choices. Marital status, age, and employment status all have an impact on freedom of mobility.

- The wife's need to obey in Egypt may limit her freedom of movement, particularly her right to leave the couple's house and travel abroad. As a result, it may make it difficult for a woman to get work or start a business. Egypt's rules were changed in 2000, requiring the husband's approval before his wife may be awarded a passport and go abroad.
- Algeria's reservation to Article 15(4) has not been lifted.

Overall, Algerian constitution have progressed toward equality, which is evident in their family law provisions, where women's duty to follow has been replaced by the notion of reciprocal duties or sharing responsibility. This transformation is reflected in other articles that aim to improve equality, such as the repeal of matrimonial guardianship and the prohibition or restriction of polygamy.

Despite the constitution's equality concept, the principle of the wife's obedience has not yet been repealed in Egypt.

Dissolution of marriage:

In Tunisia, Algeria, and Morocco, there has been some progress toward more equality between men and women in the right to divorce. Divorce proceedings are still easier for men in other nations. Women's economic and social position are often harmed as a result of the financial ramifications of divorce. Furthermore, even if the mother has custody of the children, the father retains guardianship of the children's most crucial decisions.

- In Algeria, a husband who wants to end a marriage must go to a court, who cannot refuse to register the dissolution of the marriage but must try to reconcile the two spouses. If the divorce is deemed abusive, the judge may order the husband to pay financial compensation to his wife.
- Egypt retains the authority of the husband to repudiate a wife, i.e., to dissolve the marriage unilaterally and without the presence of the partner; the husband need only appear before a marital civil officer and register his desire to terminate the relationship. If the repudiation is made orally, the wife must appear in court to have the divorce formalized.

Women in Algeria and Egypt can sue for khul' in court. Khul' is a procedure for ending a marriage unilaterally at the request of the wife, who is not required to show her husband's culpability. It implies that she pays her husband compensation, the amount of which is usually set by the courts. She gives up all of her financial interests in Egypt and returns her dowry.

The khul' is thought to have increased women's bargaining power in the marital home, giving them more clout to demand that their husbands allow them to work. According to studies, it resulted in a significant increase in female employment, notably in the 24-35 age group, in the MENA nations where it was implemented between 1980 and 2008. Faced with the likelihood that their marriage would end in divorce, women sought paid work to enable them to be self-sufficient in the event of their marriage's failure.

Children's guardianship and custody:

In Egypt as well as Algeria, women and men do not enjoy equal rights to their children, including after a divorce. During the marriage and in the event of its dissolution, the husband is often the legal guardian of his minor children.

- In Algeria, the father is typically the child's guardian. In emergency cases, such as when the father is absent or unable to act as guardian, the mother can take over as legal guardian. If the father passes away, the mother becomes the guardian.

- In Egypt, the father must pay alimony until the child reaches adulthood if the couple divorces. In Egypt, this commitment lasts until a son finishes his studies or a daughter marries or achieves financial independence. In exchange, the father is granted guardianship of goods and individuals, and he is responsible for all official proceedings pertaining to the children.

The economic, social, and emotional effects of divorce, according to focus group participants, limit a woman's ability to break an unsatisfying marriage. A divorce, for example, could have an impact on her home situation. If a couple has children, the mother will be entitled to live with them in the house during the custody proceedings.

Many women are forced to join the workforce in deplorable conditions as a result of their typically perilous financial situation following a divorce. They frequently enter the informal sector, particularly if they have no prior work experience, and may be forced to accept low-paying, physically demanding work with no social safety.

Muslim Family Reforms in Pakistan:

The Dissolution of Muslim Marriages Act, which was passed in 1939, seems to have been the first step in the subcontinent's Muslim family laws changing. This Act is regarded as one of the most important laws passed by the Indian legislature in terms of protecting the rights of Muslim women across the subcontinent.³⁸ The Act granted Muslim women the ability to request a divorce from their spouses for any of the following reasons:

1. that the husband's whereabouts have been unknown for four years;
2. that the husband has neglected or failed to provide for her maintenance for two years;
3. that the husband has been sentenced to imprisonment for a period of seven years or more;
4. that the husband has failed to perform his marital obligations without reasonable cause for three years;
5. that the husband has been sentenced to imprisonment for a period of seven years or more;
6. that the husband was and continues to be impotent,
7. that the husband has been insane for two years or is suffering from leprosy or a virulent venereal disease,

8. and that she, having been given in marriage by her father or guardian before she reached the age of fifteen, repudiated the marriage before she reached the age of eighteen:
9. that the husband treats her with cruelty, that is to say:
 - a) assaults her or makes her life miserable through cruel 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) tries to force her to lead an immoral life, or disposes of her property or prevents her from exercising her legal rights over it, or
 - d) If a man has multiple wives, he does not treat each one equally in accordance with the Quranic injunctions.³⁹

As stated in Section 4 of the Act, a Muslim married woman's conversion to another faith does not automatically result in the dissolution of her marriage. However, after her conversion, the woman has the right to file for a divorce on any of the grounds mentioned in Section 2 above. With the exception of the Maliki School, which recognised this right of a Muslim wife only in a limited number of circumstances, the majority of Muslim schools of law did not recognise the concept of a judicial annulment of a marriage at the request of a Muslim wife prior to the Dissolution of Muslim Marriages Act of 1939. The Maliki Law, on the other hand, became universally applicable to followers of all other schools as a result of this legislation. It is considered as a significant step in the direction of women's emancipation and the recognition of their unalienable rights, which were previously denied to them.⁴⁰

The interpretation of this Act has led to differing views among the High Courts, particularly in the area of the husband's maintenance of the wife.⁴¹ According to one line of thought, the Act does not explicitly state the husband's duties, hence we must rely on the corpus of Muhammadan Law as a whole to provide this information. A well-established principle of Muhammadan Law states that a disobedient wife's husband is not required to provide for her in terms of maintenance.⁴² The second line of thinking is just as valid and convincing as the first. According to this opinion, the phrase "without fair cause" was purposefully included in clause (iv) of Section 2 of the Dissolution of Muslim Marriages Act, 1939 and left out of clause (ii). If the wife has a valid reason to wish to separate from her husband, she may do so if he hasn't been able to support her for the required two years. It suggests that a woman could be at fault and that, as a

result of her behavior, she might make her husband quit providing for her maintenance, which would result in a divorce judgment. This would be equal to assisting the wrongdoer, and it would be contrary to Muslim Law principles.⁴³

Another argument opposing the above interpretation contends that in such instances, the spouse is obligated to pay the dowry, which can be extremely high, putting him in a difficult situation. In the Indo-Pakistan subcontinent, a bad practise of fixing nominal dowry has emerged in order to preserve the reputation of some dynasties, primarily in Northern India. In this custom, excessive dowry sums that are not meant to be given at all are mentioned in the marriage contract or the Dowry Namah. The wife must receive her dowry at the time of marriage, according to the spirit of Islamic law. The very purpose for why the institution of dowry was established in Islam has been defeated by this incorrect method of calculating nominal dowry. On the one hand, it has reduced to a paper transaction, and on the other, it prevents the husband from divorcing his wife, or at least makes an effort to do so, even when there are good grounds to do so, simply because he cannot afford the excessive dowry. Additionally, a large dowry discourages creditors and is unfair to heirs, especially the children of the deceased wife.⁴⁴

A Muslim wife's request for a divorce has historically been a source of conflict, particularly among Hanafi jurists, as well as a significant financial and social hardship for the lady involved. According to Hanafi law, the spouse who has the upper hand in the marriage has the right to divorce. This viewpoint is based on the following Qur'anic verse:⁴⁵

“If ye divorce them before ye have touched them and ye have appointed unto them a portion, then (pay the) half of that which ye appointed unless they (the women) agree to forgo it, or he agreeth to forgo it in whose hand is the marriage tie” (II : 237).

Hanafi jurists understand these verses to suggest that a court of law has no authority to grant a divorce ruling without the consent of the husband. The 1939 Dissolution of Muslim Marriages Act has been chastised for ignoring a key clause of Hanafi Law.⁴⁶

A husband is not obligated to pay his wife's costs if she does not have enough property to cover them, according to Muhammadan Law practise. This difficulty on the part of a wife seeking a divorce, along with the societal stigma linked to divorce, served as a powerful barrier to many downtrodden Muslim women seeking divorce from unfair and cruel husbands. In recent years, however, Muslim women's complaints about marriage and divorce have become more vocal. In light of this, the Pakistani government created a seven-member Commission on Marriage and Family Laws by resolution of the Ministry of Law dated August 4, 1955. To gather public feedback, the Commission sent a thorough questionnaire that covered practically every aspect of personal law. The Commission's terms of reference were as follows:

“Is it necessary to change the rules governing marriage, divorce, maintenance, and other ancillary problems among Muslims in order to give women their due role in society, as dictated by Islam's fundamentals? The Commission was instructed to submit a report on correct marriage and divorce registration, the right to divorce exercisable by either partner through a court or other judicial procedures, and the maintenance and establishment of special courts to deal quickly with issues impacting women's rights.”⁴⁷

Report of Commission on Marriage and Family Laws:

We'll take a quick look at the Commission on Marriage and Family Laws' Report, as well as a note of dissent from Mawlana Ihtisham-al Haqq, a member of the Commission, and the recently enacted Family Laws Ordinance.

The Commission outlines the reasons for its appointment very away, emphasising the importance of ijtiḥad:

“Because no one can fathom the infinite variety of human relationships for all situations and epochs, the Prophet of Islam left a broad domain open for legislative and judicial choices, even for his contemporaries who possessed the Holy Qur'an and the Sunnah in front of them. Within the broad context of the Quran and Sunnah, it is the principle of Ijtihad, or interpretative wisdom.”⁴⁸

After that, the Commission outlines the shortcomings of the Anglo-Muhammadan Law, such as its rigidity, which rendered it unsuited "for the people's life and genius." The Commission thinks that Pakistan's procedural laws need to be rebuilt, and that the rewriting of the Marriage and Family Laws is just the first step in that process. There was no discussion of "amending the basis of the laws governing marriage and family relations as published in the Holy Book or any clear and authentic injunctions that might be inferred from the Sunnah," according to the Commission.⁴⁹

The Commission's observations on Muslim women's predicament in marriage affairs are instructive:

"Women's powerlessness is mercilessly abused not just by certain husbands, but also by their own parents, brothers, and other male relatives." Without the parties' free consent, marriages are arranged, and in some tribes, young women are bought and sold to would-be husbands like cattle. The highest bidder gains access to the girl's father without the girl's knowledge or approval. Rarely is the Mehr, or wedding gift, that the husband gave the bride in an effort to give her some kind of prestige and financial stability, reimbursed. It is claimed to be a fake transaction in a substantial number of situations. Because of our courts' dilatory and ruinous approach, the wife lacks both the guts and the means to demand payment. Although polygamy is practised by a small minority of men in our society, their motivations and behavior in this regard are virtually invariably anything but rational and Islamic."⁵⁰

The Commission recommended that a standard marriage contract be adopted and that marriages be required to be registered. With the exception of Mawlana Ihtisham-al Haqq, all members of the Commission agreed that child marriage should be prohibited and that neither a man nor a woman should be permitted to marry before the age of 18. The legislation also proposed by the Commission would contain a clause in the marriage contract saying that the wife has the same right to divorce as her husband. The marital arrangement gave her access to this benefit. This would be a perfect example of Islamic Law, which supports the concept of delegation in marriage and divorce.⁵¹

The Commission recommended making it a crime for parents or guardians to sell their daughters, and punishing offenders severely. The Commission declared the practise of a husband making three divorce decrees in one sitting to be un-Islamic and suggested the Quranic approach of making three divorce decrees in three periods of purity, as well as the introduction of a common divorce paper. Every divorce should be registered with the revenue officer, just as every marriage. Some Comité members felt that every divorce case should be handled by the Family Laws Courts because simply registering a divorce wasn't enough to protect women's interests.⁵²

The Dissolution of Muslim Marriages Act, 1939 does not need to be changed in cases of divorce upon the wife's request, according to the Commission, and new law may be drafted "to make the khula form of talaq more certain and precise." Due to temperamental incompatibility, the Commission recommended that only the wife be able to seek for divorce using the Khul form.⁵³

In the context of polygamy, the Commission thought it was necessary and just for a man who wanted to marry a second wife to ask a Family Laws Court's authorization while outlining the specific circumstances that necessitated the second marriage. He must persuade the judge that he is not taking a second marriage just to marry a prettier or younger woman than his first wife. This recommendation's guiding principle was that no one should be allowed to support two spouses if they are unable to do so.⁵⁴

The Commission proposed that there should be no time limit on a suit for the payment of dowry and that the husband be required to pay the agreed-upon sum of dowry, regardless of how much it may be. In the case of maintenance, the Commission determined that, given the high cost of living, a court should be able to grant a wife maintenance expenses of up to Rs. 300 per month.⁵⁵ The Commission supported the system of paying the maintenance payment through a criminal court because now it is swift and effective. A wife should be able to receive maintenance payments for at least three years before filing a lawsuit for this reason. The Commission also proposed that the complicated legal system be made simpler and that special courts (Matrimonial and Family Law Courts) be established to accelerate the resolution of family law matters.⁵⁶

Minute of Dissent:

A member of the Commission, Mawlana Ihtisham al-Haqq, pen down a note of dissent in which he vehemently opposed the Commission's ability to express her opinions on Ijtihad, calling it not only a failed attempt "to undermine the accepted tenets of Islam and the fundamentals of Islamic Shariat," but also "irregular and unconstitutional." Additionally, he lamented that the majority of the Commission's members had "neither detailed understanding of Islamic teachings and injunctions nor are they skilled in the interpretation and execution of those rules," as he put it. "In contravening the Holy Quran and the Sunnah and insulting Muslim jurisprudence, and calling their behaviour ijma (consensus) in the Report, they have debased the technical term of 'Shariat,' he believes.

"As a matter of principle, giving precedence to public opinion on solely Shariat concerns amounts to tampering with Islamic Shariat and mocking the faith, which can never be accepted," he added. "The road to advancement in Muslim jurisprudence rests through 'Qiyas' (analogy)," he said after a lengthy explanation of the essence of ijtihad. "This Modernism has given to womenfolk the status of nothing more than a means for the pleasure of man's lust," he argues, attacking modernist Muslims with English education.

He highlighted that the delegation of the right to divorce by the husband to the wife should not be viewed as an absolute right of the wife, as the Commission describes it. The husband is vested in this right. He was against the proposals to make weddings and divorces compulsory to register and to make non-compliance with these requirements a criminal offence. He called the Commission's position ridiculous and against Shariah, according to which there should be no divorces that take place outside of a marriage court. Islamic edicts would be broken if a husband's right to divorce his wife were restricted in any way.

He added:

"If we proceed to bar the lawful way to talaq or limit it by making the intervention of Court compulsory, men would naturally turn to the other methods mentioned above to bring about the dissolution of marriage. God forbid! Vice and adultery would become the order of the day and Muslim society would sink to the lowest depths of disgrace ... "

Mawlana Ihtisham-al Haqq suggested a dramatic change of the Dissolution of Muslim Marriages Act, 1939, in response to the Commission's ideas regarding the wife's claim for divorce. Temperament incompatibility, he claimed, is meaningless. Only the most severe cases of incompatibility, in which marital life becomes unbearable, should be dealt differently. Khul should be allowed in these kind of situations.

His harshest criticism was directed at the Commission's proposals about polygamy limitations, which he believed were unnecessary. He lamented the Commission's intention to forbid polygamy in an endeavour to emulate the West without taking into account how it would affect a Muslim culture. Polygamy was commonplace and permitted by Shariah law. The Qur'anic norm of multiplicity of marriages was not intended solely for orphaned girls. He understood that Muslim women were being denied their legal rights today as a result of the Qur'anic permission for multiple husbands. This state of affairs exists, he believes, as a result of the lack of a well-established Shariah-based framework for dealing with family matters. In short, he believes the best answer is to maintain the multiplicity of wives authorization while also putting an end to its abuse. The best course of action would be to provide individuals with appropriate mental training in order for them to grant permission to its proper use.

The Muslims Family Laws Ordinance:

The Government of Pakistan passed the Muslim Family Laws Ordinance in March 1961, prohibiting polygamy and requiring marriage registration. This Ordinance's key elements are as follows:⁵⁷

- 1) Without the permission of the Arbitration Council, no man can marry a second time.
- 2) Before entering into a second marriage, the first wife's consent is required.
- 3) If a second marriage is contracted without the arbitration council's approval, the defaulter will be given a penalty of up to a year in jail, a fine of up to 5,000 rupees, or both. Alternatively, the government receiver may realize the deferred or prompt dowry for payment to the defaulter's wife.
- 4) Marriage registration is a legal requirement.

- 5) The offspring of a predeceased son or daughter have had their succession rights restored.

A Lahore weekly writes in an editorial about the Muslim Family Laws Ordinance.⁵⁸

“Though the reform is admirable in and of itself, its effectiveness will be determined by how well its provisions are implemented. For example, a husband could still coerce and deceive his existing wife into consenting to another marriage. In the lack of a wife's point of view, which is likely to lag under the prevailing conditions of *pardah* and segregation, the Arbitration Council may easily yield to the husband's argument. In an all-male Council, a woman might be hesitant to express her point of view. It's also not a good idea to put a woman's fate exclusively in the hands of a chairman of the Basic Democracies. Little politics may play a role in the outcome of a case here as well. A politically powerful person participating in a marriage dispute, for example, may be able to persuade the Chairman to adopt his own point of view. It could be a better idea to establish Family Laws Courts to protect against all of these potential malpractices and prejudice. The fact that men are still the stronger sex in social, official, and political circles, and wield immensely more power and influence than women, should indicate that women are still vulnerable to injustice. The next stage is to put in place protections against any potential abuse of the reform's spirit.”

To evaluate the results of the reform is too soon now. In comparison to the Commission on Marriage and Family Laws' recommendations, it appears that the Muslim Family Laws Ordinance wants to implement only a portion of the revisions. Although the Ordinance has received harsh criticism from several religious groups, yet the vast majority of Muslims in Pakistan have backed it. It remains to be seen whether the Arbitration Councils would fully vindicate the victimised women and whether they will be as effective as the Family Law Courts predicted in the Commission's Report. Under the present revisions introduced by the Muslim Family Laws Ordinance, it is unclear if divorce cases would remain outside the scope of the legislation.

Some proposed Amendments in Family Laws of Pakistan:

1. Mandatory Interim Order for Maintenance of Child

Title: Family Courts (Amendment) Bill, 2008

Moved by: Farooq H. Naik (Federal Minister for Law)

Moved on: August 8, 2008

Status: Passed by National Assembly on Aug. 19, 2009

Passed by the Senate on Oct. 15, 2009 with amendments

The purpose of this bill is to replace section 17-A of the Family Courts Act of 1964. The proposed section 17-A would make it mandatory for Family Courts to set an interim sum due periodically by the father to his children as maintenance during the pendency of a maintenance claim at the outset of the case. The text that was originally intended to replace section 17-A was as follows:

"17-A. Interim Order for Maintenance: The Family Court:-

- a) In a suit for child support, the court shall issue an interim order for child support immediately after the written statement is filed; and
- b) In any other matter for maintenance, the court may issue an interim order for maintenance at any time throughout the proceedings, requiring payment by the fourteenth of each month in advance, failing which the court may dismiss the defense and decree the suit.

The National Assembly passed the bill without modifications. The bill was amended by the Senate, and clause (a) of the proposed section now reads as follows:

- a) In a suit for child maintenance, the court shall issue an interim order for child support soon after the defendant appears in court.

"The Bill is aimed at providing immediate help to the children by paying maintenance allowance at the initial stage of proceedings in suit for maintenance," said the bill's mover.

The Bill will now be debated in Parliament's joint session.

2. Muslim Family Laws (Amendment) Bill, 2010:

Title: Muslim Family Laws (Amendment) Bill, 2010

Moved by: Justice (retired) Fakhar-un-Nisa Khokher (Pakistan Peoples' Party)

Moved on: May 4, 2010

Section 6 of the MUSLIM FAMILY LAWS ORDINANCE 1961 (VIII of 1961)

Section (1); during the continuation of an existing marriage, no man may negotiate another marriage without the prior written consent of the Arbitration Council. Furthermore, under this Ordinance, no such marriage contracted without such consent shall be registered.

Section (2); an application for authorization under sub-section (1) must be filed to the Chairman in the required manner, along with the prescribed money, and must specify the reasons for the intended marriage, as well as whether the agreement of any current spouses has been obtained.

Section (3); upon receipt of the application described in subsection (2). The Chairman will ask each of the applicant's current wives or wives to appoint a representative. And the Arbitration Council, if convinced that the proposed marriage is necessary and just, may grant the requested license, subject to any conditions that may be judged appropriate.

The Arbitration Council shall record its reasons for its judgement in deciding the application for permission to marry a second time, and either party may appeal the decision. Prefer an application for revision to the Collector concerned in the proper manner, within the stipulated period, and on payment of the prescribed amount. And his decision will be definitive and unchallengeable in any court of law.

3. Family Courts (Amendment) Bill, 2009:

Family Courts (Amendment) Act 2009

Moved by: Tahira Aurangzeb, Nighat Parveen Mir, Begum Nuzhat Sadiq (Pakistan Muslim League-N)

Moved on: June 30, 2009

This bill proposes that, in addition to other family-related issues and disputes, family courts be given the authority to decide matters involving the share of women in inheritance,' by include this subject in the Act's schedule.

"This bill provides that speedy trial in cases relating to the share of women in inheritance should be ensured by including them in the Schedule of the Family Courts Act, 1964, which will bring the issue of share of women in inheritance into the jurisdiction of the Family Courts," the bill's movers write.

Conclusion:

We can take conclusions from this brief examination of Muslim family law reforms in Egypt, Algeria, and Pakistan. One common picture obtained is that most Muslim countries are undergoing significant social and economic transformations. Laws to safeguard Muslim women's inherent rights, particularly in marriage and divorce have become necessary as a result of these changes. The reforms implemented by these three nations seem to have provided a model for others to follow. Another significant aspect of this reform is its emphasis on the necessity of executing socio-economic reforms within the overall framework of Islamic Law, demonstrating its ability to solve the issues of the modern day in this area.

The review of substantive legislation in this paper demonstrates that in many countries, there are still major inequalities in the treatment of men and women in Muslim family law, and significant and growing efforts by women's groups and others continue to advocate for more changes. CEDAW and other human rights accords help these efforts, although the most relevant and persuasive arguments within Muslim societies are often not based on international law.

Muslim women had historically been denied rights, therefore the Muslim Family Laws Ordinance, which was passed in Pakistan in 1961, was a big step in ensuring such rights. It is unclear what advantages the Ordinance's adoption will bring to Pakistani women. Family Law Courts appear to be urgently needed in order to ensure that the full benefits of reform are

available to those who are intended to benefit from them. This reform will be especially beneficial to the speedy resolution of marriage matters, particularly those involving divorce. Since the creation of Pakistan in 1947, the laborious system governing divorce suits under the Anglo-Muhammadan Law has remained intact. However, the present change, which was enacted in response to the Law Reforms Commission's recommendations, is a step in the right direction and offers a lot of optimism for the future in terms of streamlining the legal process.

A re-codification of Muslim Personal Law in Pakistan that incorporates the current change would be an excellent project. The shortcomings of Anglo-Muhammadan Law, as well as some of the severances of the dilatory legal process, could be addressed through codification. Several social ills, notably those related to traditional marriage and divorce, have been long overdue to be eradicated. A reform like this would allow even those who cannot afford to marry due to cultural traditions to have a happy family life. It is almost mandatory to conduct extensive research and study on the subject in order to estimate the extent of the difficulties before designing solutions. Appropriate legislation to tackle these scourges is a secondary requirement. Pakistan's Muslim Family Laws Ordinance has met a long-felt need. However, more effort will be necessary to generate greater and longer-term effects from this reform.

Recommendations:

After analyzing the Muslim Family Law Reforms in majority of the Muslim countries and especially focusing on Pakistan, Egypt and Algeria the paper will provide some recommendations to fill the gaps that still exist in various family laws. Following are some of them:

1. Since the father is obligated to support his children in all circumstances, courts may be able to compel the father to pay a specified monthly sum as an interim agreement while the case is pending and before it is finally resolved. Written statement should come after, not before, the order for interim maintenance. (section 17-A of the Family Courts Act of 1964)

2. Courts should guarantee that the written statement is provided within the specified time frame; the right to child maintenance may be established explicitly through a legislative amendment;
3. On a grassroots level, social and political institutions, as well as Arbitration Councils, must be developed to resolve conflicts that do not require the involvement of the judiciary.
4. In cases of second, third or fourth marriages, for securing agreement for subsequent marriage under duress, an adequate and realistic remedy may be offered. The role of the Arbitration Council must be strengthened to ensure proper implementation of any conditions set by it, as well as equity and justice in the relationship. (Section 6 of Muslim Family Laws Ordinance 1961)
5. The fine levied in cases of polygamy legislation violations should be enhanced, with a significant amount of the fine going to the current wife or wives, as the case may be.
6. The issue of inheritance cannot be discussed in various venues based on gender. It is, for all intents and purposes, a single subject that must be addressed in a single forum. To ensure that women have the right to inherit, social, administrative, and statutory actions are required.

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⁴ Ibid

⁵ Abd El Fattah, op. cit., pp. 32-39

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid., pp. 65-72

¹⁰ Ibid., p. 71

¹¹ Ibid

¹² Marmaduke Pikhthall. 1952. The Meaning of the Glorious Qur'an. Bangalore. p. 64

¹³ Abd El Fattah, op. cit., pp. 76-77

¹⁴ Ibid., pp. 90-92

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¹⁶ Ibid

¹⁷ Ibid., pp. 124-9, 281-5

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- ¹⁹ Abd El Fattah, op. cit., pp. 124-129
- ²⁰ Ibid., p. 166
- ²¹ Ibid., p. 182
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- ⁴² Ronald K. Wilson. 1930. Anglo-Muhammadan Law. Sixth edition. London
- ⁴³ Kazi Nasiruddin Ahmed op. cit. pp., 16-24
- ⁴⁴ Ibid
- ⁴⁵ Kazi Nasiruddin Ahmed, op. cit., p. 25
- ⁴⁶ Ibid
- ⁴⁷ The Gazette of Pakistan Extraordinary. June 20, 1956. Karachi. pp. 1197-9
- ⁴⁸ Ibid., p. 1199
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