

**Stipulations in Nikāḥ Nama: Sharī'ah Analysis of Post-Amendment Decisions
of Higher Judiciary (2015-2024)**



Submitted By:

Zarlish Naz Kiani

219-FSL/LLMMFL/F-23

Supervised By:

Dr. Mudassra Sabreen

Chairperson Department of Sharī'ah

IIUI, Islamabad

DEPARTMENT OF SHARIAH

FACULTY OF SHARI'AH AND LAW

INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD

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Zarlish Naz Kiani

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Supervised by

Dr. Mudassra Sabreen

Chairperson Department of Shariah and Islamic Law

Department of Shariah (Islamic Law)

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Zarlish Naz Kiani

DECLARATION

I, Miss **Zarlish Naz Kiani**, hereby declare that this dissertation is original and has never been presented in any other Institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

Student:

Zarlish Naz Kiani

LLM Islamic Family Law

219-FSL/LLMMFL/F23

Signature: _____

Date: _____

Supervisor:

Dr. Mudassra Sabreen

Chairperson Department of Shariah & Islamic Law

Faculty of Shariah & Law

IIU, Islamabad

Signature: _____

Date: _____

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ABSTRACT

In Pakistan, despite constitutional commitments to align all laws with the Qur'an and Sunnah, family law remains criticized for its disconnect from Islamic principles, especially regarding the rights and duties within marriage. A particularly neglected area is the legal treatment of stipulations (sharā'it) recorded in Column No. 19 of the Nikāḥ Nāma. Though meant to provide spouses, especially women, with contractual agency, there is no specific law addressing their enforceability or legal consequences. This legislative gap has led to inconsistent judicial interpretations, often weakening the protective aims of Islamic law.

This dissertation examines the religious and legal status of such stipulations by exploring the jurisprudence of the four Sunni schools Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī with special focus on the Ḥanbalī school's more flexible stance in favor of women's rights. It also draws comparisons from Muslim-majority countries that have successfully codified these stipulations, demonstrating their compatibility with Islamic tradition. The study further evaluates the judicial response in Pakistan after the 2015 Punjab Muslim Family Laws (Amendment) Act, revealing that courts have failed to uphold these stipulations despite Sharī'ah support. Empirical data from Nikāḥ Registrars and women in Punjab highlight a lack of awareness, training, and implementation at the ground level. This research argues for a clearer legal framework that reflects inclusive Islamic interpretations, especially the Ḥanbalī view, to ensure these stipulations are recognized and enforced. Legislative reform, judicial training, and public awareness are essential steps toward protecting women's rights and strengthening the ethical foundation of marriage in Pakistan.

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Chapter 1

INTRODUCTION TO RESEARCH

1. Thesis Statement

The critical analysis of the stipulations of Nikāḥ Nama reveals significant inconsistencies in their interpretation and validity under Islamic jurisprudence and judicial precedents; focusing on higher judiciary case laws since the Punjab Muslim Family Laws (Amendment) Act 2015, it highlights the urgent need for a cohesive legal framework that aligns with Sharī'ah principles to safeguard women's rights and enhance the fairness of the family law system in Pakistan.

2. Introduction

In Islamic law, marriage is generally considered a civil contract based on mutual consent, rather than a purely religious or sacramental bond.¹ This view is derived from classical jurisprudence, where a marriage (Nikāḥ) is recognized as a binding agreement between two parties who possess legal capacity and consent freely. According to the four major Sunni schools of thought, the contract of marriage can contain stipulations (shurut) as long as they do not contravene the basic principles of Islamic law.² These stipulations serve as mutually agreed-upon terms that can shape the rights and duties within the marriage. Over time, Islamic legal scholars have developed various interpretations regarding which types of stipulations are valid, void, or voidable. While the Ḥanafīs, Shāfi'īs and Mālikīs tends to be more restrictive, recognizing only those stipulations that

¹ Muhammad Munir, "Marriage in Islam: A Civil Contract or a Sacrosanct?" *Hamdard-Islamicus* XXXI (2008), <https://ssrn.com/abstract=1534187>.

² Asaf A. A. Fyzee, *Outlines of Muhammadan Law*, 5th ed. (Oxford: Oxford University Press, 2008), 104-106.

are consistent with the primary objectives of marriage and don't contravene Islamic Injunctions,³ the Ḥanbalīs, are more permissive in allowing stipulations that protect the interests of the wife.⁴

Both sides base their views on the Quran, Hadīth, and Islamic tradition.

While most jurists agree on the validity of permissible stipulations, debates arise regarding irregular stipulations that could benefit women, with some scholars advocating for liberal interpretations. For instance, Ḥanbalī scholars support additional conditions unless explicitly prohibited by the Quran or Sunnah, allowing wives to dissolve marriages if these are violated.

They rely on a *Ḥadīth* that states that:

The conditions that are most deserving of being fulfilled are those by which you have made lawful the private parts (i.e., marriage).⁵

Conversely, majority of jurists including *Hanafīs*, *Shāfi's*, and *Mālikīs* advocate for a cautious approach regarding the acceptance of additional stipulations, supporting their stance with various arguments.

They rely on a *Ḥadīth* that states:

Any stipulation that is not in the Book of Allah (the Qur'an) is void.⁶

Ibn Ruṣd acknowledges both Aḥādīth as authentic but argues for the prioritization of the first *Ḥadīth* in the context of marriage contracts. He suggests that while the later *Ḥadīth* provides a

³ Abī Al-Hassan Alī bin Abī Bakar bin Abdul Jalīl Al-Marghinānī, *Al-Hidāyah Sharah Bidāyatal Mubtadī*, vol.1 (Riyadh: Al-Maktabah Al-Islāmiyyah, nd), 202–203; Abu Al Walīd Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al- Muḥtāhid wa Nihāyat al- Muḥtāsid*, vol.2 (Cairo: Dār ul Salām, 1995), 59.

⁴ Muhammad 'Abdullah bin Aḥmad bin Muhammad bin Qudāmāh al Muqdasī, *Al-Mughnī li Ibn e Qudāmāh*, vol.7, (Cairo: Maktabat ul Qāhirah, 1968), 71.

⁵ Abdullah Muhammad Ibn Majah al-Qazwayni, *Sunnan Ibn i Mājah*, (Lahore: Kitab al-Nikāḥ, Islamic Academy, 1990), Vol. 2, p. 73.

⁶ Muhammad bin Ismail Abu Abdullah Al Bukhārī, Ṣaḥīḥ *Al- Bukhārī*. vol. 1. (Damascus: Dār Ṭauq Al-Najāh, 2001), 1143–1144.

general rule against stipulations not grounded in the Qur'an, the former *Ḥadīth* is more specific to the context of marriage and should guide the application of stipulations regarding marital rights.⁷ Despite differing opinions on additional stipulations, all jurists concur that terms undermining the marriage's purpose, like neglecting maintenance or unfair financial burdens, are null and void. In Pakistan, Islamic law not only informs personal and family law but is also recognized by the Constitution and statutory enactments. Article 227 of the Constitution of Pakistan mandates that all laws shall be brought in conformity with the injunctions of Islam as laid down in the Quran and Sunnah.⁸ Similarly, Section 2 of the West Pakistan Muslim Personal Law (Shari'at) Application Act, 1962, declares that in matters concerning marriage, dissolution of marriage, maintenance, dower, guardianship, and inheritance, the rule of decision shall be Muslim Personal Law (Shari'at) in cases where the parties are Muslims.⁹ These provisions create a legal expectation that family matters, especially those related to marriage contracts, must align with Islamic principles. Article 35 of the Constitution also affirms that the State shall protect the marriage, the family, the mother, and the child.¹⁰

In practice, however, the enforceability of stipulations in the Nikāḥ Nama in Pakistan presents various challenges. Judicial precedents, particularly post-2015 amendment in MFLO, 1961 rules demonstrate inconsistencies in the application of Islamic principles when it comes to contractual clauses within the marriage contract. Courts have sometimes disregarded valid stipulations agreed upon by the spouses, often citing procedural technicalities or failing to invoke Islamic

⁷ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al- Muḥtāḥid wa Nihāyat al- Muḥtāḥid*, vol.2 (Cairo: Dār ul Salām, 1995), 59.

⁸ Constitution of the Islamic Republic of Pakistan, 1973, Art. 227.

⁹ West Pakistan Muslim Personal Law (Shari'at) Application Act, 1962, § 2.

¹⁰ Constitution of the Islamic Republic of Pakistan, 1973, art. 35.

jurisprudence as a guiding source. Moreover, stipulations relating to property ownership, monetary compensation, have occasionally been dismissed by courts on the grounds that they fall outside the scope of civil jurisdiction, despite the clear mandate of family courts under Rule 5 of the West Pakistan Family Courts Rules, 1961.¹¹ As a result, cases are unnecessarily referred to civil courts, causing undue delay and hardship for women who seek enforcement of their rights under the Nikāh Nama.

The referral of such disputes to civil courts also undermines the effectiveness of the specialized family court system. Under Rule 5 of the Family Courts Rules, family courts have jurisdiction over all matters arising out of the Nikāh Nama. Nevertheless, in many instances, when stipulations involve immovable property or significant monetary claims such as deferred dower, civil courts assume jurisdiction despite this provision.¹² Women are left navigating between civil and family courts, effectively treated like a football kicked between different judicial forums. This not only leads to procedural fatigue but also violates the spirit of laws meant to simplify and expedite family litigation.

Another pressing concern relates to the judicial interpretation of these stipulations. Many judges, lacking sufficient training in Islamic jurisprudence, either ignore valid Islamic stipulations or interpret them in ways inconsistent with classical jurisprudence. This necessitates institutional reform. Judges presiding over family courts should be thoroughly trained in Islamic law and its practical application. Ideally, every family court should include at least one judge well-versed in Islamic jurisprudence. The frequent and uncritical application of foreign or Western legal

¹¹ West Pakistan Family Courts Rules, 1961, Rule 5.

¹² Muhammad Munir, ““Multiplying Zeroes:(In) Validity of Promises in Marriage Contracts under Pakistani Case Law,” *LUMS LJ* 6 1 (2019).

encyclopedias in interpreting Islamic contracts must be curtailed. Judicial activism should be promoted to allow superior courts to intervene swiftly when judgments misinterpret or ignore Islamic principles. Such judgments should be reviewed and corrected under judicial review mechanisms to prevent them from becoming binding precedents that could distort future legal interpretations.

To assess the extent to which these legal frameworks are implemented at the grassroots level, a field survey was conducted involving Nikāḥ Registrars across various Union Councils. One of the key questions posed was whether they were aware of the legal status and enforceability of stipulations recorded in the Nikāḥ Nama. A common response revealed that many Nikāḥ Registrars lacked adequate training and were unaware of the legal consequences of the clauses they record. They viewed their role primarily as that of recording marriage details, rather than acting as officers of legal accountability.¹³ This highlights the need for targeted training and regulation of Nikāḥ Registrars to ensure that they understand the binding nature of contractual stipulations in Islamic and Pakistani law.

Ultimately, the enforceability of stipulations in the Nikāḥ Nama is not merely a question of procedural law but a matter deeply embedded in constitutional, religious, and social frameworks. It is essential that judicial officers, Nikāḥ Registrars, and legal professionals understand their role in upholding Islamic contractual norms. There is an urgent need to harmonize statutory laws, judicial practice, and public awareness to ensure that the rights agreed upon in the marriage contract are protected in both letter and spirit.

¹³ Interview with Nikāḥ Registrar, Union Councils (Punjab), May 2025. Interview conducted as part of field research for this thesis.

Literature Review

The Nikāh Nama, or marriage contract, is a critical legal document in Islamic marriage, particularly in Pakistan, where it serves to regulate the rights and obligations of spouses. Despite its significance, the interpretation and enforcement of stipulations within the Nikāh Nama present numerous challenges. This literature review aims to synthesize existing research on the legal frameworks surrounding Nikāh Nama in Pakistan, especially focusing on decisions from higher judiciary bodies between 2015 and 2024. The thesis posits that addressing these challenges necessitates the establishment of a uniform system of interpretation to ensure clarity and consistency in legal practices.

The literature provides with the rulings of interpretation at length but the perspective of its implication as a law and precedents in Pakistan is least conversed. Few of the books and articles from the relevant literature shall be analyzed below.

Family Law in Islam: Theory and Application is an excellent book written by **Dr Muhammad Tahir Mansoori** in which he explored systematic exposition of Shari'ah rules regarding Muslim marriage contract on which family unit is structured. He has also analyzed the status of stipulations under classical Islamic law and the current debate on stipulations. Moreover, modern legislations in the sphere of family law are also highlighted in detail.¹⁴ The book is useful for understanding Family law in Islam in theoretical and practical perspective but it has not made a comparison to reveal the gap between the true Islamic personal laws and the ones practiced in Pakistani courts.

¹⁴Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application* (Islamabad: IPS Press, 2021).

A Code of Muslim Personal Law (1978) is a significant contemporary work written by **Tanzil-ur-Rahman** that compiles extensive Islamic legal material on family law from classical and modern sources and proposes reforms based on renewed ijtihad. The book covers key areas such as parentage, custody, maintenance, and introduces progressive reforms like restricting polygamy through court consent and broadening judicial powers for khul‘ divorce and legal separation.¹⁵ However, despite its comprehensive scope, the work does not address reforms regarding the enforceability of stipulations in marriage contracts (Nikāḥ Nama), which remain a crucial yet underexplored aspect in Muslim personal law. This omission highlights a gap in both scholarly discourse and legal reform, emphasizing the need for focused efforts to incorporate and enforce such stipulations within personal law statutes to advance justice and women’s rights in Muslim family law.

Outlines of Muslim Personal Law is a brilliant piece of work by **Imran Ahsan Khan Nyazee** which attempts to clarify the Islamic concepts regarding the personal matters along with mentioning all the codified family laws in Pakistan.¹⁶ It is an undoubtedly very helpful and comprehensive book but it has also not made a comparison to reveal the gap between the true Islamic personal laws and the ones practiced in Pakistan.

Islamic Family Law in A Changing World written by **Abdullahi A An-Na’im** is a superb book where he has conversed upon the Islamic Family laws practiced in various countries including Pakistan.¹⁷ He has explained the evolution of Family laws briefly and has also highlighted the

¹⁵ Tanzil-Ur-Rahman, *A Code of Muslim Personal Law* (Karachi: Islamic Publishers, 1984).

¹⁶ Imran Ahsan Khan Nyazee, *Outlines of Muslim Personal Law* (Rawalpindi: Federal Law House, 2012).

¹⁷ Abdullahi A An-Na’im, *Islamic Family Law In A Changing World* (London: Zed Books Ltd., 2002).

provisions which have been criticized by the Islamic sector. He also declared the provision requiring registration of marriage to be one of the criticized laws but did not discuss the beneficial conditions that can be added to the contract of marriage to make it more worthy.

The article “*A Critical Discourse Analysis of the Marriage Certificate (Nikāḥ Nama) in Pakistan*” written by **J. Asghar**, provides essential insights into the intersection of language, power, and social norms in the context of marriage. By highlighting the exploitation of language and the need for revision, the study calls attention to the significant role that legal documents play in shaping individual rights and societal expectations. Addressing the identified knowledge gaps through future research could advance the conversation on gender equality and informed consent in marriage, ultimately contributing to a more just legal framework.¹⁸

Despite the valuable insights provided by author, there are still gaps, such as the requirement for empirical research on the ways in which the Nikāḥ Nama's language influences real marriage experiences and court interpretations, particularly when there are misunderstandings. Furthermore, there is a dearth of research on the opinions of community members, legal experts, and religious leaders, which could contribute to the conversation about possible reforms in Pakistan.

The enforcement of Nikāḥ Nama stipulations faces significant challenges due to divergent interpretations by judicial bodies, as highlighted by **Muhammad Munir** in his article “*Multiplying Zeroes: (In)Validity of Promises in Marriage Contracts under Pakistani Case Law*,” which underscores the inconsistencies in judicial rulings on the enforceability of marriage

¹⁸J. Asghar, “A Critical Discourse Analysis of the Marriage Certificate (Nikāḥ Nama) in Pakistan,” *Global Language Review* VI, no. III (2021): 44–55, [https://doi.org/10.31703/glr.2021\(VI-III\).05](https://doi.org/10.31703/glr.2021(VI-III).05).

contract promises, leading to legal ambiguity and confusion among practitioners and individuals. This variability reflects the judiciary's struggle to balance contemporary societal needs with Islamic principles, further complicated by the sporadic application of constitutional amendments like Article 35 of the Pakistani Constitution, which influence family law interpretations.¹⁹ Despite existing literature, notable gaps remain, including a lack of empirical research on how these interpretative differences impact individuals especially women and limited analysis of how constitutional amendments interact with Islamic legal principles in practice. Comparative studies with other Islamic countries could offer valuable insights into these complex dynamics.

The article ***“Documentation (Nikāḥ Form and Talaq Nama) in Pakistani Muslim Family Laws: Historical and Jurisprudential Review”*** by **Syed Muhammad Usman Ghani** offers a comprehensive analysis of the evolution and significance of marriage and divorce documentation within Pakistan’s legal and Islamic frameworks. By examining historical laws from the Ottoman Empire, British India, and Pakistan, it underscores the crucial role of formal documentation in safeguarding marital rights and duties.²⁰ The study highlights current challenges, including the lack of standardized forms and awareness, which contribute to family disputes and legal ambiguities. It emphasizes the importance of aligning legal documents with Islamic principles, as advocated by the Council of Islamic Ideology and the Federal Shari’at Court, to enhance clarity and enforceability. Future research could focus on developing uniform, Shari’ah-compliant

¹⁹ Muhammad Munir, ““Multiplying Zeroes:(In) Validity of Promises in Marriage Contracts under Pakistani Case Law,” *LUMS LJ* 6 1 (2019).

²⁰ Syed Muhammad Usman Ghani, "Documentation (Nikāḥ Form and Talaq Nama) in Pakistani Muslim Family Laws: Historical and Jurisprudential Review Survey," *Al-Kashaf*, April 6, 2023, Vol. 2, No. 1, available at SSRN: <https://ssrn.com/abstract=4981539> or <http://dx.doi.org/10.2139/ssrn.4981539>. Accessed October 27, 2024.

documentation practices to strengthen family protection and reduce litigation, thereby fostering social stability and justice.

The article *Contractual Stipulations Under Classic Islamic Law and Current Marriage Contracts in USA* written by Sardar M.A. Waqar Khan Arif & Syed Mudasser Fida Gardazi describes diverse opinions across traditional schools of thought regarding the permissibility of various stipulations, focusing on their potential benefits for women and highlighting instances where such stipulations may reinforce or disrupt marital obligations. The authors delve into the roles of classical texts and contemporary legislative practices, contrasting the restrictive views of the majority of scholars with the more liberal interpretations advocating for additional conditions that empower women. The article emphasizes the necessity for stipulations to align with Shari'ah and the rights they may afford spouses, particularly in cases of conflict or divorce. Despite its thorough examination, the article does not specifically address post-amendment judicial decisions in higher courts related to Nikāḥ nama stipulations from 2015 to 2024, leaving a gap in understanding how recent legal interpretations and rulings have influenced the practice and enforcement of stipulations in contemporary Nikāḥ nama agreements. This gap presents a significant opportunity for further research, emphasizing the need for a Shari'ah-based analysis of recent judicial amendments and their implications for marriage contracts in the modern era.²¹

The article *"Marriage in Islam: A Civil Contract or a Sacrosanct Contract"* written by **Muhammad Munir** describes the nature of marriage within Islamic jurisprudence, exploring the

²¹ Sardar M.A. Waqar Khan Arif and Syed Mudasser Fida Gardezi, "Contractual Stipulations under Classic Islamic Law and Current Marriage Contracts in USA 2021," *Global Regional Review* VI(II) (2021): 186–95, [https://doi.org/10.2031703/grr%20.%202021\(%20VI-II\).](https://doi.org/10.2031703/grr%20.%202021(%20VI-II).)

dichotomy between viewing marriage as a civil contract, subject to legal regulations, and as a sacrosanct covenant with spiritual significance. The author reviews various interpretations from Islamic scholars that illustrate the historical and contemporary treatments of marriage, highlighting diverse perspectives on its theological and legal dimensions.²² This analysis underscores the flexibility within Islamic law in accommodating cultural practices while remaining anchored in religious obligations. However, despite the comprehensive examination of marriage's dual nature, there is lack of discussion regarding the implications of these varying interpretations on contemporary family cases, particularly in terms of women's rights.

The article *Knowledge and Awareness about Nikāh Nama Reforms and its Clauses in Lahore* written by **Memona Arjumand, Subha Malik, and Nayab Javed** provides a comprehensive overview of the different clauses in the Nikāh Nama, an Islamic marriage contract in Pakistan, emphasizing its significance in defining the rights and responsibilities of both partners. It systematically breaks down the various clauses, from the basic information of the bride and groom to the intricacies of Haq Mehr, the rights to divorce, and marital status, while highlighting the legal implications of each section. The review elucidates the importance of certain clauses such as the stipulation of Haq Mehr and the right to divorce as protective measures for women, particularly in light of cultural practices that may undermine their rights.²³ However, a gap exists regarding the validity of stipulations added to the Nikāh Nama in both Islamic law and recent judicial decisions.

²² Muhammad Munir, "Marriage in Islam: A Civil Contract or a Sacrosanct?," *Hamdard-Islamicus* XXXI (2008), <https://ssrn.com/abstract=1534187>.

²³ Memona Arjumand, Subha Malik, and Nayab Javed, "Knowledge and Awareness about Nikāh Nama Reforms and Its Clauses in Lahore," *Forman Journal of Social Sciences* 1 (2021), <https://doi.org/10.32368/FJSS.20210107>.

The article *“Reforming the Procedure of Nikāḥ Proceedings in Pakistan”* by **Areesha Jawad Butt** offers a comprehensive analysis of the procedural deficiencies inherent in the current marriage registration system under Pakistani law. By examining the legal significance of the Nikāḥnama as a ‘public document’ and the role of Nikāḥ registrars as public officers, the study underscores how negligence, vagueness, and potential manipulation compromise the integrity of marriage records. The paper highlights gaps in legal safeguards, including issues of interpolation, incomplete entries, and the lack of formal training for registrars, which facilitate disputes, fraud, and the undermining of individual rights—particularly those of women. Addressing these shortcomings through proposed reforms could strengthen the legal framework, reduce litigation, and ensure better protection of rights within marriage.²⁴ Future research focusing on the implementation of oversight mechanisms and the role of judicial authorities could further enhance procedural accountability and social justice in Pakistan’s marriage system.s

The article *“Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife”* written by **Lucy Carroll** provides a detailed examination of stipulations in Muslim marriage contracts, emphasizing their capacity to strengthen the legal position of wives in South Asia by recognizing marriage as a civil contract. It analyzes a wide range of permissible contractual clauses, such as residence arrangements, mobility, and maintenance, supported by over a century of case law that affirms their enforceability with limited exceptions. The discussion underscores how specific stipulations can be used to secure the wife’s rights and outlines the legal conditions under which courts have historically

²⁴ Areesha Jawad Butt, "Reforming the Procedure of Nikāḥ Proceedings in Pakistan," LUMS LJ 8 (2021): 98.

upheld such provisions.²⁵ However, the analysis is grounded in pre-amendment jurisprudence and lacks engagement with the evolving judicial approach following Pakistan's 2014 amendments to the Nikāḥ Nama. This temporal limitation marks a key gap, as recent case law trends and statutory developments concerning the enforceability of stipulations remain unaddressed in this otherwise foundational study.

The article *“Sharī’ah Perspective on Marriage Contract and Practice in Contemporary Muslim Societies”* by **Shamreeza Riaz** offers a comprehensive examination of Islamic teachings, cultural practices, and legal rulings related to marriage, with a particular focus on force free contract of marriages and consent. By analyzing religious texts, judicial decisions, and societal norms, the study highlights the discrepancies between Islamic principles of voluntary consent and the prevalence of coercive practices that violate women's fundamental rights. The work also underscores the importance of aligning customary practices with Sharī’ah to promote gender justice and uphold legal protections for women.²⁶ Future research in this area could further explore the effectiveness of legislative reforms and judicial interventions in curbing patriarchal marriages, thereby fostering a more equitable and rights-based approach to marriage within Muslim communities.

In **Muhammad Ghaus v Additional District Judge, Bahawalpur**, Lahore High Court held that, any stipulation or condition agreed between the parties mutually and with their free consent cannot

²⁵ Lucy Carroll, "Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife," *Modern Asian Studies* 16, no. 2 (1982): 277–309, <https://www.jstor.org/stable/312203>.

²⁶ Shamreeza Riaz, “Sharī’ah Perspective on Marriage Contract and Practice in Contemporary Muslim Societies,” *International Journal of Social Science and Humanity*, Vol. 3, No. 3 (May 2013): 263-267.

be considered as an absolute bar to either pronounce divorce or to contract second marriage.²⁷ In **Ghulam Shabbir v. Mst. Abbas Bibi and others** it was held that the amount agreed in terms of clause-19 of Nikāḥ Nama is spousal support having all the attributes of alimony wherein reasonable benefits were offered to enable ex-wife to have dignified and comfortable life. There is no restriction that husband cannot agree to arrange for maintenance or agree to extend fiscal advantage to the wife, even after the divorce. This nature of the benefit, which is not in any manner is restricting right of divorce, is in fact an act of bestowing benefit or gift upon wife to support her, hence, cannot be termed as illegal or contrary to the spirit of Islam and teachings of Quran.²⁸ Despite these landmark judgments where judges followed Islamic law, judges are still confused with enforceability of stipulations.

Summing up, the literature reveals a significant gap in the comprehensive analysis of stipulations in the Nikāḥ Nama from both Islamic jurisprudential and Pakistani legal perspectives. While some studies touch upon the legal and gender dimensions, there remains a lack of focused attention on post-2014 amendment case law and its implications. The inconsistencies in judicial interpretation, the absence of a standardized enforcement mechanism, and the gendered impact of these shortcomings highlight the urgent need for a coherent legal framework. A comparative analysis with other Muslim-majority jurisdictions may offer valuable models for reform. Ultimately, this research seeks to address these gaps and contribute toward a more consistent, rights-based approach to the interpretation and enforcement of Nikāḥ Nama stipulations in Pakistan.

²⁷ Muhammad Ghaus v Additional District Judge, Bahawalpur (W.P. No.7630 of 2018)

²⁸ Ghulam Shabbir v. Mst. Abbas Bibi and others (2022 CLC 963)

4. Significance of Study

Within the context of Pakistani matrimonial agreements, the analysis of Nikāḥ Nama stipulations serves as a gateway to understanding the intricate dynamics that influence marital relationships, legal disputes, and court decisions. This study seeks to unravel the multifaceted implications of these stipulations, particularly focusing on their effects on gender equality, women's rights, and family dynamics in Pakistan. By exploring the diverse interpretations of stipulations within Nikāḥ Nama agreements, this research aims to address the inconsistencies and challenges that arise, ultimately striving to promote a more equitable and just legal system.

The research questions guiding this study delve into the core of Nikāḥ Nama stipulations, examining the varying perspectives within Islamic jurisprudence, the impact of common stipulations on marital relationships and legal outcomes, the judicial handling of disputes stemming from these stipulations, and the influence of maintenance, polygamy, dower, property and financial clauses on divorce proceedings in Pakistan. Through a meticulous examination of these facets, this research endeavors to offer a comprehensive examination and analysis that not only elucidates the complexities surrounding Nikāḥ Nama agreements but also paves the way for meaningful legal reforms that enhance the fairness and effectiveness of the legal system. Visits to Union Councils to make a comprehensive report outlining compliance levels, effective practices, and recommendations for improvements will raise awareness. The research aims to establish a uniform system to mitigate clashes arising from differing interpretations of stipulations, promoting consistency and clarity in legal practices.

5. Research Questions

1. How do Islamic jurisprudential schools interpret the permissibility and enforceability of stipulations found in Nikāḥ Nama?
2. What legal frameworks govern these stipulations and How do specific stipulations within the Nikāḥ Nama influence marital relationships and legal proceedings under family law in Pakistan?
3. How do the decisions of the higher judiciary in Pakistan from 2015 to 2024 regarding Nikāḥ Nama stipulations reflect the interplay of Sharī'ah compliance within the framework of family law?
4. In what ways has the 2015 amendment to the Muslim Family Law influenced the management of Nikāḥ records in union councils, and what improvements can be made to ensure accountability and transparency?

6. Research Objectives

1. To analyze the interpretations of various Islamic jurisprudential schools on the permissibility and enforceability of stipulations included in the Nikāḥ Nama within a Sharī'ah context.
2. To investigate the effects of specific stipulations outlined in Nikāḥ Nama on the dynamics of marital relationships and the resolution of legal disputes within the context of Pakistani family law.
3. To critically examine how the decisions made by the higher judiciary in Pakistan between 2015 and 2024 related to stipulations in Nikāḥ Nama reflect broader themes of Sharī'ah compliance, social justice, and gender equity within the framework of family law.

4. To assess the consistency and divergence in court rulings (2015-2024) regarding stipulations in Nikāh Nama and their implications on legal precedents and judicial practices.

5. To evaluate the ratio of enforcement of the 2015 amendment on regulation of Nikāh and management and Nikāh records in union councils, identifying existing gaps in accountability and transparency, and recommending enhancements to improve record-keeping practices.

7. Research Methodology

The methodology will incorporate doctrinal research, systematically reviewing substantive laws, relevant statutes, and precedential law. This analysis will enrich the understanding of legal frameworks and their interpretations regarding validity and enforceability of stipulations in Nikāh nama, thus providing a deeper insight into how higher judiciary decisions have impacted the stipulations in Nikāh nama within the context of Islamic law. Complementing the doctrinal research, the methodology incorporates both qualitative and quantitative components aiming to present a nuanced perspective on the intersections of law, religion, and social practices regarding stipulations in marriage agreements in Pakistan. The qualitative analysis will entail a review of academic literature. Primary sources for this research would be Islamic Jurisprudence and Case laws. For gathering data, the researcher applies various data gathering strategies, such as use of libraries, research Journals, reading cases from Pakistan Law Site etc.

Quantitative approach includes systematic visits to Union Councils to assess the implementation of family law amendments through observations of Nikāh records, structured interviews with Nikāh registrars focusing on fraud prevention measures, key inquiries include current practices, training provided, and compliance changes since the amendments. Data collection will quantify

the ratio of properly filled versus crossed Nikāḥ namas, evaluate challenges faced by registrars in enforcing preventive measures, and culminate in a comprehensive report outlining compliance levels, effective practices, and recommendations for improvements, ultimately aiming to enhance the integrity of the Nikāḥ agreements and raise awareness.

Chapter 2

THE PERSPECTIVE OF *SHARI'AH* ON THE VALIDITY OF STIPULATIONS IN NIKĀḤ NAMA

2.1 Introduction

Islam being a complete code of life, has provided provisions for every general and personal aspect of life. Around 150 of the ayahs of Holy Qur'an on personal matters revolve around the subject of marriage and its attached fields. Islam has included all major and minor areas related to marriage in its teachings and principles. Islam recognizes marriage as a fundamental step toward achieving peace, progress, and development within a Muslim community. Understanding marriage requires considering its religious, legal, and social aspects. While considering the social and legal aspects, the aspect of religion is often neglected or mis-understood. Marriage is a socially and formally recognized union between spouses that creates rights and imposes obligations between them, their children and in-laws.²⁹

The statement that Muslim marriage is a civil contract is so stressed that other aspects of Muslim marriage are overlooked. Besides being a civil contract, Muslim marriage is also sacred covenant. Its dual aspect highlights its role as an 'ibāda (act of worship) and mu'āmala (worldly

²⁹ William A. Havilland, Harald E. L. Prinz and Bunny McBride, *Cultural Anthropology: The Human Challenge* (USA: Wadsworth Publications, 2011), 211.

engagement).³⁰ This institution establishes both moral and legal rights and responsibilities between the partners. Beyond fulfilling sexual desires and facilitating procreation, marriage embodies love, compassion, kindness, honor, care, sincerity, loyalty, integrity, and mutual respect among spouses.³¹

Marriage is recognized in Islam as the basis of society. Spouses are strictly enjoined to honor and love each other. Moreover, Islam declared that marriage was a contract between two persons, and gave the parties to the contract the freedom to include various conditions that benefit the spouses, which furthers the objectives of the contract and is consistent with the teachings of Islam. Unreasonable conditions, such as the wife not being supported by the husband or asking the wife to give up her dowry or agreeing on the condition that the marriage will not be consummated etc., are void from the beginning because they contradict the basic objectives of the marriage contract. The question arises that how do Islamic schools of jurisprudence interpret the permissibility and enforceability of the stipulations contained in Nikāḥ Nama? Islam has not only defined marriage and clarified its concept but has also elaborated its elements, requisites of validity, rulings regarding stipulations and all its relevant topics at length.

2.2 Overview of Islamic Law on Marriage and Validity of Stipulations

The principles governing marriage in Islam emphasize the importance of mutual consent, the establishment of a family, and the fulfillment of responsibilities as agreed upon between the spouses. The Qur'an and Hadith provide essential guidance on the rights and obligations of both

³⁰ Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (New Delhi: Oxford University Press, 1970), 90.

³¹ Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London: I.B. Tauris & Co Ltd., 1997), 33.

spouses, highlighting the need for compassion, respect, and partnership. Central to the Islamic understanding of marriage is the concept of mutual consent (Ijāb and Qabūl), which necessitates the agreement of both parties entering the contract.³² This principle ensures that both individuals willingly accept the responsibilities and commitments that marriage entails. Furthermore, the significance of marriage extends beyond mere sexual relations; it encompasses emotional support, companionship, and a shared commitment to building a life together in accordance with Islamic values.

2.2.1 Islamic Texts Governing Marriage Contracts

Muslim jurists have formulated different definitions that highlight the distinctive features of marriage. They have provided various definitions of marriage that emphasize its unique characteristics and significance. At its core, marriage is seen as a sacred contract that legitimizes the sexual relationship between a man and a woman, transforming their bond into one that is both lawful and respected. It serves not only as a means for sexual fulfillment but also plays a vital role in family life and procreation. Essentially, marriage establishes a legal relationship based on mutual agreement, allowing both partners to enjoy each other's company intimately and build a life together. This understanding highlights the profound emotional and social dimensions of marriage, beyond just its legal aspects.³³

³² Abdul Rahman bin Muhammad ‘Auz Al Jazīrī, *Al Fiqh ‘Alā Al Madhāhib Al ‘Arb’āh*, vol. 4 (Beirut: Dār ul Kutub ul ‘Ilmiyyah, 2003), 16-17.

³³ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, vol.2 (Cairo: Dār ul Salām, 1995), 2.

Some contemporary jurists have expressed dissatisfaction with this description of marriage on the grounds that it does not reflect the true nature of marriage and its aims. Its focus is mainly on legitimate sexual gratification. However, it may seem that sexual intercourse is important and not the only goal of marriage. They argue that the Qur'an speaks of marriage in terms of lifelong companionship, mutual love, empathy, tranquility and peace of mind. Thus, the focus is on the more abstract dimension of marriage, that is, companionship, tranquility and peace, and not the sexual aspect.³⁴

The Qur'an describes marriage as a sacred and sanctified covenant (*mithaqan ghaliza*).³⁵

Allah says:

And how can you take it when you have entered into one another and taken a solemn covenant from you?³⁶

Elsewhere the Qur'an describes that through marriage God creates between spouses the deepest love.

Allah says:

³⁴ Dr Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application*, First (Islamabad: IPS Press.2021)

³⁵ Abu Muhammad Mahmood bin Ahmad bin Mūsā bin Ahmad bin Hussayn Al-Ghītābī Al- Ḥanafī, *Al-Bināyah Sharah Al-Hidāyah* , vol.5 (Beirut: Dār ul Kutub ul ‘Ilmiyyah, 2000), 3.

³⁶ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur’ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur’ān Printing Complex), Qur'an, 4: 21.

One of the signs of God is that He created for you husbands from yourselves to live with them in tranquility, and He placed between your hearts love and mercy, and He contains signs for meditators.³⁷

This shows that sexual pleasure is not the only goal of marriage but peace and companionship as well. Marriage is thus recognized as an essential step towards peace, progress and development in the Muslim community.

The Prophet (peace be upon him) emphasized marriage in many hadiths. In one hadith he said:

Marriage is my Sunnah, and whoever moves away from my Sunnah does not own me.³⁸

2.2.2 Permissibility and Prohibitions of Stipulations in Classical Islamic Law

Word used for stipulations in Islam is *šhurūṭ*. There are two main types of *šhurūṭ* based on the one settling them:

1. "Al-šharṭ al-šhar‘i."

Al-šharṭ al-šhar‘i is that which is given by Lawgiver (Allah Almighty), such as two witnesses in marriage, ablution before praying etc. There is no need to mention the first type of conditions in the marriage contract, because they are the main purpose of marriage and are protected by the Shari'ah itself but if we mention them it will further reaffirm the rights of parties.³⁹

2. Al-šharṭ al-ja‘li

Al-šharṭ al-ja‘li is that which is stipulated by parties and also known as improvised condition such as condition of providing mortgage or guarantor for the deferred price, in a sales contract. The

³⁷Ibid, Qur'an, 30:21

³⁸ Muhammad bin Ismail Abu Abdullah Al Bukhārī, *Ṣaḥīḥ Al- Bukhārī*. vol. 1. (Damascus: Dār Tauq Al- Najāh, 2001), 5063.

³⁹ Wahbatu'l Zahīlī, *Al-Fiqh al-Islāmī wa adillatuhu*, vol. 7 (Damascus: Dār al Fikr, 1989), .47

condition of wife residence in specific place, or not preventing her from working after marriage, delegating right of divorce to wife of third party and many other benefiting parties to the contract. Contracting parties may not include in their contract any condition they want, rather, there are limits set by Law giver for the freedom of contracting parties in this regard. Condition precedent to stipulate these conditions in contract of marriage is that, they must comply with Sharī'ah and should not contradict objectives of marriage as ordained by Shari'ah. The jurists have agreed that the condition is valid if it confirms to the requirements of contract, and the effects resulting from it, or it is a valid custom.⁴⁰ As far as the condition that contradicts the requirements of the contract, which is the one that modifies the effects of the contract and its ruling that the Lawgiver has established for it, the jurist have decided that it is invalid.⁴¹

Imām al-Shāṭibī, categories condition into three types, first is that they compliment the wisdom of condition and support it, and there is no contradiction to it in any case, such as release in a good manner in marriage or stipulating fasting during I'tikāf aligns with the act of devotion and there is no contradiction in it. In contrast, the second category includes conditions that are in appropriate and contradict the intended purpose, such as stipulating in contract that husband will not spend on wife or stipulating in prayer that he speaks during it if he likes. Such stipulations are invalid as they are against Shari'ah.⁴²

Third category is one that neither contradicts nor aligns to the requirement of contracts or its effects. While determining validity of such stipulations, different rules are applied to the acts of worship and transactions. As for acts of worship, it is not sufficient for them to be non-

⁴⁰ Wahbatu'l Zahīlī, *Al-Fiqh al-Islāmī wa adillatuhu*, vol. 7 (Damascus: Dār al Fikr, 1989), .47

⁴¹ Muhammad Salam Madkur, *Introduction to Islamic Jurisprudence* (n.d.), 166.

⁴² Ibrāhīm ibn Mūsā Abū Ishāq al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, trans. Imran Ahsan Khan Nyazee (*The Reconciliation of the Fundamentals of Islamic Law*, Volume I) (n.d.), 382.

contradictory without the appearance of compatibility, because the basic principle in them is worship and the basic principle in them is that one does not undertake them except with permission. The same is true for conditions related to them. As for customs, it is sufficient for them to be non-contradictory, because the basic principle in them is to pay attention to the meanings without worship, and the basic principle is permission until evidence to the contrary is presented. There is a difference of opinion among Muslim Schools of thoughts about the validity of the different conditions.⁴³

2.3 Islamic Jurisprudence: The Principles of Stipulations in Islamic Law

In Islamic Jurisprudence there are three main types of stipulations:

1. Express stipulations

These stipulations are main objectives of Nikāḥ itself, and create rights and obligations between spouses. Some of them are reciprocal or some are peculiar either to husband or wife i.e., husband is legally and religiously bound for kind and fair treatment towards wife, maintenance and protection of family. Similarly, wife is obliged to be obedient towards her husband, to observe fidelity, maintaining conjugal relations and upbringing children of her husband. These are valid and enforceable.⁴⁴

⁴³ Ibid.

⁴⁴ Ibn Hajar al-‘Asqalani, *Fath al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī* (Cairo: Maktab al-Kulliyah al-Azhariyah, 1978), Vol. 19, 262.

2. Invalid Stipulations

These stipulations are against the objectives of marriage, and create no rights and obligations between spouses i.e., husband stating that he will not maintain her wife or pay her dower, or wife stating that she will not fulfill conjugal rights and or one that permits women to receive a portion from their husband's second wife. Imām al-Bukhārī, reporting on the authority of ‘Abd Allāh ibn Mas‘ūd, states that a woman may not stipulate in her marriage contract that her sister in Islam, i.e. the co-wife, be divorced.⁴⁵ He also relates, on the authority of Abū Hurayrah, that the Holy Prophet (PBUH) has said that it is not valid for a woman to stipulate that the cowife be divorced in order to increase her own share because she will only get what Allah has prescribed for her.⁴⁶

3. Stipulation neither permitted nor prohibited

These stipulations are crucial as they include conditions that favor the wife, which are not explicitly forbidden or permitted in Islam. By agreeing to these conditions, the husband may relinquish certain rights. For instance, the wife may specify that he cannot take a second wife during their marriage or that she should not be removed from her domestic residence.⁴⁷

2.3.1 Scholarly Perspectives on Stipulations in Nikāḥ Nama

In first two types of stipulations there is no disagreement among Fuqahā but validity of third kind of stipulations is disputed among Islamic legal schools of thoughts.

⁴⁵ ‘Abd al-Razzaq b. Hammām al-San‘ānī, *Al-Muṣannaf*, trans. Abū al-‘Alamī Muhyiddīn Jahāngīr, 2nd ed, (Beruit: al-Maktab al-Islami, 1983), Vol. 6, 227–231.

⁴⁶ Hussain Ibn Mas‘ood al-Baghwi, *Sharh al-Sunnah* (Beruit: al-Maktab al-Islami, 1983), Vol. 9, 55.

⁴⁷ Muhammad ‘Abdullah bin Aḥmad bin Muhammad bin Qudāmah al Muqdasī, *Al-Mughnī li Ibn e Qudāmah*, (Cairo: Al-Matba’ah al-Shafiyah, 1962), Vol. 7, 71.

Ḥanafis Opinion⁴⁸

According to Ḥanafī Scholars stipulations are of two types: valid and irregular⁴⁹

1. Valid stipulations are those which aligns with the objectives of contract of marriage and injunctions of Islam as well. For example, if wife stipulates that her husband will arrange a separate residence for her or her dower will be paid immediately after marriage. These conditions are considered valid and binding in Sharī'ah. Some valid conditions are not collateral with the contract but still binding because Islam allows so, such wife stipulating right to divorce her from his husband (Talaq al-Tafwīd) or if a wife stipulates to pay double or triple the original amount of dower in case of arbitrary divorce, Sahibayn consider this condition as binding and that the husband must oblige this in case of divorce. According to Imām Abū Ḥanīfah, wife will get proper dower only while Imām Zufar consider this condition void.⁵⁰

2. Irregular Stipulations are those which are not ancillary to contract and are not permitted under Sharī'ah. For instance, stipulating in contract that this marriage is for specified period of time or prohibiting polygamy for husband. These stipulations are not permissible in *Ḥanafī* fiqh. They oppose any stipulation made by the wife that prevents her husband from remarrying during her lifetime. This viewpoint is clearly articulated in the following passage from Fatawa 'Alamgiriāh:

⁴⁸ Abū Ḥanīfah al-Nu'mān ibn Thābit (699–767 CE) founded the Ḥanafī school in Kufa, Iraq. As the earliest of the four Sunni schools, it emphasizes analogical reasoning (qiyās) and juristic preference (istiḥsān). See Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 34–35.

⁴⁹ Ibn 'Abidīn, *Radd al-Mahtār 'alā Ad-Durr al-Makhtār*, vol. 2 (Beirut: Dār 'l Iḥyā' al- Turāth al- 'Arabī, 1987), 405.

⁵⁰ Abī Al-Hassan Alī bin Abī Bakar bin Abdul Jalīl Al-Marghinānī, *Al-Hidāyah Sharah Bidāyatal Mubtadi*, vol.1 (Riyadh: Al-Maktabah Al-Islāmiyyah, nd), 202–203.

If any condition within a marriage contract contradicts legal principles such as a stipulation that the husband cannot wed another woman while the first wife is alive, nor can he keep a concubine then that condition is null, while the marriage contract remains valid along with the dowry. Similarly, if the husband specifies that the dowry must be paid by a certain date and that failure to do so would invalidate the contract, both the contract and the dowry are still enforceable, while the condition is void.⁵¹ Nevertheless, *Hanafīs* do accept other stipulations, such as Talaq al-Tafwīd.

Legal Effect of these stipulation is that they don't affect the validity of contract, only condition is declared null and void.

Mālikīs Opinion⁵²

According to Mālikīs Jurists stipulations are of two types, valid and invalid.⁵³

1. Valid stipulations are further divided by them into proper and improper. Proper conditions are those that align with the intended purpose of contract. On the other hand, improper conditions don't contradict the purpose of contract but impose difficulties on the husband and limit his freedom, such as stipulating that he can't take her wife out of her hometown or can't marry another woman or an increase in amount of dower in case of arbitrary divorce. (they agree with Imām Abū

⁵¹ Neil B.E. Baillie, *A Digest of Muhammadan Law*, vol. 1 (London: 1875; reprint, Lahore: 1965), 76. This is a translation of the chapters on family law from "Fatawa Alamgiriāh".

⁵² Mālik ibn Anas (711–795 CE) founded the Mālikī school in Medina during the 8th century. His school gives significant weight to the practice of the people of Medina ('amal ahl al-Madīna) as a legal source. See Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 65.

⁵³ Abū al-Barakāt al-Dardīr, *al-Sharḥ al-Ṣaghīr 'alā Aqrab al-Masālik ilā Madhhab al-Imām Mālik*, ma' Hāshiyāt al-Ṣawī wa-l-Mubārak, bi-Taḥqīq al-Sayyid 'Alī al-Sayyid 'Abd al-Raḥmān al-Hāshim, vol.2, (al-Qāhirah: Dār al-Faḍīlah, 2023), 384-386;

Ḥanīfah that wife will get proper dower only). These types of conditions are not enforceable against the husband.⁵⁴

2. Invalid Stipulations are those, which are against the objectives of marriage contract and are prohibited by Sharī'ah. For instance, stipulating that maintenance will be the responsibility of wife not husband. Such conditions should be cancelled if marriage has not been consummated, **Legal effect** of this would be that, if marriage has been consummated, the contract will remain valid, the condition alone will be abrogated. In this scenario wife will get proper dower instead of specified dower.⁵⁵

Shāfi'ī's Opinion⁵⁶

Like, *Mālikīs*, *Shāfi'ī's* jurists also divide stipulations into valid and void. According to them valid conditions are permissible in Sharī'ah and they are enforceable too whereas invalid conditions make the contract of marriage invalid.⁵⁷

Ḥanbalī Opinion⁵⁸

According to Ḥanbalī Jurist's stipulations are of two types:

⁵⁴ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, vol.2 (Cairo: Dār ul Salām, 1995), 58.

⁵⁵ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, vol.2 (Cairo: Dār ul Salām, 1995), 58.

⁵⁶ Muḥammad ibn Idrīs al-Shāfi'ī (767–820 CE), born in Gaza and later active in Egypt, established the Shāfi'ī school. He systematized uṣūl al-fīqh and balanced hadith and reasoning. See Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 97–101.

⁵⁷ Muhammad 'Abdullah bin Aḥmad bin Muhammad bin Qudāmah al Muqdasī, *Al-Mughnī li Ibn e Qudāmah*, vol.3, (Cairo: Maktabat ul Qāhirah, 1968), 226.

⁵⁸ Aḥmad ibn Ḥanbal (780–855 CE) founded the Ḥanbalī school in Baghdad. Known for his strict textualism, he relied heavily on hadith and rejected juristic speculation. See Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press,

1. Valid stipulations support the contract of marriage and add lawful benefits to one of the spouses. For Instance, stipulation that wife will not be taken away from her domestic residence or her husband will not take another wife during sustenance of their marriage or wife will be entitled to double amount of dower in case of arbitrary divorce. These stipulations are enforceable by law.

2. Invalid stipulations are against the objectives of contract of marriage or they are repugnant to Islamic principles, hence, prohibited. Ḥanbalī divide these stipulations further into two types based on their effect on contract. The first type includes conditions that do not affect the validity of the marriage itself; if these conditions are not met, only the condition becomes void, but the marriage remains valid. Examples of such conditions are that the husband will not have sexual relations with his wife, that he will divorce his first wife to marry another, or that the wife will cover household expenses. The second type includes conditions that do affect the validity of the marriage contract, making it invalid if they are not fulfilled. An example of this is stipulating that the marriage is only for a specific period, after which the contract is automatically revoked.

After comprehensive discussion of opinions of Islamic jurisprudential schools of thought it can be said that the *Hanafīs*, *Shāfi'īs*, and *Mālikīs* schools have similar views. They consider such stipulations to be unlawful but the contract will remain valid whereas Ḥanbalī school of thought consider such stipulations lawful and enforceable.⁵⁹

⁵⁹ Muhammad Munir, "Stipulations in a Muslim Marriage Contract with Special Reference to Talaq Al-Tafwid Provisions in Pakistan (2005-2006)," Yearbook of Islamic and Middle Eastern Law 12 (2006): 235–62, accessed August 12, 2024, <https://ssrn.com/abstract=1797046>.

2.3.1.1 Arguments Against Stipulations

Majority of Fuqahā (Jamhūr) except Hanbali scholars, only allow stipulations which determine their permissibility directly from Sharī'ah. They prohibit the conditions which are not expressly allowed by Qur'an and Sunnah. They forward following arguments to prove their point:

Their first argument is based on prophetic saying:

The Messenger of Allah said:

What is the matter with people who stipulate conditions that are not in the Book of Allah? Whoever stipulates something that is not in the Book of Allah, it is not valid even if he stipulates one hundred conditions? The condition of Allah is more deserving of being followed and is more hinting.⁶⁰

Based on this saying they argue that, abovementioned stipulations are not permissible and have no binding force.

Another Prophetic saying states that:

Muslims are bound by their stipulations they set for themselves unless it be a condition which turns unlawful into lawful and lawful into unlawful.⁶¹

From the caliphate period it is often reported that a woman was promised by her husband that she will be given a house but later on husband refused to do so. This matter was decided by Hazrat Ali (R.A), who is reported to have said that, Allah's rules are more important than wife's wishes.⁶²

⁶⁰ Muhammad bin Ismail Abu Abdullah Al Bukhārī, *Ṣaḥīḥ Al- Bukhārī*. vol. 1. (Damascus: Dār Ṭauq Al- Najāh, 2001), 1143–1144.

⁶¹ Abu Bakar Al-Baīhaqī, *Al-Sunnan Al-Kubrā, Hadith* no. 14819 (Beirut: Dār ul Kutab Al 'Ilmiyyah, 2003), vol.5, p.525.

⁶² Ibn Abī Shaybah, *Al-Mussanif*, ed. Ḥabīb al-Raḥmān al-Azāmī, vol. 4, (n.d.), 200.

Jurists (Jamhūr) argue that what Allah has permitted can't be taken away by either spouse by inserting stipulations. Allah has allowed polygamy for men, so adding condition not to marry further may restrict what is legal.

2.3.1.2 Arguments in Favor of Stipulations

Many great religious scholars advocate for the legal validity of stipulations in contracts. Among these supporters are notable personalities such as ‘Umar,⁶³ ‘Amr ibn al- ‘Ās, Shurayḥ, ‘Umar ibn ‘Abd al-‘Azīz.⁶⁴ Additionally, well-respected religious scholars like Imām al-Bukhārī, Abū Dāwūd, and Aḥmad ibn Ḥanbal⁶⁵ also endorse this view. Their arguments in favor of recognizing these stipulations as legitimate and binding are compelling. To substantiate the permissibility of stipulations in the marriage contract, they refer relevant provisions from the Qur’an, Sunnah and practices of companions of Muhammad (S.A.W):

Ayahs from Holy Qur’an

Allah says in Qur’an

1.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ

O believers! Honor your obligations.⁶⁶

⁶³ ‘Abd al-Razzaq b. Hammām al-San‘ānī, *Al-Muṣannaḥ*, trans. Abū al-‘Alamī Muhyiddīn Jahāngīr, 2nd ed, (Beruit: al-Maktab al-Islamī, 1983), vol. 6, 227.

⁶⁴ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, vol.2 (Cairo: Dār ul Salām, 1995), 59.

⁶⁵ Muhammad ‘Abdullah bin Aḥmad bin Muhammad bin Qudāmāh al Muqdasī, *Al-Mughnī li Ibn e Qudāmāh*, vol.7, (Cairo: Maktabat ul Qāhirah, 1968), 71.

⁶⁶ Muhammad Taqī-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur’ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur’ān Printing Complex), Qur’an, 5:1.

Abū Bakr al-Jassās al-Rāzī cites various authorities, including Abdullāh ibn ‘Abbās, Mujāhid, Ibn Juraij, and ‘Abū ‘Ubaydah, who interpret the Qur’anic term " ‘Uqūd " as referring to promises and agreements.⁶⁷ This includes the conditions stipulated during the marriage contract (Nikāh).

The Ḥanbalī school of thought emphasizes the significance of this verse as the cornerstone of contract law, underscoring both the freedom to enter into agreements and the principle of *pacta sunt Servando*. This principle, which translates from Latin to "agreements must be kept," is fundamental in contract law, asserting that parties who engage in a contract are legally bound to fulfill their obligations as outlined in the agreement. This implies that how the Ḥanbalī perspective aligns with the broader legal doctrine that prioritizes trust and reliability in contractual relationships, ensuring that individuals can depend on their agreements and that their commitments are respected and upheld by law.

2.

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

And fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned.⁶⁸

3.

..... وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا

And those who keep the pacts they make.⁶⁹

In this Ayah Allah has called people righteous who fulfill their promises. According to Qurtubī, the term ‘Ahd refers to something that is 'common' and includes any promises or commitments

⁶⁷ Abu Bakr al-Jassas, *Ahkam al-Qur'an* (Cairo: Matba' at Awqaf al-Islamiyah, 1916), Vol. 3, pp. 283–284.

⁶⁸ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur'an: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur'an Printing Complex), Qur'an, 17:34.

⁶⁹ Ibid, Qur'an 2:177.

one makes, whether they pertain to business, relationships, or any other permissible matters within the religion.

These verses of the Holy Qur'an signify that Allah Almighty has made it obligatory for believers to fulfill their obligations and undertaking towards each other and prohibited violation thereof. This also includes the conditions the parties stipulate in their contract of marriage through free will.

Aḥādīth of Holy Prophet (S.A.W)

أَحَقُّ مَا أَوْفَيْتُمْ مِنَ الشَّرْطِ أَنْ تَوْفُوا بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ.

The Prophet (ﷺ) said:

The stipulations most entitled to be abided by are those with which you are given the right to enjoy the (women's) private parts (i.e. the stipulations of the marriage contract).⁷⁰

Many scholars of hadith have referenced this narration and regard it as authoritative.⁷¹ In one account, 'Abd al-Rahman ibn Ghunaym recounts that a couple approached 'Umar, the second Caliph, where the woman expressed her concern that her husband had initially promised during their marriage contract to allow her to remain in her father's home, but was now attempting to relocate her. In response, 'Umar ruled in her favor.⁷² It's important to note that this incident occurred in Mādīnah. and was not contested by any Companion, which is why it is viewed as a consensus (Ijma').

There is another prophetic saying:

⁷⁰ Abdullah Muhammad Ibn Majah al-Qazwayni, *Sunnan Ibn i Mājah*, (Lahore: Kitab al-Nikāḥ, Islamic Academy, 1990), Vol. 2, p. 73.

⁷¹ Kamal al-Din Muhammed Ibn al-Humam, *Fath al-Qadir Sharh al Hidaya* (Cairo: Matba Mustafa Muhammad, 1900, p. 217.

⁷² Muhammad bin 'Īsā Al-Tirmidhī, *Sunnan Al-Tirmidhī: Kitab al-Nikāḥ*, vol.1, (Egypt: Maktabah wa Maṭba' Muṣṭafā al-Bābī al-Ḥalabī, 1975),347.

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطاً حَرَّمَ حَلَالاً وَ أَحَلَّ حَرَاماً .

The Holy Prophet (S.A.W) said:

Muslims are bound by their stipulations unless it be a condition which turns haram into halal and halal into haram.⁷³

It can be inferred from these aḥādīth of Prophet (S.A.W) such conditions benefiting parties must be honored and given effect unless they do not contradict injunctions of Holy Qur'an and Sunnah.

Practices of Companions and Tābi'īn

‘Abd al-Raḥmān ibn Ghunaym narrates that a couple came to ‘Umar (the second Caliph) in his presence, and woman complained that her husband, having agreed at the time of their Nikāḥ to keep her in her paternal home, should now abide by it and not take her out of there. ‘Umar consequently ruled in her favor.⁷⁴

Ibn Sāhnūn asked Ibn Al-Qāsim (companion of Imam *Mālik*):

If a woman made it a condition that her husband will not marry another woman during sustenance of her marriage and if he does so she will retain a right to divorce herself from him. Then if he marries another woman and she decides to divorce herself, she may divorce herself from him three times. But can she do this if her husband opposes this?

Ibn Al-Qāsim said, "*Mālik* has said in this matter, 'The right to divorce here lies with the woman, so the man's refusal to divorce has no value here'."⁷⁵

⁷³Imām Muḥammad b. ‘Alī b. Muḥammad al-Shawkānī, *Naylul Awtār Min Asrār Muntaqā al-Akḥbār*, vol.5, n.d. 525.

⁷⁴. Muḥammad bin ‘Īsā Al-Tirmidhī, *Sunnan Al-Tirmidhī: Kitāb al-Nikāḥ*, vol.1, (Egypt: Maktabah wa Maṭba‘ Muṣṭafā al-Bābī al-Ḥalabī, 1975), 347.

⁷⁵Abd as-Salam ibn Sa‘īd at-Tanūkhī, *Al-Mudawana fī Furu' al-Mālikīyah*, vol. 2. Edited by Sahnūn. (Cairo: Dar al-Kutub al-Misriyya, 1954), 75.

2.3.1.3 Evaluating Perspectives of both Sides

It is crucial to explore the perspectives from both sides, as this highlights the necessity of interpreting Islamic texts thoughtfully. Such an approach ensures that legal practices align with fundamental principles while also adapting to modern contexts.

The first argument for the majority requires some discussion because understanding the context in which it was made is crucial to grasp its true meaning.⁷⁶

It is reported that Barirah, a formerly enslaved woman, sought financial assistance from Ā'isha, the wife of the Prophet Muhammad (PBUH), after being manumitted by her master. Ā'isha offered to purchase Barirah and then grant her freedom, allowing Ā'isha to establish a relationship of patronage (wālā) with her. Barirah's master agreed, but this arrangement contradicted Islamic principles, as the right of patronage cannot be transferred through mutual agreement in the same way that familial ties cannot be created through mere contracts. Thus, if Ā'isha, bought and freed Barirah, she would rightfully hold the patronage, not the original owner.

Upon learning of this arrangement, the Prophet Muhammad (PBUH) expressed his disapproval, stating, "How can some people impose conditions not found in the Book of Allah? Any stipulations not included in the Qur'an are not binding, regardless of how many there are."⁷⁷ Conversely, other

⁷⁶ Muhammad Munir, "Stipulations in a Muslim Marriage Contract with Special Reference to Talaq Al-Tafwid Provisions in Pakistan".

⁷⁷ Muhammad bin Ismail Abu Abdullah Al Bukhārī, *Ṣaḥīḥ Al- Bukhārī*. vol. 1. (Damascus: Dār Ṭauq Al-Najāh, 2001), 269–270.

reports suggest that the Prophet (P.B.U.H) did permit the arrangement, affirming that patronage goes to the one who frees the slave, not the previous owner.

Ibn Ḥazm. presents an unusual argument, claiming that the previous allowance for such conditions was valid only because the Prophet's (P.B.U.H) approval indicated their compliance with Islamic law. However, after the Prophet publicly rejected these stipulations in a sermon, such conditions became illegal.⁷⁸ He argues that any stipulation not explicitly mentioned in the Qur'an or Sunnah is prohibited, and general verses or Ḥadīth cannot justify such stipulations, as doing so would contradict fundamental principles of Islamic law.

Forbidden stipulations are those explicitly prohibited by the Holy Qur'an. For example, neither a husband nor a wife can agree to abstain from sexual relations with their spouse, nor can a man attempt to evade his obligation to support his wife. Ibn Taymiyah. posits that something "not in the book of Allah" refers to matters not expressly forbidden in the Qur'an.⁷⁹ Consequently, prohibitions cannot be included in agreements, whereas permissible matters can be mutually accepted and are binding for both parties. Ibn Qadāmah suggests that such stipulations should be seen as enhancing the marital relationship.

Additionally, preventing a married man from marrying a second wife or allowing a wife to remain in her father's home cannot be viewed as 'prohibiting the legal' since these conditions were approved by Ḥazrat 'Umar, as they aim to offer additional protection to the typically weaker party, often the wife. Furthermore, to advance this goal, Islam permits a man to delegate the right of

⁷⁸ Muslim ibn al-Hajjaj, *Ṣaḥīḥ Al- Muslim*, vol. 4 (Beirut: Dar al-Ma'arifa, 1976), 133–134.

⁷⁹ Taqi al-Din Ibn Taymiyah, *Al-Away 'id al-Rumania al-Fisheye* (Beirut: Dar al-Narwhal al-Jeddah, 1980), 229.

divorce to either his wife or a third party, even though this right is generally viewed as solely belonging to the man. Ultimately, marriage is perceived as a civil contract that obligates both parties to uphold their mutual commitments as agreed.

2.4 Contemporary Jurisprudence on Stipulations in Marriage Contracts

The topic of contractual provisions is a crucial element in the ongoing discussions regarding the rights of modern Muslim women. Recently, the concept of incorporating additional terms such as clauses on monogamy, the wife's delegated right to initiate divorce, and her right to pursue education and a career has garnered significant attention among Muslim feminists and advocates. These individuals view such stipulations as empowering tools for women. Numerous organizations in Islamic nations are actively educating Muslim women on how to leverage these provisions to safeguard their fundamental rights. They encourage women to articulate and customize their marriage contracts to clearly outline spousal rights and responsibilities.

In Egypt, for example, a coalition of female activists, legal professionals, religious scholars, and academics developed a New Marriage Contract (NMC) that facilitates the inclusion of various conditions in a user-friendly format.⁸⁰ Similarly, in Iran, standardized contracts have been created that incorporate stipulations like the obligation for a husband to compensate his wife upon divorce and the delegation of the right to initiate divorce to the wife. In the United States, Karam, a Muslim attorney advocating for human rights, is drafting a model marriage contract that encompasses

⁸⁰Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application* (Islamabad: IPS Press, 2021), 36.

conditions such as monogamy, equal divorce rights, and the wife's autonomy in education and employment. This growing interest among Muslim women, especially activists, reflects a desire to utilize marriage contracts and their stipulations to protect their rights.⁸¹

Activists perceive the contract drafting process not merely as a delineation of rights and responsibilities but also as an opportunity to communicate their evolving identities as a couple. More importantly, it serves as a platform for discussing and aligning on critical family matters (like career choices, child-rearing, finances, and living arrangements) that might otherwise be postponed until stressful times.⁸²

2.4.1 Modern Legislation

Contemporary Muslim Personal Law codes tend to align with the Ḥanbalī school of thought regarding the acceptance of additional conditions in marriage contracts. The legislative frameworks across various countries demonstrate a progressive approach to marriage contracts, particularly in enhancing women's rights within the context of Islamic law. The Tunisian Code allows for the cancellation of contracts without penalties if conditions are unmet prior to consummation, while the Iraqi Code protects the wife's rights by enabling her to seek cancellation if her husband fails to honor legitimate conditions.⁸³ The Syrian Code validates conditions that benefit the wife but ensures they do not infringe upon the husband's lawful rights, whereas the

⁸¹ Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application* (Islamabad: IPS Press, 2021), 37.

⁸² Asifa Quraishi, "No Altars: A Survey of Islamic Family Law in the United States," in *Islamic Family Law in a Changing World*, ed. Asifa Quraishi and Frank E. Vogel (Cambridge: Harvard University Press, 2008), 11-34.

⁸³ Tahir Mahmood, *Personal Laws in Islamic Countries* (New Delhi: Academy of Law and Religion, 1987), 156.

Kuwaiti Code categorizes conditions into those that can void the contract, those that do not affect its validity, and those that are binding. Iranian Law recognizes conditions in marriage agreements, particularly emphasizing the husband's obligation to provide for the wife upon divorce and granting her specific rights to seek divorce. Similarly, the Moroccan Code nullifies conditions that violate marriage law but maintains contract validity, allowing wives to initiate divorce under certain stipulations. The Jordanian Personal Status Law affirms that beneficial conditions are binding and gives the wife grounds for divorce if unmet. Additionally, the Ottoman Law of Family Rights enforces stipulations that prevent a husband from taking another wife. Collectively, these codes illustrate a commitment to safeguarding women's rights and ensuring that marriage contracts are equitable and just.

Similarly, courts in the subcontinent have recognized such provisions as valid. However, they did not embrace the Ḥanbalī perspective; instead, they emphasized that a Muslim marriage constitutes a civil contract. Provided that any stipulation does not violate the Indian Contract Act of 1872, it will be considered valid and enforceable. In the case of *Muhammad Amin v. Amina Bibi*, Justice Addison articulated this by stating, “marriage is a civil contract, and the parties are free to form agreements as they wish, within certain limits”. In Pakistan there is no uniform approach to interpretation and enforcement of these stipulations however, cases can be found where Ḥanbalī perspective was followed. The judiciary has upheld the validity and enforceability of stipulations in marriage contracts, reflecting a positive approach towards such agreements. The courts have recognized that these stipulations, including provisions related to dower, serve as a manifestation of mutual consent between the spouses and are integral to the civil contract of marriage. For

instance, in the case of *Ghulam Shabbir v. Mst. Abbas Bibi*,⁸⁴ the court affirmed that financial agreements made in the *Nikāḥ Nama*, which include compensation for divorce, do not impose an absolute bar on a husband's right to divorce but serve as reasonable support for the wife. Similarly, in *Dr. Sabira Sultana v. Maqsood Sulari*,⁸⁵ it was held that the deferment of dower payment with the wife's consent is permissible, emphasizing the importance of mutual agreement in determining the terms of marriage. Moreover, the Supreme Court, in various rulings, has reiterated that conditions agreed upon in the *Nikāḥ Nama* are not only valid but also reflect the intent of the parties involved, thus reinforcing the legal standing of such stipulations. This judicial recognition underscores the courts' commitment to preserving the rights of individuals within the framework of Islamic law and promoting a fair and equitable marital relationship.

In the case of *Nasrullah v District Judge*,⁸⁶ the Family Court dismissed the wife's claim for 200,000 rupees in compensation for an unjustified divorce as was stipulated in marriage contract. On appeal, the District Judge awarded the full compensation amount. Justice Maulavi Anwarul Haq of high court upheld the decision of district judge, but it was decision of single judge which can easily be turned over. It was determined that the agreed amount in this clause serves as spousal support, akin to alimony, intended to ensure the wife's dignity and comfort post-divorce. The court emphasized that such financial arrangements do not impede the right to divorce but rather represent a beneficial provision for the wife, aligning with Islamic principles and teachings.

⁸⁴ *Ghulam Shabbir v. Mst. Abbas Bibi*, 2022 CLC 963.

⁸⁵ *Dr. Sabira Sultana v. Maqsood Sulari*, 2000 CLC 1384.

⁸⁶ *Nasrullah v. District Judge*, PLD 2004 Lah 588.

These modern legal frameworks illustrate a progressive approach to marriage contracts, emphasizing the importance of stipulations in enhancing women's rights within the context of Islamic law.

2.5 Classical Traditions in Contemporary Marriage Reform

In Islam, there is a significant emphasis on respecting and safeguarding the rights of women within the institution of marriage. The flexibility within Islamic teachings allows for additional stipulations in marriage contracts as long as they align with the fundamental principles outlined in the Qur'an and Sunnah. This approach enables modern Muslim women to assert their rights effectively, incorporating stipulations such as monogamy, the wife's right to work, and even the delegated right to divorce.

The various traditional Islamic schools of jurisprudence present a range of legal perspectives on the types of conditions that may be included in an Islamic marriage contract. Given that the legal entitlements of women differ across Muslim nations, common stipulations often focus on safeguarding women's rights by establishing mutual agreements on equal rights to initiate divorce, commitments to monogamy, and provisions for education and employment. Additionally, they may address the equitable distribution of household duties and living arrangements. All traditional jurists concur that no conditions can be added that would contradict the fundamental aspects of marriage or prohibit what is deemed legally permissible.

Conflict resolution is vital, and structured approaches like mutual consultation and negotiation, inspired by the teachings of Prophet Muhammad صلى الله عليه وسلم ensure both partners are heard

during disagreements. Clarity on household duties prevents misunderstandings, promoting shared responsibilities that align with Islamic values. A clause supporting educational pursuits empowers both partners, especially the wife, enhancing personal and professional growth. Recognizing the wife's right to work acknowledges her autonomy and contributions, exemplified by Khadījah, the Prophet's first wife. Prohibiting coercion or abuse in the marriage contract reflects Islam's emphasis on compassion. The husband's financial obligations ensure the wife's security, while mutual responsibility for health and emotional well-being promotes a supportive environment. Privacy rights foster trust and individuality, and provisions for the wife's freedom to travel for education or work affirm her independence. Encouraging involvement in community responsibilities empowers both partners, reflecting Islamic principles. If polygamy is considered, requiring mutual consent safeguards emotional well-being and ensures justice. A wide range of stipulations can be added depending upon circumstances and needs of spouses as long as they align with Sharī'ah and objectives of marriage. However, these are some of the specific provisions that can be added to empower women and protect their interests.

Incorporating these provisions into the marriage contract enables spouses to create a framework that promotes equality, respect, and mutual support while aligning with Islamic principles.

2.6 Conclusion

Under classical Islamic law, stipulations in marriage contracts are classified as either valid or invalid. Valid stipulations align with Sharī'ah principles and are binding, while invalid ones contradict Islamic teachings and have no legal standing. While most jurists agree on the validity of permissible stipulations, debates arise regarding irregular stipulations that could benefit women,

with some scholars advocating for liberal interpretations. For instance, Ḥanbalī scholars support additional conditions unless explicitly prohibited by the Quran or Sunnah, allowing wives to dissolve marriages if these are violated.

They rely on a *Ḥadīth* that states that:

The conditions that are most deserving of being fulfilled are those by which you have made lawful the private parts (i.e., marriage).⁸⁷

Conversely, majority of jurists including *Hanafīs*, *Shāfi'īs*, and *Mālikīs* advocate for a cautious approach regarding the acceptance of additional stipulations, supporting their stance with various arguments.

They rely on a *Ḥadīth* that states:

Any stipulation that is not in the Book of Allah (the Qur'an) is void.⁸⁸

Ibn Ruṣd acknowledges both Aḥādīth as authentic but argues for the prioritization of the first *Ḥadīth* in the context of marriage contracts. He suggests that while the later *Ḥadīth* provides a general rule against stipulations not grounded in the Qur'an, the former *Ḥadīth* is more specific to the context of marriage and should guide the application of stipulations regarding marital rights.⁸⁹

Despite differing opinions on additional stipulations, all jurists concur that terms undermining the marriage's purpose, like neglecting maintenance or unfair financial burdens, are null and void.

Modern Nikāḥ namas can empower women by permitting the inclusion of protective stipulations.

Islam also emphasize the importance of crafting these contracts to safeguard their interests while

⁸⁷ Abdullah Muhammad Ibn Majah al-Qazwayni, *Sunnan Ibn i Mājah*, (Lahore: Kitab al-Nikāḥ, Islamic Academy, 1990), Vol. 2, p. 73.

⁸⁸ Muhammad bin Ismail Abu Abdullah Al Bukhārī, *Ṣaḥīḥ Al- Bukhārī*. vol. 1. (Damascus: Dār Ṭauq Al- Najāh, 2001), 1143–1144.

⁸⁹ Abu Al Walīd Muhammad bin Ahmad bin Muhammad bin Ahmad Ibn Rushd Al Qurṭabī, *Bidāyat al- Muṭtahid wa Nihāyat al- Muqtaṣid*, vol.2 (Cairo: Dār ul Salām, 1995), 59.

ensuring no conditions conflict with Islamic objectives or unfairly advantage one party over the other. Ultimately, such contracts seek to uphold family integrity, and in cases of disputes, the agreements reached by the parties can be utilized for resolution.

Chapter 3

THE PAKISTANI LEGAL FRAMEWORK ON STIPULATIONS IN NIKĀḤ NAMA AND SHARĪ'AH ANALYSIS OF CASE LAWS

Islamic marriage is based on the Nikāḥ Nama, or marriage contract, which outlines each party's rights and responsibilities. The Nikāḥ Nama has legal authority in Pakistan and influences personal rights and family law in addition to being a religious text. This chapter explores the legal framework pertaining to Nikāḥ Nama in Pakistan, looking at how its provisions are regulated by both Pakistani civil law and Islamic law. Historical reforms, pertinent laws, court rulings, and the Sharī'ah analysis of recent case law will all be covered.

3.1. Introduction

The preceding chapters have provided a thorough explanation of Sharī'ah laws and fiqhī opinions regarding the validity of stipulations in marriage contracts; however, it is also crucial to examine current Pakistani legal practices and precedents in light of fiqhī opinions. In Pakistan, family laws address the legal issues pertaining to the family, including its establishment and dissolution, and include all laws that are related to marriage, maintenance, custody of children, divorce, inheritance etc. To regulate family matters, the Pakistani legislature has passed a number of acts. However, some of the issues have not been approved as statutes; as a result, they are discussed in case laws

and serve as precedents. Question arises that what legal frameworks govern the stipulations of Nikāḥ Nama under Pakistani family law, and how do recent rulings from the higher judiciary (2015–2024) reflect the interaction of Sharīʿah compliance within this legal framework? A cursory examination of Muslim family law also shows the absence of comprehensive statutory provisions addressing the validity of stipulations in marriage contract except delegated right of divorce and polygamy as a ground for dissolution of marriage. Case laws have, however, discussed validity and enforcement of these stipulations.

Such stipulations have been accepted as valid by courts in the sub-continent. In *Hamidullah v. Faizunissa*⁹⁰ the court acknowledged that an arrangement entered into before marriage, allowing the wife to divorce herself under specified contingencies, should be honored. In *Ayatunnessa Bibi v. Karam Ali*⁹¹ the court upheld that a wife given the right of khula by the marriage contract could exercise this option at her discretion, especially if it was conditional upon a stipulated event. In *Sainuddin v. Latifunnessa Bibi*⁹² the court ruled that a post-nuptial delegation of the power of divorce was valid, and a wife could exercise this right upon the occurrence of stipulated conditions. In *Mansur v. Mt. Azizul*⁹³ the court upheld a condition for separate maintenance for the first wife in case of the husband's second marriage, stating that such agreements are not against public policy. However, they did not adopt the Ḥanbalī doctrine but iterated that a Muslim marriage is a civil contract, and as long as a stipulation does not contravene the Indian Contract Act 1872, it will remain valid and binding. In *Muhammad Amin v. Amina Bibi*⁹⁴ Addison J. put it this way:

⁹⁰ *Hamidullah v. Faizunissa* ILR 8 Calcutta (1881) 327.

⁹¹ *Ayatunnessa Bibi v. Karam Ali* ILR 36 Calcutta (1908) 23.

⁹² *Sainuddin v. Latifunnessa Bibi* (ILR 46 Calcutta (1918) 141.

⁹³ *Mansur v. Mt. Azizul* AIR 1928 Oudh 303.

⁹⁴ *Muhammad Amin v. Amina Bibi* AIR 1931, Lahore.

“marriage is a civil contract and the parties may contract in any way they wish to within certain limitations.”

After independence, some cases can be found where stipulations related to marital agreements have been judicially recognized and upheld. In *Muhammad Zaman v. Irshad Begum*,⁹⁵ the Lahore High Court upheld an agreement that allowed the first wife to live separately and receive maintenance if her husband took a second wife. In *Muhammad Ghaus v Additional District Judge, Bahawalpur*,⁹⁶ Lahore High Court held that, any stipulation or condition agreed between the parties mutually and with their free consent cannot be considered as an absolute bar to either pronounce divorce or to contract second marriage. Pakistan's courts often rely on English law, neglecting Islamic jurisprudence as mandated by the Pakistan Muslim Personal Law (Shari'at) Application Act, 1962.

Despite the provisions in the Shari'ah Act, 1991, which emphasize the importance of Islamic law, there remains a lack of Shari'ah analysis regarding stipulations meant to benefit women. This oversight leads to difficulties for divorced women, who face hardships despite being blameless. Article 35 of the Constitution calls for the protection of family welfare, highlighting the need for legal reforms in family law to address these issues effectively.

⁹⁵ *Muhammad Amin v. Amina Bibi* PLD 1967 Lahore 1104.

⁹⁶ *Muhammad Ghaus v Additional District Judge, Bahawalpur*, W.P. No.7630 of 2018

3.2 Muslim Family Laws in Pakistan: Legal Framework and Evolutionary Development

Generally speaking, family laws are those that address the establishment and termination of a legal family status, its ramifications, and the financial and physical security of family members. The ability and institution of marriage, all forms of its dissolution, dower, dowry, child custody, inheritance, and other family and domestic relations issues are also covered by Pakistan's family laws. In addition to statutes, court rulings, municipal ordinances, and provisions of federal and state enactments that are pertinent to family relationships and the rights, responsibilities, and financial implications associated with them also constitute Pakistan's family laws. Though cultural influences and differing schools of thought caused the interpretation and application to fall short of fully adhering to Islamic teachings, the personal law of Muslims in India during the Muslim regimes remained unaltered and was based on the Qur'an and Sunnah.⁹⁷ The need for the official adoption of Islamic laws to regulate Muslims' private affairs arose with the fall of Mughal rule.

3.2.1 Evolution of Muslim Family Law: From the Mughal Period to Ottoman Reforms and Legislation in British India

The Ottoman Law of Family Rights in 1917 was a key development in family law within the Muslim community. This law aimed to modernize traditional Islamic family laws, which were based on the Qur'an and jurisprudence and varied among different Islamic schools of thought like Ḥanafī and Mālikī. The Ottoman Empire, known for its vast territory and diverse population, established a modern legal framework to protect family rights and individual liberties for both Muslim and non-Muslim citizens.

⁹⁷ Safia Iqbal, *Woman and Islamic Law* (Lahore: Islamic Publications Ltd., 1989), 135.

In 1915, changes were made to divorce laws that allowed women to seek divorce under certain conditions, like desertion or when the husband had a contagious disease. These changes were more progressive than what the conservative Ḥanafī school typically allowed and expanded women's rights in divorce. The law focused on formalizing marriage and divorce processes, requiring both Muslim and non-Muslim citizens to acquire a marriage certificate and inform the local government of the marriage within eight days.⁹⁸

Grounded in Islamic jurisprudence, the Ottoman family law also incorporated modern legal principles to safeguard individual rights. While marriage was guided mainly by Mālikī and Ḥanbalī teachings, the law recognized other schools of thought to reflect the diverse religious landscape. It provided a structured framework for divorce, custody, and inheritance, marking a significant progress in Muslim family law and inspiring later laws in Muslim-majority countries.

The society of the Indian subcontinent was a multi-faceted one and everyone was free to conduct their family affairs in line with their religious rituals or directions. The *Fataawa Alamgiri*, compiled during the Mughal period under Emperor Aurangzeb, served as an early comprehensive collection of Islamic law in India. It addressed Muslim family matters, including marriage and divorce, through fatwas, which were legal opinions issued by scholars. It was, influential in South Asia, also provided detailed advice on personal law and emphasized the importance of properly documenting marriages and divorces.⁹⁹

The Bengal Act of 1876 aimed to regulate the registration of Muslim marriages and divorces in British India. It established a system for voluntary registration to ensure legal clarity and

⁹⁸A. S. Khan, *Islamic Law and Modern Legal Systems in the Ottoman Empire* (Cambridge: Cambridge University Press, 2015), 210..

⁹⁹ Safia Iqbal, *Woman and Islamic Law* (Lahore: Islamic Publications Ltd., 1989), 136.

consistency, appointing registrars authorized to officially record marriage and divorce details. This act represented a significant step towards promoting transparency in family matters among Muslims in Bengal.¹⁰⁰

3.2.2 Family Laws in Pakistan

Muslims were given the freedom to manage their private affairs in accordance with Shari'ah, according to the Shari'at Application Act of 1935. The Muslim family laws that had been established in British India continued to govern personal status issues even after Pakistan was formed in 1947. There were no changes made to Pakistan's family laws.¹⁰¹ This persisted for a few years until the "Commission on Marriage and Family Laws," a seven-member committee, was established in 1955. It was tasked with examining Muslim family law, determining what needed to be changed, and suggesting suitable personal status legislation that would work in the new state.¹⁰² The committee made a number of recommendations in its 1956 report, but it had to deal with a lot of debate and resistance from different religious scholars. The commission's recommendations were adopted in a diluted form, and the Muslim Family Laws Ordinance was promulgated in 1961¹⁰³.

The preamble of the Family Law Ordinance states that it was enacted with the intention of incorporating the recommendations made by the commission. Similar to how the commission's recommendations were rejected, the "Ulamā" also harshly attacked some of the ordinance's

¹⁰⁰ Bengal India, The Bengal Muhammadan Marriages and Divorces Registration Act, 1876 as Modified up to the 20th May, 1935, 1876.

¹⁰¹ Nadya Haider, "Islamic Legal Reform: The case of Pakistan and Family Law", Yale Journal of Law and Feminism 12:2 (2000), 287-340.

¹⁰² Abdullahi A An-Na'im, *Islamic Family Law In A Changing World* (London: Zed Books Ltd., 2002), 230.

¹⁰³ Rakhshanda Naz and Maliha Zia, Muslim Family Laws in Pakistan, Accessed at: <http://www.musawah.org/sites/default/files/Pakistan-report%20for%20Home%20Truths.pdf>, Accessed on: January, 16th, 2025.

provisions that were passed in support of these suggestions. It was argued that the provisions contradicted the Sunnah and Qur'ān's teachings.¹⁰⁴

The prohibition of polygamy, the reform of the laws governing dower and maintenance in marriage and divorce, the rules pertaining to the inheritance of orphaned grandchildren, the requirement of marriage registration, the amendment of the marriage age, and other measures were among the many that were hotly contested.¹⁰⁵

The family laws in statute form which are currently applicable in Pakistan are as following:

1. The Divorce Act 1869
2. Guardians and Wards Act 1890
3. The Mussalman Wakf Validating Act 1913
4. The Mussalman Wakf Validating Act 1923
5. The Child Marriage Restraint Act 1929
6. The N.W.F.P Muslim Personal Law (Sharī'at) Application Act 1935
7. The Muslim Personal Law (Sharī'at) Application Act 1937
8. The Dissolution of Muslim Marriages Act 1939

¹⁰⁴ Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application* (Islamabad: Shari'ah Academy, International Islamic University Islamabad, 2006), 209.

¹⁰⁵ Abdullahi A An-Na'im, *Islamic Family Law In A Changing World* (London: Zed Books Ltd., 2002), 230.

9. The West Punjab Muslim Personal Law (Sharī'at) Application Act 1948

10. Muslim Family Law Ordinance 1961

11. West Pakistan Rules Under the Muslim Family Laws Ordinance 1961

12. West Pakistan Family Courts Act 1964

13. West Pakistan Family Courts Rules 1965

14. Punjab Waqf Properties Ordinance 1979 ¹⁰⁶

3.2.2.1 Legislation Governing Nikāḥ Nama Stipulations and Amendments

Various acts have been enacted by the Pakistani legislature to regulate the legal issues of families. But some of the matters have not been endorsed as statutes and thus are discussed in case laws and are applicable as precedents. Likewise, a cursory view of the Muslim family laws reveals that no statute law has been legislated concerning the stipulations that can be added in marriage contract. However, many case laws have conversed over this issue. Ḥanbalī School of Jurisprudence is often referred while deciding validity and enforcement of such stipulations.

Nikāḥ nāmāh refers to a specific form which is used for the registration of marriage. The form titled nikāḥ nāmāh (marriage certificate) under rules No 8 and 10 of the Muslim Family Ordinance issued in 1961, 98, 1961) is a two-page legal size one side printed, officially designed document to register a marriage in the area. The nikāḥ nāmāh contains the terms of the nikāḥ i.e. the contract

¹⁰⁶ Imran Ahsan Khan Nyazee, *Outlines of Muslim Personal Law* (Rawalpindi: Federal Law House, 2012), 293.

between a man and a woman, having the object to enable them to legitimately live together and enjoy all the rights as husband and wife. The terms and conditions are meant to secure the rights and interests of both the parties; the husband and the wife. It is settled law that a presumption of truth is attached to the nikāḥ nāmāh and it enjoys the status of a public document. Likewise, there is a strong presumption of truth regarding the entries recorded in the nikāḥ nāmāh.¹⁰⁷ In exercise of powers conferred under section 11 of the Ordinance of 1961, the competent authority has made the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961. The matters relating to registration of marriages and the issuance of licenses to Nikāḥ Registrars are regulated under the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961. Form II of the Rules of 1961 has prescribed the form of Nikāḥ Nama and its entries.¹⁰⁸ The document contains 25 clauses, 12 signature spaces, and a background check on marital status. The clauses are classified into three categories: names and addresses of the marrying partners, their attorneys and witnesses, terms and conditions of the marriage, and background checks on marital status. All clauses are written in one to two-word questions, phrases, or passive structures, with the state as the information seeker and the bride and bride as the addresses. The titles of columns 13 to 16 relate to 'dower' while the heading of column 17 is 'special conditions, if any'.¹⁰⁹ However, it is observed that in many areas, especially the rural areas, there is no concept of the nikāḥ nāmāh and marriages are still performed informally without filling and signing the document. Further, if the nikāḥ nāmāh is prepared, then

¹⁰⁷ Areesha Jawad Butt, "Reforming the Procedure of Nikāḥ Proceedings in Pakistan." ,” *LUMS LJ* 8 , 2021.

¹⁰⁸ Form II of West Pakistan Rules under the Muslim Family Laws Ordinance, 1961.

¹⁰⁹ J. Asghar, "A Critical Discourse Analysis of the Marriage Certificate (Nikāḥ Nama) in Pakistan," *Global Language Review* VI, no. III (2021): 44–55, [https://doi.org/10.31703/glr.2021\(VI-III\).05](https://doi.org/10.31703/glr.2021(VI-III).05).

most of these entries are left unfilled or struck out. It is not fully understood by the marrying parties nor is its importance realised.¹¹⁰

Before the promulgation of this ordinance, the registration of marriages was not necessary. After years of deliberations and struggle at the national level, the government promulgated an ordinance in 1961 making it mandatory for marrying parties to get their marriage registered. A written marriage status is a legal and administrative requirement. Originally, marriage was only through verbal acceptance, but for future payments, a written agreement is best. In 2015 an amendment was made which obliged Nikāḥ registrar to accurately fill all the columns of nikāḥ nāmāh with specific answers of the bride and bridegroom. The laws regarding the conduction of marriage and its registration specifically are mentioned in the Muslim Family Laws Ordinance with some relevant provisions in other acts. It is therefore essential to analyze the procedure of conduction and registration mentioned in the said ordinance.

3.2.2.2 Registration of Marriage under Section 5 of Muslim Family Laws Ordinance, 1961

The registration process for all Muslim marriages that follow Islamic traditions exists under Section 5 of the Muslim Family Laws Ordinance, 1961. This requirement operates without restriction on marriage registrars or other individuals who authorize nuptials under Muslim principles. The Union Council can authorize one or more Nikāḥ Registrars for any single ward

¹¹⁰ Memona Arjumand, Subha Malik, and Nayab Javed, “Knowledge and Awareness about Nikāḥ Nama Reforms and Its Clauses in Lahore,” *Forman Journal of Social Sciences* 1 (2021), <https://doi.org/10.32368/FJSS.20210107>.

while all standard nikāḥ nāmāh forms must be given to the registrars once the prescribed fee is paid.¹¹¹

The Supreme Court declared through Gardezi case that both parties need not be Muslim citizens for MFLO application. The judgment states how weddings between Pakistani Muslim males with non-state Muslim or non-Muslim female spouses would be administered through the Muslim Family Law Ordinance.¹¹² The Muslim Family Ordinance, 1961 remains applicable for marriage registrations regardless of where the marriage took place as court decisions have established this fact.¹¹³

The section states that any person other than the Nikāḥ Registrar who conducts a marriage must submit a report to the Nikāḥ registrar for registration purposes. Failure to report such nikāḥ will result in punishment through imprisonment up to 3 months and a fine of thousand rupees or both. Perpetrators who violate registration duties become subject to imprisonment not exceeding 3 months and a thousand-rupees fine.¹¹⁴ Moreover, the section establishes that documents on nikāḥ nāmā and records kept by the Union Council, registrar registers and both parties' nikāḥ nāmāhs must be delivered following payment of the specified fee.

Anyone from the Union Council's office can view the registered marriage record, and a copy can be acquired by paying the required fee.¹¹⁵

51. ¹¹¹ Cassandra Balchin, *A Handbook on Family Law in Pakistan* (Lahore: Shirkat Gah Publishers, 1994),

¹¹² Syed Ali Nawaz Gardezi versus Lt. Col. Muhammad Yusuf (PLD 1963 SC 51)

¹¹³ Fazal Khitab versus Mst. Naheed Akhtar (PLD 1979 SC 864)

¹¹⁴ Clauses (3) and (4) of Section 5 of the Muslim Family Law Ordinance, 1961.

¹¹⁵ Clauses (5) and (6) of Section 5 of the Muslim Family Law Ordinance, 1961

This is the only part of the MFLO that deals with conducting a marriage, and it makes no mention of any requirements or conditions for signing the contract. However, a number of additional rulings have been deduced from the section by the judges and commentators. For example, a case law ruling has established that registration under section 5 of the MFLO is a must and that failure to register the marriage raises questions regarding its solemnization.¹¹⁶ Likewise, in a different instance, it was claimed that the absence of Nikāḥ Khwan's production raises serious questions about the authenticity of the marriage.

The Nikāḥ Registrar's eligibility to serve as a registrar would be in doubt even if he is present and has not complied with section 5's requirements. As it is a very sacred and delicate matter, to which are attached very significant issues like succession, maintenance, dower legitimacy of children, divorce, etc., it was also affirmed in this case that the registrar's responsibility is not to simply fill out the columns of nikāḥ nāmāhs, but to be extremely prudent in fulfilling all the requirements responsibly. Therefore, before authenticating the nikāḥ, the nikā registrar must be prudent enough to properly inquire about the ages, competency, and free will of both parties.¹¹⁷

That being said, practically all interpreters agree that if a marriage is proven to have been performed in compliance with Islamic law, its non-registration does not render it void. The MFLO's section 5(4) only imposes a penalty; the marriage is not deemed void.¹¹⁸

¹¹⁶ Dr. A.L.M Abdulla versus Rokeya Khatoon and Another (PLD 1969 Dacca 47)

¹¹⁷ Syed Farman Ali versus Abid Ali and others (PLD 1995 Lahore 364)

¹¹⁸ MR. M. Farani, *Manual of Family Laws in Pakistani* (Lahore: Lahore Law Times Publication, 1985),

3.2.2.3 Assessing the Compatibility of Section 5 with Islamic Legal Principles

Islam emphasizes the importance of writing contracts and transactions, particularly marriage, as it involves reciprocal obligations such as maintenance, legality of children, and inheritance. The legality and validity of a marriage contract are not obligated by the Holy Quran or Sunnah but are not prohibited.¹¹⁹ While non-registration makes it difficult, legally registered marriage contracts can be helpful in resolving challenging issues of proof of marriage and enforcement of agreed-upon rights and duties..¹²⁰ Certain 'Ulāmā' in Pakistan have condemned the lack of registration as an offense; however, it is deemed admirable as it enables the state to implement administrative laws that are not forbidden by Sharī'ah. The absence of marriage registration has led to complications and conflicts among spouses, that is why the Federal Sharī'at Court strongly endorsed the registration of marriage contracts. The court supported the view that Section 5 is not un-Islamic or contrary to Islamic law.¹²¹ However, non-registration does not amount to invalidity if other Shar'ī requirements are complied with.

4. Interpretation and Evaluation of Stipulations in the Nikāḥ Nama by Pakistan's Higher Judiciary (Pre-2015)

The Nikāḥ Nama, while primarily seen as a ceremonial registration of marriage in Pakistan, also serves as a contractual document that can legally bind the parties to specific stipulations. Over the years, spouses—particularly women—have inserted conditions into the marriage contract to

¹¹⁹ Tanzil-Ur-Rahman, *A Code of Muslim Personal Law* (Karachi: Islamic Publishers, 1984), 88.

¹²⁰ Zeenat shaukat Ali, *Marriage and Divorce in Islam, an Appraisal* (Bombay: Jaico Publishing House, 1987), 103

¹²¹ Allah Rakha and others versus Federation of Pakistan (PLD 2000 FSC 1)

secure rights that are either unaddressed or insufficiently protected under statutory law. These include stipulations for financial compensation in the event of arbitrary divorce, the delegation of the husband's right to pronounce talaq (talaq al-tafwid), restrictions on polygamy, and the wife's right to reside independently or seek dissolution if certain conditions are breached.¹²²

The enforceability of these stipulations, however, has been subject to varying interpretations by Pakistan's higher judiciary. While some judgments exhibit a willingness to enforce such clauses—acknowledging them as legitimate contractual protections within a marriage—others take a more restrictive stance, either striking down the conditions as invalid or ruling them beyond the jurisdiction of Family Courts. This section explores key pre-2015 case law to identify how the judiciary has responded to such stipulations. For clarity, the decisions have been grouped based on the courts' general attitude: those that have shown openness towards enforcement, and those that reflect judicial reluctance or resistance.

4.1 Judicial Openness to Enforcing Stipulations in the Nikāḥ Nama

There are number of cases where courts have supported the enforcement of stipulations in the Nikāḥ Nama

1. Ayatunnessa Bibi v. Karam Ali (AIR 1925 Calcutta)

This case involved the delegation of the husband's right to pronounce divorce (talaq al-tafwid) through a stipulation that allowed the wife to dissolve the marriage if he took another wife. When he did so, the wife exercised her right. The court upheld the validity of her action, recognizing talaq al-tafwid as a legitimate and enforceable delegation of authority under Islamic law. This

¹²² Syed Muhammad Usman Ghani, "Documentation (Nikāḥ Form and Talaq Nama) in Pakistani Muslim Family Laws: Historical and Jurisprudential Review Survey," *Al-Kashaf*, Jan.–June 2022, vol. 2, no. 1, p 12.

judgment continues to be cited as one of the earliest judicial acknowledgments of women's negotiated rights in marriage contracts.¹²³

2. Muhammad Aslam v. Mst. Fateh Khatoon (1969 SCMR 818)

In this earlier case, the husband had agreed not to remarry without the wife's permission and to provide her with specific financial compensation in the event he did. Upon breaching this condition, the wife claimed damages. The Supreme Court upheld her right, treating the stipulation as a valid contractual term. The ruling illustrated the Court's readiness to give legal effect to mutually agreed terms in a marriage, especially those aimed at preserving marital harmony and preventing unjust hardship.¹²⁴

3. Aiysha Yasmien v. Maqbool Hussain Qureshi (PLD 1979 Lah 241)

While the central issue in this case involved procedural compliance under Section 7 of the Muslim Family Laws Ordinance (MFLO), the court acknowledged the importance of following contractual processes in the dissolution of marriage. The recognition of formal requirements in divorce proceedings can be seen as implicitly supportive of enforcing stipulated procedures agreed upon by spouses.¹²⁵

4. Allah Rakha v. Federation of Pakistan (PLD 2000 FSC 1)

Though this case focused primarily on the interpretation of Section 7 of the MFLO, the Federal Sharī'at Court noted that Islamic law permits the delegation of the right to divorce, and that such delegation, when exercised properly, is not contrary to Sharī'ah. This lends indirect support to the recognition of talaq al-tafwid clauses in the Nikāḥ Nama.¹²⁶

¹²³ Ayatunnessa Bibi v. Karam Ali (AIR 1925 Calcutta)

¹²⁴ Muhammad Aslam v. Mst. Fateh Khatoon (1969 SCMR 818)

¹²⁵ Aiysha Yasmien v. Maqbool Hussain Qureshi (PLD 1979 Lah 241)

¹²⁶ Allah Rakha v. Federation of Pakistan (PLD 2000 FSC 1)

5. Nasrullah v. District Judge (PLD 2004 Lahore 588)

In this case, the husband had agreed in the marriage contract to pay Rs. 200,000 to his wife as compensation in the event of an unjustified divorce. Upon divorce, the wife claimed the amount, which was contested by the husband. The Family Court partially dismissed the claim, but the District Judge and subsequently the Lahore High Court held that such a clause created a property right in favour of the wife. The court interpreted this right as an “actionable claim,” fitting within the scope of personal property under the Family Courts Act. This judgment marked a significant judicial step in recognizing contractual obligations within the Nikāḥ Nama as legally binding and enforceable.¹²⁷

6. Muhammad Masood Abbasi v. Mst. Mamona Abbasi (2004 YLR 482)

Here, the couple had mutually agreed that in the event of an arbitrary divorce, the husband would pay Rs. 100,000 to the wife. When the husband subsequently divorced her and contracted a second marriage, the wife filed a suit to enforce the clause. The Family Court initially rejected the claim, but the District Judge on appeal, and later the Lahore High Court, upheld the stipulation. The High Court found nothing in Islamic law or public policy to bar such a clause, emphasizing that it served as a deterrent against misuse of the unilateral right of divorce.¹²⁸

Emphasizing that such procedural requirements, if mutually agreed upon and not contrary to public policy, are enforceable, the Lahore High Court in the Ghulam Fatima case (not reported) supported a provision stating that a divorce would only be effective after approval by a mutually nominated family committee.¹²⁹ On the other hand, in the Rawalpindi District case, the Family Court

¹²⁷ Nasrullah v. District Judge (PLD 2004 Lahore 588)

¹²⁸ Muhammad Masood Abbasi v. Mst. Mamona Abbasi (2004 YLR 482)

¹²⁹ Muhammad Munir, ““Multiplying Zeroes:(In) Validity of Promises in Marriage Contracts under Pakistani Case Law”.

underlined the need of clarity in contractual terms concerning divorce stipulations by acknowledging the enforceability of a clause allowing a wife to start khula with her husband's consent despite ambiguous language.

4.2 Judicial Reluctance or Refusal to Enforce Stipulations in the Nikāḥ Nama

Despite a number of cases where courts have supported the enforcement of stipulations in the Nikāḥ Nama, there has also been a strong line of jurisprudence that reflects judicial resistance. In these cases, courts either questioned the legal validity of such conditions or held that claims based on them fall outside the jurisdiction of Family Courts. Many of these decisions rest on narrow statutory interpretations or concerns regarding interference with the husband's unilateral right to divorce.

1. Muhammad Akram v. Mst. Hajra Bibi (PLD 2007 Lahore 515)

The Nikāḥ Nama included a clause stating that the husband would pay Rs. 100,000 to the wife either in case of sour relations or upon divorce. When the wife filed for dissolution and later claimed the stipulated amount, the Family Court dismissed her suit, arguing that the claim was outside its jurisdiction. The Lahore High Court upheld this view, holding that such compensation did not fall under “personal property” as defined in the Family Courts Act and was thus not recoverable through the Family Court.¹³⁰

2. Muhammad Bashir Ali Siddiqui v. Mst. Sarwar Jehan Begum (2008 SCMR 186)

This case involved a reciprocal clause where both parties agreed to pay Rs. 250,000 in case of divorce (by the husband) or khula (by the wife). When the wife sought dissolution, the husband attempted to enforce the clause against her. The Supreme Court dismissed the claim, declaring

¹³⁰ Muhammad Akram v. Mst. Hajra Bibi (PLD 2007 Lahore 515)

such clauses incompatible with the spirit of marriage, which is to be based on mutual trust and not on financial penalties.¹³¹

3. Muhammad Amjad v. Azra Bibi (2010 YLR 423)

This case involved a clause obligating the husband to pay Rs. 100,000 to his wife if he entered into a second marriage. After he remarried, the wife claimed the amount. The court ruled that such a stipulation, even if contractually agreed, amounted to a claim for damages and thus fell outside the Family Court's domain, requiring a separate civil suit.¹³²

4. Mukhtar Hussain Shah v. Saba Imtiaz (PLD 2011 SC 260)

In this landmark judgment by the Supreme Court, the husband had agreed in both the Nikāḥ Nama and a subsequent agreement to pay Rs. 100,000 in the event of divorce. The Family Court decreed the wife's claim, but the Supreme Court overturned this, ruling that Family Courts are special forums limited to the categories explicitly listed in the Family Courts Act. The Court rejected the argument that such stipulations could be enforced as "personal property," thus signaling a restrictive reading of Family Court jurisdiction.¹³³

5. Mst. Zeenat Bibi v. Muhammad Hayat (2012 CLC 837)

The wife sought Rs. 50,000 as compensation for being divorced without cause. The Family Court and appellate forum both dismissed her claim. The Lahore High Court relied on Mukhtar Hussain Shah and emphasized that courts are not to entertain claims rooted in conditional divorce compensation unless explicitly provided for in statute.¹³⁴

¹³¹ Muhammad Bashir Ali Siddiqui v. Mst. Sarwar Jehan Begum (2008 SCMR 186)

¹³² Muhammad Amjad v. Azra Bibi (2010 YLR 423)

¹³³ Mukhtar Hussain Shah v. Saba Imtiaz (PLD 2011 SC 260)

¹³⁴ Mst. Zeenat Bibi v. Muhammad Hayat (2012 CLC 837)

6. Mst. Shaista Shahzad v. Additional District Judge (PLD 2012 Lahore 245)

The Nikāḥ Nama stated that the wife would be entitled to Rs. 200,000 in case of divorce. While the Family Court initially entertained the claim, the High Court rejected it, maintaining that such claims are not within the jurisdiction of Family Courts. The judgment reiterated the procedural limitations placed on women attempting to enforce contractual protections.¹³⁵

In Tariq Khan v. Saima Naz, a Rs. 500,000 divorce penalty clause was deemed unenforceable by the Family Court on the ground of lack of jurisdiction of family courts to adjudicate civil remedies. In Muhammad Shahid v. Mst. Rubina Bibi, the court declined to enforce a vague clause allowing the wife to dissolve the marriage for husband's personal violations, citing lack of clarity and jurisdiction. However, these cases were not reported as no appeal was filed against them.

5. Sharī'ah Analysis of Higher Judiciary Cases Post-Amendment (2015-2024)

After exploring how courts previously interpreted and adjudicated stipulations in Nikāḥ nama, this section presents a Sharī'ah-based evaluation of key judicial decisions delivered by the higher courts in Pakistan after 2015 legislative amendments. The following analysis engages with select post-amendment rulings of the higher judiciary, exploring how Sharī'ah has been interpreted and applied—particularly in relation to stipulations within the Nikāḥ Nama. Each case is examined to assess the extent to which judicial reasoning aligns with Islamic jurisprudence, with a particular focus on the enforceability of stipulations in the Nikāḥ Nama.

5.1 Amjad Hussain v. Mst. Jamila Yasmeen (2015 CLC Lahore 138)

The facts of the case revolves around a dispute that arose following the dissolution of marriage between the petitioner, Amjad Hussain, and the respondent, Mst. Jamila Yasmeen. The husband

¹³⁵ Mst. Shaista Shahzad v. Additional District Judge (PLD 2012 Lahore 245)

issued a divorce and notified the Arbitration Council as required under Section 7 of the Muslim Family Laws Ordinance, 1961. However, he did not participate in the reconciliation proceedings. The wife filed claims before the Arbitration Council for past maintenance (2005–2007), medical expenses related to childbirth, maintenance for the iddat period, and a stipulated compensation of Rs. 50,000 due to the divorce. The Arbitration Council upheld all her claims. The husband filed a revision petition before the Deputy District Officer (Revenue)/Collector, which was also dismissed. Subsequently, he filed a constitutional petition before the Lahore High Court, which partially accepted his plea upholding the maintenance and medical expenses but setting aside the divorce compensation as contrary to public policy.

Justice Rauf Ahmad Sheikh emphasized the limitations of the Arbitration Council's jurisdiction, particularly in relation to awarding compensation for divorce. The court stated that the Arbitration Council could award maintenance, including for iddat and childbirth-related medical expenses, as these are part of the husband's duties. However, awarding Rs. 50,000 as compensation for divorce was deemed beyond its authority and against public policy, as such financial penalties could undermine the sanctity of marriage and lead to social discord. The judgment reflects a conservative judicial trend where courts restrict stipulations that appear to impose punitive conditions on divorce, despite being mutually agreed.¹³⁶

Critical Evaluation of Judicial Trends

The High Court followed a restrictive Ḥanafī-oriented view, characterizing the divorce compensation clause as harsh and against public policy. However, this approach neglects the

¹³⁶ See also Muhammad Nawaz, v. Mst. Khurshid Begum and 3 others PLD 1972 SC 302

evolving nature of Sharī'ah-based family law, especially in contexts where women's rights need stronger contractual safeguards.

This judgment appears to ignore the principle of binding stipulations (shurūt) supported by Ḥanbalīs. It Overlooked the increasing jurisprudential recognition that Nikāḥ is not merely a sacrament but a civil contract ('aqd) which allows parties to negotiate terms that promote fairness and deter arbitrary abuse of power, including unilateral divorce. If Pakistani courts were to engage with Ḥanbalī juristic thought more flexibly, especially in the interpretation of Nikāḥ Nama stipulations, it would open the door for more equitable treatment of women in matrimonial disputes, consistent with Islamic ethics and social justice.

Sharī'ah Analysis

The ruling issued by the Lahore High Court in this matter appeared lacking in fiqhī and legal reasoning. It has not addressed all the facets of the problem, nor has it included all the views of Islamic jurisprudential schools on validity of stipulations. The learned judge has disregarded Ḥanbalī schools of thought's view on the legitimacy of stipulations to be included in marriage contracts. Though it was carelessly handled, the case was being set as a precedent for the future cases. This established rule would result in disastrous outcomes and extremely unclear circumstances. The entire decision is predicated on a single statement, which is interpreted and contextualized to fit the circumstances at hand.

The family laws that the higher courts have established in this way have the potential to demoralize and threaten society. Unlike the Ḥanafī school, the Ḥanbalī school, notably through scholars such as Ibn Qudamah and Ibn Taymiyyah takes a more liberal and contractual view regarding

stipulations in marriage.¹³⁷ The Ḥanbalīs consider that the stipulations not contradicting Sharī’ah and agreed upon by both parties are binding. If the husband agrees to pay a specific amount upon divorce whether arbitrary or otherwise it becomes a contractual obligation that should be fulfilled, provided it is not inherently unjust or sinful. Ibn Taymiyyah supported the idea that conditions beneficial to the wife, even if they restricted some actions of the husband (like taking a second wife or paying compensation upon divorce), were valid so long as they did not breach any express commands of Sharī’ah.¹³⁸ In the present case, the stipulation for Rs. 50,000 upon divorce falls squarely within the Ḥanbalī understanding of valid contractual terms. The parties mutually agreed to it, and it does not violate any express Islamic principle. The idea of compensating the wife upon divorce can be viewed as a form of *musālahah* (settlement or compensation), which is well recognized under Ḥanbalī fiqh as long as the agreement is clear and consensual. Hence, from a Ḥanbalī perspective, the stipulation should be upheld by the court as a binding agreement and not as a contravention of Islamic ethics or public policy. The Ḥanafī school, as outlined in *Fatawa ‘Alamgiriya*, regards such stipulations as void but maintains the marriage’s validity, considering conditions for compensation upon divorce as irregular. In contrast, the Shāfi‘ī and Mālikī Schools adopt a more moderate stance, permitting stipulations that benefit the wife, provided they align with Islamic objectives and do not involve impermissible restrictions.

¹³⁷ Taqi al-Din Ibn Taymiyyah, *Al-Away ‘id al-Rumania al-Fisheye* (Beirut: Dar al-Narwhal al-Jeddah, 1980), 229.

¹³⁸ Muhammad ‘Abdullah bin Aḥmad bin Muhammad bin Qudāmah al Muqdasī, *Al-Mughnī li Ibn e Qudāmah*, vol.7, (Cairo: Maktabat ul Qāhirah, 1968), 71.

Conclusion

The judgment in *Amjad Hussain v. Mst. Jamila Yasmeen* shows judicial reluctance to uphold contractual stipulations in *Nikāḥ Nama* that impose financial liabilities on the husband in the event of divorce. While valid under Pakistani law to an extent, the refusal to enforce the compensation clause contrasts with the more progressive *Ḥanbalī* view, which upholds such conditions as long as they do not violate clear *Sharī'ah* principles. Incorporating *Ḥanbalī* reasoning could provide doctrinal support for recognizing women's negotiated rights within marriage, aligning legal interpretations more closely with *Sharī'ah*'s spirit of justice, consent, and fairness. in Islamic law and can adversely affect women's economic security post-divorce.

5.2 *Mst. Nabeela Shaheen v. Zia Wazeer Bhatti* (PLD 2015 Lahore 88)

This case involves *Mst. Nabeela Shaheen*'s claim to recover Rs. 200,000, ten tolas of gold, a house, maintenance for herself and her son, and dowry articles, based on entries in the *Nikāḥ Nama*. The respondent, *Zia Wazeer Bhatti*, challenged these entries, particularly denying that the house and gold were part of the agreed dower, alleging fabrication with the *Nikāḥ Registrar*'s involvement. The lower courts dismissed parts of her claim, but the Lahore High Court ultimately reversed these decisions, affirming the validity of the entries in the registered *Nikāḥ Nama* and recognizing the inclusion of the house and gold as part of the dower.¹³⁹

Critical Evaluation of Judicial Trends

The judicial trend in this case reflects a progressive approach that balances legal presumptions with Islamic principles. Courts tend to uphold the integrity of registered documents, especially when they are public records, unless convincingly challenged. The Lahore High Court's decision

¹³⁹ See e.g., *Dr. Asma Ali v. Masood Sajjad* PLD 2011 SC 221.

to affirm the inclusion of the house and gold as part of the dower demonstrates an evolving understanding that the scope of mahr can extend beyond monetary assets to include immovable property, provided valuation is feasible.

This trend indicates an increasing acknowledgment of women's rights within the framework of Islamic law, ensuring that contractual obligations are honored and that women can claim their due rights, including property, as part of mahr. The courts' willingness to order valuation of the house for enforcement purposes further reflects a fair and equitable judicial approach aligned with Islamic jurisprudence.

Shari'ah Analysis

From an Islamic perspective, the Nikāḥ contract (aqd) is a binding civil contract whose terms, once mutually agreed upon, are enforceable.¹⁴⁰ The stipulations regarding mahr (dower) can be in various forms such as cash, gold, or property provided the terms are clear and agreed upon. The inclusion of immovable property as dower is recognized in Islamic jurisprudence if its value can be determined

The presumption of correctness for registered contracts, such as the Nikāḥ Nama, is supported by Islamic principles that favor the validity of documented agreements unless there is credible evidence to contest them.

In this case, the court upheld the entries in the Nikāḥ Nama as binding and valid, placing the burden of proof on the respondent to substantiate allegations of forgery. The recognition that even vague

¹⁴⁰Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur'ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur'ān Printing Complex), Qur'an 5:1; 17:34

descriptions of property, like the house, can be valid as dower if its value is ascertainable aligns with classical jurisprudence, which emphasizes fairness and clarity in contractual obligations.

Conclusion

The case exemplifies a modern, Sharī'ah -compliant interpretation of marital contracts, emphasizing the sanctity and enforceability of the Nikāḥ Nama and the stipulations therein. The Lahore High Court's ruling reinforces that once mutually agreed upon, the terms of dower, including immovable property, are binding and protected under law, provided they are documented and their value ascertainable. The decision underscores the importance of procedural fairness, the presumption of correctness of official documents, and the obligation of the husband to prove any claims of invalidity. Ultimately, it promotes justice for women within an Islamic legal framework, demonstrating that contemporary legal standards can harmonize with traditional Sharī'ah principles to ensure women's rights are safeguarded.

5.3 Mst. Mithan v. Additional District Judge, Jatoi and 7 others (2017 MLD 1101 Lahore – Multan Bench)

This case arose from a suit filed by Mst. Mithan, widow of Muhammad Nawaz, for the recovery of dower as per Column No. 16 of the Nikāḥ Nama. The Nikāḥ Nama, dated 05.12.1973, recorded that her husband promised to mutate 15 bighas of agricultural land in her name as dower and to pay a monthly amount of Rs. 40,000. The Family Court decreed the suit in her favour on 28.03.2011. However, the appellate court (Additional District Judge, Jatoi) set aside this decision on 02.12.2011, holding that the Family Court lacked jurisdiction. Mst. Mithan filed a constitutional petition challenging this order.

Critical Evaluation of Judicial Trends

Justice Ali Akbar Qureshi reversed the Appellate Court’s judgment, upholding the Family Court’s jurisdiction and restoring its original decree in favor of the petitioner. The decision firmly established that matters arising from stipulations recorded in the Nikāḥ Nama—including those relating to immovable property—fall within the Family Court’s jurisdiction, especially in light of the amendment made through Act No. XI of 2015. Entry No. 10 inserted into the Schedule of the Family Courts Act, 1964, states that the Family Court shall have jurisdiction over “any other matter arising out of the Nikāḥ Nama.” The Court held that this amendment, being procedural, would apply retrospectively.¹⁴¹ In a similar case the Supreme Court upheld the wife’s right to claim agricultural land mentioned in the Nikāḥ Nama, even in the absence of precise identifying details.¹⁴² The ruling in *Mst. Mithan* further extends this reasoning by validating the Family Court’s jurisdiction over such claims and recognizing the enforceability of dower conditions involving immovable property. The High Court explicitly held that the appellate court committed a jurisdictional defect by excluding Family Court jurisdiction and dismissing the suit on that basis. This judgment is especially important because it breaks from the prior judicial trend where courts often reclassified cases involving property as purely civil in nature, thereby excluding them from the purview of Family Courts. In many previous instances, this tendency undermined the enforceability of stipulations in favor of women, particularly where land, houses, or other immovable assets were involved. However, in this case, the court took a firm and progressive

¹⁴¹ See also *Rai Naeem Shahadat v. Mst. Qamar Munir* (2004 SCMR 412); *Yusuf Ali Khan Barrister-at-Law v. HSBC* (1994 SCMR 1007); *National Bank of Pakistan v. Muhammad Akram Khan* (2000 CLC 1493); *Iftikhar Ali v. The State* (PLD 2001 SC 38); *Khalid Qureshi v. United Bank Limited* (2001 SCMR 103).

¹⁴² *Dr. Asma Ali v. Masood Sajjad* (PLD 2011 SC 221),

position by confirming that stipulations in the Nikāḥ Nama—even when they pertain to property, are intrinsically connected to the marital contract and thus fall within the Family Court’s domain.

Sharī’ah Analysis

From an Islamic legal perspective, particularly within the Hanbali school of thought, the inclusion of such stipulations in the Nikāḥ Nama is valid and binding. The Ḥanbalī jurists consider marriage a civil contract (‘aqd) that can incorporate additional conditions, including those related to dower (mahr), maintenance, and even property transfers, provided they are not contrary to Islamic principles.

The condition that the husband would mutate land in favor of the wife as part of dower falls within the permissible category under Ḥanbalī jurisprudence. This reflects the Qur’anic injunction from Surah An-Nisa:

And give the women [upon marriage] their [bridal] gifts graciously...¹⁴³

Even if the promise was made without immediate transfer, it is binding as a deferred dower (mahr mu’ajjal). Other juristic schools (Ḥanafī, Mālikī, Shāfi‘ī) also accept such promises, though they may require more rigorous evidence if the stipulation concerns immovable property.

In this case, the court’s reliance on both procedural jurisdiction and the enforceability of Nikāḥ Nama stipulations aligns squarely with the Ḥanbalī framework. The precedent in Dr. Asma Ali reinforces the principle that property, whether precisely described or not, can still be claimed if the agreement is clear and supported by evidence.

¹⁴³Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur’ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur’ān Printing Complex), Qur’an 4:4.

Conclusion

This judgment represents a strong reaffirmation of the jurisdiction of Family Courts in matters involving stipulations made in the Nikāḥ Nama, including those related to immovable property. It effectively counters the regressive tendency to strip Family Courts of jurisdiction in such cases by mislabeling them as civil matters¹⁴⁴. The court rightly recognized the procedural nature of the 2015 amendment and applied it retrospectively, reinforcing the enforceability of dower conditions recorded decades earlier. This is a progressive and rights-affirming step, especially in the context of judicial trends that have historically overlooked or invalidated women's claims tied to property. The decision also highlights the necessity of training judges and registrars in both Islamic jurisprudence and procedural law so that contractual rights arising from marriage are protected comprehensively. This case should serve as a binding authority in lower courts to eliminate technical objections related to Family Court jurisdiction in Nikāḥ Nama-based claims.

5.4 Muhammad Ghaus v. Additional District Judge, Bahawalpur & others (W.P. No. 7630 of 2018)

The petitioner, Muhammad Ghaus, filed a constitutional petition under Article 199 to challenge concurrent findings of the Family Court and Additional District Judge, which had decreed in favor of the respondent, Mst. Salma Shahzadi, for recovery of Rs. 500,000 as additional dower under a clause in Column No. 17 of the Nikāḥ Nama. The stipulation held that if the husband contracted a second marriage or divorced the wife, he would owe the additional amount.

¹⁴⁴ See also: PLD 2011 SC 221 (Dr. Asma Ali v. Masood Sajjad); 2020 SCMR 2052 (Mst. Kaneez Fatima v. Shahbaz Ahmed); PLD 2022 SC 448 (Khawar Mumtaz v. Federation of Pakistan), where courts acknowledged stipulations and enforceable commitments recorded at the time of Nikāḥ.

Petitioner contested the entry, alleging it was the product of fraud and collusion. However, he failed to produce evidence, did not enter the witness box, and initiated no proceedings under the authority of the Deputy Commissioner to challenge the Nikāḥ Nama. Both the trial and appellate courts found the clause valid, and the High Court declined interference under Article 199.

Critical Evaluation of Judicial Trends

This ruling signifies an increasing judicial inclination in Pakistan towards the enforceability of provisions in the Nikāḥnama and a pro-woman evidentiary perspective in familial legal disputes. This decision fits squarely within the progressive judicial trend that upholds the enforceability of stipulations inserted into the Nikāḥ Nama, particularly those listed in Column No. 17 and Column No. 19. Justice Shakil Ahmad affirmed that these clauses, when mutually agreed upon, are civilly enforceable, and their violation entails consequences, not prohibitions, on the husband's Islamic rights. Quoting *Shajar Islam v. Muhammad Siddique* the Court reiterated that under Article 199, constitutional jurisdiction cannot be used as a substitute for appeal or revision, especially where no jurisdictional error, misreading, or non-reading of evidence exists.¹⁴⁵

The ruling also relied heavily on *Ghulam Shabbir v. Mst. Abbas Bibi* (2022 CLC 963), where a stipulation for financial compensation in case of divorce or second marriage was found valid, not a bar to Islamic rights, and equivalent to spousal support akin to alimony in modern legal systems.

¹⁴⁵ *Shajar Islam v. Muhammad Siddique* (PLD 2007 SC 45); *Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani* (2023 SCMR 246)

Shari'ah Analysis

In this case the Court engaged in deep Islamic jurisprudential reasoning, citing Qur'anic injunctions, classical fiqh texts, and Pakistani precedents to reinforce the validity of conditional dower stipulations.

The stipulation in Column No. 17, requiring additional dower upon divorce or a second marriage, was interpreted as deferred dower (*mahr-i-muwajjal*), a legitimate form of financial obligation under Islamic law. The Ḥanbalī permits stipulations in marriage contracts that protect the rights of the wife, so long as they do not contradict express Shari'ah principles. They refer to this:

If a condition is made that the husband will not take her from her town, or will not marry another, or will not travel with her, and he accepts this, then he is obliged to fulfill it. If he does not fulfill it, she has the right to annul the marriage.¹⁴⁶

This Ḥanbalī perspective directly supports the validity of the stipulation in this case. The condition for payment upon second marriage or divorce is not a punishment, not a restriction, but a consequence of breaching a mutually agreed condition. It reflects the Ḥanbalī understanding that conditional contracts are binding under the *Ḥadīth*:

The conditions that are most deserving of being fulfilled are those by which you have made lawful the private parts (i.e., marriage).¹⁴⁷

Thus, Justice Shakil Ahmad's reasoning implicitly aligns with Ḥanbalī jurisprudence: the clause does not prohibit polygamy or divorce but merely attaches a legal consequence, which is Islamically valid.

¹⁴⁶ Abd as-Salam ibn Sa'īd at-Tanūkhī, *Al-Mudawana fi Furu' al-Mālikīyah*, vol. 2. Edited by Sahnūn. (Cairo: Dar al-Kutub al-Misriyya, 1954), 75.

¹⁴⁷ Abdullah Muhammad Ibn Majah al-Qazwayni, *Sunnan Ibn i Mājah*, (Lahore: Kitab al-Nikāḥ, Islamic Academy, 1990), Vol. 2, p. 73.

Conclusion

This judgment is a foundational precedent for the recognition and enforceability of stipulations in the Nikāḥ Nama, particularly in Column No. 17 and by extension, Column No. 19. Justice Shakil Ahmad’s opinion confirms that such stipulations, far from restricting Islamic rights, are contractual mechanisms to uphold justice and protect women’s financial security within marriage. His interpretation reflects an authentic Islamic spirit, drawing upon the Qur’an, classical jurists (including Ḥanbalī scholars), and constitutional values.

This decision reinforces that marriage under Islamic law is a contract, and as such, mutually agreed terms, including financial obligations tied to specific conduct, are binding. It affirms the judicial trend towards harmonizing Islamic jurisprudence with gender justice and statutory family law, while setting an enduring example of how courts may reason with doctrinal clarity, religious authenticity, and legal precision.

5.5 Muhammad Afzal Khan v. Chairman Arbitration Council and another (2018 CLC 1125 Islamabad)

This constitutional petition under Article 199 of the Constitution of Pakistan arose from the refusal of the Chairman Arbitration Council, Islamabad, to issue a Certificate of Effectiveness of Talaq following the death of Mst. Shayan Afzal. She had been delegated the right of divorce (Talaq Tafweez) under Column 18 of the Nikāḥnama by her husband, Syed Farrukh Abbas. Exercising this right, she issued three written notices of divorce dated 30.08.2013 and filed an application before the Arbitration Council on 21.10.2013 under Section 7 of the Muslim Family Laws Ordinance, 1961. Despite repeated notices to the husband and expiration of the statutory 90-day reconciliation period, the Chairman failed to issue the certificate.

Following her death in 2015, her father, Muhammad Afzal Khan, applied for the certificate, which was rejected on the ground that a third party could not pursue such relief posthumously. The matter was taken to the Islamabad High Court.

Critical Evaluation of Judicial Trends

Justice Mohsin Akhtar Kayani of the Islamabad High Court took a progressive stance, recognizing the legality of delegated divorce under Column 18 and affirming the procedural finality of Talaq once the 90-day statutory period under Section 7 of the Muslim Family Laws Ordinance, 1961 had elapsed without reconciliation or withdrawal of notice. The Court held that the Arbitration Council's refusal to issue the certificate due to the applicant's death was legally untenable, as the divorce had already taken effect by operation of law after the 90-day period, and no express revocation had occurred.

The Court clarified that the purpose of the Arbitration Council is limited to reconciliation; if reconciliation fails or the respondent fails to appear, the Chairman is legally bound to issue the certificate. The petitioner's daughter had clearly manifested her intention to dissolve the marriage, as evidenced by unambiguous written notices. The Court emphasized that neither the applicant nor her legal representative ever sought to withdraw the application, and the respondent never appeared or contested the notices.

In doing so, the Court relied on authoritative precedent including *Mst. Zahida Shaheen v. State*¹⁴⁸ and *Khawar Iqbal v. Federation of Pakistan*,¹⁴⁹ affirming that the issuance of a Talaq certificate is a ministerial function once legal requirements are fulfilled. The Court rightly criticized the

¹⁴⁸ *Mst. Zahida Shaheen v. State* (1994 SCMR 2098)

¹⁴⁹ *Khawar Iqbal v. Federation of Pakistan* (2013 MLD 1711)

Arbitration Council's deviation from its statutory duty and ordered the certificate to be issued retrospectively.

This judgment stands in contrast to the broader trend of judicial reluctance to enforce pro-women stipulations in the *Nikāḥnama*. Here, the Court upheld a woman's delegated right of divorce without requiring her physical appearance, even posthumously. While some lower courts emphasize procedural hurdles or the husband's non-consent, this judgment reinforced the principle that once the statutory process under Section 7 is initiated, *Talaq* becomes effective upon passage of time, not upon discretion of the Chairman.

Sharī'ah Analysis

The delegated right of divorce (*ṭalāq al-tafwīd*) is firmly entrenched in classical Islamic jurisprudence and is universally acknowledged across all four Sunni schools of thought without significant dispute. The juristic consensus (*ijmā'*) holds that a husband may lawfully delegate the authority to pronounce divorce to his wife, either conditionally or unconditionally, and such a delegation—when accepted—is binding and enforceable. The differences among jurists pertain primarily to form, scope, and timing, not to its fundamental permissibility.

The Ḥanafī school offers the most detailed elaboration on this doctrine. *Al-Hidāyah* explains that if a husband delegates the right unconditionally and the wife pronounces divorce in the same sitting, the divorce is valid and irrevocable.¹⁵⁰ *Fatāwā 'Ālamgīriyyah* and other key texts affirm that such stipulations, if recorded at the time of marriage and later exercised in accordance with

¹⁵⁰ Burhanūddīn al-Marghīnānī, *Al-Hidāyah fī Sharḥ al-Bidāyah*, Vol. 2 (Cairo: al-Maktabah al-Islāmiyyah), p. 362.

agreed conditions, are legally binding. The Ḥanafīs categorize tafwīḍ as revocable or irrevocable depending on whether it is temporary, conditional, or absolute.

The Mālikī school similarly endorses this right. *Al-Mudawwanah al-Kubrā* records examples where women were given this right, especially when added to the marriage contract.¹⁵¹ According to Ḥāshiyat al-Dusūqī, once the right is delegated and properly exercised by the wife, the resulting divorce takes full legal effect, even without the husband's direct involvement.¹⁵² This reflects the Mālikī emphasis on good faith and mutual consent in contractual obligations.

The Shāfi'ī school upholds the permissibility of tafwīḍ but emphasizes certain procedural aspects. According to Imam al-Nawawī's commentary on *Rawḍat al-Ṭālibīn*, delegation may be conditional or time-bound, and if the condition is fulfilled and the wife accepts the mandate, her pronouncement of divorce is valid.¹⁵³ The Shāfi'īs do not dispute the concept itself but require that its terms be clearly established and exercised within the specified framework.

The Ḥanbalī school, often perceived as more literalist, also recognizes the delegated right of divorce. *Al-Mughnī* by Ibn Qudāmah explains various forms of tafwīḍ—including absolute, temporary, and conditional delegation—and affirms that once a wife has lawfully exercised such a right, the resulting divorce is binding.¹⁵⁴ The Ḥanbalīs support this based on the practice of the Prophet ﷺ, who is reported to have allowed his wives to choose between remaining married or separating, thus setting a precedent for lawful delegation.¹⁵⁵

¹⁵¹ Aurangzeb Alamgir (compiler), *Fatāwā 'Ālamgīriyyah* (also known as *al-Fatāwā al-Hindiyyah*), vol. 1, *Kitāb al-Ṭalāq*.

¹⁵² Sahnūn Ibn Sa'īd, *Al-Mudawwanah Al-Kubrā*, vol. 2 (Beirut: Dār al-Fikr, n.d.), 307.

¹⁵³ Muḥammad 'Ārafah Al-Dusūqī, *Ḥāshiyat Al-Dusūqī 'alā Al-Sharḥ Al-Kabīr*, vol. 2 (Beirut: Dār al-Fikr, n.d.), 450.

¹⁵⁴ Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī*, vol. 7 (Maktabat al-Riyāḍ al-Ḥadīthah, n.d.), 304.

¹⁵⁵ Yahyā ibn Sharaf Al-Nawawī, *Rawḍat Al-Ṭālibīn*, vol. 7 (Beirut: Al-Maktab al-Islāmī, n.d.), 76.

In all four schools, the core consensus (ijmā‘ al-fuqahā’) remains that ṭalāq al-tafwīḍ is a legitimate legal mechanism within Islamic law. It reflects the broader understanding that marriage is a civil contract with room for mutual terms and agreed conditions. The concept of delegated divorce finds Qur’anic precedent in Surah Al-Ahzab), where the Prophet Muhammad (ﷺ) offered his wives the option to choose separation:

O Prophet, say to your wives: If you desire the life of this world and its adornment, then come, I will give you a suitable compensation and release you with a gracious release.¹⁵⁶

This classical consensus is reflected in modern Islamic legal opinion as well. The Federal Sharī’at Court, in its 1984 judgment, observed in Section 101 that the practice of tafwīḍ is fully compatible with Islamic injunctions and should be encouraged to strengthen women’s rights within the institution of marriage. Additionally, scholars like Maulana Ashraf ‘Alī Thānvī, in *Ḥīla Nāghiza*, affirm that once the right is granted to the wife, its lawful exercise results in a complete and valid divorce, which the husband cannot later revoke.¹⁵⁷

Thus, the recognition of ṭalāq al-tafwīḍ in Pakistani law, particularly through Column 18 of the Nikāḥ Nāmah, is not a foreign innovation but a direct continuation of centuries of Islamic jurisprudential consensus. Any judicial reluctance to enforce such stipulations therefore contradicts not only the Ḥanafī tradition—the dominant legal school in Pakistan—but also the broader Sunni consensus, which views this right as fully legitimate, binding, and protective of women’s contractual agency.

¹⁵⁶ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur’ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur’ān Printing Complex), Qur’ān 33:28–29

¹⁵⁷ Maulana Ashraf ‘Alī Thānvī, *Ḥīla Nāghiza*, Urdu ed. (Karachi: Maktaba Thanviya, n.d.). 58.

Conclusion

This judgment marks an important precedent in aligning statutory law with Islamic jurisprudence, affirming the autonomous enforceability of women's delegated right of divorce under Column 18 of the Nikāḥnama. By holding that the death of the applicant does not invalidate a divorce already effective under law, the Court took a nuanced yet firm stand against bureaucratic inertia.

The ruling reflects a rare harmonization of statutory clarity, constitutional rights, and Islamic principles, particularly from the Ḥanbalī school. It thus enhances the enforceability of contractual stipulations in Muslim marriages and challenges the entrenched bias within lower-level councils that often deny or delay women's rights under the guise of procedural ambiguity.

Nevertheless, the case exposed institutional weaknesses, especially within the Arbitration Council. The reluctance to issue the certificate due to erroneous assumptions about legal standing reveals a dire need for capacity-building. Council officials must be trained in both the technical requirements of Section 7 MFLO and the Islamic basis for women's contractual divorce rights, including the jurisprudential authority supporting them. This judgment not only contributes to the growing corpus of pro-women family law jurisprudence in Pakistan but also exemplifies how Shari'ah and statutory law can be coherently applied in support of gender justice.

5.6 Mst. Hajira Bibi v. Abidullah and Others (2019 CLC Peshawar Note 61)

The petitioner-wife, Mst. Hajira Bibi, filed a suit in the Family Court seeking, among other reliefs, the enforcement of a stipulation recorded in Column No. 17 of the Nikāḥ Nama, that her husband would purchase a 6 marla plot and construct a house for her. The Family Court decreed in her favor, recognizing this stipulation. However, the Appellate Court reversed this decision, holding that the Family Court lacked jurisdiction to enforce such a promise, as it fell outside the scope of Section 5 of and the Schedule (part 2) of the Family Courts Act, 1964. The High Court upheld this

decision, dismissing the constitutional petition solely on jurisdictional grounds, without addressing the Islamic legal principles underlying such stipulations. The judiciary in this case adopted a formalist and restrictive approach to family court jurisdiction, holding that the promise to provide property, despite being part of the Nikāḥ Nama, did not fall within the Family Court's statutory scope. Instead, the enforcement of this clause was referred to civil courts with plenary jurisdiction. The trial court initially attempted a broader interpretation to grant relief, but the appellate court reversed this, narrowing the jurisdiction. The High Court upheld the appellate decision without examining the substantive issues of the stipulation. This pattern reflects a trend of strict proceduralism, emphasizing procedural boundaries over the substantive enforcement of marital commitments.

Critical Evaluation of Judicial Trends

The judgment is problematic from both justice-oriented and Islamic legal perspectives, as it neglects substantive rights of women and fails to address the enforceability of Islamic contractual stipulations in the Nikāḥ Nama. By avoiding engagement with the Islamic jurisprudential validity of such promises and citing jurisdictional limitations, the court missed an opportunity to uphold the legal and religious significance of these agreements. This approach undermines trust in the Nikāḥ Nama as a meaningful legal instrument for Muslim women and reflects a disconnect from the socio-religious context of marriage contracts, ultimately undermining the judiciary's role in delivering accessible family justice in Pakistan.

Sharī'ah Analysis

Sharī'ah provides clear guidance on the enforceability of stipulations in marriage contracts, including material promises such as the provision of a house. The Qur'an emphasizes the

importance of honoring contracts and covenants explicitly highlighting the necessity of fulfilling agreements.¹⁵⁸ The Prophet Muhammad (peace be upon him) also stated that Muslims must abide by their conditions.¹⁵⁹

The four Sunni schools of Islamic jurisprudence generally uphold the validity of stipulations in marriage if they do not contravene Sharī'ah principles. The Ḥanafī school permits stipulations like providing housing, especially if clearly stipulated in the Nikāḥ Nama. The Mālikī and Shāfi'ī schools support enforcing conditions that benefit the wife and are Sharī'ah-compliant; in cases of breach, the wife may seek dissolution of the marriage. The Ḥanbalī school is particularly stringent, allowing the wife to annul the marriage if contractual stipulations are not fulfilled. Consequently, stipulations such as the provision of a house are regarded as binding if agreed upon at the time of marriage, not merely as civil promises but as enforceable contractual terms within Islamic law, possibly as part of the dower if intended so.

However, despite this jurisprudential framework, the court in the case at hand disregarded these principles, choosing to dismiss the case on procedural jurisdictional grounds rather than analyzing the validity and enforceability of the stipulation under Sharī'ah. This approach marked a significant deviation from the Islamic emphasis on justice based on substantive rights over procedural technicalities.

Conclusion

This case reveals a problematic judicial trend where substantive Islamic principles are sidelined in favor of technical proceduralism. The courts failed to recognize the Sharī'ah-backed enforceability

¹⁵⁸ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur'ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur'ān Printing Complex), Qur'ān 2:177; 5:1

¹⁵⁹ Abdullah Muhammad Ibn Majah Al-Qazwayni, *Sunnan Ibn I Mājah*, vol. 2 (Lahore: Islamic Fiqh Academy, 1990), 73.

of stipulations in the Nikāh Nama, particularly promises that benefit the wife such as the provision of property. Rather than advancing justice in light of Islamic legal imperatives, the judiciary defaulted to jurisdictional avoidance, which is both legally and morally problematic. In a country where Islamic law governs personal status, such judicial behavior deserves serious critique. It undermines the protective framework Islam provides to women in marriage and contradicts the judiciary's own duty to uphold Islamic principles enshrined in Pakistan's Constitution.

5.7 Muhammad Naeem v. Additional District Judge & Others (2021 YLR Lah 108)

The facts of this case revolved around the recovery of 4 tolas of gold, explicitly mentioned in Column 17 of the Nikāhnama, which had been given to the wife, Mst. Asma Noreen, at the time of marriage. While the husband acknowledged that the gold was given, he contended that the wife had taken it with her upon leaving the matrimonial home. The wife, however, claimed that it had been forcibly taken from her a month after marriage. The Family Court dismissed her claim, but the Appellate Court reversed this decision, holding her entitled to recover the ornaments. The husband challenged this reversal through a constitutional petition under Article 199 of the Constitution, which was dismissed by the Lahore High Court, affirming the findings of the appellate court on the basis that the wife's testimony went un rebutted due to failure of specific cross-examination, and the husband did not produce any cogent evidence to substantiate his version.

Critical Evaluation of Judicial Trends

This judgment reflects a growing judicial trend in Pakistan toward the enforceability of stipulations in the Nikāhnama and a pro-woman evidentiary approach in family litigation. The High Court emphasized that since the wife's assertion in examination-in-chief, regarding forcible retrieval of gold by the husband, was not specifically cross-examined, it would be presumed to be true in the

eyes of the law. Moreover, the husband's inability to prove his claim with credible evidence further justified the appellate court's intervention. Such reasoning aligns with earlier precedents, including PLD 2015 Lahore 88 and 2015 CLC 138, where courts recognized the evidentiary value of women's testimony and emphasized the enforceability of contractual clauses in the Nikāḥnama, even in the absence of documentary proof or procedural compliance by the husband¹.

This jurisprudential stance also resonates with the constitutional protections afforded to women under Article 35 of the Constitution of Pakistan, which obligates the state to protect the family, the mother, and the child. Judicial fidelity to this obligation is evident in how courts, including in the present case, avoid dismissing legitimate claims of women based on technical deficiencies and instead emphasize substantive justice. Furthermore, Article 25(2) guarantees equality and prohibits gender-based discrimination, reinforcing the notion that rights promised under a marriage contract must be upheld regardless of gender-based presumptions. The High Court's decision to respect the woman's version, given the absence of rebuttal, is thus not merely a matter of procedural inference but also a constitutional affirmation of gender equality and access to justice.

Sharī'ah Analysis

From a Sharī'ah perspective, particularly within the Hanbali school of thought, the stipulations made in the Nikāḥ contract are binding if they do not contradict any principle of Sharī'ah. The acknowledgment of dower (mahr) in Column 17 and its later alleged retrieval by the husband is impermissible under Islamic law, which views such dower as the exclusive property of the wife.

Allah says in Surah an-Nisa:

And give the women [upon marriage] their bridal gifts graciously¹⁶⁰

The Qur'anic injunction makes clear that once dower is given, it cannot be unilaterally reclaimed. The Hanbali school, more than other Sunni schools, places significant weight on such stipulations and holds that violation of agreed terms can be grounds for judicial intervention. In addition, the notion of amanah (trust) in Islamic law imposes a moral and legal obligation on the husband not to expropriate or misuse what has been entrusted to him. The wife's right to dower and its unlawful deprivation thus find both legal and moral reinforcement under Islamic jurisprudence.

Conclusion

This case reinforces a strong and evolving judicial commitment to the enforceability of Nikāḥnama stipulations and the protection of women's marital and financial rights in Pakistan. It marks a convergence between constitutional mandates, evidentiary justice, and Sharī'ah-compliant interpretations, all of which work together to empower the wife as a rights-holder in both legal and moral frameworks. The High Court's refusal to disturb the well-reasoned findings of the appellate court demonstrates how courts are increasingly prioritizing substantive justice in family law, consistent with Islamic jurisprudential values and the constitutional commitment to safeguarding marriage and protecting women's dignity and rights.

5.8 Wasif Ali & another v. Mst. Fakhra Jabeen & others (2023 CLC 1021 Lahore-Rawalpindi Bench)

This case consolidated two writ petitions W.P. No. 2111/2013 and W.P. No. 2716/2019 as they raised a common legal question concerning the interpretation of Nikāḥnama columns 13 and 16. In both cases, the wives sought enforcement of entries in these columns for the recovery of dower

¹⁶⁰ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur'ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur'ān Printing Complex), Qur'ān 4:4.

(mehr) and property allegedly promised as part of the dower or as an additional condition of marriage. Mst. Fakhra Jabeen claimed Rs. 500,000 as dower and a 10-marla plot mentioned in column 16. Mst. Fahmeena Bashir also sought recovery of Rs. 100,000 and a house mentioned in column 16. In both cases, the husbands denied the claims, arguing either payment was made or the property was not theirs to transfer.

2. Critical Evaluation and Judicial Trend:

The primary legal issue was whether entries in column 13 (amount of dower) and column 16 (transfer of property) of the Nikāḥnama should be read separately or conjunctively. The larger bench was constituted due to conflicting precedents: in *Mst. Iram Shahzadi v. Muhammad Imran-ul-Haq*,¹⁶¹ the Court treated the entries independently, whereas in *Attorney General v. Mst. Amnatuz-Zahra*,¹⁶² the Court read the entries together as interdependent. The High Court resolved the conflict by holding that the entry in column 13 was a rider to columns 14–16. Therefore, claim to the property in column 16 could only arise if the monetary dower (column 13) remained unpaid. This interpretation harmonizes the contract's terms and avoids creating overlapping or double obligations.

The Court further held that property in column 16 could not be enforced if the person owning it (e.g., the bridegroom's father) was not a party to the contract or had not consented. As such, even if the property was mentioned in the Nikāḥnama, it could not bind a third party. If property is ownership of his father, mother or brother, who is neither signatory to the Nikāḥnama nor had agreed to transfer the same in favour of bride, entries in Nikāḥnama cannot be enforced against

¹⁶¹ *Mst. Iram Shahzadi v. Muhammad Imran-ul-Haq* (2019 MLD 112); *Anwarul Haq v. Federation of Pakistan* (1995 SCMR 1505) and *House Building Finance Corporation v. Shahinshah Humayun* (1992 SCMR 19),

¹⁶² *Attorney General v. Mst. Amnatuz-Zahra* (2011 CLC 726)

him/her and he/she cannot be deprived of his/her property.¹⁶³ This is consistent with both civil law and Islamic jurisprudence, which upholds that contractual obligations are binding only on consenting parties.

A major concern arises in how the Court handled the stipulations concerning maintenance and education. These are clearly protective clauses in favor of the wife, yet the Court neither emphasized their importance nor analyzed their enforceability in depth. Instead of affirming these as binding contractual obligations, the judgment largely treats them as auxiliary or marginal, thus diluting their effect and ignoring their empowering potential. Court held that dower should be confined to Column 13, and any additional conditions (like transfer of property) should be recorded in a separate agreement, which is a good step yet it overlooked the importance of Column 19 in the Nikāḥ Nama, which is intended for recording mutually agreed-upon special conditions at marriage.

The Supreme Court of Pakistan has held that entries in the Nikāḥ Nama are not enforceable against third parties¹⁶⁴ but here the Court missed an opportunity to distinguish private enforcement between spouses from third-party enforceability, which could have strengthened the case for women's contractual protections. The Court also referred to interpretive ambiguities in favor of the groom, which is especially concerning when the stipulations clearly sought to protect the wife's rights. A more gender-sensitive and purposive interpretation was required to give effect to these clauses. The ruling reinforces the judicial reluctance that still prevails in fully embracing stipulations empowering women in marriage contracts.

¹⁶³ Fawad Ishaq and others v. Mst. Mehreen Mansoor and others (PLD 2020 SC 269).

¹⁶⁴ See also e.g., PLD 1965 SC 690

Sharī'ah Analysis

The judgment reiterates the classical Islamic jurisprudential view that marriage is a civil contract and dower (mehr) is a mandatory right of the wife.¹⁶⁵ Citing that dower can be monetary or in the form of tangible/intangible property, the Court recognized its essential nature and enforceability unless expressly waived.

However, the Sharī'ah principle of aqd (contract) limits enforceability to parties who consent to the contract. Since the bridegroom's father, in this case, was neither a signatory nor consenting party, the transfer of his property under column 16 could not be enforced. The Court's view that such property cannot be enforced against third parties who are not signatories or owners aligns with the Islamic principle that no one can be divested of property without their explicit consent.¹⁶⁶ This also aligns with classical fiqh including the Ḥanafī school which upholds that no one can be made liable or divested of property without consent, even in dower arrangements.¹⁶⁷

Further, the judgment clarified that if parties wish to include additional beneficial conditions in marriage (not strictly dower), these should be included in a separate, independently executed document, not in the Nikāḥnama. This recommendation reflects fiqh-based emphasis on clarity and mutuality in contracts and helps prevent future disputes.

While the court correctly observed that a condition relating to immovable property could not be enforced against a person who was not a party to the Nikāḥ Nama, such as the father-in-law in this case it failed to engage with the deeper ethical and legal implications from a Sharī'ah perspective.

¹⁶⁵ Ali Amer, *Mohammedan Law*, 6th ed., vol. 2 (Dhaka: Shams Publication, 2002), 432

¹⁶⁶ Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan, *The Noble Qur'ān: Translation of the Meanings in the English Language* (Madinah, K.S.A.: King Fahd Glorious Qur'ān Printing Complex), Qur'ān 2:188).

¹⁶⁷ Muhammad ibn al-Hasan al-Kasani, *Bada'i' al-Sana'i' fī Tartīb al-Shara'i* (Beirut: Dar al-Ma'arif, 1988), 210.

Even if legal transfer of the house was not possible because it was not registered in the husband's name, this does not absolve the husband of responsibility. The stipulation in question arose from his own representation: he assured his wife that she would be given that house. In Islamic law, such deceit is morally and legally condemnable. The husband, knowingly promising a property he did not own, effectively misled his spouse at the time of marriage, a violation of the principles of honesty, trust (amanah), and fairness that undergird Islamic marital ethics.

Moreover, under classical Hanbali jurisprudence, while a stipulation that is impossible or involves a third party may be unenforceable in terms of execution, the deceit itself may constitute grounds for compensation or even annulment if it amounts to gharar (undue uncertainty or fraud).¹⁶⁸ Yet the court failed to evaluate whether the husband's conduct, though not enforceable against the third party (i.e., his father), still gave rise to a compensable moral or contractual breach under Islamic principles. The silence of the court on this aspect leaves the wife with no remedy despite being misled, a result that undermines both the letter and the spirit of Sharī'ah.

Conclusion

This case highlights key judicial shortcomings: the non-enforceability of beneficial stipulations recorded in Nikāḥnamas when they involve third-party assets, even if such conditions were part of the marriage negotiations. The judiciary prioritizes privity and title documentation over equitable remedies. Moreover, the Court issued policy directions: The High Court's refusal to interpret pro-woman stipulations generously marks a conservative trend in family law enforcement.

¹⁶⁸ Abdul Rahman Al-Jaziri, *Al-Fiqh 'Ala Al-Madhahib Al-Arba'a*, vol. 4 (Beirut: Dār'l Kutub ul-'Ilmiyyah, 2003), 304–306; Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh*, vol. 7 (Damascus: Dar al-Fikr, 1989), 124–128.

However, policy directions issued by court, requiring Nikāḥ Registrars to strictly comply with Rules 7-13 of the 1961 Rules, ensuring only permitted entries are made in the Nikāḥnama seems to be a vital step. The government must prescribe minimum educational qualifications for Nikāḥ Registrars and provide training. Additionally, if parties wish to include beneficial stipulations beyond the standard provisions, they must execute a separate agreement.

This decision fits within a broader judicial trend of cautious formalism in interpreting marital contracts, combined with procedural and institutional reform recommendations to prevent misuse or ambiguity in Nikāḥnama entries. The decision reaffirms the urgent need for: Clearer guidance in Nikāḥ documentation, Islamic jurisprudential literacy among judges, and a move toward harmonizing statutory and Sharī'ah-based understandings of marital contracts, especially in ways that do not disadvantage women.

5.9 Muhammad Awais v. Zahida Parveen, (2024 CLC 2129 Lahore High Court)

This case arose from a suit filed by the respondent-wife for enforcement of stipulations recorded in Columns 17 and 19 of the Nikāḥ Nama. At the time of marriage on 25.11.2008, the petitioner-husband had agreed to (i) provide 8 tolas of gold ornaments and (ii) pay Rs. 500,000 as compensation in the event of divorce. After he unilaterally divorced the wife on 15.01.2009, she filed a suit for recovery of both amounts. The Family Court initially ruled in favor of the husband, but the matter was remanded and later decided against him by the Civil Court. The appellate court upheld that decision. On revision, the Lahore High Court partially allowed the petition—maintaining the decree for gold but setting aside the Rs. 500,000 compensation as contrary to Islamic law and legal precedent.

Critical Evaluation of Judicial Trend

Justice Shahid Bilal Hassan upheld the enforceability of the agreed 8 tolas of gold, treating it as a valid stipulation enforceable under the law. The wife presented consistent and credible oral testimony, corroborated by the Nikāḥ Khawan and marriage witnesses. The Nikāḥ Nama, never challenged before a competent forum, was treated as reliable documentary evidence. The husband failed to establish any coercion or forgery, and thus the decree for the gold was rightly sustained. However, the Court invalidated the stipulation for Rs. 500,000 in case of divorce, reasoning that it imposed an unlawful restriction on the husband's right to talaq under Islamic law and the Muslim Family Laws Ordinance, 1961. The Court placed reliance on binding precedent, particularly *Muhammad Bashir Ali Siddiqui v. Sarwar Jahan Begum*,¹⁶⁹ to assert that such clauses contradict settled Islamic principles. Court followed the prevailing judicial trend of rejecting stipulations that financially penalize a husband for exercising his right to talaq.¹⁷⁰

This reasoning, however, reflects a deep-rooted and outdated judicial tendency to adopt the most restrictive interpretation of Islamic law namely that of the Ḥanafī school without considering more progressive juristic views. Despite the fact that the compensation clause was mutually agreed upon, unambiguous, and clearly recorded at the time of marriage, the Court made no effort to examine whether other Sunni schools (such as the Ḥanbalī or Mālikī) might support such a condition. The failure to undertake any ijtihadi (independent) juristic reasoning, or even acknowledge the possibility of legitimate interpretive diversity within Islamic jurisprudence, reveals a judicial mindset confined to traditionalist rigidity.

¹⁶⁹ *Muhammad Bashir Ali Siddiqui v. Sarwar Jahan Begum* (2008 SCMR 186)

¹⁷⁰ See also, *Mst. Zeenat Bibi v. Muhammad Hayat* (2012 CLC 837); *Muhammad Asif v. Mst. Nazia Riasat* (2018 CLC 1844), and *Mujahid Kamran v. Mst. Saira Aziz* (2022 CLC 24).

More critically, this neglect demonstrates a worrying lack of Sharī'ah literacy among the judiciary. Had the judge been well-versed in comparative Islamic jurisprudence, or even approached the matter as a civil contractual issue, they would have recognized that such conditions are not only valid but enforceable under both classical and modern interpretations of Islamic law. The judiciary's unwillingness to engage in such reasoning underscores the need for family court judges to be trained in Islamic jurisprudence and comparative fiqh, so that the rights of women—especially those contractually secured at the time of Nikāḥ—are not arbitrarily denied.

Sharī'ah Analysis

The Court's judgment follows the orthodox Ḥanafī position, which maintains that a husband's right to unilateral talaq is absolute and cannot be financially conditioned or restricted. However, this view does not reflect the full range of Sunni juristic scholarship as Sahibayn consider this condition as binding and that the husband must oblige this in case of divorce.¹⁷¹ The Hanbali school—known for recognizing marriage as a civil contract permits a wide range of stipulations, including those that condition divorce or impose compensation where the wife's rights are prejudiced by an arbitrary talaq. Ḥanbalī jurists expressly allow such stipulations when they are agreed upon at the time of marriage, provided they do not contradict an express injunction of Sharī'ah.¹⁷²

Tragically, the Court made no attempt to consider or apply this juristic diversity. The judge's complete silence on alternative Islamic views, especially when a woman's contractual rights were

¹⁷¹ Abī Al-Hassan Alī bin Abī Bakar bin Abdul Jalīl Al-Marghinānī, *Al-Hidāyah Sharah Bidāyatal Mubtadi*, vol.1 (Riyadh: Al-Maktabah Al-Islāmiyyah, nd), 202–203.

¹⁷² Muhammad 'Abdullah bin Aḥmad bin Muhammad bin Qudāmah al Muqdasī, *Al-Mughnī li Ibn e Qudāmah*, vol.7, (Cairo: Maktabat ul Qāhirah, 1968), 71.

clearly recorded and the parties had mutually consented to them, reflects the institutional absence of Islamic legal competence. This rigid approach not only stifles Islamic legal evolution but actively works against justice for women. In a civil contract, once a term is agreed upon and not repugnant to Sharī'ah, it should be upheld—and in this case, there is strong Islamic precedent for doing so.

It is respectfully submitted that many judges currently serving in family courts lack adequate training in Islamic legal methodology. To ensure more equitable and informed decisions, it should be made a requirement that judges adjudicating on personal and family law matters possess sufficient Sharī'ah knowledge and intellectual capacity to view cases from multiple legitimate perspectives—not merely follow inherited orthodoxies.

Conclusion

The ruling in *Muhammad Awais v. Zahida Parveen* once again illustrates the judiciary's partial recognition of stipulations in the Nikāḥ Nama: material clauses such as gold delivery are enforced, while more substantive pro-woman protections—especially those that deter unjustified divorce—are routinely invalidated. Despite clear contractual consent, the Court rejected the compensation clause, strictly adhering to the Ḥanafī position and failing to engage with the wider Islamic jurisprudential spectrum. This case lays bare a broader institutional problem. Judges entrusted with adjudicating Islamic family law often demonstrate limited familiarity with Islamic legal diversity, and consequently rely on narrow, literalist interpretations. The result is a formalistic and, at times, unjust approach to women's rights in marriage.

To remedy this, judicial reform is urgently needed. Judges, especially in family courts, should be selected and trained with due regard to their understanding of Islamic law. Sharī'ah is not a monolith—it contains within it interpretive tools, traditions, and philosophies that can support a

more balanced and equitable application of justice. We must move away from the rigid application of inherited views and embrace the pluralistic, principled framework that Islamic jurisprudence offers. Only then can the courts begin to protect the spirit of justice that underpins both Islamic and constitutional values.

6. Field Surveys and their Analysis

This chapter also includes two empirical surveys designed to assess the practical enforceability of the post-2015 amendment to the Muslim Family Laws Ordinance, 1961. The first, titled “Awareness of Nikāḥ Nama Stipulations: A Survey for Brides”, explores the level of awareness among women regarding their marital rights and the inclusion of stipulations in the Nikāḥ Nama. The second, titled “Institutional Compliance with Post-2015 Amendments: A Field Survey of Union Councils”, investigates the practices of Nikāḥ Registrars in implementing the amended provisions and identifies any challenges or gaps in enforcement. The detailed responses, conclusions, and analytical findings derived from these surveys are appended as annexures to this chapter at the end of the thesis.

7. Conclusion

While Pakistan does have a framework of family laws, there is no specific statute that directly addresses the stipulations in the Nikāḥ Nama. As a result, when courts are called upon to decide matters concerning such stipulations, they rely heavily on judicial precedents. The absence of detailed legislation has led to increased dependence on case law, but this has also resulted in inconsistent judgments, reflecting a lack of uniformity in the legal treatment of these stipulations. The judicial trajectory regarding stipulations in the Nikāḥ Nama reflects a pattern of cautious progression rather than a full embrace of reform.

A close reading of the post-2015 amendment judgments reveal a gradual but discernible shift in judicial attitude toward stipulations in the Nikāḥ Nama, particularly those that reflect women's agency within the marital contract. Earlier post-amendment decisions, such as the one where the court invalidated a clause imposing a monetary penalty on the husband upon divorce, reveal a lingering adherence to traditional interpretations that view such stipulations as un-Islamic and unenforceable. These cases demonstrate that despite the amendment mandating that all columns be filled and considered, courts were still reluctant to treat contractual stipulations as binding if they deviated from the established patriarchal framework.

However, while some early post-amendment judgments particularly those delivered around 2018, recognized the enforceability of stipulations such as monetary compensation for second marriage, arbitrary divorce, and delegated right of divorce are indicating a departure from traditionally rigid interpretations, the 2024 judgment reflects a retraction from this progressive trajectory by declining to uphold the condition for compensation, thereby reintroducing uncertainty into the judicial treatment of such stipulations.

That said, this evolution is inconsistent and patchy. The number of judgments directly engaging with Nikāḥ Nama stipulations remains low even after the 2015 reform, and many courts still resolve cases on procedural grounds without addressing the stipulations substantively. This suggests a hesitation, whether doctrinal or institutional, in fully embracing the contractual dimension of the marriage contract. Thus, the overall trend is not of linear progression but of sporadic and uneven change. The law may have changed on paper, but without institutional will, judicial confidence, and community-level awareness, its transformative potential remains largely unrealized.

Chapter 4

CONCLUSION AND RECOMMENDATIONS

This chapter synthesizes the findings of the research by examining judicial opinions and conducting a Sharī‘ah-based analysis of case law concerning stipulations in the Nikāḥ Nama. It reflects on how Pakistan’s legal framework engages with Islamic jurisprudence, particularly the Ḥanbalī position and concludes with practical recommendations to enhance the enforceability of contractual stipulations within Muslim family law.

4.1 Conclusion

After comprehensive research and analysis of the fiqhī rulings, statutes, and precedents about adding stipulations to a marriage contract, it is clear that there is a big difference between the real Sharī principles in this area and how they are said to be followed in the Pakistani Muslim Family laws and Judiciary. The diverse conditions expressed by classical jurists, supported by various arguments, for the validation and usefulness of the marriage contract are examined. The jurisprudence surrounding stipulations in Nikāḥ Nama within Islamic law presents a complex and nuanced landscape. Rooted in the foundational sources of the Quran and Hadith, classical fiqh schools offer differing perspectives on the validity and scope of stipulations in marriage contracts. While all four Sunni schools agree that stipulations in the marriage contract are valid if they do not contradict Islamic principles. However, Ḥanafī, Shāfi‘ī, and Mālikī jurists generally agree in being cautious toward conditions that restrict the husband’s legally recognized rights, such as the right to polygamy, unilateral divorce, or financial penalties tied to divorce. These are often seen as non-binding or even invalid if they directly contradict Sharī‘ah norms.

In contrast, stipulations that ensure fair treatment, maintenance, or fulfillment of specific agreed-upon conditions, such as separate residence, education, or permission to work are broadly accepted across all four schools. Among them, the Ḥanbalī school stands out for being the most permissive regarding conditional restrictions on polygamy or divorce, often recognizing them as binding if agreed at the time of the contract. This divergence influences how stipulations are interpreted and enforced in legal contexts, often leading to inconsistent judicial applications.

Within the framework of Pakistani law, Islamic principles are embedded through constitutional provisions and statutory laws, notably Articles 227 and 35 of the Constitution and the West Pakistan Muslim Personal Law (Sharī'at) Application Act. These legal instruments affirm that family law must conform to Islamic injunctions, and Muslim Personal Law governs marriage-related matters. Despite these constitutional safeguards, the enforceability of stipulations recorded in the Nikāḥ Nama remains inconsistent and often tenuous. Judicial decisions post-2015 amendments reveal a tendency to approach stipulations cautiously, sometimes dismissing them altogether due to procedural technicalities or jurisdictional ambiguities. The 2015 Amendment to the Muslim Family Laws Ordinance aimed to improve transparency by requiring complete filling of columns and recording of stipulations in the Nikāḥ Nama, including signatures and specific clauses. However, practical challenges such as inadequate institutional capacity, lack of proper training for Nikāḥ Registrars, and procedural ambiguities have hampered effective implementation. Courts frequently revert to procedural dismissals or refer cases involving stipulations to civil courts, which complicates enforcement and undermines the contractual potential of the Nikāḥ Nama as a tool to protect marriage and women's rights.

Judicial practice since the 2015 reforms reflects a gradual but uneven evolution in attitudes towards stipulations. Early judgments often invalidated stipulations that challenged traditional patriarchal

norms, such as conditions requiring monetary penalties for arbitrary divorce or stipulations for second marriage rights. Over time, some courts have shown a more accepting stance towards certain stipulations, recognizing their enforceability, particularly those concerning deferred dower, monetary compensation in cases of arbitrary divorce, or delegated divorce rights. Yet, this progress remains inconsistent; many courts continue to resolve disputes procedurally, often neglecting the substantive rights embedded in stipulations. The judiciary's cautious approach, exemplified by recent judgments, underscores a persistent doctrinal ambiguity and institutional hesitance to fully embrace the contractual autonomy that stipulations can afford, especially for women's protection. This inconsistency hampers the Nikāḥ Nama's potential as an effective legal instrument for safeguarding rights within marriage.

Empirical field surveys involving Nikāḥ Registrars reveal significant gaps in awareness, training, and practice. Many Registrars perceive their role as purely administrative, neglecting the legal and contractual significance of stipulations. Consequently, protective clauses—such as those pertaining to maintenance, property rights, or divorce conditions—are often omitted, recorded improperly, or not emphasized during registration. Societal norms further inhibit women from actively negotiating stipulations; cultural taboos, fear of social backlash, and lack of awareness discourage women from asserting their rights during marriage negotiations. Family influence plays a pivotal role, where supportive families can facilitate inclusion of stipulations, while societal pressures often suppress such initiatives. Nikāḥ Khawans, who facilitate the marriage process, often focus on formalities and fees rather than informing couples about their legal rights and the importance of contractual stipulations. This institutional neglect, combined with societal attitudes, results in stipulations, especially those designed to protect women being inadequately recorded or enforced, undermining their legal efficacy.

Cultural and societal barriers pose substantial challenges to the effective use of stipulations. Deep-rooted patriarchal norms and societal resistance to contractual conditions that challenge traditional authority structures restrict women's ability to negotiate or include protective stipulations in their marriage contracts. Many individuals internalize societal disapproval, leading to discomfort or fear when discussing stipulations, especially those related to women's rights. This creates a significant barrier to exercising legal provisions designed to empower women and uphold justice within marriage. The slogan "Choose your hard" encapsulates the dilemma faced by women: asserting their rights through stipulations may involve social and familial conflicts, yet enduring a marriage without safeguards can be equally difficult. Without societal acceptance and cultural shift, legal reforms alone are insufficient to ensure meaningful change. Societal norms and cultural perceptions must evolve in tandem with legal measures to foster an environment where contractual stipulations are viewed as legitimate and empowering.

The need for comprehensive legal and institutional reforms is evident to bridge the gap between jurisprudence, practice, and societal norms. Legislation should be modernized to explicitly recognize and regulate stipulations within the marriage contract, drawing upon principles from various fiqh schools, especially the Ḥanbalī School, which permits most conditions unless explicitly prohibited by the Quran. Developing a clear legal framework that codifies permissible stipulations, enforcement mechanisms, and procedural safeguards would reduce judicial discretion and enhance enforceability. Institutional capacity building is also crucial; regular training programs for Nikāḥ Registrars on Islamic jurisprudence, legal provisions, and gender-sensitive practices can improve record-keeping and awareness. Establishing repositories for standard contractual clauses and stipulations can facilitate consistency and standardization across jurisdictions. Judicial training must be enhanced through modules on enforceability, Islamic law,

and modern legal principles, empowering judges to interpret and uphold stipulations effectively. Procedural reforms, including digitization of registration processes and strict compliance with recording protocols, are essential to ensure transparency and enforceability. Public awareness campaigns, pre-marital counseling, and community-based education can demystify stipulations and promote their acceptance, especially among women and marginalized groups. Empowering women through legal literacy programs, women's legal clinics at registration centers, and family involvement in negotiation processes are vital components of a holistic reform strategy.

The role of fiqh and modern legal practice must be aligned to facilitate effective stipulations. While traditional fiqh, particularly the Ḥanbalī School, provides a permissive foundation, adopting a more dynamic and inclusive fiqh approach, integrating insights from different schools, can help craft laws responsive to contemporary social realities. Jurisprudence should evolve to recognize and validate stipulations that safeguard women's rights, property, and autonomy, aligning Islamic principles with modern notions of justice and equality. Countries like Syria have demonstrated how codified laws allowing stipulations can harmonize fiqh with modern legal frameworks, serving as models for reform. Pakistani scholars and legislators should collaborate to revise fiqh and develop a modern, flexible jurisprudence that supports standardized stipulations, ensuring clarity and consistency in legal interpretation. Updating fiqh to reflect contemporary social challenges is essential for creating a legal environment where stipulations are not only permissible but actively promoted and enforced.

Implementing effective enforcement mechanisms requires a multi-layered approach. Legal provisions should clearly define the enforceability of stipulations, with family courts empowered to adjudicate disputes. Administrative oversight, including regular audits of Nikāḥ Registrars' practices and compliance with procedural norms, can ensure institutional accountability. Judicial

review must be proactive, with higher courts reviewing and rectifying inconsistent rulings to establish binding jurisprudence that favors enforceability. The integration of digital infrastructure such as online registration platforms, centralized databases for stipulations, and monitoring tools can streamline processes and improve compliance. Community engagement involving religious scholars, community leaders, civil society organizations, and media campaigns is essential for fostering social acceptance and understanding of the importance of contractual stipulations. These efforts must aim to create a culture where stipulations are viewed as legitimate, empowering tools for justice and gender equality.

In conclusion, stipulations in Nikāḥ Nama hold significant potential to protect women's rights, promote justice, and reinforce the sanctity of marriage. However, their effective utilization remains hindered by doctrinal ambiguities, procedural shortcomings, societal resistance, and institutional weaknesses. A comprehensive, multi-pronged approach encompassing legislative reforms, judicial capacity building, institutional strengthening, societal awareness, and fiqh reform is necessary to realize this potential. Modern, codified laws that clearly recognize and regulate stipulations, guided by a flexible and inclusive fiqh, can serve as a foundation for a more equitable family law system. By fostering societal change alongside legal reform, Pakistan can transform the Nikāḥ Nama from a religious formality into a powerful instrument for social justice, gender equality, and legal clarity. Implementing these recommendations will ensure that stipulations are not mere theoretical provisions but practical tools for safeguarding rights, enhancing justice, and strengthening the fabric of marriage in contemporary society.

4.2 Recommendations

In light of doctrinal inquiry, judicial analysis, and field-based empirical research, it is evident that the stipulations in the Nikāḥ Nama, particularly those found in Column 19 hold significant

potential as instruments of contractual justice, gender equity, and legal empowerment within Muslim family law. However, their impact remains severely limited due to procedural lapses, judicial inconsistency, and deep-rooted socio-cultural resistance. Certain recommendations are therefore proposed to legislative bodies, judicial institutions, and the broader citizenry of Pakistan to mitigate the adverse impacts arising from the ineffective implementation and neglect of stipulations in the Nikāḥ Nama. These recommendations are framed not merely as technical reforms but as part of a broader vision to harmonize Islamic legal principles with contemporary social realities, strengthen institutional accountability, and reinforce the dignity and autonomy of women within the marital contract.

To begin with, legislative intervention is urgently required to transform the status of stipulations from an optional and often-overlooked component of the Nikāḥ Nama into a recognized and enforceable part of the legal marriage framework. A statutory codification should be developed that clearly defines stipulations, identifies their permissible scope within the bounds of Islamic jurisprudence, and outlines procedural safeguards for their implementation. Pakistan can look toward the example of other Muslims countries like Syria Tunisia, Iraq Jordan, Iran, etc. where stipulations are explicitly integrated into family law statutes, thus moving away from ambiguous judicial interpretations toward a more stable legal environment. A dynamic legislative model should adopt the perspective of juristic schools such as the Ḥanbalī position, which generally allow conditions in contracts unless they directly contravene the Qur'an or Sunnah. This would allow Pakistan to maintain Islamic legitimacy while simultaneously offering women greater contractual agency.

Alongside codification, institutional mechanisms must be restructured to support the practical enforcement of such stipulations. Nikāḥ Registrars play a central role in the marriage contract

process, yet interviews with field actors reveal that they often lack both training and understanding of the legal and religious dimensions of stipulations. Regular training sessions focused on Islamic jurisprudence, procedural law, and gender sensitivity should be instituted for all registrars. Furthermore, minimum educational qualifications should be required for appointments, with refresher courses conducted periodically to ensure up-to-date compliance with family law developments. In addition, registrars must be held accountable to existing regulations, particularly Rules 7 to 13 of the Muslim Family Laws Rules, 1961, which govern the completion and accuracy of Nikāḥ Nama entries. All columns, especially Column 19, must be properly filled out, with accurate entries, signatures, and attached documentation.

A centralized “Marriage Contractual Clauses Repository” at the district and provincial levels should be established to monitor, record, and standardize stipulations. This would help guide future contracts, create reference points for dispute resolution, and facilitate oversight of registrars’ practices. Digitization of the Nikāḥ Nama registration process is another necessary reform. A software-based system with mandatory fields and verification checks would prevent the submission of incomplete forms and reduce fraud. Digital systems can also ensure transparency and accountability, including making stipulations traceable across institutions. All stipulations should be written in clear, unambiguous language and include valuation and detail where relevant, particularly in matters of dower, maintenance, and property division.

Judicial reform forms another cornerstone of this strategy. Judicial officers should undergo specialized training on the enforceability of stipulations under Islamic law, as well as contemporary legal theory and gender justice principles. Institutions like the Punjab Judicial Academy and the Federal Judicial Academy should include training on Islamic jurisprudence related to marital conditions, historical precedents, and case law. Judicial activism is encouraged

to prevent inconsistent or un-Islamic decisions and to uphold valid stipulations. Courts should document their reasoning when rejecting stipulations to create a transparent jurisprudential record and promote accountability. Additionally, an appellate process should be established for women to challenge unjust court decisions, ensuring fairness, consistency, and transparency in judicial practice. In this regard, the role of the Federal Shari'at Court (FSC) and its Shari'at Appellate Bench in the Supreme Court must be revitalized and expanded. These institutions are constitutionally mandated to examine the Islamic validity of laws, and they should play a more proactive role in adjudicating matters related to the enforcement of stipulations. The FSC should develop a coherent Islamic jurisprudential framework specifically addressing the contractual dimensions of marriage, including permissible stipulations, drawing from classical fiqh and contemporary needs. Strengthening the capacity, engagement, and jurisprudential leadership of the FSC and its appellate bench can significantly enhance the legitimacy, consistency, and enforceability of stipulations within Pakistan's dual legal system.

Parallel to legal and judicial reforms, public awareness and legal literacy must be elevated to ensure that parties entering a marriage are informed of their rights and obligations. Pre-marital counseling, facilitated by the state or non-governmental organizations, should be mandatory to educate couples on their legal and religious rights, the scope of valid stipulations, and available enforcement mechanisms. Marriage rights education must also be embedded in school and university curricula to inculcate early awareness. Community workshops, social media campaigns, and local awareness programs involving religious leaders, women's rights activists, and legal experts should work collectively to destigmatize stipulations and highlight their value in promoting marital harmony and protecting women's rights. Legal aid clinics for women should be set up at marriage

registration offices to provide free guidance on drafting enforceable stipulations and understanding procedural safeguards.

At a broader cultural level, reforms must also seek to normalize the inclusion of stipulations in the marriage contract by challenging prevailing taboos that equate such conditions with distrust or disobedience. Instead, the narrative should shift toward viewing stipulations as legitimate tools for achieving marital equity. Families, especially male guardians, should be encouraged to support and negotiate fair stipulations in the marriage contract. Campaigns promoting the “Choose Your Hard” philosophy can motivate women to assert their rights by emphasizing that the temporary discomfort of negotiation is preferable to long-term vulnerability in a marriage without safeguards. Critically, any such reforms must be situated within an Islamic legal framework that is both authentic and responsive to modern needs. Pakistan must adopt a more inclusive, cosmopolitan form of *ijtihād* (Islamic legal reasoning), breaking away from rigid textualism or blind adherence to a single school of thought. As history shows, several Muslim-majority countries have already pioneered such transformations. The Ottoman Law of Family Rights, Egypt’s personal status laws, Iran’s Family Protection Law, and codified family law regimes in Iraq and Syria have all drawn from various juristic schools to enshrine stipulations directly into statutory law. These countries exercised *takhayyur* (juristic selection) and *talfiq* (legal hybridization), selecting the most equitable rulings across *madhāhib* and creating a harmonized body of law that addressed contemporary social realities. Such legislation has enabled conditions regarding maintenance, divorce, education, domestic responsibilities, and property division to gain statutory force.

This jurisprudential model is not an innovation devoid of Islamic legitimacy but is rooted in centuries of Islamic legal pluralism. It provides an ideal precedent for Pakistan to emulate. Rather than relegating stipulations to an optional column in a marriage form left to the mercy of individual

registrars or judges, Pakistan should formally legislate specific enforceable stipulations in its family law framework. The reformist principle must be clear: unless a condition explicitly violates a Quranic command, it should be considered valid and binding. Through collaboration between Islamic scholars, legal experts, and legislators, a reformed fiqh can be articulated one that maintains fidelity to Islamic law while meeting the practical needs of Muslim women today.

Finally, to ensure sustained impact, enforcement and monitoring mechanisms must be institutionalized. A dedicated monitoring authority should be created to oversee Nikāḥ Nama registration, registrar training, and judicial enforcement of stipulations. Regular audits of registration records and court judgments should be conducted to ensure procedural compliance. All cases involving disputed or rejected stipulations should undergo judicial review under clear criteria and published standards. Technological tools, including public databases and case tracking software, can facilitate transparency and public oversight.

In conclusion, the transformation of stipulations from marginal contractual addendums to enforceable rights within Pakistan's legal system requires coordinated reform across legal, institutional, judicial, and societal dimensions. The recommendations presented here grounded in doctrinal analysis, empirical research, and comparative jurisprudence aim to build a legal culture that respects the agency of women, honors the principles of Islamic justice, and fosters equitable marital relations in modern Islamic Republic of Pakistan.

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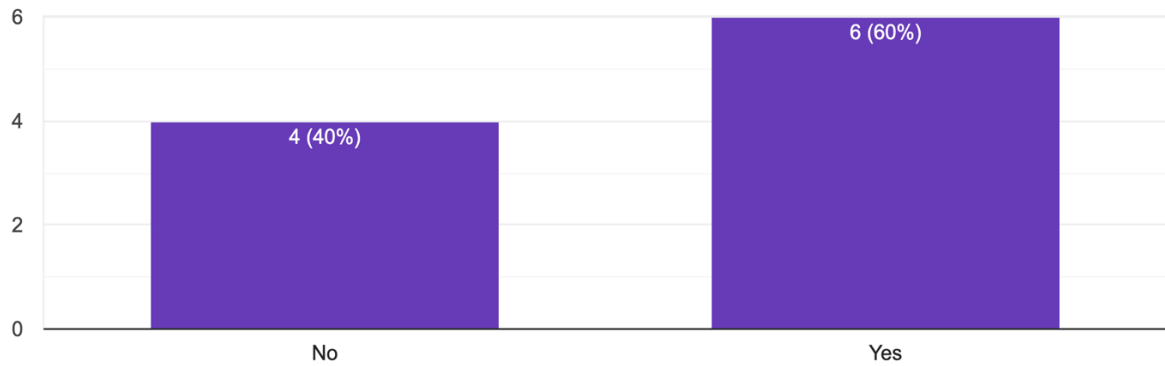
Zeeshan Ali Zafar v. SHO, 2021 MLD 880 Lahore.

ANNEXTURES

A-Awareness of Legal and Social perspectives of Nikah Nama: A survey for Brides

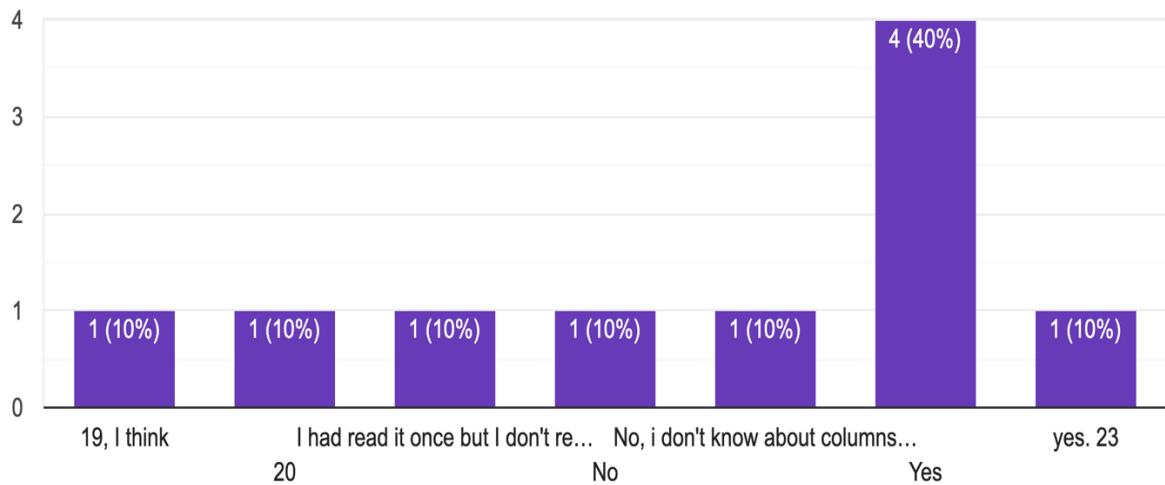
1. Have you ever seen nikah nama before contracting marriage?

10 responses



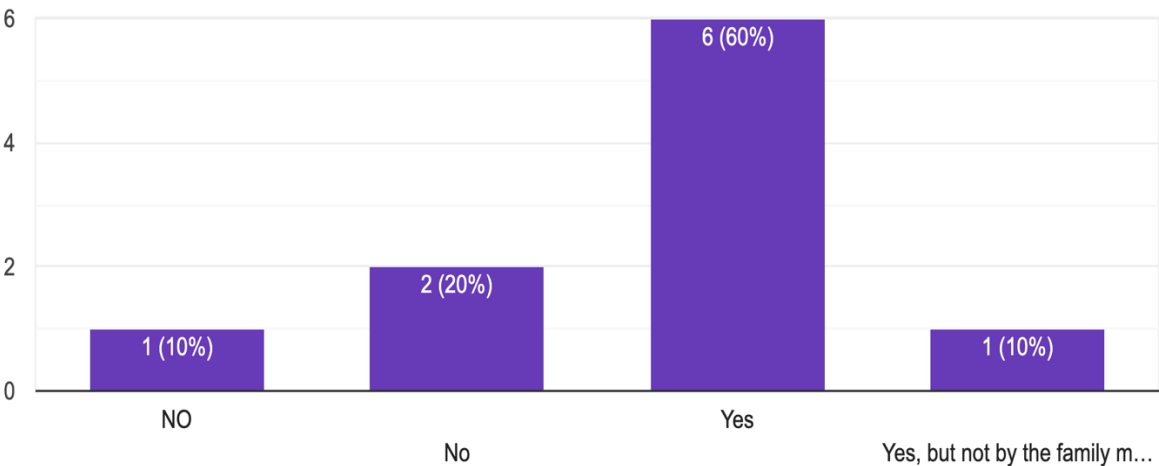
2. Do you know how many columns are there and what topics they cover?

10 responses



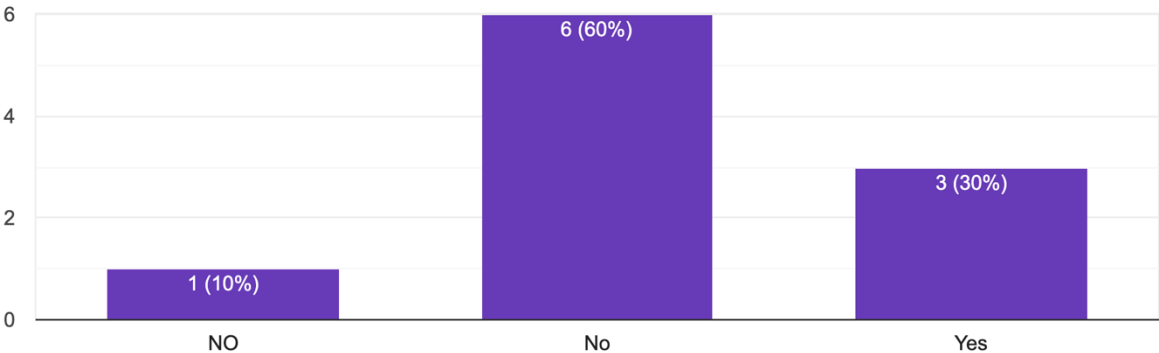
3. Have you been informed that you can stipulate specific conditions in your nikah nama to secure your rights?

10 responses



4. Have you discussed the stipulations of your marriage contract with your parents or family members?

10 responses



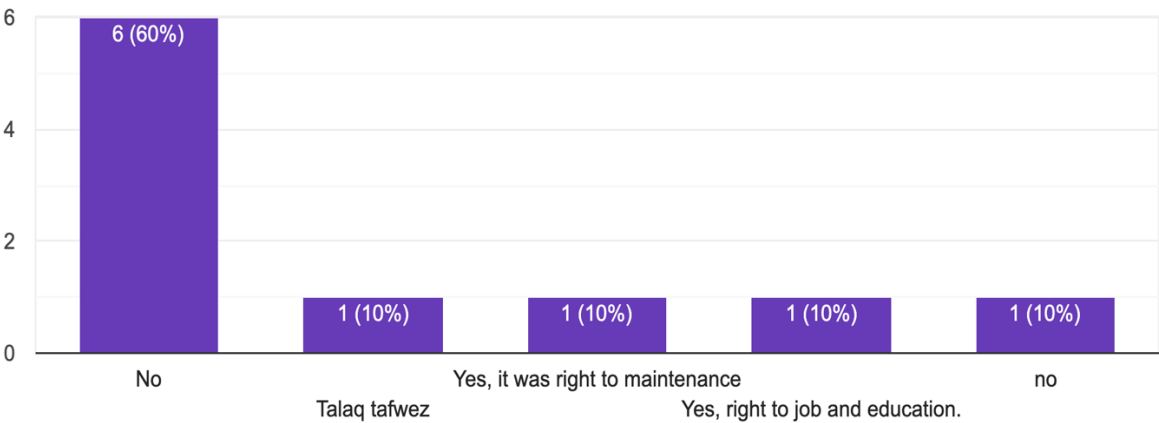
5. What specific conditions do you think can be included in nikah nama to protect women rights?

10 responses

1. Right to maintenance, and right in property of spouse
2. Equal responsibilities regarding home.
3. Compensations for arbitrary divorces and polygamy
4. Yes
5. I think a condition of separate accomodation can be included in nikah nama.
6. Conditions regarding domestic violence
7. Talaq tafwiz mandatory
8. Clause regarding Post divorce maintenance
9. To impose heavy penalty
10. Compensation in case of second marriage, Pocket money

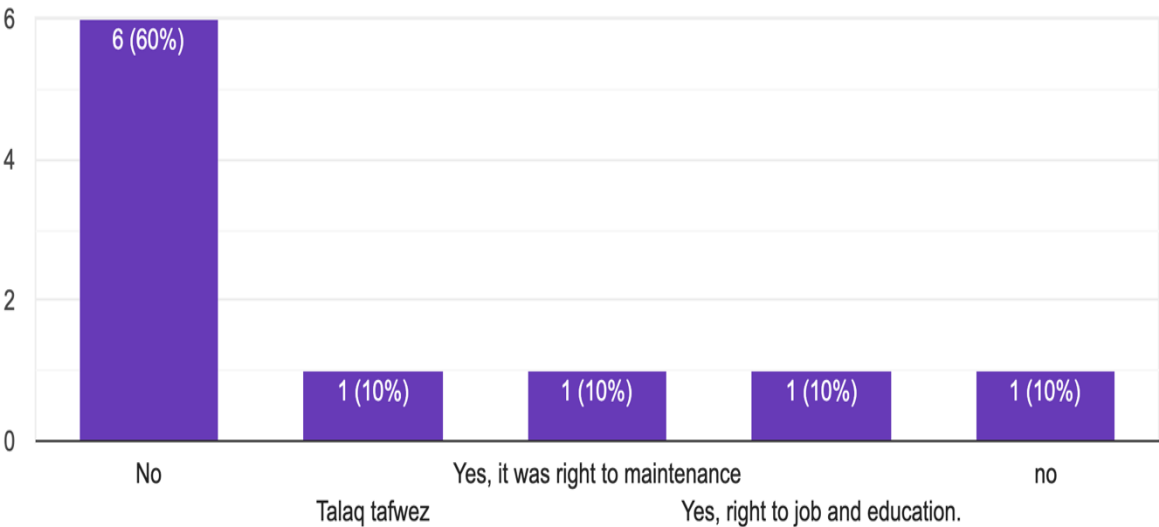
6. Have you ever considered stipulating conditions related to maintenance, right to get Khula, and right to persue education or job e.t.c in your marriage contract? If Yes, what was it?

10 responses



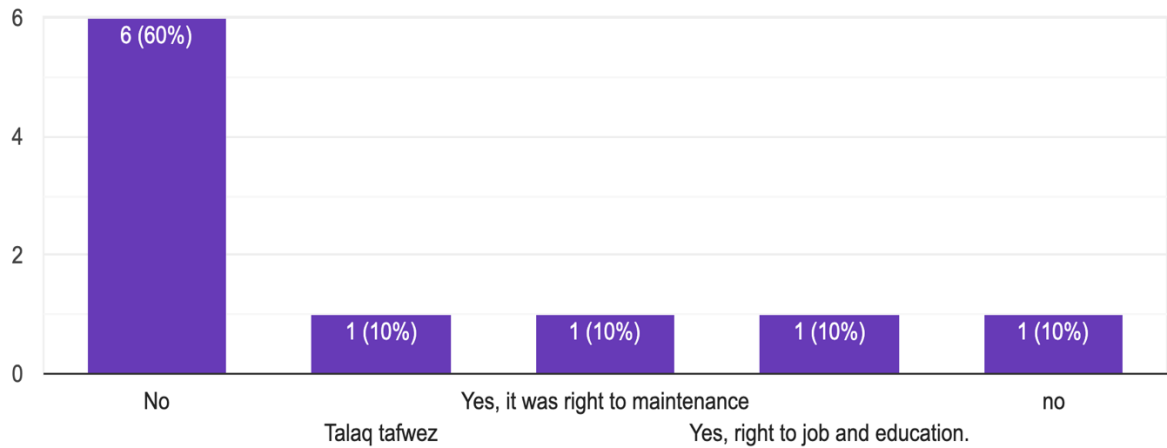
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10 responses



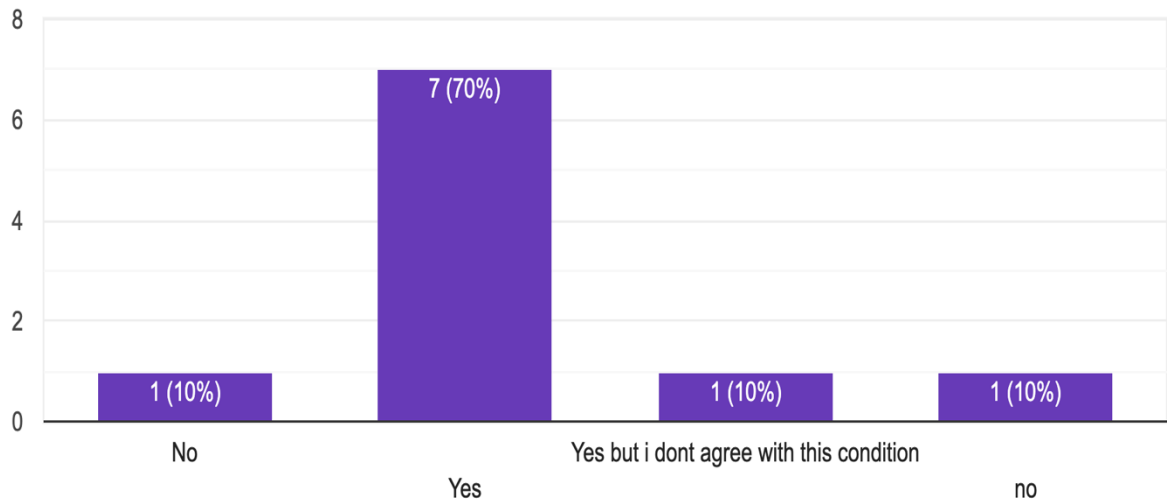
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10 responses



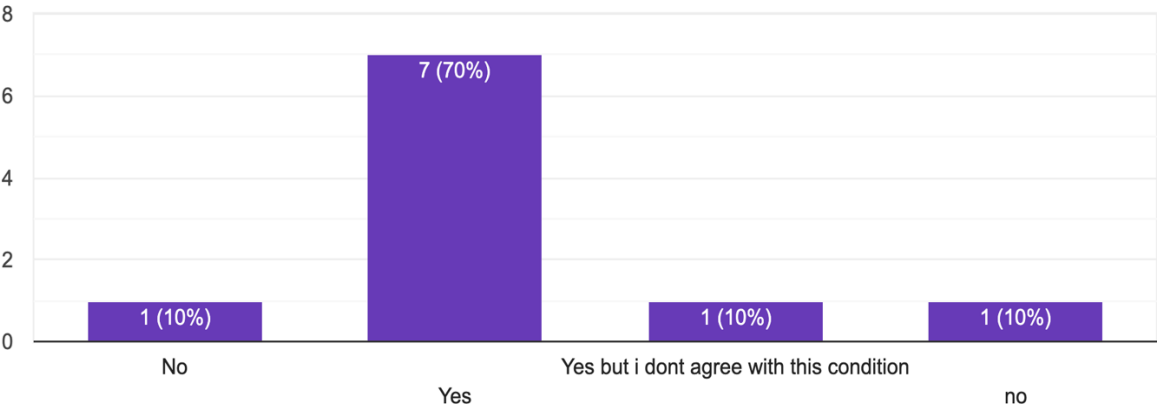
7. Are you aware of your rights regarding seeking dissolution of marriage if your husband opts for polygamy?

10 responses



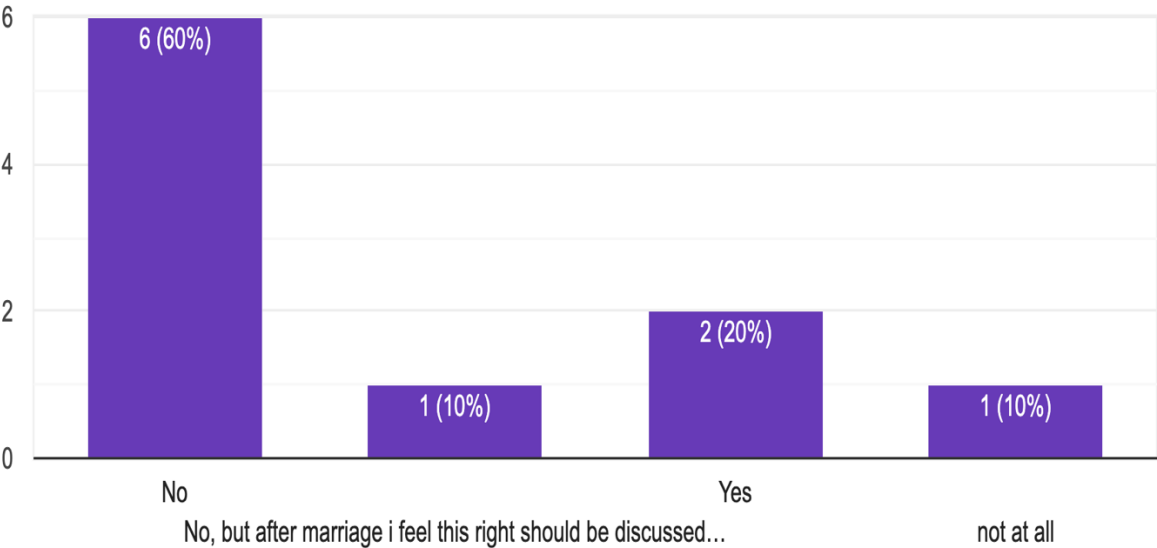
7. Are you aware of your rights regarding seeking dissolution of marriage if your husband opts for polygamy?

10 responses



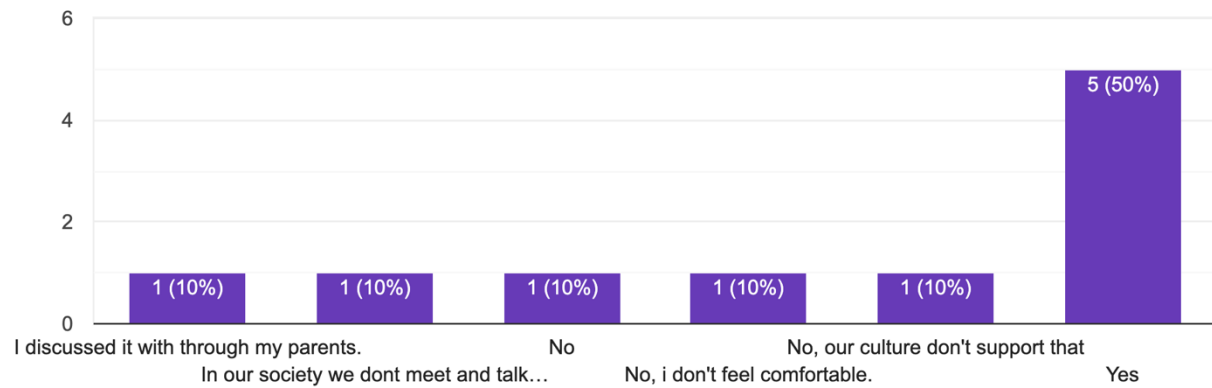
8. Did you discuss your rights to delegate the right of divorce before your marriage?

10 responses



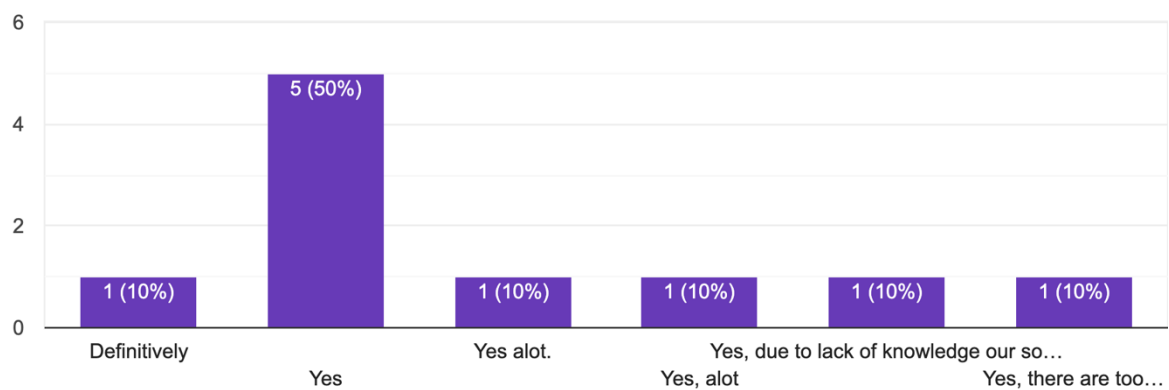
9. Do you feel comfortable discussing your rights and stipulations with your spouse before marriage?

10 responses



10. Are there cultural or societal barriers that prevent women from stipulating conditions in their marriage contract?

10 responses



11. What role do the nikah khawan play in helping couples understand their options in marriage contracts?

8 responses

1. They don't play a role at all
2. Nothing. There are only 5% nikah khawan who actually fulfil their role regarding this.
3. They just come and go

4. Nothing they just take consent

5. Nikah khawan was not there for female because he is in masjid. Therefore, he didn't play any role in helping female to understand their options in marriage contracts.

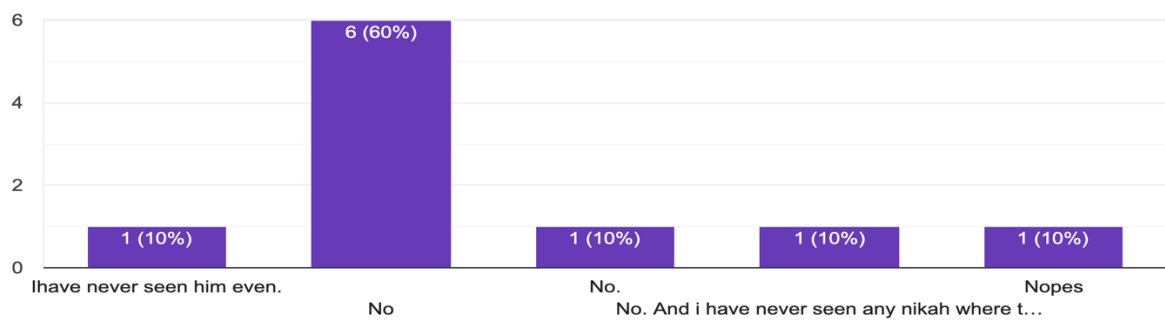
6. I think mostly nikah khawan dose not explain the bride her rights or about any stipulations which she can make in her nikahnama.

7. Nothing

8. No role, he just recites.

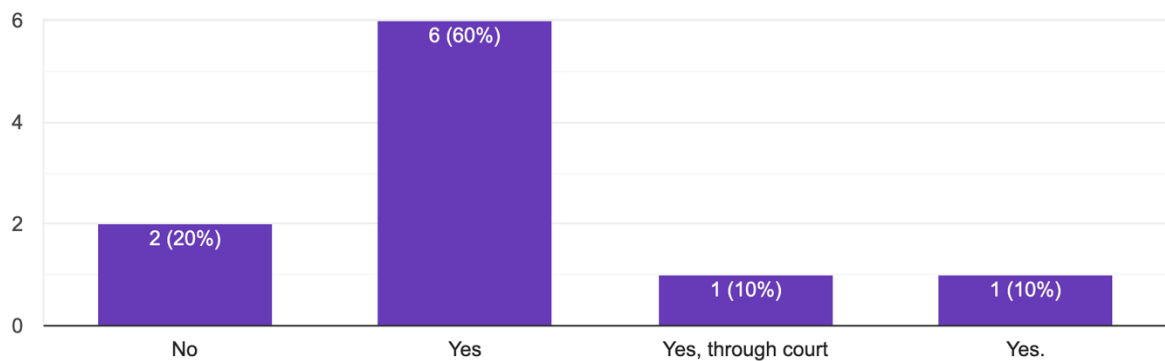
12. Have you ever been asked by a nikah Khawan to include specific conditions in your marriage contract?

10 responses



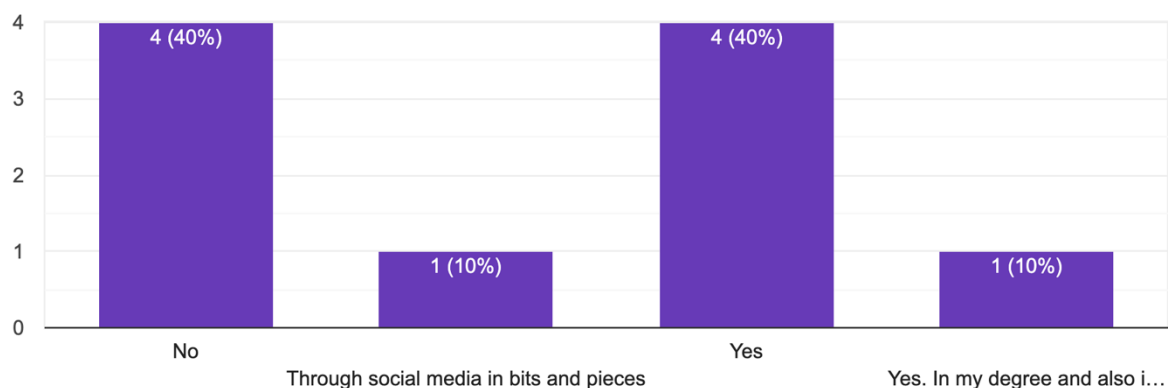
13. Are you aware of the process for enforcing your rights if they are violated after marriage?

10 responses



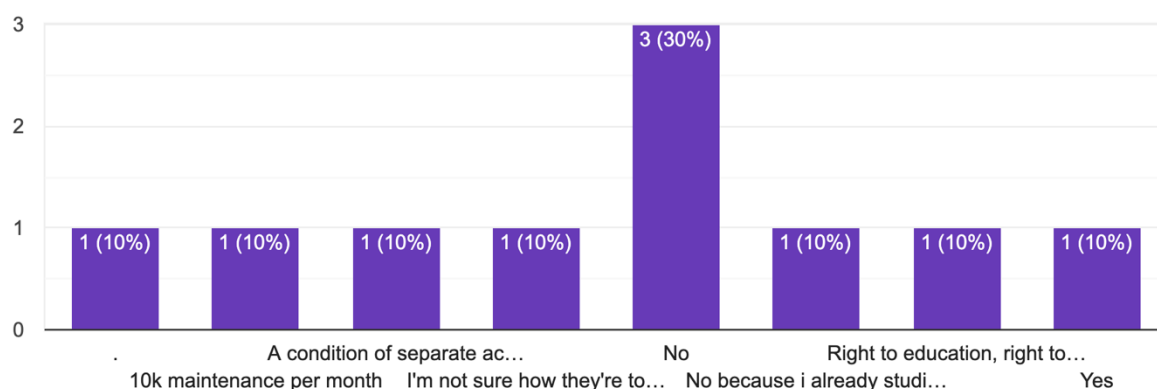
14. Have you received any education or information about your rights as a bride before your marriage?

10 responses



15. Are there any specific conditions you wish you had included in your nikah nama?

10 responses



16. How do you feel about the level of awareness among brides regarding their legal rights?

10 responses

1. They don't know about their basic rights
2. In today's society many brides know their rights but the issue is not with the awareness of brides but with the males and the society and norms in itself

3. Brides are little bit aware but do not have any legal support to defend their rights
4. Our society very lack in awareness you can just understand it through an example; there was a bride she had completed her education through mudrassa system and she was conscious about that her nikkah is not valid because nikkah khawahn didn't give her time to recite thesra Kalma.
5. I feel there is no awareness among brides regarding their legal rights.
6. I think 70-75 percent of the brides are not aware of their legal rights.
7. Nil
8. Knowing and demanding rights is considered as a taboo in the society and women themselves are shy.
9. It feels like 90% of women have no awareness about these rights
10. Majority of brides are not aware of their rights.

17. What steps do you think could be taken to improve awareness of rights among brides in your community?

9 responses

1. Soicoal media campaigns and awareness lectures in educational institutions
2. There should be a government based 1-day workshop for not only brides but also the grooms regarding rights and obligations and it should be compulsory for doing nikah.
3. Awareness coirses for spouses
4. I think there should be compulsory 2-3 months courses for couples , not just only for brides but grooms too, soo if brides demand their legal rights then grooms understand it and not take it personal.
5. 3 months training before marriage
6. Awareness programs
7. Legal rights should be taught at the primary levels to each and every citizen. We should bring reforms in our education system. Law shouldn't be just a degree. It should be an awareness.
To make them know about their rights
8. It's going to take generations because families need more awareness than the bride herself.

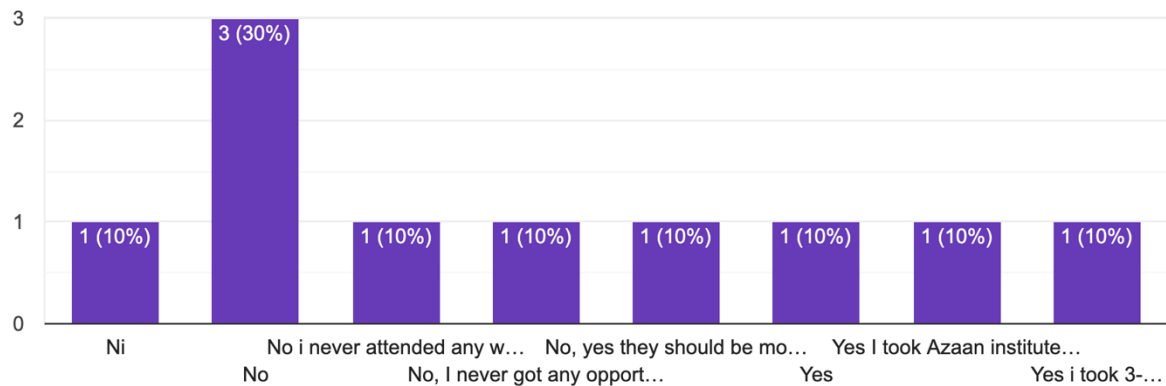
18. What advice would you give to other brides about ensuring their rights through stipulating them in marriage contract?

9 responses

1. Do your homework before entering into a contract know your rights and then sign the contract
2. Take stand for yourselves and discuss the points with your father or any other male member of the family. Rather than taking divorce or khula after marriage its better to talk the points before marriage.
3. Please ask your parents to help you filling each column of nikah nama through proper understanding days before entering the marriage
4. If a bride thinks that there is a thing that she can't compromise after marriage, like she cannot give up her career she should discuss it with their spouse and in-laws before marriage
5. I would suggest that they got atleast one week session from any religious scholar or lawyer about their rights and then stipulate any condition according to their circumstances. However, separate accomodation is the condition and right of bride which help her in long run.
6. Nil
7. Marriage without knowing your rights and later getting abused is hard. Marriage by discussing your rights and facing the societal pressure is hard. CHOOSE YOUR HARD!
8. Firstly they should know about their rights and then make them exercisable
9. Get your nikahnama discussed and filled right when both families are ready to move forward with the marriage. That says a lot about what people think about women rights.

19. Have you ever attended any workshops or seminars related to marriage rights, duties and stipulations that can be added? Do you think that b...ved in discussions about their marriage contracts?

10 responses



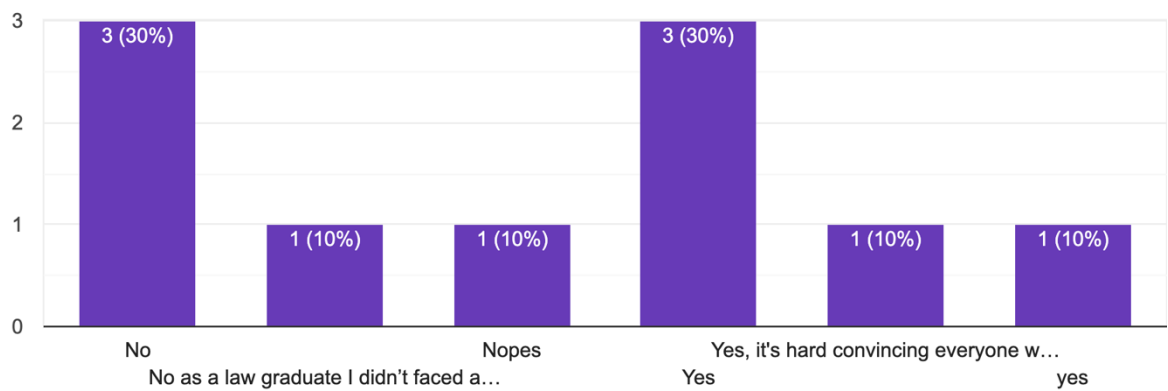
20. How important do you think it is for brides to know their rights before entering into marriage?

10 responses

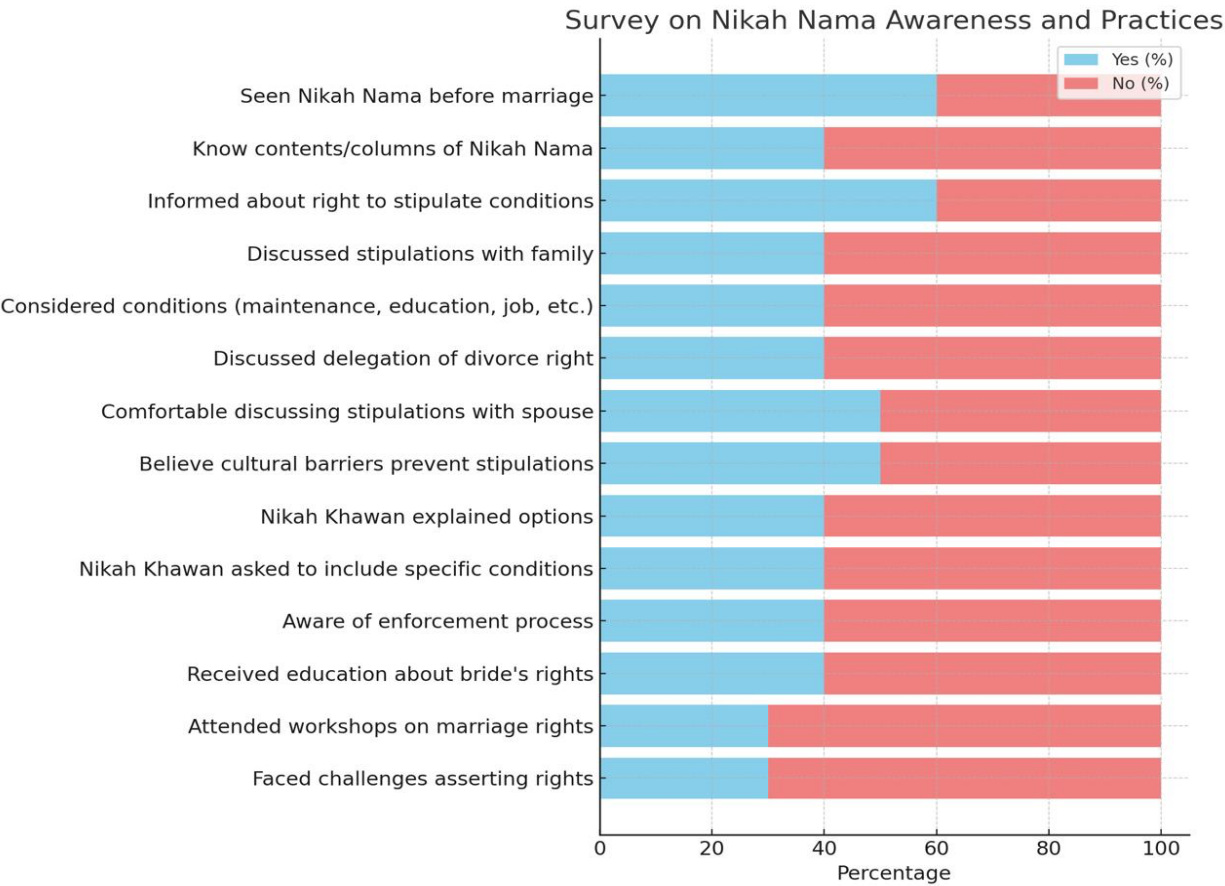
1. Very important
2. Really important. But with rights comes responsibilities. So focus should not only be in awareness of rights but also on duties.
3. Marriage is a lifetime bond, so knowing duties and obligations that come with it is really very important
4. I think it should be necessary so that challenges of domestic violence and abuse may be addressed.
5. It is very important for couples to know their rights.
6. I think if they know their rights and duties before contracting the marriage there would be no or less problems after marriage as the things are mutually decided earlier.
7. Very much
8. I believe it should be their fundamental right.
9. Very important
10. Really important

21. Have you encountered any challenges in understanding or asserting your rights as a bride?

10 responses



Consolidated Response Chart:



Nikah Nama Survey Report Analysis

This report presents a qualitative and quantitative analysis of responses gathered from survey on brides's awareness of and participation in stipulating rights within the Nikah Nama (Islamic marriage contract). The objective of this study is to evaluate levels of awareness, identify the most commonly recommended protective conditions, understand the role of familial influence, and assess gaps in legal education and enforcement mechanisms. The analysis reflects both the statistical trends and the underlying sociocultural factors that shape how marriage contracts are approached in Pakistan.

1. Awareness and Familiarity with the Nikah Nama

Survey results indicate that:

- 60% of respondents had seen a Nikah Nama before marriage, but only 40% were familiar with its specific columns or topics.
- A similar 60% were aware that specific conditions could be stipulated to secure women's rights, reflecting moderate but insufficient pre-marital education on this legal tool.

This data points to a substantial gap in early-stage awareness and legal literacy around the Nikah Nama. It reveals that while the existence of the contract is acknowledged, its functional use as a rights-protective instrument remains underutilized.

2. Suggested Conditions for Protecting Women's Rights

Respondents emphasized several conditions they believe should be included in the Nikah Nama to safeguard women's rights:

- **Right to Maintenance:** Ensuring consistent financial support.
- **Right to Spouse's Property:** Inclusion of clauses securing property rights or compensation in the event of arbitrary divorce.
- **Protection Against Arbitrary Divorce and Polygamy:** Clauses requiring consent or compensation in cases of second marriage or divorce.
- **Separate Accommodation:** Condition for independent living arrangements post-marriage to enhance safety and autonomy.
- **Protection from Domestic Violence:** Legal acknowledgment of abuse as grounds for dissolution or compensation.
- **Right to Education and Employment:** Explicit permission for continuing education and professional work.
- **Delegated Right of Divorce (Talaq Tafwiz):** Though rarely discussed, this right was highlighted as a potential tool for legal equity.

These recommended conditions reflect a growing desire for autonomy and protection within marital relationships, challenging the notion of unilateral control by the husband.

3. Family Involvement in Stipulation Discussions

Family influence emerged as a significant factor in whether women consider or include stipulations in the Nikah Nama:

- 70% had not discussed stipulations with their families, often due to societal taboos or fear of judgment.
- Among those who did, guidance from male guardians (particularly fathers) was emphasized as essential for ensuring that the bride's rights were fully understood and defended.
- Respondents urged that parents actively assist in reviewing each clause of the contract prior to marriage.

These findings underscore the role of family as both an enabler and barrier. While supportive families can empower women to articulate their conditions, silence or avoidance within families can lead to missed opportunities for legal empowerment.

4. Role of the Nikah Khawan (Marriage Registrar)

Respondents widely criticized Nikah Khawans for neglecting their duty to inform couples, particularly brides about the implications and opportunities of the Nikah Nama:

- 60% stated they had never been asked by a Nikah Khawan to add specific conditions.
- Many respondents viewed Nikah Khawans as being more concerned with formalities and fees than with education or empowerment.

There is a clear call for Nikah Khawans to receive legal and gender-sensitive training to ensure they fulfill their gatekeeping role responsibly.

5. Enforcement Awareness and Legal Literacy

- A majority of respondents lacked awareness about how to enforce their rights once married.
- Only 40% had received formal education or information about marriage-related rights, typically through informal channels such as family, friends, or occasional workshops.
- Some respondents expressed regret about not stipulating key conditions like educational continuation or maintenance clauses.

The low levels of legal literacy highlight a critical failure in both state and civil society mechanisms to equip women with essential rights-based knowledge.

6. Sociocultural Barriers and Resistance

- 50% of respondents felt uncomfortable discussing stipulations with their spouse or family due to societal norms that view such actions as confrontational or disrespectful.
- A prevailing theme was the internalization of cultural pressure that discourages women from negotiating marriage terms, often portraying it as a betrayal of trust or love.
- Respondents invoked the slogan “Choose your hard”—suggesting that while asserting one’s rights may be difficult, so too is enduring a marriage without legal safeguards.

This dichotomy shows the tension between cultural expectations and the need for legal self-assertion, particularly in patriarchal contexts.

7. Recommendations for Reform and Awareness

Respondents and researchers suggested several steps to improve awareness and implementation:

- **Mandatory Pre-Marital Counseling:** State-led or NGO-supported sessions for both spouses before signing the Nikah Nama.
- **Curriculum Integration:** Introducing marriage rights education in schools and universities.
- **Social Media Campaigns:** Leveraging digital platforms to raise awareness, especially among younger audiences.
- **Nikah Khawan Training:** Standardized training and certification on gender rights and Islamic legal obligations.
- **Community Workshops:** Localized efforts to engage both men and women in marriage contract literacy.

Such multi-pronged reforms are essential to bridge the gap between legal theory and lived practice.

8. Conclusion

This report underscores a pivotal but underused opportunity to strengthen women's rights through informed use of the Nikah Nama. Despite moderate levels of awareness, societal norms, lack of

family engagement, and failure of institutional actors like Nikah Khawans have restricted women from exercising their legal rights. Empowering women to negotiate and include protective stipulations in marriage contracts requires a coordinated effort: family dialogue, community awareness, institutional accountability, and state support. The Nikah Nama is not just a religious formality, it is a legal document with the potential to shape marital equality, autonomy, and dignity.

B-Assessing the Implementation of the 2015 Amendment to Section 5(2) of the Muslim Family Laws Ordinance, 1961

A Survey of Nikah Registrars Conducted in Punjab on Awareness, Compliance Strategies, and Procedural Challenges

1. Introduction

In 2015, the Government of Pakistan amended Section 5(2) of the Muslim Family Laws Ordinance, 1961, clarifying that no column of the Nikah Nama shall be left blank, particularly with an emphasis on Column No. 19, which relates to stipulations (shara'it) agreed upon by the contracting parties. This survey was conducted to assess how Nikah Registrars understand, implement, and experience this amendment in their professional duties. The findings are based on field interviews conducted across various Union Councils. Registrars' views were gathered on legal awareness, challenges in form filling, interactions with families, use of stipulations, and proposals for improving current procedures.

2. Key Findings by Thematic Area

I. Awareness of the 2015 Amendment and Column No. 19

- • Most registrars claimed awareness of the amendment, especially the requirement that no column should be left blank.
- • However, their understanding was limited to procedural compliance rather than its legal purpose or significance.
- • No registrar reported receiving formal training or official written guidance after the amendment.

Legal Observation / Analytical Insight:

The purpose of the amendment was not merely clerical but aimed at reinforcing contractual protections, particularly for women. Lack of training undermines this protective framework.

II. Implementation Practices and Fraud Prevention

- Registrars check CNICs and documents only when property or valuables are mentioned in dower.
- They face issues verifying the marital history or real age of individuals, particularly those from other districts.
- Some claim to be misled by parties who conceal previous marriages or falsify status.

Legal Observation / Analytical Insight:

Given NADRA's centralized database, such verifications are feasible. The registrars' claims often reflect negligence or inadequate SOPs, not actual impossibility.

III. Use and Enforcement of Column No. 19

- Column No. 19 is routinely left blank.
- Registrars do not initiate discussions with brides about their legal rights or potential stipulations.
- When conditions are added, they are usually initiated by bride's parents, not the bride herself.
- A few registrars recall rare cases where families included compensation clauses (e.g., Rs. 500,000 for arbitrary divorce).

Legal Observation / Analytical Insight:

This reflects a systemic disregard for women's agency in contract negotiations. Column 19 is misunderstood as optional, whereas legally it holds binding contractual power when filled properly and mutually agreed.

IV. Views on Legal Binding Nature

- Stipulations written in Column 19 are legally binding and can be enforced if mutually agreed upon and signed.
- Many were unsure what kinds of conditions are permissible.
- Some expressed belief that such conditions should instead be registered in a separate agreement, not the Nikah Nama.

Legal Observation / Analytical Insight:

The Nikah Nama is a public legal document, and Column 19 is a formal mechanism to record binding conditions under Pakistani civil and Islamic law. Referring such conditions to informal contracts dilutes their transparency and enforceability.

V. Experiences with Families

- Brides are typically uninvolved in discussing stipulations.
- Parents or male family members make most decisions.
- Women focus on the ceremony, clothes, and dowry, not legal rights.

Legal Observation / Analytical Insight:

This reflects patriarchal gatekeeping and lack of legal awareness among women. The registrar's passive stance in not informing the bride contradicts the spirit of informed consent and equality before the law.

VI. Challenges and Structural Barriers

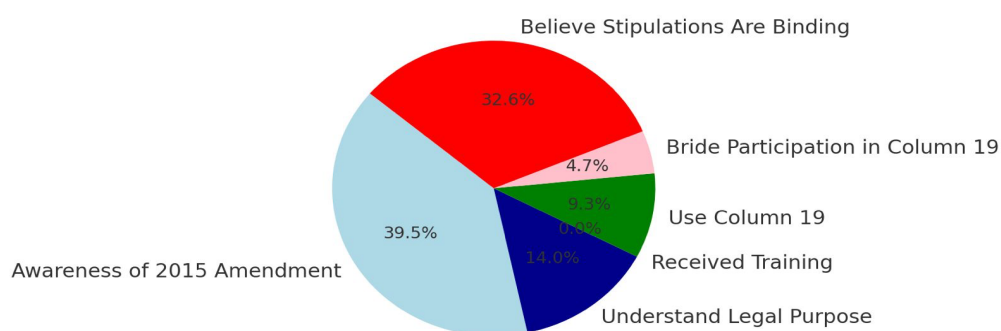
- No formal training for registrars.
- Poor public understanding of Nikah Nama's legal purpose.
- Male resistance to accepting conditions.
- Weak oversight from Union Councils.
- Penalties for registrar negligence are too light to act as a deterrent.

3. Synthesized Observations

Theme	Summary Insight
Amendment Awareness	Surface-level only; no depth in interpretation or legal grounding
Column 19 Usage	Frequently ignored; not explained to parties
Women's Participation	Minimal; mostly sidelined by family
Registrar Training	Non-existent; all respondents open to receiving training
Legal Literacy Among Public	Critically low, especially among women
Enforcement Mechanism	Weak penalties allow repeat negligence

Documentation Practices	Inconsistent, especially in verifying previous marital status
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Nikah Registrars: Awareness and Practices on 2015 Amendment



4. Recommendations

I. Legal and Procedural Reforms

1. Mandatory Legal Training Modules for all Nikah Registrars on:
 - Family laws
 - Binding nature of stipulations
 - Rights of the bride and bridegroom
 - Post-2015 amendment and its legal implications

2. Revise Registrar Licensing Criteria:
 - Introduce a minimum educational standard (e.g., law diploma or degree)
 - Include periodic assessments for license renewal
3. Enhance Penalties for Non-Compliance:
 - Increase fines and introduce graduated penalties (fines, suspension, cancellation)

for incomplete or misleading Nikah entries

II. Administrative Improvements

4. Insert a Mandatory Column for Wali's Permission:
 - Especially important in underage or controversial marriages
 - This helps reduce fraud and early divorce rates
5. Create SOPs for Document Verification:
 - Registrars must check NADRA marital history, divorce records, and CNIC authenticity
6. Pre-Marriage Counseling at UC Level:
 - Legal aid teams should brief couples before Nikah about their rights and obligations

III. Awareness and Empowerment

7. Introduce Legal Literacy in School Curricula:
 - Family law basics should be taught from middle to high school levels
8. Public Awareness Campaigns:
 - Use radio, TV, and mosque platforms to inform families about:
 - The purpose of Column 19
 - Legal rights during marriage
 - Importance of women's participation in contract negotiations

5. Conclusion

This field survey reveals a systemic pattern of passive compliance with the 2015 amendment. While a significant number of Nikah Registrars are aware of the amendment, the absence of institutional support and the lack of structured training hinder their ability to implement the reform meaningfully. The symbolic enforcement of provisions such as those in Column 19 results largely from poor oversight by Union Councils, inadequate legal understanding, and the consistent exclusion of the bride's voice during contract formation. Consequently, reforms designed to enhance women's agency and protection remain largely ineffective on the ground.

To address these issues, a coordinated and multi-tiered reform strategy is necessary, one that treats the Nikah Nama not just as clerical paperwork but as a critical tool of legal empowerment. Every legal amendment should be accompanied by a gazette notification campaign. This must go beyond mere publication, ensuring that Union Councils receive a clear summary with directives to read, comprehend, and apply the changes in practice. Courts should also be required to document their reasoning when refusing to enforce stipulations under Column 19. This will build a jurisprudential trail over time, aiding in consistent and principled enforcement.

Judicial education needs reform as well. Modules on the enforceability of the Nikah Nama, especially stipulations under Column 19, should be incorporated into training at institutions such as the Punjab Judicial Academy and Federal Judicial Academy. Judges must begin treating the Nikah Nama as a legally binding contract, not simply a ceremonial document.

Administratively, digitization can play a transformative role. Union Councils should be equipped with software for the Nikah Nama that includes mandatory field checks. These systems should prevent submission unless Column 19 is either appropriately filled out or marked as "None declared by parties." To enhance registrar awareness and standardize practices, a district-level

repository should be established to log stipulations. This “Marriage Contractual Clauses Repository” would facilitate training by identifying frequently accepted terms and guiding registrars accordingly.

Finally, expanding access to pre-Nikah legal awareness is vital. Women’s legal clinics should be introduced as a routine part of marriage registration processes. These clinics would provide legal guidance, clarify the purpose and power of stipulations, and ensure that brides understand their contractual rights. Only through such a holistic approach—blending legal reform, administrative restructuring, and gender-sensitive educational outreach—can the Nikah Nama be transformed into a genuinely empowering legal