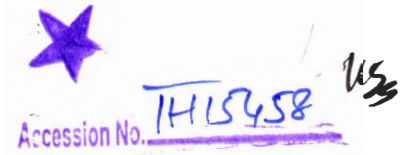


**Christian Marriage Act 1872 in Pakistan and Its  
Comparison with Muslim Family Laws Ordinance 1961: An  
Analytical and Comparative Study**



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A thesis submitted in partial fulfillment of the requirement of the Degree  
of MS in Muslim Family Laws with a specialization of Christian  
Marriage Act 1872 in Pakistan and Its Comparison with Muslim Family  
Laws Ordinance 1961: An Analytical and Comparative Study  
International Islamic University, Islamabad

## Declaration

I, Zainab Moin, do solemnly affirm this thesis entitled **“Christian Marriage Act 1872 in Pakistan and its Comparison with Muslim Family Law Ordinance 1961: An Analytical and Comparative Study”** is the result of my own research work and has never been presented anywhere else. I, moreover declare that whatever sources are used they are duly acknowledged.

Student: Zainab Moin

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## APPROVAL SHEET

**Christian Marriage Act 1872 in Pakistan and its Comparison with  
Muslim Family Laws Ordinance 1961: An analytical and Comparative  
Study.**

By

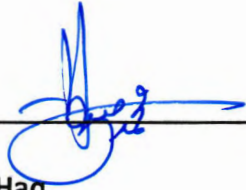
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*Dedication*

*Dedicated to the followers of all Religions.*

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All praises are for Allah (SWT) who as an evidence of His love associated us to the *Ummah* of His Beloved Prophet (ﷺ), who bestowed me courage to complete this work and all aspects for the Holy Prophet (ﷺ) who is forever source of guidance and knowledge for humanity.

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Zainab Moin



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# **Introduction to Research**

## Introduction

Islam is a complete code of life. It has a distinct outlook on life. It aims at producing a unique personality in the individual and a distinct culture for the community bases on Islamic Ideas and values. Family is a basic unit of society, which builds on the basis of institution of marriage. And this institution of marriage occupies very important position in scheme of life. In Islam, marriage is a most sacred institution and makes it incumbent on every Muslim man and woman. The human race is a product of this institution and not the other way round. The *Quran* says "*O mankind! Be careful of our duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women. Be careful of your duty toward Allah in whom ye claim (your rights) of one another, and toward the wombs (that bare you). Lo! Allah hath been a watcher over you.*"<sup>1</sup> This means that the marriage is a social contract, a noble and sacred contract, but a contract nonetheless. In Pakistani society, Christians also exist in minority and form and consider marriage as important and sacred institution. *Nikah* is the relationship on the basis of which sexual relations are valid between husband and wife. And the children born are considered legitimate offspring, having confirmed lineage. *Nikah* is derived from Arabic word. The meaning of which is to meet. So when the branches of trees meet with each other then it is said that trees are together or they mix-up with each other so as majazi mursal it means that it is also applied in *aqd(nikah)* that is base for the sexual relationship between husband and wife.<sup>2</sup> According to jurists *nikah* is (a contract which is productive of an exclusive right of enjoyment i.e. this enjoyment is validate only for those

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<sup>1</sup> Al-Quran 4:1.

<sup>2</sup> Al-Jazairi Abdur-Rehman, *Kitab-al-Fiqh*, translated by Manzoor Ahsan Abbasi (Lahore: Shuba Matbuatt Mahkma Awaqf Punjab,) 1977, vol:4, p.1

women by a man who are legally not prohibited for marriage.<sup>3</sup> *Shariah* has declared nikah as a describable act. Allah ordained in the *Quran* "Marry with whom you like"<sup>4</sup> Prophet said: "O young men, those among you who can support wife should marry, for it restrains eyes from casting, and preserves one from immorality."<sup>5</sup> Family has great importance because it gives satisfaction to a person and relationship through which husband and wife secure comfortable atmosphere. The quotations of *Quran* and *Sunnah* show that the Islamic view on sex and marriage is in complete harmony with human nature. So it is concluded that the marriage is for social security harmony and peace and also prevents Muslims from getting into sins and gives marriage a value of worship. A Christian marriage is more than just the union of two Christians of the opposite sex. A Christian marriage is characterized and governed by Christian principles that are taught in the Bible. Christian marriage is not defined by the teachings of a church<sup>6</sup>. A Christian marriage adheres to the standards of marriage revealed in the Holy Bible regardless of a church's teachings and practices.<sup>7</sup> Christian coupling fundamentals can be a complicated ideology to understand, but it is important to take a look at the role that Biblical text has in discovering what marriage can mean to a Christian couple. According to the first book in the Bible, marriage was ordained and set up by God as a union between a man and a woman. There is a lot of debate on that notion, but Christians have used that commandment from God to define

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<sup>3</sup> Haskafi, Muhammad Al-ud-Din, *The Darr-ul-Mukhtar*, (Lahore: Law publication company Katchery Road) (nd), pp.1-2.

<sup>4</sup> Al-Quran 4:3

<sup>5</sup> Imam, Bukhari, Kitab-u-Nikah, Imam Muslim, Kitab-un-Nikah, Hadith 1400.

<sup>6</sup> The typical church teaching about marriage is a functional unit governed by duties and responsibilities. The typical teaching on marriage is composed of the duties of the husband and the duties of the wife. Typically, it is the husband's job to cater to the wife. His duties include, but are not limited to the following: Hold the car door for her, Hold her chair for her when she wants to sit down, protect her, comfort her, love her, and provide for her. The wife's responsibilities include, but are not limited to the following: Prepare meals for the family, raise the children, custodian of the house as far as cleaning and organization, provide sexual pleasure for the husband, and submit to the husband.

their view of Christian marriage. According to many involved in Christian coupling family therapy, a Christian marriage represents the connection of Jesus Christ to the Church. This is in accordance to Paul of Tarsus who, in Ephesians, noted the connection from the Old Testament point of view that marriage was a parallel between a connection to man and God. This type of union, often called a covenant by Christians, is of signature importance to the Christian tradition and stands as an example of God's faithfulness to the people. In Pakistan Catholics Christians are more in number. Family matters among the Christian community are dealt with by the Christian Marriages Act of 1872 and under Muslims are dealt by the Muslim Family Law Ordinance 1961.

### **1. Problem Statements:-**

- What is concept of marriage in Islam and Christianity?
- What are Quranic and Biblical teachings about marriage?
- What is difference between Muslim Family Laws Ordinance 1961 and Christian Marriage Act 1872 in Pakistan?
- What is the state of Implementation of MFLO 1961 and CMA 1872?

### **II. Hypothesis**

- Christian Marriage Act 1872 is not according to religious teachings of Christianity.
- Christian Marriage Act in Pakistan and Muslim Family Law Ordinance 1961 is partially according to their religious teachings.

### III. Objectives of Research

This research is aimed at

- To define and describe legal injunctions related to marriage rules in Islam and Christianity.
- To provide viewpoints of the scholars on marriage in Christianity and Islam.
- To compare Islamic family laws with Christian family laws.
- To examine the existing Muslim Family Law Ordinance 1961 and Christian marriage Act 1872.

### IV. Methodology

Following methodology has been applied in this research

- The research is descriptive, analytical comparative in nature.
- Primary sources have been utilized of Islam and Christianity.
- As secondary sources important books of Christian and Muslim family laws of the authentic and eminent writers have been utilized.
- Original text of Muslim Family Law Ordinance 1961 and Christian Marriage Act 1872 as authentic source of Pakistani law for marriage have been utilized.
- As an emphasizing factor, the classical scholars of Muslims and Christians have been included.

Being the researcher, I tried my level best to complete this task without mistakes. As a human being if any kind of mistakes are found. I will try to improve it.



# **Chapter 1**

## **Institution of Marriage in Islam and Christianity**

## 1.1. Regulations of Marriage in Islamic Law

Family is an institution which is divinely-inspired and its continuation is possible with the man's creation on the basis of marriage contract, *Quran* has also given the contract of marriage as name of *Mithaqanghalizah*.

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا (21)

*"And how could you take it (back) while you have gone in unto each other, and they have taken from you a firm and strong covenant"*<sup>8</sup>

Being the social, dignified and blessed contract, marriage creates relationships and extends family life by creating rights and duties imposed on husband and wife as pair.<sup>9</sup> Human beings are born in this world to play their distinct roles. The family in Islam is unit in which both husband and wife live their lives according to the injunctions laid down by Allah Almighty.<sup>10</sup> Islamic concept of marriage in its start was considered as civil contract and also known as devotional act (*ibadat*). It is an institution which legalizes physical relations between man and woman and gives preservation to human race, which promotes love and union for building a good family life. A Muslim marriage is called in Arabic *Nikah* and rules are laid down for it by Prophet (pbuh) and have given certain criteria for one's spouse. Marriage is considered base for the social life just to secure mental peace and security in social relationship. To run family life, both husband and wife must have mutual consent for every decision just to run smooth family affairs.<sup>11</sup>

<sup>8</sup> Al-Quran:4:21.

<sup>9</sup> Khurshid Ahmad, *Family life in Islam*, (United kingdom, The Islamic Foundation, Leicester, 1979), 14-15.

<sup>10</sup> *Shariah* includes law and the tenets of faith that is *aqaid*. and *Shariah* is the law itself given by Lawgiver.

<sup>11</sup> Tanzeem Fatima, *Marriage Contract in Islam*, (New Delhi, Deep & Deep Publications PVT LTD 2007), 31-32.

Being natural religion Islam emphasizes on the principle that when man and women enter into the marital bond, they bring into existence a social unit known as family which is long-lasting relationship through principle of peace and harmony. Islam also demands both man and woman in family role to understand natural realities. This natural reality will help them to act on what are their responsibilities rather to focus more on duties. The common goal of both should be the proper maintenance of the family system.<sup>12</sup> And for the proper maintenance of the family system, the marriage sermon is very beautifully quoted in Quran

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا (1)

*“O Mankind, have fear of your Lord, who created you from a single soul. From that some He created its mate, and through them He scattered the earth with countless men and women and fear Allah, in whose name you claim (your rights) of one another, and of the ties of Kinship. Allah is ever watching you”<sup>13</sup>*

Marriage has great importance as it helps in building civilized society which represents that the reason is because of the righteous society. Righteous society is based on good family system as family itself is the sacred matrimonial connexion between husband and wife which fully depends on the awareness of the etiquettes and duties of marital life in both husband and wife. Spouse's sincerity towards observing these etiquettes e.g. treats each other with liberal heart and adopt sacrificing attitude in every matter concerning each other.<sup>14</sup> Allah says “And live with them in a good manner”. Marriage is successful if husband and wife both entertain each other with good

<sup>12</sup> Wahiduddin Khan, *Principles of Islam*, (India New Delhi, Good word Books, , 2010) 68-72.

<sup>13</sup> Al-Quran:4:1.

<sup>14</sup> Muhammad Yusuf Islahi, *Etiquettes of Life in Islam*, (Trans) Husain Riaz, (Lahore, Islamic Publications LTD 1996), 206-207

opinion with an attitude of politeness, toleration and magnanimity for the sake of amicable living with each other. If wife lacks in beauty then husband should look at her good manners, morality and other skills with generosity, liberty of mind and self-sacrifice.<sup>15</sup> As Allah says

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِيَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ  
بِفَاحِشَةٍ مُبَيَّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا (19)

*"For if you hate them it may happen that you hate a thing wherein Allah has placed much good"*<sup>16</sup>

They both should have an attitude of forgiveness and kindness. Forgetting all faults especially of wife, will help maintain peaceful marital life having patience, calmness, kindness, affection and devotion.<sup>17</sup> As Quran says

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ مِنْ أَزْوَاجِكُمْ وَأَوْلَادِكُمْ عَنْوَاءَ لَكُمْ فَاحْذَرُوهُمْ وَإِنْ تَعَفَّوْا وَتَصَنَّفَحُوا وَتَغْفِرُوا فَإِنَّ اللَّهَ غَفُورٌ  
رَحِيمٌ (14)

*"O you who believe! Verily, among your wives and your children, there are enemies for you, therefore beware of them. And if you aface and overlook and forgive, then Allah is forgiving Merciful."*<sup>18</sup>

Quran also states that

إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ

*"They (women) are your garments and you (men) are their garments."*<sup>19</sup>

<sup>15</sup> Ibid 208

<sup>16</sup> Al-Quran:4:19

<sup>17</sup> Muhammad Yousf Islahi, *Etiquettes of Life in Islam*, 211

<sup>18</sup> Al-Quran: 64 :14

## 1.2. Meaning of *Nikah*

*Nikah* is derived from Arabic word *Nikah*. In linguistic it means sexual intercourse. One meaning of *Nikah* is to meet. So when the branches of trees meet with each other then it is said that trees are together or they are mix up with each other so as *Majazi Mursal* it means that it is also applied in *Aqd (Nikah)* that is base for the sexual relationship between husband and wife.<sup>20</sup> Imam Shafi also defined the literal meaning of *Nikah* as sexual intercourse.<sup>21</sup> According to jurists *Nikah* is (a contract which is productive of an exclusive right of enjoyment) i.e. this enjoyment is validating only for those women by a man who are legally not prohibited for marriage.<sup>22</sup>

The Arabic word for marriage is *nikkah* which originally meant *aqad* or uniting and had the sense of *watti* or carnal connection.<sup>23</sup> *Shariah* has declared *Nikah* as desirable act. Allah ordains in the Quran

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ

"marry of the women, who seem good to you"<sup>24</sup>

Prophet said "O young men, those among you who can support a wife should marry, for it restrains eyes from casting, and preserves one from immorality."<sup>25</sup>

<sup>19</sup> Al-Quran:2:187

<sup>20</sup> Abdur-Rehman, Al-Jaizairi *Kitab-al-Fiqh*, Trans by Manzoor Ahsan Abbasi, (Lahore, Shuba Matbuatt Mahkma Awaqaf Punjab:,1977)vol 4,2.

<sup>21</sup> Abu-Bakr Al-Sarakhsi, Shams al-Din, *Al-Mabsut*, (Bairut:Darr al-Marfah,n.d.),vol:6,192.

<sup>22</sup> Muhammad Ala-ud-Din Haskafi, *The Darr-ul-Mukhtar*, (Lahore, Law publication company Katcheery Road: (nd),pp.,1-2

<sup>23</sup> Chaudhry Muhammad Shafqat, *Marriage, dower and divorce*. (Lahore: Mr. Azl-i-Mahmood, general manager,1955) 24.

<sup>24</sup> Al-Quran:4:3.

"Anas has narrated that once a companion asked the Holy Prophet that I will not marry, another companion said I will offer prayer all the night I will not sleep, and one of them said I will observe fasts all the year but will not get marry. When Holy Prophet heard all this then He said What has happened to these people that they say so and so. Whereas I pray and sleep too; I fast and suspend observing them; I marry women also? And he who turns away from my Sunnah, has no relation with me".<sup>26</sup>

Holy Prophet(peace be upon Him) has forbidden that one should not stop him from *Nikah* out of love for worship. All jurists also agreed that *Nikah* is obligatory, recommended and imperative duty.<sup>27</sup> Allah has created man and woman to live together by accompanying each other and to keep them away from living lonely lives. The demands of Islamic teachings are that women live with their husband in ups and downs of life helps her husband to run affairs of life. They both are complementary to each other as both of them play vital role in each other's life.<sup>28</sup> Since the time of Adam family life is based and developed on *Nikah*. It is the *Nikah*, which builds relationships and make families. Relationships build on *Nikah* are forever. The importance of marriage is clear from Islamic teachings that *Nikah* is something which builds strong relations and which is the fulfillment for the rights and duties, has given more value rather than *nafl* worship.<sup>29</sup>

Marriage leads towards a very beautiful relation that how men and women relate to each other and they are like body and garments, body is meaningless without garment and garment is meaningless without body. This symbolizes the two sex's closeness in both material and spiritual

<sup>25</sup> Imam Ābi Abdullah Muhammad Bin Ismail al-Bukhari, *Sahih al-Bukhari*, Kitab-un-Nikah, Trans by Mohsin Khan, hadith num 1400(Karachi: Drul-Isaht,1998)vol,7

<sup>26</sup> Ibn-al-Hajjaj, Imam Abul Hussain Muslim. *Sahih Muslim*. Tran by. Nasiruddin Al-Khattab. The Book of Marriage. (Riyadh: Maktaba Dar-us-Salam,(2007). vol.4Imam Muslim,Kitab-un-nikah,Hadith 1401

<sup>27</sup> Dr Mustafa Saeed-al-Kun,*Qawaid-e-Usulia main Fuqaha Ka Ikhtilaf aur Faqhi Masail par us kaa Athar*,Trans by Hafiz Habib-ur-Rehman,(Islamabad,Shariah Academy Islamic Interantional University,2002),.p.,560.

<sup>28</sup> Maulana Shahab-ud-Din Nadvi, *Islam ka Qanoon-e-Talaq*, Muqaddama, p.,12.

<sup>29</sup> Maulana Minhaj-ud-din Minai, *Islami Fiqh*,p.,285.

sense. The Quran further says that marriage is important because husband and wife are like part of each other<sup>30</sup>

Marriage as an important institution of human society is set by Allah to make sure the marriage as possible relation for everyone. In Islam marriage is strong tie and commitment of life to behave as a strong and respectable person of society.<sup>31</sup>

### 1.3. Marriage Significance in *Shariah*

Being civil contract marriage is obligated as all other contracts have some rules and regulations to follow. It comes into being as a result of offer from one party and acceptance from the other.<sup>32</sup>

Marriage is the foundation of social life as it is the effective cause of the human family and social relationship.<sup>33</sup> Marriage as a contract is acknowledged in Islam, because it is base for the tranquility, advancement and expansion of a Muslim social order. No proper and suitable family life can be achieved without marriage and a peaceful relationship between male and female is necessary for the stable and peaceful family life in human society<sup>34</sup>

Marriage serves as an effective tool for the beneficial control of sexual behavior and functions as a shield against committing adultery.<sup>35</sup> Marriage in Islam is worship of Allah and serves as a transaction between human beings. As worship, marriage is to please Allah, on His commandments both husband and wife feel affection for each other and facilitate each other to make hard work for the continuation of the *nasl* and raise and look after their children to become good practicing Muslims. In its dealings, marriage is lawful contract for physical relations and

<sup>30</sup> Maulana Wahiduddin Khan, *Principles of Islam*, 68-72

<sup>31</sup> Haifaa A Jawad, *The rights of women in Islam An Authentic Approach* (McMillan Press Ltd, London, 1998), 30

<sup>32</sup> Dr. Muhammad Tahir Mansoori, *Family Law in Islam*. (Islamabad: Shariah Academy, 2009), 31.

<sup>33</sup> Tanzeem Fatima, *Marriage Contract in Islam*. (New Delhi: Deep and Deep Publications Pvt.Ltd, 2007), p. 32-33

<sup>34</sup> Dr. Muhammad Tahir Mansoori. *Family Law in Islam*. 1-2.

<sup>35</sup> Shahid Ashraf, *Family culture in Islam* (India: Anmol Publications pvt.ltd. 2006), 133.

for growth in race. The Islamic law has laid down rules and regulation by giving its interpretation, how to keep this institution unbreakable as its legally bind both husband and wife to avail rights and perform duties for creating good family life. This peaceful life is not only good for children but for offspring's as well.<sup>36</sup>

Marriage is considered as a sacred foundation and every Muslim is recommended to observe it. It is not recommended for a person if he or she has physical and economic deficiency for enjoying this marital institution. Quran has used the word "*Nikah*", whereas in so many other verses the word عَقْدَةُ النِّكَاحِ<sup>37</sup> is used. In Quran marriage contract is known by the word *Ahsan. Mohsan* is the person who contracts marriage with the *Mohsana* who is the woman with whom marriage is contracted. *Nikah* is the shelter, defense and shield for the woman for living a moral life.<sup>38</sup> Marriage being sacred union between man and woman is considered as religious obligation and describes the love and mutual rights among couple. It is a form of worship which encourages mental and physical capacity because sexual relations are not only for procreation but connects couple by strengthening their relationship. Loyalty is expected from both husband and wife and they should be honest enough to have good sexual and emotional attachment within the boundaries of marriage.<sup>39</sup>

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ  
يَتَفَكَّرُونَ

<sup>36</sup> Abdul Rehman I. Doi, *Women in Shariah*. (London, Ta-Ha publishers Ltd, 1996), 32.

<sup>37</sup> Al-Baqarah:235

<sup>38</sup> Muhammad Iqbal Siddiqi, *The Family Laws Of Islam*. (Lahore, kazi publications, 1984), 29-30

<sup>39</sup> Mohammad Imani Jaafar and Charlie Lehmann, "Women's Rights in Islam regarding Marriage and Divorce" *Journal of Law and Practice*, (2011) accessed January 2012 <http://lawandpractice.wordpress.com/2011/04/11/women%E2%80%99s-rights-in-islam-regarding-marriage-and-divorce/>. Paragraph 11.



*"Among His signs is that He created for you spouses from yourselves so that you might find repose with them. And He has placed between you affection and mercy. In that there are certainly signs for people who reflect."*<sup>40</sup>

Husband and wife duty is to provide ease and complement each other. Being responsible to their duties, it automatically clarifies those different roles and tasks which are for both of them. Islam on the basis of different roles and duties does not differentiate between their positions as human beings. Still they are equal within their own roles and status and will be judged according to his or her responsibilities and duties.<sup>41</sup> Quran has also used the word *Ziwaj* which signifies pair or a mate. Whereas in manners of speaking it is known as marriage.<sup>42</sup> Marriage and family institution has vital importance in the legal system of Islam. This relationship through marriage helps husband and wife to lead a life of chastity. It provides security against immoral sexual treat. Marriage is called as a castle in the Quran because it is a protection against dishonesty and arrogance. It has frequently used the word *muhsin* for chaste, *muhsanat* for chaste women who come from the root word *hisan* i-e castle and fort. The idea leads towards the conclusion that marriage safeguards and protects chastity in the same way as a fort protects the garrison within from a besieging.<sup>43</sup> Ashraf Shahid quotes that *"Marriage serves as an effective tool for the beneficial control of sexual behavior and functions as a shield against committing adultery."*<sup>44</sup>

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<sup>40</sup> Al-Quran:30:21

<sup>41</sup> Dr.M. Afzal Wani, *The Islamic law On Maintenance of Women, Children, parents and other relative's classical principles and modern legislations in India and Muslim countries*. (Kashmir: Upright study Home Noomay. 1995),16.

<sup>42</sup> Abdul. Rahman I.Doi, *Women in Shariah*, p.32.

<sup>43</sup> Dr.Muhammad Tahir Mansoori, *Family Law in Islam*,7-8.

<sup>44</sup> Shahid Ashraf, *Family culture in Islam*.133.

### 1.3.1. Significance of Marriage in the Quran

Marriage being social need is also given moral and religious need and focused on its establishment forcefully. Quran considers marriage as Prophet's Sunnah. In Quran

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

*"And marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty. Allah is of ample means, Aware"*<sup>45</sup>

Quran mentions man and woman's relation of *Nikah* as comfort, peace and blessing of Allah.

Allah says in the Quran

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

*"And of His signs is this: He created for you helpmeets from yourselves that you might find rest in them, and He ordained between you love and mercy."*<sup>46</sup>

It means it is from the signs of Allah that he made your wives from your gender. As Allah said

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ

*"And Allah has given you wives of your own kind, and has given you, from your wives, sons and grandsons."*<sup>47</sup>

Another place in the Quran

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<sup>45</sup> Al-Quran:24:32.

<sup>46</sup> :Al-Quran:30:21

<sup>47</sup> Al-Quran:16:72

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ

*"And marry to those women to whom you like"*<sup>48</sup>

Allah further says

*"So wed them by permission of their folk, and give unto them their portions in kindness, they being honest, not debauched nor of loose conduct"*<sup>49</sup>

In Another place Allah says

وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ

*"Place not difficulties in the way of their marrying their husbands if it is agreed between them in kindness."*<sup>50</sup>

All the verses mentioned above shows the importance of marriage in Islam.

### 1.3.2. Significance of Marriage in *Sunnah*

Holy Prophet (peace be upon Him) has given clear injunctions about the importance of marriage through his sayings.

Prophet said "*Nikah* is my *Sunnah*"<sup>51</sup>

It was narrated that 'Alqamah said:

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<sup>48</sup> Al-Quran:4:3.

<sup>49</sup> Al-Quran:4:25

<sup>50</sup> Al-Quran:2:232

<sup>51</sup> Sunan ibn Maja, Kitab-un-Nikah, Chapter Ma Ja Fi Fazli-l-Nikah: Hadith, 1832.

"I was walking with 'Abdullah in Mina when he was met by Uthman. He stood and talked with him and Uthman said to him: 'O Abu Abdur-Rahman shall we not marry you to a young girl who can remind you of times past?' 'Abdullah said: 'If that is what you are telling me, (let me tell you that) the Messenger of Allah ﷺ said to us: O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding one's chastity. And whoever cannot afford it should fast, for it will be a shield for him."<sup>52</sup>

Holy Prophet has given the importance of nikah in different occasions.

"Hazrat Anas narrated that Prophet said those who want to meet Allah in good condition then He should marry free women"<sup>53</sup>

"Abdullah b. Amr reported what Allah's Messenger had said: The whole world is a provision, and the best wares of the world is the pious woman"<sup>54</sup>

By prescribing the *nikah* Islam has forbidden unlawful ways, Islam has given the proper way to save oneself from adultery, fornication, and all other unnatural ways. In one of the *Hadith* that Hazrat Uthman bin Matuan asked the permission of Prophet about not having sexual organs or to abolish sexual organs, Prophet replied

"By Allah I am afraid from Allah more than you and takes care whatever I do. But I observe fasts and leave it, I offer prayer, I sleep and I become marry. So those who does not follow my *Sunnah* he is not from me."<sup>55</sup>

<sup>52</sup> Ibn-al-Hajjaj, Imam Abul Hussain Muslim. Tran by. Nasiruddin Al-Khattab. The Book of Marriage. *Sahih Muslim*. (Riyadh: Maktaba Dar-us-Salam, (2007). vol.4. [3398] 1 – (1400).15.

<sup>53</sup> Sunan ibn Maja, Kitab-un-Nikah, Chapter Tazweej-ul-Harair, Hadith 1852.

<sup>54</sup> *Sahih Muslim*, Kitab-ul-Razah, chapter Khair Matah Al-Dunya Al-Maraat Al-Salihah, Hadith 1467.

<sup>55</sup> Imam Abi Abdullah Muhammad Bin Ismail al-Bukhari, *Sahih al-Bukhari*, Kitab-un-Nikah, chapter Al-Targhib fi-l-nikah, hadith ,4675 (Karachi: Drul-Isaht, 1998) vol,7

Abu Hurairah Narrated that the Prophet ﷺ said:

*" Women are married for four (reasons): For their wealth, their nobility, their beauty, and their religion. So be successful with one of religion may your hands be covered in dust!."*<sup>56</sup>

*Anas (Allah be pleased with him) reported that some of the companions of Allah's Messenger (peace and blessings of Allah be upon him) asked his (the Prophet's) wives about the acts that he performed in private. Someone among them said: I will eat meat: and someone among them said: I will not lie down in bed. He (the Holy Prophet) praised Allah and glorified Him, and said: "What has happened to these people that they say so and so, whereas I observe prayer and sleep too; I observe fast and suspend observing them; I marry women also? And he who turns away from my Sunnah, he has no relation with me."*<sup>57</sup>

It was narrated that Abdullah said *The Messenger of Allah ﷺ said to us: "O you young men! Whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding one's chastity. And whoever cannot afford it, let him fast, for it will be a shield for him."*<sup>58</sup>

*Hadrat ' Ali bin Abi Talib (may Allah be pleased with him) related: The Messenger of Allah (Allah's blessings and peace be upon him) said to him: "O 'Ali! Do not make delay in the three matters: to offer prayer when its time arrives, to bury the deceased whose funeral is ready for burial, to marry an unmarried women, when you find for her an equivalent match."*<sup>59</sup>

<sup>56</sup> Sulaiman bin Ash'ath, Imam Hafiz Abu Dawud. Tran. Qadhi, Yasir. (2008). The Book of Marriage. *Sunan Abu Dawud*. Riyadh: Maktaba Dar-us-Salam. vol.2.[2047].p. 500.

<sup>57</sup> The Book of Marriage. *Sahih Muslim*. vol 4 [3403] 5 – (1401). p17.

<sup>58</sup> Ibid [3400] 2 – (1400). p.16.

<sup>59</sup> Ibn 'Eisa At-Tirmidhi, Imam Hafiz Abu Eisa Mohammad. Tran. Abu Khaliyl. *Jami At-Tirmidhi*. The Chapters on Marriage. ( Riyadh: Maktaba Dar-us-Salam. 2007). Vol.2.[1087] p.457.

Hadrat 'Abdullah bin 'Umar (may Allah be pleased with him) related: The Messenger of Allah (Allah's blessings and peace be upon him said: "Do not marry women merely on the basis of their beauty, it may be their beauty may ruin them, nor should you marry women on the basis of their property alone, it may be that may make them disobedient to you. Rather, you should marry them on the basis of their religiosity, as a dark complexioned, religious minded slave girl with perforated ears is better than the others."<sup>60</sup>

#### 1.4. Marriage in Christianity

In Christianity their belief is that family was the first institution designed by God. Man and his wife enjoy a most beautiful relationship on this planet. All acts are given by God and made family an institution. God has established family as an institution so that husband and wife live for whole life with each other with love, harmony respect and appreciate each other for all the acts done. Bible says marriage is between a male and female. From the creation of this world, God has always given the successful picture of marriages in the world e.g. Adam and Eve, Abraham and Sarah, Isaac and Rebekah, etc. The first marriage mentioned by Lord Jesus Christ is in Matthew 24:38 and informed all humanity that daughters were given in marriage by all the fathers before the flood. Being important an legal act God specially made and sanctified, Jesus said,

*"The children of this world marry, and are given in marriage"*<sup>61</sup>

Jesus has taken his disciples to Cana and attended the marriage. This was time when He approved it as an institution (John 2:2). God has given the meaning of the word marriage as

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<sup>60</sup> Chawla, Dr. La'li Muhammad. *A Glossary from the Quran and Hadith on Islamic Conduct*. (Karachi: Darul-Ishaat. 1998),7

<sup>61</sup> Luke: 20:34.

husband and wife's relationship for whole life. They live their life till death by promising with each other that they will live a life of love, affection, harmony and faithfulness and will not be separated from each other till death approaches any of them. The marriage relationship has importance because in the law God commanded that

*"If anyone violated the relationship by committing adultery, they were to be executed"*<sup>62</sup>

The guilty is given punishment because it destroys family system. The marriage is also seen as witness for salvation. Both spouse's duty is to please each other means to please Christ. The significant aspect of Christian marriage is not to seek pleasure for one own self but also for the pleasure of the spouse with whom he or she married.<sup>63</sup>

Marriage was important for Christians as they considered it very important after the consummation and husband and wife cannot be separated as after consummation they become one and God becomes part of this marriage even they cannot break this relation. Christians especially Catholics give such an importance to marriage that if husband is ill and gives this illness to woman, he will not be considered guilty and cruel for this.<sup>64</sup>

For Christian God has instituted the marriage contract with purpose. As marriage is contracted to prevent immoral sexual relation with each other. To harmonize the domestic affairs and to make family a secure place for upbringing of children. Genesis verse 18 Lord commanded, *"It is not good for the man to be alone. I will make a helper suitable for him."*

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<sup>62</sup> Deut, 22:22.

<sup>63</sup> Pastor Stan Vespie, "Marriage Divorce and Remarriage" 1995 acceded on January 31, 2012, <http://www.biblebelievers.com/Vespie1.html#contents>

<sup>64</sup> K.N Ahmad, Muslim Law of Divorce, pp-559-560

Marriage and woman are made for the relationship to complete the humanity. God has shown his intention in bible that he wants to create wife for a man.

*“It is not good for the man to be alone. I will make a helper suitable for him.”*  
“65

In bible two elements of marriage are given, first is to emphasize that marriage should be solemnized between man and woman as phrase of Genesis 2:24

*“a man will... be united to his wife.”*<sup>66</sup>

The above mentioned verse of bible not only forbids illegal sexual relation between man and woman but it also forbids homosexuality. Human race has started with marriage among close relatives which was necessarily and was permitted by God. At time passed, and the increased in race also seen, God has forbidden cousin marriages.<sup>67</sup> Secondly marriage is formal commitment and covenant which is designed by God till any of the spouses dies. As it is said

*“by law a married woman is bound to her husband as long as he is alive, but if her husband dies, she is released from the law of marriage”*<sup>68</sup>

Death is the commitment which is way of separating husband and wife who were living with each other through marriage bond.<sup>69</sup>

Bible has offered many verses in which a man and woman are given guidance about their marital relationship, husbands, wives, newly married couples and even for engagements. In Bible

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<sup>65</sup> Genesis,2:18

<sup>66</sup> Genesis,2:24

<sup>67</sup> Lev,18:9,20:17

<sup>68</sup> Rom,7:2

<sup>69</sup> Brian Jones, “A Biblical Theology of Marriage, Divorce and Remarriage”, 2002, 5-9. Accessed on February 5,2012,<http://brianjones.org/downloads/Docs/ThMThesis.pdf>



marriage is associated with God, Jesus Christ and the Christian faith, which clarifies the importance of marriage in Christianity. In Christianity the Lord has ordained marriage as life long relationship between husband and wife which serves four purposes. The spiritual partnership and mutual edification of husband and wife in pursuing the will of the Lord.<sup>70</sup>

*"Wives, submit to your husband's as to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything. Husbands, love your wives, just as Christ loved the church and gave himself up for her to make her holy, cleansing her by the washing with water through the word, and to present her to himself as a radiant church, without stain or wrinkle or any other blemish, but holy and blameless. In this same way, husbands ought to love their wives as their own bodies. He who loves his wife loves himself. After all, no one ever hated his own body, but he feeds and cares for it, just as Christ does the church---for we are members of his body. For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh. This is a profound mystery---but I am talking about Christ and the church. However, each one of you also must love his wife as he loves himself, and the wife must respect her husband."<sup>71</sup>*

For successful marriage, biblical understanding is very important. Bible gives clear teachings for happy married life but Church has changed it a lot. Bible has given clear injunctions for happy

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<sup>70</sup> Michael F. Ross "Biblical Grounds for Divorce and Remarriage" *Christian Research Journal*, (2010)vol, 33, num, 1. Accessed on February 5, 2012, <http://www.equip.org>

<sup>71</sup> Ephesians 5,22-33.

*the cords of his sin hold him fast. He will die for lack of discipline, led astray by his own reat folly.*"<sup>74</sup>

*"The marriage covenant is a solemn, sacred agreement is also made under God's watchful eye. He is the witness to for keeping the obligations created by the covenant. His curses or blessings flow accordingly. These agreements are not meant to be entered into lightly. Christians understand marriage as a covenant made under God, and in the presence of the Christian family. This pledge endures, not because of the force of the law or the fear of its sanctions, but because an unconditional covenant has been made. A covenant more solemn, more binding, more permanent, than any legal contract."*<sup>75</sup>

In Garden of Eden first marriage was solemnized by God and said

*"This is why a man leaves his father and mother and bonds with his wife, and they become one flesh"*<sup>76</sup>

They were made in beginning the male and female and were joined together. God by himself has joined the members of opposite sex in a relationship which is natural in its own essence. God has instituted marriage so it's nothing but a ceremony. God asks that if human think that marriage is difficult and very hard to keep it till death then why one should get married. He replies by himself and says in Genesis.

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<sup>74</sup> Proverbs 5:15-23.

<sup>75</sup> "A Christian perspective on Marriage", Christian Family Law Association, *Established 2009*, accessed on February 10<sup>th</sup>, 2012, [lloyd@christianfamilylawassociation.org](mailto:lloyd@christianfamilylawassociation.org)

<sup>76</sup> Matthew, 19:4-6;

*"It is not good for man to be alone. I will make him a helper who approximates (or corresponds) to him."*<sup>77</sup>

God has given marriage as a solution for removing man's loneliness and also said that Adam's loneliness was not good. He recognized that Adam needs "a helper who was like him, "and she is the one who can balance him, who has similar nature like his own self.

*"So the Lord God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs and closed up the place with flesh. Then the Lord God made a woman from the rib he had taken out of the man, and he brought her to the man. The man said, "This is one bone of my bones and flesh of my flesh; she shall be called woman, for she was taken out of man"*<sup>78</sup>

Marriage is sacred contract as it establishes between the spouses the bodily, mental, rational, touching and religious health .Love is an important ingredient for marriage contract. As love in contract of marriage is found in

*"Love is patient, love is kind, It does not envy, it does not boast, it is not proud. It is not rude, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. Love does not delight in evil but rejoices with the truths. It always protects, always trusts, always hopes, always and perseveres."*<sup>79</sup>

Marriage gives and builds patience, humbleness, delight, accuracy, calm, assertion, and hope for husband and wife. To abuse marriage is not allowed. Bible does not allow to beat each other or

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<sup>77</sup> Genesis,2:18

<sup>78</sup> Genesis 2: 21-23.

<sup>79</sup> 1 Corinthians 13: 4-7.

to insult each other in marriage. Love in marriage gives peace and removes loneliness when the couple lives with each other.<sup>80</sup>

God has created and established institute of marriage and ensured the protection of race. Marriage is the tie which is unbreakable for man and woman once they have contracted it. Marriage is a need as it saves family relations and provides children with unconditional love. Children learn care and good habits from their parents who caused to born them in this world. God has created man and woman in such a way so that they give full attention to each other. Marriage encourages man and woman to be in relationship where they for whole life sacrifices for each other. They live with unity so that God is also pleased. Jesus in sacred text has affirmed the marriage contract as permanent contract.<sup>81</sup>

*"What therefore God has joined together, let no man put asunder."*<sup>82</sup>

Till Christ time marriage was considered as civil contract between man and woman. Jesus has made this relationship an elegant and sensitive contract which needs both man and woman consent to live with each other. And this is how marriage is known as sacrament of Matrimony among Christians. Matrimony is defined as *"the sacrament by which a baptized man and a baptized woman bind themselves for life in a lawful marriage and receive the grace to discharge their duties."* It is not hard to understand why Jesus made marriage a sacrament—the sacrament of Matrimony.

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<sup>80</sup> "A Christian perspective on Marriage", Christian Family Law Association, *Established 2009*, accessed on February 18<sup>th</sup>, 2012, [lloyd@christianfamilylawassociation.org](mailto:lloyd@christianfamilylawassociation.org)

<sup>81</sup> "Catholic Marriage: A Union Sealed by the Sacrament of Matrimony", 2006, accessed on February 18<sup>th</sup> 2012, <http://www.beginningcatholic.com/catholic-marriage.html>

<sup>82</sup> Matthew 19:7

Marriage is a process which enables man and woman to accept each other's faults and compromise with respect and dignity for each other's nature and habits. No matter what couple has to be responsible for becoming good parents? It is not an easy task to up bring the children as per God's demands as children are entrusted by him and duties are also assigned to parents. Parents need a vision how to bring up their children. Marriage is given the title of graceful contract. In short is known as the sacramental grace of Matrimony.<sup>83</sup> This sacramental matrimony has so many benefits as husband and wife love is completed, it also raises the mental and physical compatibility with each other, and teaches how to build love relationship with each other by avoiding illegal relations. Husband and wife are more careful about their children's future. Marriage also gives sense of responsibility to solve many problems might be faced by the family. And last but not the least, marriage is to bear each other's weakness and appreciate each other's strengths. All these can be achieved from the grace of Matrimony and they also show to God what they can get and do for the survival of their family life.<sup>84</sup>

Lord has created woman from the rib of man and made her man's companion. The man has said *"This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for she was taken out of man."*

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<sup>83</sup> Catholic Marriage: A Union Sealed by the Sacrament of Matrimony

<sup>84</sup> Ibid

#### 1.4.1. Significance of Marriage in Bible

*"For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh."*<sup>85</sup>

*"May your fountain be blessed, and may you rejoice in the wife of your youth. A loving doe, a graceful deer-- may her breasts satisfy you always, may you ever be captivated by her love."*<sup>86</sup>

*"A wife of noble character is her husband's crown, but a disgraceful wife is like decay in his bones."*<sup>87</sup>

*"He who finds a wife finds what is good and receives favor from the LORD."*<sup>88</sup>

*"If a man has recently married, he must not be sent to war or have any other duty laid on him. For one year he is to be free to stay at home and bring happiness to the wife he has married."*<sup>89</sup>

*"Haven't you read," he replied, "that at the beginning the Creator 'made them male and female,' and said, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh'? So they are no longer two, but one. Therefore what God has joined together, let man not separate."*<sup>90</sup>

*"Now for the matters you wrote about: It is good for a man not to marry. But since there is so much immorality, each man should have his own wife, and each woman her own husband. The husband should fulfill his marital duty to his wife, and likewise the wife to her husband. The*

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<sup>85</sup> Genesis 2:22-24

<sup>86</sup> Proverbs 5:18-19

<sup>87</sup> Proverbs 12:4

<sup>88</sup> Proverbs 18:22

<sup>89</sup> Deuteronomy 24:5

<sup>90</sup> Mathew 19:4-6

Marriage should be honored by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral. Keep your lives free from the love of money and be content with what you have, because God has said,

*"Never will I leave you; never will I forsake you." So we say with confidence, "The Lord is my helper; I will not be afraid. What can man do to me?" Remember your leaders, who spoke the word of God to you. Consider the outcome of their way of life and imitate their faith.*<sup>93</sup>

Report of the Roman Catholic (2004) concludes very beautifully about the importance of marriage in Christianity and says that *"marriage is a union that allows humans to live out the Christian ideals of love and sacrifice."* In the decades that followed, another statement spoke of marriage both as a divine vocation and a social good, intended for comradeship. In a more recent statement, the church described marriage as *"a gift from God"* in which the couple *"...offers one another the promise of lifelong companionship, rich expressions of human affections and sexuality, and nurture for the children."* Likewise, the Roman Catholic Church has for centuries taught the goodness of marriage and continues to do so right up to the present time. According to a 1940s manual for religious education, the purpose of marriage is for procreation and companionship, although the emphasis was clearly on the former. With the growth in social sciences and increased attention to the human person in the decades that followed, the importance of friendship, love and companionship moved from the periphery to the centre. Thus the church more recently describes marriage as, first, *"a partnership of the whole of life,"* which is *"ordered toward the good of the spouses and the procreation and education of offspring."* In the Roman Catholic tradition, marriage is celebrated as a sacrament of the church—one of seven sacred signs and instruments of God's saving action in Christ and

<sup>93</sup> Hebrew 13;4

*continued throughout time in that Body of Christ which is the church . Because it is a sacrament, the form of the rite is decided at the highest and most universal level of ecclesial authority. Several options are offered, but in its shape and action, and in most of its language, the rite is clearly the same all over the Catholic world.*<sup>94</sup>

### **1.5. Conclusion**

In Islam marriage is recommended for all socio-economic class of people and Holy Prophet (peace be upon Him) has recommended to observe it. Whereas in Christianity marriage is considered sacrament and gift of God as if a man and woman have spiritual relation with Jesus Christ. Islam allows Muslim man's marriage with Christian woman but Christianity does not allow Christian to marry Muslim women. Islam does not demand Muslim man and woman to recite Quran at the time of marriage whereas Christians has bible recitation at the time of marriage. Both religions focus on the importance of marriage and considers it religious duty.

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<sup>94</sup> "Marriage: Report of the Roman Catholic/ United Church Dialogue", October 2004—April 2012 , Roman Catholic Church/ United Church of Canada Dialogue, accessed on March 2<sup>nd</sup>, 2013. [http://ecumenism.net/archive/dialogues\\_ca/2012\\_rc\\_ucc\\_marriage\\_en.pdf](http://ecumenism.net/archive/dialogues_ca/2012_rc_ucc_marriage_en.pdf)



## **Chapter 2**

# **Rulings on Marriage in Christian Marriage Act 1872**

## 2.1. Introduction to Christian Marriage Act 1872

The Roman, Orthodox and Old Catholic churches consider marriage a sacrament contract and refer to it as the sacrament of Matrimony. This marriage contract is between baptized persons.<sup>95</sup>

Christian marriage Act also refers towards the monogamous marriage which should be between two baptized persons and also known as sacrament in Christianity.<sup>96</sup>

Christian marriage is a voluntary union for life between a man and a woman, to the exclusion of all others. Family matters among the Christian community are dealt with by the Christian Marriages Act of 1872 . Christian marriage act has total eight parts. This is for Christians and can be practiced if marriage is between two Christian people only. There are strong penalties of fine and imprisonment (in some instances up to 10 years) for violation of the provisions in the Christian Marriages Act by the parties and the Registrar. However implementation is very rare. For girl minimum age exceeding 13 years and for boy minimum age is 16 years. Priest is not suppose to solemnize the marriage unless both parties are christens. Both parties have to give their consent in front of public having two witnesses for their marriage. The parties have to give notice three months before the intention of getting married and the notice should be consecutive. Every marriage has to be registered without which the marriage will be considered void. Marriage certificate has great importance and should be there at the time of marriage. The strongly recommended marriage solemnization is in church but if they want to celebrate it at home they have to take special permission from church.<sup>97</sup>

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<sup>95</sup> *Encyclopedia of Religion*, (Sen Adeep Anmol publications, New Delhi, 2006), 140.

<sup>96</sup> Stuckrad Kocku Von, *The Brill Dictionary of Religion*(Brill Leiden Boston,2006)vol 3 M-R,1150.

<sup>97</sup> Accessed on November 12,2012 [www.christianmarriageact1872.com](http://www.christianmarriageact1872.com)

### 2.1.1. Analysis of Marriage Act 1872

According to the Act (Sec.19 & 60), if either of the spouses has not exceeded 18 years of age the certificate of marriage will not be issued unless the consent of the father/guardian/mother has been given. As per the act any person who has received Episcopal ordination provided the marriage is solemnized in accordance with rules, rites, ceremonies, customs of the church of which he is a Minister or he can be any clergy of the Church of Scotland as there is no church of Scotland or England in Pakistan so it is known as church of Pakistan and get the license. Other than these categories act also allow to solemnize the marriage by any minister of religion holding a license under the Christian Marriages Act ,or a Marriage Registrar appointed as per the Act can also solemnize the marriage. But recently this act has faced objection to called against injunctions of bible teachings or Christian spirit because it permitted marriage in residence with permission as well.<sup>98</sup>

For marriage license, the document once defined by *Black's Law Dictionary* as "permission granted by public authority to persons who intend to intermarry, usually addressed to the minister or magistrate who is to perform the ceremony [and] . . . in most jurisdictions . . .made an essential prerequisite to the lawful solemnization of marriage.." <sup>99</sup>

The importance for notification is because it is now a general rule across the country that at least six months notice of the date on which you hope to marry, must be given to the priest of the community. The reason for this is to allow sufficient time for all the formalities and preparations that are required. It is highly advisable to delay setting the date for any other arrangements until you have agreed the date for the ceremony in the church where you hope to marry. The priest

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<sup>98</sup> Khalid Masood Somro, "Christian marriage Act termed Contrary to Spirit of Christianity"2013 Daily News Karachi June 7 accessed on [www.cephas-library.com/.../](http://www.cephas-library.com/.../)

<sup>99</sup> Mary Anne Case, "Marriage Licenses", *Minnesota Law Review*2005,1759 accessed on November 20<sup>th</sup>,2012 [www.law.uchicago.edu/files/files/case-marriagelicenses](http://www.law.uchicago.edu/files/files/case-marriagelicenses). Paragraph 1.

who will be involved in your marriage will also advise you about exactly which papers will be required by the Church and Civil registrars. In general, you will be asked to produce: Written evidence that you are free to marry: this means, first and foremost, that neither partner has been married previously. If either or both partners have been married before, it is of primary importance that the couple raise the matter with the priest at the first meeting with him. He will be able to advise you in relation to your own particular situation. If there is difficulty in providing the information about freedom to marry, you can go to a Solicitor or Commissioner for Oaths and swear an affidavit to that effect and this will be acceptable. Baptism certificate: for the Catholic partner, a recently issued copy (i.e. within the previous six months) from the church where you were baptized; for Christians of other Churches, the original or copy of the original. Confirmation certificate: normally it is expected that the Catholic will have been confirmed or is prepared to be confirmed, though this is not an absolute requirement.<sup>100</sup>

Christian marriage Act 1872 does not legalize the marriage if any of the spouse is under the age of 18 years..<sup>101</sup> Christian Marriage Act 1872 was considered against the injunctions of Christian teachings by Director of Kalimatullah Fellowship & Evangelism Ministry. The director has also said that divorce or separation is not allowed once Christians couple get married. Khalid Mansoor Soomro explained that

*"his divine task of solemnizing marriages had been protected in Section 5/1 of the Christian Marriage Act whereas the fundamental rights enshrined in Article 8 of the Constitution provided*

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<sup>100</sup> "Catholic Marriage, A Guide to getting married within The Catholic Church", section One accessed on November 12, 2012 [www.marriagecare.org.uk/wp-content](http://www.marriagecare.org.uk/wp-content) paragraph 5.

<sup>101</sup> Pakistan's Institutionalized Discrimination Against Religious Minorities -by Rebecca Buckwalter Poza -See, more at: <http://lubpak.com/archives/33214#sthash.KQHr2iVm.dpuf>, <http://lubpak.com/archives/33214#sthash.KQHr2iVm.dpuf>, The Huffington Post December 12, 2010 December 12, 2010

*ample religious freedom to everybody. "We find Section 5 of the act and Article 8 of the Constitution enough for us."*<sup>102</sup>

One of the scholars Aziz ur Rehman suggested that this act should be annulled except the section 5 clause 1. He said that if marriage is solemnized as per the rules which are set by church. He further said rest of the law does not sound comparable according to the teachings.<sup>103</sup>

The Pakistan Christian Marriage Act (Act XV, the "Christian Marriage Act, 1872") superseded the Christian Marriage Act (Act V, 1865) and must be read alongside the Foreign Marriage Act XIV, 1903. The latter applies only to non-citizen Christians and requires appropriate cortication and notice before marriage can be contracted. Jurists have repeatedly noted that these marriage laws require redrafting following extensive consultation with relevant stakeholders and community representatives. Pakistani courts have adopted the High Court of Madras definition of the term, "person(s) professing the Christian religion," to include both adults following the Christian faith and their children who, for purposes of the law, are presumed to follow their father's religion. Of particular importance to the purposes of this report and the issue of forced marriages and forced conversions is that the Christian Marriage Act applies not only to instances where both parties contracting marriage are Christians by faith, but also where only one of the parties is Christian. This provision was included to safeguard Christian women from the practice of polygamy when marrying a man of Muslim, Hindu, or Buddhist faith. Christian law, based on traditional interpretations of the faith, strictly enforces monogamy. This provision is readily ignored and laws concerning conversion and marriage are interpreted not as specified in law but in terms of Islam. The Christian Marriage Act further outlines procedures for contracting

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<sup>102</sup> Khalid Mansoor Soomro, *Christian Marriage Act termed Contrary to spirit of Christianity*, June 7 taken from [www. Christian Marriage Act 1872](http://www.ChristianMarriageAct1872.com) at 20<sup>th</sup> April 2014.

<sup>103</sup> Pakistan Chrisitan Post, July 19, 2014, 3:29 pm

marriage and includes specific provisions markedly different from the Personal Laws for other faiths in Pakistan. The Act specifies that marriage must be made in the presence and under authority of religious Ministers or licensed Marriage Registrars. The age of majority, as specified under the Act, is 18 for Pakistani Christians and 21 for other Christians. In contrast, applicable Mohammedan personal law, the age of puberty for females success for valid contracting of marriage. Under the Christian Marriage Act, where one of the parties being married is a minor, a notification of consent from father or guardian is required. The parent or guardian, when asked for such notice, has the right to protest within reasonable time against the marriage certificate. Where mixed marriages between parties of two different faiths is contracted, Catholic teachings provide that the "Catholic partner is obliged not only to remain steadfast in faith but also, as far as possible, to adhere to requirements of baptism and rearing in the same faith so that (the child) may receive all those aids to eternal salvation that the Catholic Church provides for her sons and daughters".

In cases where a marriage is contracted under Muslim rites, however, the Personal Laws for Muslims override subsequently applied Personal Laws of non-Muslims<sup>59</sup>. A previous marriage solemnized under Christian rites, therefore, will cease in effect once a party converts and declares themselves as Muslim by religion, as provided in the holding of the Federal Shariat Court in *Sardar Masih v. Haider Masih* (PLD 1988 SC 78). Several questions are therefore left unaddressed given this decision, including the issues of child custody and formal dissolution of marriages. NCJP reports that these legal loopholes incentivize conversions since spouses may

sidestep more restrictive annulment provisions and marital obligations outlined in the Christian Divorce Act<sup>104</sup>.

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<sup>104</sup>, Report on Forced Marriages & Forced Conversions In the Christian Community of Pakistan, MOVEMENT FOR Solidarity & Peace First Published April 2014© Movement for Solidarity and Peace (MSP Inc.) - All rights Reserved : [www.msp-pk.org](http://www.msp-pk.org) / Email: [info@msp-pk.org](mailto:info@msp-pk.org) P9-10 retrieved at April 25<sup>th</sup> 2014.

**Chapter 3**

**Rulings on Marriage in Muslim Family Laws**

**Ordinance 1961**



### 3.1. Historical Background of Muslim Family Laws Ordinance 1961:

The legal system of Pakistan is based on English common Law by knowing Pakistan as "Islamic State" After the independence in 1947. In British India new legislation related to Muslim Family Law was introduced. Then commission consisting of seven members for Marriage and Family Laws was established in 1955 and also implemented personal status laws implementation in new state known as Pakistan. In 1956 the commission suggested some reforms of all triple divorces with mutual discussion of different leading Ulemas such as Maulana Maududi opposed its recommendations. The Muslim Family Law Ordinance 1961 adopted some of the reforms such as divorce law, inheritance law relating to orphaned grand-children. The MFLO 1961 also introduced compulsory marriage registration, polygamy was restricted, maintenance and dower was also given due place in marriage and divorce. Marriage age was also amended.<sup>105</sup>

Basically this ordinance was imposed by Field Marshal Law General Ayub Khan having too much flexibility of the Ulema. This ordinance received strong support from All Pakistan Women Association led by Begum Raana Liaquat Ali Khan, so finally this ordinance was promulgated the Muslim Family Laws Ordinance on March 2<sup>nd</sup>, 1961, which came into force on July 15<sup>th</sup>, 1961. Ulema at that time were against the said ordinance as they had opinion that it's against Islamic rules. But this ordinance was given protection in 1962, 1972, 1973 constitution. It has thirteen sections which provide title, extent, application and commencement. And it is applicable on whole Pakistan's Muslims citizens<sup>106</sup>

<sup>105</sup> Abdullah A An-Naim, *Islamic Family Law in a changing World: A Global Resource book* (Zed Books Ltd, London, UK, New York USA, 2002) 229-230.

<sup>106</sup> Dr. Tanzilur-Rahman, *Muslim Family Laws Ordinance Islamic & Social Survey*, 51-52, Karachi Pakistan

### 3.2.1. Over View of Muslim Family Law Ordinance 1961

This law basically was recommended by commission of marriage in 1955 .This ordinance has importance because it has advanced women legal rights, reformulated a uniform way of divorce, even *khula* and delegated right of divorce were not only given, but delegated right is also added in Nikanama as a clause. For polygamy husband was made binding on taking in advance permission through Chairman Arbitration Council from first wife which indirectly restricted polygamous marriages. And if husband contracts second marriage, he has to pay immediately dower to the first wife of wives their dower. This ordinance has also amended Child Marriage Restraint Act and identified the marriage age for female 14 and for male 16 years. The ordinance also talked about the inheritance of children from pre deceased son and matters such as dower, maintenance etc were implemented through this ordinance.<sup>107</sup>

The main purpose to introduce 1961 MFLO was to discourage polygamy and regulate divorce. Along with the procedures given for marriage and divorce registration, the grand children right in inheritance was introduced. The documentation for marriage was also given importance for the security of woman. While the law also ensured the right of inheritance of grand children and provided for procedures and much needed documentation of marriages and divorces, it did not grant women any substantive rights. The law was introduced having good intention for women but still there is need of improvement.<sup>108</sup>

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<sup>107</sup> Naheeda Mehboob Ellahi , "Family Laws and Judicial Protection". P-7

<sup>108</sup> Rukhshanda Naz and Maliha Zia "Muslim Family Laws in Pakistan Aurat Foundation",p-1.

Mumtaz Ahmed writes about MFLO 1961 that it was a major step towards women right "in promoting the status of women in Pakistan by upholding the need for women to be free economically, socially, and politically"<sup>109</sup>

Religious leaders, reformists and some leading women by realizing women's helplessness have tried to recommend some suggestions for removing discrimination against them. At the result of which Muslim family law ordinance 1961 has introduced restrictions on the men right of divorce their views and contracting polygamous marriages. Both divorce and polygamous marriages has to be notified officially. A restriction on divorce minimize the ratio of divorce for women. Along with wife's prior permission, this ordinance has introduced that husband has to be just physically mentally an financially with the wife. If fail to do so, the arbitration will punish husband. If husband does not take permission from first wife then first wife will claim maintenance. And and dower otherwise she will be separated through judicial divorce.<sup>110</sup>

Section 8 of MFLO 1961 gives delegated right of divorce to women at the time of contract of marriage by her husband. This section gives the right to terminate marriage other than talaq through delegated right of divorce, can give it as her right but the conditions stipulated has to be logical.<sup>111</sup> Muslim Family Law Ordinance 1961 was promulgated in 1961. It was actually recommendation of the Commission on marriage and family laws constituted by government. The Commission comprised Khalifa Shuja ud-Din, Dr. Khalifah Abd ul-Hakim, Mawlana Ihtesham ul-Haq, Mr Inayat al-Rahman, Begum Shah Nawaz, Begum Anwar G. Ahmad and Begum Shamsun Nihar Mahmood. The report was submitted on June 11, 1956 and was published

<sup>109</sup> Mumtaz Ahmed, *The Muslim Family Laws Ordinance Pakistan*, Reviewed work(s): Source: International Journal on World Peace, Vol. 10, No. 3 (SEPTEMBER 1993), pp. 37-46 Published by: Professors World Peace Academy Stable URL: <http://www.jstor.org/stable/20751912>. Accessed: 22/02/2012 04:24

<sup>110</sup> Attila Ambrus, Erica Field, Maximo Torero "Muslim Family law, Prenuptial agreements and the Emergence of Dowry in Bangladesh" *IFPRI*, June 2009, Harvard University.

<sup>111</sup> Abid, Ali S, *Manual of Family Laws in Pakistan: As Amended up-to-date with Case Laws* (Lahore: Civil & Criminal Law Publications, 1993) 43.

in Gazette of Pakistan. After the issuance of report, various recommendations were incorporated in Muslim family law ordinance and it promulgated in 1961. Ulemas had objections on ordinance especially on the sections of 4, 5, 6, and 7.<sup>112</sup>

The Muslim family law ordinance has introduced reforms concerning the registration of marriage and divorce, inheritance rights of orphaned grand children, restrictions on polygyny, considering every *talaq* as single and revocable, formalizing disputes in maintenance or dissolution of marriage, and recovery of mahr along with the specified penalties for non-compliance.<sup>113</sup>

This section seems to apply to only those modes of dissolution in which the parties may dissolve the marriage by their own act without the intervention of the court. In the case of *Talaq-i-Tafwid*, the wife exercises her option of *Talaq-i-Tafwid* by sending a notice to Chairman, whose duty is to try for reconciliation among parties through Arbitration Council. The Arbitration Council's duty is to attempt reconciliation; if party doesn't agree then case can be taken to court. If the court finds that the authority to pronounce *talaq* had been validity delegated and the *talaq* itself properly pronounced and notified, the divorce will be legally recognized from the date ninety days following the notification required by the MFLO, 1961. Court has nothing to do with divorce to happen, its role is to check whether right is delegated correctly or whether it is conditional and is in favor of women or not.<sup>114</sup> Nikanama has clause about delegated right of divorce and the words used are "Whether the husband has delegated the power of divorce to the wife. If so under what conditions".<sup>115</sup>

The Nikanama established by Provisional Governments for purpose of registration of marriages under Section 5 of the MFLO, 1961, also makes provision for the right of *talaq* to be delegated

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<sup>112</sup> Dr Mansoori Tahir, *Family Law in Islam Theory and Practice*, 209.

<sup>113</sup> Abdullah An A Naim, *Islamic Family law in a changing world: A Global Resource book*, 233-235.

<sup>114</sup> Tanzil-ur-Rahman, *Muslim Family Laws Ordinance: Islam and Social Survey* 175.

<sup>115</sup> Cassandra Balchin, *A hand book on family laws in Pakistan* (Lahore: Shirkat Gah, 1994), 65

to the wife by the husband at the time of marriage, if agreed. According to Hanafis and Malikis it is an irrevocable divorce but under Section 8 of the MFLO, 1961, the divorce shall nevertheless be revocable by consent of the parties.<sup>116</sup> By this divorce, wife's right to mahr is not affected and if right of delegated divorce is conditional (e.g., it is operational only if husband has failed to maintain wife), husband can challenge fulfillment of conditions in Family Court.<sup>117</sup> The important aspect covered by the MFLO, is the approval of a form of divorce available to the wife in traditional Islamic law, called *talaq-e-tafwid*. Section 8 says: 'where the right to divorce has been delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than talaq, the provisions of section 7 shall, mutatis mutandi and so far as applicable apply'.<sup>118</sup>

### 3.2.1. Registration of marriages.

Muslim Family Law Ordinance legalizes marriage through a marriage certificate which has a purpose to provide protection to women. This protection includes marriage gift (*Mahr*) and in this crucial time, help in reminding man through written record that this woman belongs to that man, and it also saves woman for the conditions which she mentions at the time of marriage and required for divorce.<sup>119</sup> Although marriage is not terminated without due registration of marriage. But MFLO has introduced these provisions just to smooth the marriage affairs especially to protect women by registration of marriage.<sup>120</sup> Registration of marriage in MFLO 1961 has

<sup>116</sup> Dr Muhammad Tahir Mansoori, *Family Law in Islam Theory and Practice*, 209

<sup>117</sup> Abid, Ali S *Manual of Family Laws in Pakistan: As Amended up-to-date with Case Laws*, 44.

<sup>118</sup> Dr Muhammad Tahir Mansoori, *Family Law in Islam Theory and Practice*, 209

<sup>119</sup> Orzala Ashraf Nemat, "Comparative Analysis of Family Law in the Context of Islam" trans by Jawed Nader, *Heinrich Boll Foundation, Roundtable Conference, August 15-17, ,Kabul Afghanistan, 2006* 19.

<sup>120</sup> <http://www.zallp.com/family.html> , retrieved on December 23, 2013 at 10:00pm.

emphasized on registration because of the reforms which were required for protection of the women.

Marriage being noble contract demands written proof as it also includes the obligations of dower, maintenance, inheritance which cannot be claimed without written contract. The basis for writing it is taken from the surah Baqarah 2<sup>nd</sup> verse which recommends writing monetary dealings. The legitimacy of children can also be effected because of not writing the marriage contract.<sup>121</sup> Ulema say that to treat non-registered marriage as an offence is not recommended.<sup>122</sup>

Because of low literacy rate in Pakistan the Nikah is performed on Shariah way and don't register it because they don't know that it is to safeguard the women. Federal Shariat court strongly recommended registration of marriage contract. Because non registration of marriage can deny the parentage of child. But marriage will be considered valid without registration.<sup>123</sup>

Although registration of marriage is not found in Quran and Sunnah and marriage is validated as well, the law should talk about it clearly. To enforce marriage registration is basically to remove difficulties of marriage with special focus of dower<sup>124</sup>. As Allah says in Quran

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَيْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ

وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ

*"O you who believe when you contract a debt for a fixed period, record it in writing. Let a scribe record it in writing between you in terms of equity"*<sup>125</sup>

<sup>121</sup> Dr Mansoori Tahir, *Family Law in Islam Theory and Practice*, 217.

<sup>122</sup> Ibid, 218.

<sup>123</sup> Ibid, 220-221.

<sup>124</sup> Dr Tanzilur Rahman, *Muslim Family Laws Ordinance Islamic & Social Surveys*, 104.

And further the injunction is

وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَى وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكَكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ

*“Be not averse to writing down (the contract) whether it be small or great, with record of the terms thereof. That is more equitable in the sight of Allah and more sure for testimony, and the best way of avoiding doubt between you”*<sup>126</sup>

Dower being debt needs written documentation. When *Shariah* demands two witnesses then orally it's not recommended they should sign on marriage contract and on registration for safety.<sup>127</sup>

### 3.2.2. Succession

*Ilm-ul-Faraiz* is known as the law of inheritance which introduces the modes and manners of succession to a deceased Muslim. After paying all funeral expenses keeping in view the social status of deceased and paying all the debts due on him or her, the property will be distributed amongst the heirs by right of inheritance.<sup>128</sup>

As Allah's Apostle said

<sup>125</sup> Al-Quran:2 :282

<sup>126</sup> Al-Quran:2: 282

<sup>127</sup> Tanzilur Rahman, *Muslim Family Laws Ordinance Islamic & Social Surveys*,105

<sup>128</sup> Mahomed Ullah, *The Muslim Law of Inheritance*,p-2.

"Abu Huraira (Allah be pleased with him) reported that when the body of a dead person having burden of debt upon him was brought to Allah's Messenger (may peace be upon him) he would ask whether he had left property enough to clear off his debt, and if the property left had been sufficient for that (purpose), he observed funeral prayer for him, otherwise he said (to his companions): You observe prayer for your companion. But when Allah opened the gateways of victory for him, he said: I am nearer to the believers than themselves, so if anyone dies leaving a debt, its payment is my responsibility, and if anyone leaves a property, it goes to his heirs."<sup>129</sup>

"Abn Huraira (Allah be pleased with him) reported Allah's Apostle (may peace be upon him) having said this: By Him in Whose Hand is the life of Muhammad, there is no believer on the earth with whom I am not the nearest among all the people. He who amongst you (dies) and leaves a debt, I am there to pay it, and he who amongst you (dies) leaving behind children I am there to look after them. And he who amongst You leaves behind property, that is for the inheritor whoever he is."<sup>130</sup>

### 3.2.1.1. Meaning of *ilm al-fara'id*

The rules governing inheritance form an extensive and complicated portion of *Shariah* law, which is also called "the science of shares," or '*ilm al-fara'id* in Arabic. Generally, *miraath*, the *Qur'anic* term, means inheritance to be divided from the property among a decedent's successors prescribed by *Shariah*.<sup>131</sup> A person when he dies, own some wealth, property, movable and unmovable, cash, jewelry, clothes, everything big or small, even needle to thread becomes his

<sup>129</sup> *Sahih Muslim*, Kitab Al-Fara'id, the rules pertaining to the law of inheritance, Chapter 4: Those who leaves behind Property, that is for the Heirs", Book 11, Hadith Num 3944.

<sup>130</sup> *Ibid*, Book 11, Hadith num 3946.

<sup>131</sup> Omar T. Mohammedi, "Shariah-Compliant Wills: Principles, Recognition, and Enforcement" Vol 57 2012/ 57 (N.Y.L. Sch. L. Rev. 259 2012-2013), 4 accessed on March 20<sup>th</sup>, 2012 [http://www.nylslawreview.com/wordpress/wp-content/uploads/2012/11/NYLS\\_Law\\_Review\\_Volume-57-2.Mohammedi.pdf](http://www.nylslawreview.com/wordpress/wp-content/uploads/2012/11/NYLS_Law_Review_Volume-57-2.Mohammedi.pdf). Paraph 2-3.



inheritance as per *Shariah* rules. Clothes of deceased are also included which he was wearing at the time of his death. In general four claims will be made on deceased total property. The preparation of deceased by bathing and shrouding. The financial claim or debt owned by the deceased to someone, the valid will or testament made by the deceased, the distribution of inheritance among heirs. These are first priority which has to pay from deceased property.<sup>132</sup>

### 3.2.1.2. Inheritance Rights in Quran

In the *al-mawarith* verse, Allah s.w.t. has given clear injunctions with its detail about beneficiaries and their portions in the inheritance meaning:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ  
نَصِيبًا مَّفْرُوضًا

“Unto the men (of a family) belongs a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave.”<sup>133</sup>

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِّلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ وَاسْأَلُوا  
اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا

“Unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned.”<sup>134</sup>

<sup>132</sup> Dr Muhammad Abdul Hai Arifi, “Death and Inheritance: The Islamic Way”, Trans by Prof Shameem Muhammad (Karachi, Darul Ishaat, , 2000), 147-148.

<sup>133</sup> Al-Quran:4:7.

<sup>134</sup> Al-Quran:4:32.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“Allah chargeth you concerning (the provision for ) our children to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then for her is the half. And to his parents a sixth of the inheritance, if he have a son; and if have no son and his parents are his heirs, then to his mother appertaineth the third; and if he have brothers, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (have been paid)”<sup>135</sup>

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمُ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّةٌ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“And if a man or a woman have a distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother's side) then to each of them tain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after

<sup>135</sup> Al-Quran:4:11

any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been paid."<sup>136</sup>

Law of inheritance in Islam is significant because the verses after the verses of sharers in inheritance have given its importance.<sup>137</sup> As Allah says

تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ

"These are limits (set by) Allah (or ordinances as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success."<sup>138</sup>

وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ

"And whosoever disobeys Allah and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment."<sup>139</sup>

According to Quranic verses the first right of deceased is of the creditors. After them, any will by the deceased to maximum 1/3 shall be executed. The inheritors in general are divided into two categories, the sharers fixed by Quran, the residuary who take inheritance after sharers. In case no sharer is left or alive then share will be given to residuaries. If only one inheritor of each category is left then he will take all the assets except husband and wife as they have received fixed share. If in case balance is left then it will go to nearest close relatives known as distant

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<sup>136</sup> Al-Quran:4:12

<sup>137</sup> Dr Abid Hussain "Islamic Laws of Inheritance" accessed on September 10th, 2011, <http://www.islam101.com/sociology/inheritance.htm> at 12:00 ,paragraph 3.

<sup>138</sup> Al-Quran:4:13

<sup>139</sup> Al-Quran:4:14

kindred. If no distant kindred available then will go to the master of a slave otherwise to *bait-ul-mal*.<sup>140</sup> These Quranic provisions have been strictly interpreted by the *Sunnis* as retaining the substratum of the pre-Islamic customs. The Quran has not been construed to alter or affect the basic conception existing in pre-Islamic Arabia regarding the proximity of kingship. So, the *Sunni* interpretation of the law permits those women alone to compete with the customary heir, in whose case the only bar to recognition (under the customary law) was their gender, viz. female agnates.<sup>141</sup> It is clear from Quranic injunction that difference is not found on the bases of gender, Quran has focused on the person's relationship with deceased and their social responsibility. Gender is not the issue as the share of the daughter is determined keeping in view her economic opportunities and her social status in which is living. The daughter is considered as full owner of the property which she receives from father and her husband also gives at the time of marriage, her dower money is also her property whether prompt or deferred. The husband is responsible to maintain her and his property can be her full possession. So the difference is only because of the legal sharers in shadow of law which secures equality.<sup>142</sup>

### 3.2.1.3. Importance of Inheritance in *Sunnah*

*"Usama b. Zaid reported Allah's Messenger (may peace be upon him) as saying: A Muslim is not entitled to inherit from a non-Muslim, and a non-Muslim is not entitled to inherit from a Muslim."*<sup>143</sup>

<sup>140</sup> Shakil Ahmed Khan, *How to calculate Inheritance A Simple Approach* (New Delhi, Good words books, 2004), 60-61

<sup>141</sup> Hamid Khan, *The Islamic Law of Inheritance A Comparative Study of Recent Reforms in Muslim countries*, (Karachi Pakistan: Oxford University Press, 1999), 25.

<sup>142</sup> Faiz-ur-Rehman. "A Islamic Laws of Inheritance" accessed on March 31<sup>st</sup>, 2012 <http://www.newageislam.com/islamic-sharia-laws/the-islamic-law-of-inheritance/d/6964>.

<sup>143</sup> *Sahih Muslim*, Kitab Al-Faraid (the rules pertaining to the law of inheritance, Chapter: Give Inheritance to those who are entitled to it, Book 11, number 3928).

*"Ibn Abbas (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying: Give the shares to those who are entitled to them, and what remains over goes to the nearest male heir. "144*

*"Ibn 'Abbas (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying: Give the shares to those who are entitled to them, and what is left from those who are entitled to it goes to the nearest male heir. "145*

*"Tawus reported on the authority of his father Ibn Abbas (Allah be pleased with them) narrating that Allah's Messenger (may peace be upon him) said: Distribute the property amongst Ahl al-Fara'id, according to the Book of Allah, and what is left out of them goes to the nearest male heir. "146*

*"Jabir b. 'Abdullah (Allah be pleased with him) reported: Allah's Apostle (may peace be upon him) and Abi Bakr (Allah be pleased with him) visited me on foot in Banu Salama, and found me unconscious. He (the Holy Prophet) called for water and performed ablution and sprinkled out of it (the water) over me. I felt relieved. I said: Allah's Messenger, what should I do with my property? And this verse was revealed: "Allah enjoins you concerning your children: for the male is equal of the portion of two females. "147*

*"Jabir b. 'Abdullah (Allah be pleased with them) reported: While I had been ill Allah's Messenger (may peace be upon him) visited me and Abu akr (Allah be pleased with him) was with him, and they both came walking on foot. He (the Holy Prophet) found me unconscious.*

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<sup>144</sup> Book 11: Hadith num 3929.

<sup>145</sup> Book 11: Hadith num 3930.

<sup>146</sup> Book 11: Hadith num 3931.

<sup>147</sup> Ibid, Chapter 2: The Law of Inheritance according to Alkala (The person who dies leaving no child or parent), Book 11, Hadith num 3933.

*Allah's Messenger (may peace be upon him) performed ablution and then sprinkled over me the water of his ablution. I felt relieved regained my consciousness) and found Allah's Messenger (may peace be upon him) there. I said: Allah's Messenger, what should I do with my property? He gave me no reply until the verse (iv. 177) relating to the law of inheritance was revealed."*<sup>148</sup>

### 3.2.3. Polygamy

Section 6(5) of MFLO 1961 held that second marriage without permission of first wife and Arbitration Council is not void but it will be considered an offence if husband marries second time without first wife's permission and will be given imprisonment for one year or fine rupees 5000. If there is chance of marriage contract to be cancelled then husband has to pay entire dower prompt or deferred immediately.<sup>149</sup> Provision of section 6 of MFLO 1961 protects the rights of existing wives and children. Muslim Family Law Ordinance 1961 has introduced polygamy law against man but has not called second marriage illegal. 1961 has only introduced law and given a procedure which needs to be followed if going for second marriage and it also emphasized for the betterment of society that if not followed properly will be punished. Even if man has not asked for permission from Arbitration Council, the second marriage will not be illegal as per Islamic rules.<sup>150</sup>

Rehman Javaid writes about the importance of MFLO 1961 and polygamy<sup>151</sup> that "In its post-independence period, the most significant piece of legislative enactment, the Muslim Family Laws Ordinance 1961 has created various restrictions on polygamous marriages. A system of

<sup>148</sup> Ibid, Book 11: Hadith num 3934.

<sup>149</sup> The Muslim Family Laws Ordinance, 1961. An Ordinance to give effect to certain recommendations of the commission on marriage and Family Laws. Retrieved from [www.courtmarriage-nikah.com](http://www.courtmarriage-nikah.com)

<sup>150</sup> Ishfaq Ali, *Manual of Family Laws (with the amendments and up-to date Case Law)*, (Shammas Law House, Lahore, 2007), 55.

<sup>151</sup> Rehman Javaid, "The Shariah, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq", 116-117.

compulsory registration was introduced for all marriages solemnized under Muslim law prior to entering into a polygamous marriage; Muslim men are required to obtain the written permission of the Arbitration Council, a Council which consists of a representative of existing wife (or wives), his own representative and a neutral chairperson. In addition to stating the reasons for a proposed polygamous marriage, the petitioner is also required to inform the Council as to whether the consent or agreement of the existing wife or wives has been obtained. A second or further marriage is only permissible once the Arbitration Council is satisfied as to its 'necessity and just' nature in accordance with the Rules laid down in pursuance of the Muslim Family Laws Ordinance 1961. Rule 14, in defining 'just and necessary', points towards the following grounds: physical unfitness, insanity, infertility, sterility of the wife (wives) and willful avoidance of a decree for restitution of conjugal rights on the part of the existing wife (wives). Polygamy is an arrangement of marriage where one person has more than one spouses. Polygamy has two types; polygyny in which a man gets married more than one wife, second is polyandry, which is woman of getting married with more than one man. Limited polygyny is permitted whereas polyandry is forbidden strictly.<sup>152</sup>

MFLO 1961 interesting aspect is about polygamy because it does not straight away bans polygamy rather it stipulates that a man having intention of second wife has to get consent of first wife along with explaining the reason to get second marriage in front of arbitration council. This sitting will be consisting on each party's representative along with the chairman of local

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<sup>152</sup>Said Abdullah Seif-al-Hatimy, *Women in Islam; A Comparative Study* (Pakistan: Islamic Publications (PVT) LTD2000), 55. See also: Umm Abdurrahman Hirschfelder, *From Monogamy to Polygyny: A Way Through*. (Lahore: Darussalam publication, 2003), 21.

council. And the arbitration council has full right to decide whether man is allowed to have second marriage or not.<sup>153</sup>

There is no doubt that normally every man has one wife but the truth is that some men have naturally an instinct to have relation with more than one woman. They may have apparently a wife but they can't control their sexual desire. So for such men if polygyny is not permitted then there is great chance of involving in illegal physical relations. The example of West is clear where because of ban on polygamy adultery has increased. Although legally they are allowed to have one wife but unfortunately they have relations with so many other women who even don't get and enjoy the marital rights.<sup>154</sup>

Quran has given protection to women by revealing the verse about polygamy. In pre-Islamic time polygamy had no limit and one person can have so many wives at one time. Husband married woman by paying dower to her family, due to which she had to be dependent on husband's family for maintenance etc. She was unable to change her status and without dower she could not afford divorce and the threat of leaving her destitute always tensed her, then Allah revealed the verse on polygamy and safeguard women by giving her financial security as well.<sup>155</sup>

Polygamy permission within framework of Islamic law has raised two fundamental questions. What was the rationale of legitimizing polygamous marriage and is its prohibition justifiable in international law? The answer is that in today's world the flexible side of Shariah is not understood. When Islam was revealed it has given rights to women which were family rights,

<sup>153</sup> Mumtaz Ahmed, p-40. International Journal on World Peace, "Muslim Family Laws Ordinance,

<sup>154</sup> Syed Jalal-ud-Din Umari, *Tadad-i-Azواج*, (Islamic research Institute, Ali Garh, 1984) p-84.

<sup>155</sup> Nate Olsen, "Marriage and Divorce in Islamic and Mormon Polygamy: A Legal Comparison", (Intermountain West) *Journal of Religious Studies* Vol 1 Number, 2009, 91 accessed on April 1<sup>st</sup>, 2012 <http://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=paragraph 2>.



financial rights and given enlightened ideas for family life. The Shariah has perceived and recommended monogamous marriage.<sup>156</sup> As Allah says in Quran

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا (3) وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا (4) وَلَا تَوْنُوا السُّفَهَاءَ أَمْوَالُكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

*"Hand over their property to the orphans and do not exchange the bad for the good, and do not devour their property mixing it with your own. Surely, that is a great sin. Should you apprehend that you will not be able to deal fairly with Orphans, then marry of other women as may be agreeable to you, two or three, or four; but if you feel you will not deal justly between them, then marry only one . . . that is the best way for you to obviate injustice"* <sup>157</sup>

Quran has given restrictions in the above verse for polygamy. And given the condition of keeping justice between wives as Quran itself says

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

*"You cannot keep perfect balance emotionally between your wives, however much you desire it"* <sup>158</sup>

The Quran has given the practical example as this verse was revealed at the time of battle of Uhud (625 A.D.) And many men were died leaving behind widows and children orphaned.

<sup>156</sup> Rehman Javaid, "The Shariah, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq" *International Journal of Law, Policy and Family* (Advance Access Publication, 2007), 114, Vol. 21, No 1, accessed on April 1<sup>st</sup> 2012 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.131.5930&rep=rep1&type=pdf>, paragraph 3.

<sup>157</sup> Al-Quran: 4:3-5.

<sup>158</sup> Al-Quran: 4:130.

Women rights were misused so this verse was revealed for orphans and women who were widows. Because of the changes in social, political and legal environment polygamy practice demand were used for this practice as women are more, children are left orphans but in today's time this does not apply to practice polygamy. If government want to stop polygamy they have to provide equal chances of finances to both of them otherwise polygamy is the only way to protect divorced, widow women in the society.<sup>159</sup>

Before Islam Arabs used to marry so many women at one time but Islam has limited this liberty of marrying so many women and restricted it to the four wives. The four wives were allowed at the time of war. Islam has also imposed certain conditions on those who want to have more than one wife. The conditions are difficult to fulfill that is why men prefer to have married with one wife. The condition given by Quran is justice and is not tolerated if injustice is done with any of his wife. Islam does not encourage the idea of a man to marry more than one wife except in war time because number of women becomes great and are unable to find husbands.<sup>160</sup> Quran says

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَذْنَىٰ أَلَّا تَعُولُوا

*"And if u fear that u cannot act justly towards orphans, than marry such women as seem good to u but if u fear that you will not do justice between them, than marry one only."*<sup>161</sup>

<sup>159</sup> Rehman Javaid, "The Shariah, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq", 115, paragraph 3.

<sup>160</sup> Ajijola Alhaj A.D., *The Concept of Family in Islam*, (Adam publishers and distributors, India, 1999), 53.

<sup>161</sup> Al-Quran:4:3

And in another verse the Holy Qur'an says:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ

*"You will never be able to do justice among women" <sup>162</sup>*

Qur'an being the final revealed book, in this world till day of *Qayamah*, says 'marry only one'.

No other religious book on this earth starts with marry only one. The context of this phrase is the following verse from Surah Nisa of the Glorious Qur'an:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَذْنَىٰ أَلَّا تَعُولُوا

*"If you fear that you will not act justly towards the orphans marry such women as seem good to you, two, three, four; but if you fear you will not be equitable, then only one, or what your right hands own, so it is likelier you will not be partial." <sup>163</sup>*

The revealed context of above verse has so many facts that polygamy should not be taken as obligatory, nor positive but just allowed. This permission was given for the widows and orphans, when no one was there to look after them. It is better not to take it as pleasure for sex. The permission for widows and help for orphans was the reason of revelation of the polygamy verse. And it is not to get more than one marriage but husband has to be just in providing housing, food, clothing, and kind treatment. If he is unable to do justice then it's better to have one wife only. <sup>164</sup>

<sup>162</sup> Al-Quran:4:129

<sup>163</sup> Al-Quran:4:3

<sup>164</sup> Dr Muhammad Tahir Mansoori. *Family Law in Islam*. 223. See also: Abdul Rehman I.Doi, *Women in Shariah*, 51.

The permission is very strictly given if man is unable to do justice, which was never practiced by Arabs because they practiced unlimited polygamy so how could they be just with their countless wives.<sup>165</sup>

So many opponents say that when the verse of An-Nisa revealed which has banned more than four wives .After revelation this verse Prophet has ordered so many people to leave more than four wives. Why Prophet has not followed this practice of leaving more than four wives? The Quran has answered that woman who is in *Nikah* of Prophet get status of spiritual mother of the Muslim *Ummah*. She cannot get married to any other men after Prophet's death or divorce.<sup>166</sup> As Quran says

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا

*"The Prophet is closer to the Believers than their own selves, and his wives are their mothers. Blood-relations among each other have closer personal ties, in the Decree of Allah. Than (the Brotherhood of) Believers and Muhajirs: nevertheless do you what is just to your closest friends: such is the writing in the Decree (of Allah).*

..167

In another verse Allah says

<sup>165</sup> Faridali Mas'ood Debas, *The Wives of Prophet Muhammad ﷺ*. (Saudi Arabia: International Islamic Publishing House, 2006), 172.

<sup>166</sup> Imam Abdur Rehman Baizawi, *Tafsir Baizawi* (Matbua Majlis Taraqi Adab Lahore).vol 4, 158.

<sup>167</sup> Al-Quran:33:6

لَا يَسْتَحْيِي مِنَ الْحَقِّ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُنكِحُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا

“ ..... And when ye ask (his ladies) for anything ye want, ask them from before a screen: that makes for greater purity for your hearts and for theirs. Nor is it right for you that ye should annoy Allah's Apostle, or that ye should marry his widows after him at any time. Truly such a thing is in Allah's sight an enormity.”<sup>168</sup>

### 3.2.4. Talaq

Muslim Family Laws Ordinance 1961, regulates the laws of divorce in Pakistan. The purpose of this law was to assist those women in broken marriages who were not being allowed to get their divorce.<sup>169</sup> MFLO 1961 has changed the mind sets of orthodox by challenging the divorce by repudiation or to pronounce divorce three times. Actually women are relieved through this provision or section of the said law because women were in great stress where men used to utter three divorces in one time. This is how MFLO has asked husbands if they want to divorce they have to send a written notice to the chairman of local council along with its copy to wife. The fixation of 90 days which are not liked by many Ulemas are misunderstood. The fixation of 90 days by the said law is to bring the two families near, to involve the local body for good purpose, and to go for reconciliation between husband and wife. Arbitration council is involved in order to provide guarantee to the family members involved in all this procedure. And the law is positive because it waits for wife's child to be delivered for the effectiveness of the notice.

Mumtaz Ahmed very beautifully said “Significant aspect of the law requiring formal registration of marriages and providing for a standardized marriage contract was that it now became possible for women to seek enforcement of this contract through the intervention of courts. In the absence

<sup>168</sup> Al-Quran:33:53

<sup>169</sup> Orzala Ashraf Nemat, *Comparative Analysis of Family Law in the Context of Islam*, trans by Jawed Nader, 41

of such contracts, women had no recourse to take legal action against their husbands in matter of divorce, maintenance dower etc.”<sup>170</sup> Ordinance has time and again emphasized on written notice for so many aspects just to discourage the practice of men divorcing wives three times and for reconciliation to go through natural *halala*.<sup>171</sup>

Sub-section 3 and 5 of section 7 of Muslim Family Laws Ordinance 1961 are against the injunctions of Islam by 2000FSC 1. As divorce can be effective if it meets three requirements as per sub-section 1 of section 7. They are pronouncement of *talaq* in accordance of Muslim Law, delivery of a notice to chairman, and delivering a copy of the notice to the wife. Any condition missing will nullify divorce even if ninety days are passed.<sup>172</sup> But section 1 of section 7 creates doubt about *iddah*.<sup>173</sup>

According to Islam if the woman marriage is not consummated, she has no *iddah* whereas this section does not talk about this aspect and sub-section 3 of section 7 fixes the *iddah* period of ninety days for all cases of *iddah*. Sub-section 5 of section 7 also contradicts Shariah. As it any period which is greater will be observed. According to section 7 the *iddah* will be calculated with the date of husband's notice to the chairman but not from the date when husband divorced her.<sup>174</sup>

Revocation is possible after notice to chairman but within ninety days as per section 7(4). This section does not clarify from which kind of divorce it is possible. Because all forms of divorce cannot be revoked. Sub-section 4 emphasizes that reconciliation is possible through arbitration council.<sup>175</sup>

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<sup>170</sup> Mumtaz Ahmed, International Journal on World peace,p-41

<sup>171</sup> Masud, Interpreting Divorce Laws in Pakistan, <http://www.maruf.org/Law and society in islam>,p=196

<sup>172</sup> Shaikh Abdul Halim, Muslim Family Laws( Nabha RoadPublisher, Lahore 1996)p-29

<sup>173</sup> Tanzil-ur-Rehman, A Code of Muslim Personal Law,p-164.

<sup>174</sup> The All Pakistan Legal Decisions 2000 Federal Shariat Court, Vol: LII,p.58 FSC.

<sup>175</sup> Shaikh Abdul-Haleem, Muslim Family Laws,p.32.

### 3.2.4.1. Literal meaning of *Talaq*

Literally *talaq* means separation of a husband from his wife.<sup>176</sup> The word *talaq* has literal meaning of “to snap off” or “to separate”. Imam Sarakhsi defines it laterally as “*izalatulqayd*”, freedom from bondage. It is taken from the root word “*Talaqun*”, from which the word “*itlaq*” freedom is derived.<sup>177</sup> Linguistic meaning of *talaq* is the breaking of a bond, derived from *al-itlaq* means to send or to leave.<sup>178</sup>

### 3.2.4.2. Technical meaning of *Talaq*

Technically divorce is considered as the breaking of marriage contract, through which any woman becomes wife of any man. This contract breaks with the announcement of three divorces.<sup>179</sup>

It is said in the Quran

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

“So if a husband divorces his wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has divorced her.”<sup>180</sup>

Technically, it is defined as “*termination with explicit or implied words by the husband the bond create by the marriage contract*”. It is also defined as “*dissolution of marriage contract or the annulment of its legality by certain words*”.<sup>181</sup>

<sup>176</sup> Feroz-al-Lughat; Al-Munjad Arabi Urdu.

<sup>177</sup> Au Bakr Shams al-Din Al-Sarakhsi, *Al-Mabsut*, vol:6,2.

<sup>178</sup> Muhammad Subhi bin Hasan Hallaq, *Al-Lubab Fee Fiqhus-Sunnah wal-Kitab*, Trans by Sameh Strauch, *Fiqh according to Quran & Sunnah* ( International Publication Darussalam, Lahore , ,2008) Vol2,161.

<sup>179</sup> Ibid,p.2.

<sup>180</sup> Al-Quran:2:230

<sup>181</sup> Keith, Hodkinson. *Muslim family laws: a source of book*. (London: British library cataloguing publishing. 1984), 220.

*"Divorce is to reverse the marriage knot through an explicit expression such as telling one's wife, 'you are divorced' or through an inexplicit expression but with the same intention such as telling her, go back to your family."*<sup>182</sup>

### 3.2.4.3. Legitimacy of divorce in Quran

is legitimacy is proved from Quran :As Allah says

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ  
وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ  
عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*"Divorced women shall wait concerning themselves for three monthly courses. It is not lawful for them to hide what God has created in their wombs if they have faith in God and the last day. And their husbands have better right to take them back in that period if they wish for reconciliation."*<sup>183</sup>

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

*"A divorce is only permissible twice. After that the parties should either hold together on equitable terms or separate with kindness."*<sup>184</sup>

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهَا

*"If he (husband) divorces his wife (the third time) then he cannot after that remarry her until after she has married another husband."*<sup>185</sup>

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لَتَعْتَدُوا

<sup>182</sup> Yousaf AL-Hajj Ahmad, *Encyclopedia of Islamic Jurisprudence Concerning Muslim Women*, (Maktaba Darussalam, Lahore, 2010) Vol 2, 350.

<sup>183</sup> Al-Quran: 2:228

<sup>184</sup> Al-Quran: 2:229

<sup>185</sup> Al-Quran: 2: 230.



*"When you divorce women and they fulfil the term of their iddah either take them back before the expiry of such term on equitable terms or set them back to injure them."*<sup>186</sup>

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا لِهِنَّ عَهْدًا فَإِنْ طَلَّقْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا لِهِنَّ عَهْدًا فَإِنْ طَلَّقْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا لِهِنَّ عَهْدًا فَإِنْ طَلَّقْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا لِهِنَّ عَهْدًا

*"When you divorce women and they fulfill their term of iddah do not prevent them from marrying their (former) husbands if they mutually agree on equitable terms."*<sup>187</sup>

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ

*"There is no blame on you if you divorce women before consummation or the fixation of their dower, but bestow on them a gift."*<sup>188</sup>

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ

*"If you divorce them before consummation but after the fixation of the dower, half of the dower is due to them, unless they remit it."*<sup>189</sup>

وَالْمُطَلَّاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

*"For divorced women a provision in kindness. That is a duty of the righteous."*<sup>190</sup>

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ

<sup>186</sup> Al-Quran:2:231.

<sup>187</sup> Al-Quran:2: 232.

<sup>188</sup> Al-Quran:2: 236.

<sup>189</sup> Al-Quran:2: 237.

<sup>190</sup> Al-Quran:2: 241.

*“O Prophet! When you divorce women, divorce them at their prescribed periods and count (accurately) their prescribed period. Fear God your Lord and turn them not out of their houses.”<sup>191</sup>*

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعَهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا

*“O you who believe when you marry believing women and then divorce them before you have touched them, no period of iddah have you to count in respect of them. So, give them a present and set them free in a handsome manner.”<sup>192</sup>*

### 3.2.4.4. Kinds of divorce

#### 3.2.4.4.1. Talaq al-Sunnah

*“Abdullah is reported to have said, (the effective divorce of women is this that one divorces her as she is purified (from menstruation) without making sexual intercourse.”<sup>193</sup>*

#### 3.2.4.4.2. Talaq al-Hasan

This is second approved form of divorce by a husband who divorces his wife in successive three periods in which husband don't have physical relation with wife in her purity.<sup>194</sup>

*“Abdullah is reported to have said about Sunnah divorce,. Man should divorce her by one pronouncement after every purification. When she is purified for the third time, he may divorce her and after this menses are compulsory for her.”<sup>195</sup>*

<sup>191</sup> Al-Quran:65:1

<sup>192</sup> Al-Quran:33:49.

<sup>193</sup> Sunan Ibn Maja, al-Sunan, Kitab-ul-Talaq, Hadith No:2020.

<sup>194</sup> Syed Amir Ali, Fatawa Alamghire, (Lahore: Sheikh Ghulam Ali and Sons, n.d), vol:2, 310.

<sup>195</sup> Ibn Maja, al-Sunan, Kitab-ul-Talaq, Hadith No:2021.

*Talaq al- hasan* means proper divorce. It is not unanimously accepted as a lawful divorce by all the Sunni School of law. Imam *Malik* regards it as *Bid'ah*. He says divorce is prohibited that is why to pronounce it once can secure it and would not be then effected; if husband would still pronounce it he will be punishable or be on mistake. Rests of the jurists think that it would be considered legal if taken in form of *Talaq- Al-Sunnah*.<sup>196</sup>

Divorce of this form is performed by husband during *tuhr* known as period of purity, but the condition of having no intercourse has to be there. Then she would be divorced in next *tuhr* and third time in *tuhr* which will be last divorce. But divorce on this way has to be consecutively in three *tuhr* periods without having intercourse with wife during all this time. And if divorce is not revoked then this will be final divorce and marriage will be terminated.

#### **3.2.4.4.3. *Talaq al-Bid'ah***

This form is most disapproved but legally it is known as effective.

- Divorce at the time of menstruation is pronounced when woman is in menstruation. This is incumbent on husband has to recourse to his wife and the evidence of recourse in this situation is also found in authentic tradition.

*"Narrated Salim that Abdullah bin Umar told him that he had divorces his wife while she was in her menses, so Umar informed Allah's Apostle of that. Allah's Apostle became very angry at that time and said, "ibn Umar must return her to his house and keep her as his wife till she becomes clean and then menstruate and becomes cleans again, whereupon, if he wishes to divorce her, he may do so while she is still clean and before having any sexual relations with her, for that is the legally prescribed period for divorce as Allah has ordered."*<sup>197</sup>

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<sup>196</sup>Ibid. 65.

<sup>197</sup> *Sahih Bukhari*, Kitab-al-Talaq, Hadith No:431.

- Divorce at the time of purity but after cohabitation is forbidden because it prolongs the iddah period of woman.<sup>198</sup> If woman is divorced during menstruation and marriage is consummated then this will be known as *talaq-i-bidah* whereas if woman is menstruated but marriage is not consummated then *Hanafi*, *Maliki* and *Shafi* call it *talaq al-Hasan*.<sup>199</sup>
- Three divorces at the same time or at one session in period of *tuhr* is called as *talaq bidah* whether pronounced in one sentence or in different sentences. In Sunni school this form is more practiced now days. He can pronounce in one sentence that I want u to divorce thrice, divorce will occur, but his will be known as *talaq al-Bid'ah*.<sup>200</sup>

*"Abu al-Sahba said to ibn Abbas: enlighten us with your information whether the three divorces (pronounced at one and the same time) were not treated as one during the lifetime of Allah's Messenger and Abu Bakr. He said: it was infact so, but when during the caliphate of Umar people began to pronounce divorce frequently. He allowed them to do so to treat pronouncements of three divorces in a single breath as one."*<sup>201</sup>

*"Abu Sahba said to ibn Abbas: Do you know that three divorces were treated as one during the life time of Allah's Apostle, and that of Abu Bakr, and during the three years of Caliphate of Umar? Ibn Abbas said: yes."*<sup>202</sup>

The discouragement for prohibition of triple pronouncement of divorce in one session closes the gates of revocation.<sup>203</sup>

<sup>198</sup> Imam Kasani, Bidhay al-Sunai, p.94.

<sup>199</sup> K.N Ahmed, ,68.

<sup>200</sup> Ibid,,pp.68-69.

<sup>201</sup> Sahih Muslim, Kitab-al-Talaq, Hadith No:1472R 2.

<sup>202</sup> Ibid, Hadith No:1472R 1.

<sup>203</sup> Ashraf Ali Thanvi, *Biyan al-Quran* (Multan: Idra Talifat Ashrafiah, n.d) vol.3, 557.

#### 3.2.4.4.4. *Al-Talaq al-Mughallazah*

The word *al- Mughallazah* means “very hard”, but here it conveys the idea of finality and we may call it a final or absolute divorce. Under the Muslim law, a husband can remarry his wife if he had divorced her revocable only once or twice and the period of her ‘iddah has expired, but she becomes absolutely forbidden to him after the pronouncement of three divorces so he cannot remarry her until and unless she marries another person and that other marriage is dissolved after consummation. His rule is based on a verse in the Quran where it is stated,

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا

*“So if he (the husband) divorced her (the third time) she shall not be lawful to him afterwards until she marries another husband.”*<sup>204</sup>

The three divorces may be pronounced either on three different occasions or on two different occasions or at the same time. The *Mughallazah* divorce shall become affected as soon as the third pronouncement of divorce is made. The husband can remarry his divorced wife without the necessity of an intermediary only if he has divorced her once or twice.<sup>205</sup>

#### 3.2.5.. *Iddah for Divorced Woman*

*Iddah* means counting or enumerating. In Islamic law it is to observe the prescribed period or to wait for some period either after the husband’s death or after divorce.<sup>206</sup> *“The word iddat is derived from root word “adda” means to count so it means the counting of days and months. The iddat is a waiting period, a period of abstinence, or a specified term during which the wife shall*

<sup>204</sup> Al-quran:2:230.

<sup>205</sup> K.N. Ahmed. *The Muslim law of divorce*. 84.

<sup>206</sup> Prof Dr Ala’eddin Kharofa, *Islamic Family Law A comparative Study with other Religions*, (International Law Book Service, Kuala Lumpur, 2004), 195.

remain unmarried after the dissolution of marriage by divorce, death, or any other form of separation under certain conditions.”<sup>207</sup> Literally *iddah* means “few” and “number”. *Iddah-tul-Maraat* means divorce of woman or express of sorrow on husband’s death.<sup>208</sup> Literally it also means “numeration” and *uddat* means “preparation for an object”; in Islamic law *iddah* signifies the meaning of “waiting period for an opportunity” which as man or a woman has to do on account of something which causes one to wait.<sup>209</sup>

Technically Imam Kasani defines *iddah* as “*iddat is naming of that period during which the remaining signs of Nikah come to end*”.<sup>210</sup> In *Hidaya* *iddah* is defined as “*the term by the completion of which a new marriage is rendered lawful*”<sup>211</sup> *Iddah* is also defined in the Manual of the Law of Marriage as “*The observance of the waiting period is incumbent on any free woman, who is capable of intercourse, when she has been secluded with her husband, he being above the puberty and not a eunuch, under conditions rendering intercourse possible, even though both deny its occurrence.*”<sup>212</sup>

### 3.2.5.1. *Iddah –bil-Haml*

If woman is pregnant at the time of divorce, her *iddah* will be terminated at the time of baby’s delivery. As it is said in Quran

وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ

<sup>207</sup> Jamal J Nasir, *The Islamic Law of Personal Status* (Kluwer Law International, New York, 2002), 137.

<sup>208</sup> Feroze-al-Lughat,; Al-Munjad Arabi Urdu.

<sup>209</sup> Muhammad Ala-ud-Din Haskafi, *The Durr-ul-Mukhtar* (Lahore: Law publication company Katchery Road (nd), p.273.

<sup>210</sup> Imam Kasani, *Bidhay al-Sanai*, p-190.

<sup>211</sup> Charles Himalton, *The Hedaya*, (Lahore: Premeir Book House, n.d) p.128.

<sup>212</sup> David Russell Alexander, *A Manual Of The Law of Marriage* (Lahore: Law publication company Katchery Road, nd), 254.

*"And if they carry (life in their wombs) then spend on them till they deliver their burden"*<sup>213</sup>

At the time of *iddah* during revocable divorce, husband can *ruju* to the wife means he can have conjugal relations with her but it is not allowed without her consent. And it is allowed only after one or two pronouncements of divorces. *Ruju* is the method through which he takes her back into marriage.<sup>214</sup> As Quran also says

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ

*"And their husbands have a better right to take them back in that period"*<sup>215</sup>

*"Raju mean "restitution, in law it signifies a husband returning to, or receiving back his wife after divorce, and restoring her to her former situation, in which she was not liable to separation from the passing of her courses, or of the space of time corresponding with this periods and she recovers by ruju"*<sup>216</sup> *Talaq raji* is not the cause of dissolving marriage completely and he can recourse back with her during *iddah*. Wife will not be entitled for immediate payment of dower and she will be given it either on the death of husband or after irrevocable divorce. *Raji* reduces the number of divorce, if husband uses single right of divorce, he can have two more, and again if he pronounces second divorce then he will have only one chance with him. During *iddah* of wife husband if has four wives cannot have fifth wife as the one to whom he divorced is still his wife. Wife will be entitled for maintenance and dwelling during *iddah*.<sup>217</sup>

<sup>213</sup> Al-Quran:65:6.

<sup>214</sup> Dr Muhammad Tahir Mansoori, *Family Law in Islam Theory and Application*,122

<sup>215</sup> Al-Quran:2:228.

<sup>216</sup> Charles Himalton, *The Hedaya*,103.

<sup>217</sup> Dr Muhammad Tahir Mansoori, *Family Law in Islam Theory and Application*,122,123

### 3.2.6. Maintenance

This provision was made to focus on the simpler remedy for neglected wives. As Sub-section 1 of section 9 says that husband cannot ignore to maintain his wife or wives otherwise they wives have full right to inform chairman through application, who will constitute arbitration council for solution of the problem. This arbitration council issues certificate to husband for payment of maintenance. Section 2 of 9 permits husband and wife to challenge the decision taken by arbitration council. Wife can also claim for past and future maintenance. To divorced women only maintenance during *iddah* will be given.<sup>218</sup>

Islam is religion which has embodied a lawful wife the right to get maintenance by her husband. It is husband's most important duty to provide maintenance to wife but if he fails to provide maintenance then he has no right to expect obedience and care from wife. The husband's duty of maintenance has to be regarded by wife for running of smooth family affairs. If wife refuses to have conjugal relations with him, she is not entitled for maintenance but if husband has not paid dower to her then wife will enjoy maintenance by him but can refuse conjugal relations. Maintenance can be enjoyed by wife as granted in *Shariah* if she is willing to submit herself in the husband's power.<sup>219</sup> *Nafaqah* or maintenance refers to the requirements for the necessities of life, which a man is appreciative to provide to his wife, or wives equitably according to the income of the giver and the needs of recipients. Maintenance includes everything that is essential for sustenance i.e. residence, clothing etc according to social status of the giver.<sup>220</sup>

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<sup>218</sup> Shaikh Abdul Haleem, *Muslim Family Laws*, p-40.

<sup>219</sup> C.M Shafqat, *The Muslim Marriage, Dower and Divorce*, 67.

<sup>220</sup> Dr Muhammad Tahir Mansoori, *Family Law in Islam, Theory and Application*, 97.



### 3.2.6.1. Meaning of Maintenance

#### 3.2.6.1.1. Literal meaning

In Arabic maintenance is called *Nafaqah*, نفقة which literally means “expense”, “cost” and “money spent”.<sup>221</sup> *Nafaqah* means “expenditure, an expending, a sum expended”<sup>222</sup> It also means “expenditure”<sup>223</sup>, whatever man spends on his children<sup>224</sup>, *ikhraj* i.e. taking out or in dictionary language it means whatever one spends on his children<sup>225</sup>, means of support<sup>226</sup>, or what a man spend son his family<sup>227</sup>, is a necessary expenses for living, a spend, salary, a maintenance<sup>228</sup>.

#### 3.2.6.1.2. Technical meaning

Technically *Nafaqah* means “maintenance or provision for support”. It includes everything from food, clothes, place to live and all essentials required for a wife according to the *Urf* (custom of a place) and his/her status and position in society. Maintenance is not restricted to three things only food, clothes and lodging but the maintenance of the wives include everything which is linked with their sustenance and practical comfort.<sup>229</sup>

#### 3.2.6.1.3. Legitimacy of maintenance in Quran and *Sunnah*

Legitimacy of maintenance is found in so many Quranic injunctions. As Allah Almighty has said

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<sup>221</sup> , Dr.Rohi Baalbaki. *Al-Mawrid; A Modern Arabic-English dictionary*, 1180.

<sup>222</sup> Aurangzeb Azmi, *A Glossary of the Quran* (New Delhi: Good Wood Books, 2003).

<sup>223</sup> Al-Mujamind, *Arabic Urdu Dictionary* (Karachi, Darul-Ashaat).

<sup>224</sup> M Ala-ud-Din Haskafi, *Durr-ul-Mukhtar*, 316.

<sup>225</sup> Dr Tanzil-ur-Rehamn, *A Code of Muslim Personal Law*, Vol: 1, 258.

<sup>226</sup> Donaich N.S, *The Oxford English Arabic Dictionary* (Britain: Oxford University Press, n.d)

<sup>227</sup> Syed Ameer Ali, *Mohammedan Law*, vol, 2, 364.

<sup>228</sup> John Richardson & Fravies Johnson, *Dictionary, Persian, Arabic*.

<sup>229</sup> Dr.M. Afzal Wani, *The Islamic law On Maintenance of Women, Children, parents and other Relatives Classical Principles and Modern Legislations in India and Muslim countries*, (New Delhi: Genuine publications 1995), 1

*"And mothers shall suckle their children for two whole years; that is for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent the lie of that (which was incumbent on the father). If they desire to wean the child, by mutual consent and (after) consultation it is no sin for them; and if you wish to give your children out to nurse, it is no sin for you in kindness. Observe your duty to Allah, and know that Allah is seer of what you do."*<sup>230</sup>

الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

*"Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means."*<sup>231</sup>

As in another verse Allah has said

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَمِّرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَمَنْزِلُكُمْ فَسَتْرُضِعْ لَهُ أُخْرَى

*"Let the women live (in Iddah) in the same style as you live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable."*

<sup>230</sup> Al-Quran:2: 223

<sup>231</sup> Al-Quran: 4:34.

*And if you find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf*<sup>232</sup>

لِيُنْفِقَ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

*"Let him who hath abundance spend of his abundance and he whose provision is measured, let him spend of that which Allah hath given him. Allah asketh naught of any soul save that which He hath given it. Allah will vouchsafe, after hardship, ease,."*<sup>233</sup>

وَلِلْمُطَلَّاقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

*"For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous."*<sup>234</sup>

*Narrated Abu Masud Al-Ansari the Prophet said, when a Muslim spends something on his family intending to receive Allah's reward, it is regarded as Sadaqah for him*<sup>235</sup>

*Narrated Abu Hurairah Allah's Messenger said, "Allah said, O son of Adam spend, and I shall spend on you"*<sup>236</sup>

*Narrated Sad: the Prophet visited me at Mecca while I was ill, I said (to him), "I have property; may I bequeath all my property in Allah's cause?" He said, "No". I said, half of it?" He said, "No". I said, "one third of it"?" He said, "One third is alright, yet it is still to much, for you*

<sup>232</sup> Al-Quran:65:6

<sup>233</sup> Al-Quran:65:7

<sup>234</sup> Al-Quran:2:241.

<sup>235</sup> Sahih Bukhari, Kitab-un-Nafaqah ,vol.7,Hadith No:263

<sup>236</sup> Ibid, Hadith No:264

*had better leave your inheritors wealthy than leave them poor, begging of others, whatever you spend will be considered as Sadaqah for you, even the mouthful of foods you put in the mouth of your wife, anyhow Allah may let you recover, so that some people may benefit by you and others be harmed by you*"<sup>237</sup>

*Narrated Abu Hurairah: the Prophet said, " The best alms is that which is given when one is rich, and a giving hand is better than a taking one, and you should start first to support your dependents. A wife says, "You should either provide me with food or Divorce me.' A slave says. 'Give me food and enjoy my service." A son says, "Give me food; to whom do you leave me? The people said, "O Abu Hurairah, Did you hear that from Allah's Messenger? He said, "No, it is from my own self"*"<sup>238</sup>

*Narrated Umar : the Prophet used to sell the dates of the garden of Ban An-Nadir and store for his family so much food as would cover their needs for a whole year.*"<sup>239</sup>

*Narrated Aisha: Hind bint Utba came and said, "O Allah's Messenger Abu Sufyan is a miser so is it sinful of me to feed our children from his property? Allah's Messenger said, "No except if you take your needs what is just and reasonable".*"<sup>240</sup>

*Narrated Abu Hurairah: the Prophet said, "if the wife gives of her husband's property (something in charity) without his permission, he will get half the reward.*"<sup>241</sup>

*Narrated Ali: Fatima went to the Prophet complaining about the bed effect of the stone hand mill on her hand. She heard that the Prophet had received a few slave girls. But (when she came*

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<sup>237</sup> Ibid, Hadith No:266

<sup>238</sup> Ibid, Hadith No: 268

<sup>239</sup> Ibid, Hadith No:270

<sup>240</sup> Ibid, Hadith No; 272

<sup>241</sup> Ibid,Hadith No:273

there) she did not find him, so she mentioned her problem to Aisha. When the Prophet came, Aisha informed Him about that. Ali added, "So the Prophet came to us when we had gone to bed. We wanted to get upon (on his arrival) but he said, stay where you are." Then he came and sat between me and her and I felt the coldness of his feet on my abdomen, "shall I direct you to something better than what you have requested? When you go to bed say Subhan Allah thirty times, 'Alhamdulillah thirty three times, and Allahu Akbar thirty four times, for that is better for you than a servant."<sup>242</sup>

Hazrat Muawiah Ibn Haidah relates I requested the Holy Prophet as to what is the right of a wife upon her husband? He said: 'feed her as and when you, feed yourself; clothe her as and when you clothe yourself; do not beat on her face; do not abuse or curse her and do not separate yourself; from her except inside the house."<sup>243</sup>

Bahz b. Hakim reported on the authority of his father from his grandfather as saying: I said: Apostle of Allah, how should we approach our wives and how should we leave them? He replied: approach your tilth when or how you will, give her (your wife food when you take food, clothe when you clothe yourself, do not revile her face, and do not beat her."<sup>244</sup>

Sulaiman b. Amr b. Ahwas is reported to have said, "My father related to me that he was present at the last pilgrimage with Allah's Messenger. He praised Allah and exalted Him, made a reminder and exhorted and then said, "I enjoin upon you good treatment with women (so observe my advice) for they are captives in your charge. You do not possess except that they commit some obvious sin, immorality, if they happen to commit it abandon them in their beds

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<sup>242</sup> Ibid, Hadith No:274.

<sup>243</sup> Ibn-e-Maja, *Sunan Ibn Maja*, Kitab-ul-Nikah, Hadith No:1850, vol 1, Hadith No:277, See also Abu Dawud, *Sunan Abu Dawud*, Kitab-ul-Nikah, Hadith No:2137.

<sup>244</sup> Abu Dawud, *Sunan Abu Dawud*, Kitab-ul-Nikah, Hadith No:2138.

and beat them seek excuses against them. You have a right over your women and you women enjoy a right over you. Your right over your wives is that they should not allow anyone to enter your bed whom you dislike and should not permit to enter your houses, whom you dislike. Be aware, and, and their right upon you is that you should treat them kindly in providing them garments and food."<sup>245</sup>

Islam has given some common rights to both husband and wife keeping in view their natural capabilities and abilities to have their own role in family life. The right to maintenance has spiritual, legal and lawful value because this right is awarded to women by Allah Almighty irrespective of her being rich or poor. Even husband cannot force wife to contribute in household items.<sup>246</sup>

Quran has not given burden to husband and left the maintenance according to the husband's economic position. As Allah says

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُفِيقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

"Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease."<sup>247</sup>

Being the head of the family man is considered as *qawwam* which means care taker, custodian and supervisor. As by birth he is stronger physically so he is superior to women in absolute sense but this superiority is related only to the qualities in which man is admirable as maintainer.<sup>248</sup>

<sup>245</sup> Ibn-e-Maja, Hadith: 1851.

<sup>246</sup> Wani, M.A. Maintenance rights of Muslim women, 7.

<sup>247</sup> Al-Quran:65:7

*Husband has obligation to provide maintenance to his wife and children according to their needs. As narrated by Abu Huraira:*

*The Pophet (S.A.W) said, 'the best alms is that which is given when one is rich, and giving hand is better than a taking one, and you should start first to support your dependents. 'a wife says, 'you should either provide me with food or divorce me.' A slave says, 'give me food and enjoy my service.' A son says, "Give me food; to whom do you leave me?" ...<sup>249</sup>*

*And it is narrated by Abu Masud Al- Ansari that prophet (S.A.W) said:*

*"When a Muslim spends some thing on his family intending to receive Allah's reward it is regarded as charity for him. " <sup>250</sup>*

*And it is narrated by hazrat Ayesha (R.A):*

*Hind Bind Utba came and said: "o Allah's Apostle! Abu Sufyan is a Miser, is there any harm if I spend something of his property for our children? Allah's Apostle said; "no if you spend it according to your needs, justly and reasonably."<sup>251</sup>*

In today's era maintenance is according to the requirement and living standards such as: food, fruits, carpet, bed, summer and winter garments, utensils and necessary things for cooking, eating and drinking; air conditioner, house; owned or rented, expense of health and medicine, the costs of cleanliness and make-up and other necessities.<sup>252</sup> As Jamal J.Nasir also says that "maintenance is the lawful right of the wife under a valid marriage contract on certain conditions. It is the right of the wife to be provided at the husband's expense, and at a scale

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<sup>248</sup> Maulana Wahiduddin Khan, *Woman in Islamic Shariah*, 84

<sup>249</sup> *Sahih Bukhari*, hadith no, 5355, p.191.

<sup>250</sup> Ibid, hadith no, 5351, chapter no 69, p.190.

<sup>251</sup> Ibid, Kitab un Nifaqah, chap no.3, hadith no.5259, p.192.

<sup>252</sup> Ayatullah Ibrahim Amini, *Woman's Rights in Islam* (Tehran, Iran: Naba Cultural Organization, 2006), 81.

*suitable to his means, with food, clothing, housing, toilet necessities, medicine, doctors and surgeons fees, baths, and also the necessary servants where the wife is of a social position which does not permit her to dispense with such services, or when she is sick.*"<sup>253</sup> Maintenance can be food, clothing and accommodation by including hygiene and it should be husband's priority to maintain his children and other relatives.<sup>254</sup>

Maintenance is the money which a man spends on his independents and the persons who are legally responsible to sustain. It includes nourishment, residence, and clothing. Maintenance becomes obligatory because of three reasons, kinship<sup>255</sup>, and ownership<sup>256</sup>, matrimony<sup>257</sup>.<sup>258</sup> *Shariah* has made no legal discrimination between man and woman; laws are also applicable on both of them. Whenever they both enter into a contract of marriage they establish social unit in which there is need of organizer, manager, supervisor for running smoothly affairs for family life. Man is given the status of supervisor of family but as manager instead of being superiority over women. In family system man is maintainer and protector as he has ability of management and performing duties.<sup>259</sup> There is always a need of head for any minor or major institution. The family structure and relationship among its members is sensitive to deal with, that is why Allah has given the position of head to man for several reasons. It saves family from disorganization. But it does not mean that man has gained unlimited charge or authority on his wife but it is to live with mutual consent and fulfill legal demands of him as wife and man has obligation to

<sup>253</sup> Jamal J. Nasir, *The Islamic Law of Personal Statue*, 97.

<sup>254</sup> Keith Hodkinson, *Muslim Family Law A Source Book*, 147.

<sup>255</sup> Includes his young children, even adults if they are handicapped and cannot earn living. (Prof. Dr. Kharofa Alaeddin, p95)

<sup>256</sup> Includes his needy parents. (Prof. Dr. Kharofa Alaeddin, p95)

<sup>257</sup> He is responsible for the maintenance of his wife if marriage contract is valid irrespective whether wife is rich or poor. (Prof. Dr. Kharofa Alaeddin, p95)

<sup>258</sup> Prof. Dr. Kharofa Alaeddin, *Islamic Family Law: a Comparative Study with Other Religions*, 95.

<sup>259</sup> Maulana Wahiduddin Khan, *Women in Islamic Shariah*, 84.



perform his duties and pay all her rights in the category of maintenance.<sup>260</sup> As it is mentioned in Quran

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

*"Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth" .....<sup>261</sup>*

The above verse says that everyone is superior in one way or another. But man has to be maintainer and woman has legal right to ask for maintenance from him and if he fails to provide, he has to be answerable for it. This charge to man is given on the basis of physical differences.<sup>262</sup> As Allah said in Quran

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

*"They ask thee O Muhammad, what they shall spend. Say: that which ye spend for good (must go) to parents and near kindred and orphans and the needy and the wayfarer. And whosoever good you do, lo Allah is aware of it."<sup>263</sup>*

The amount of maintenance is fixed according to the resources and economic position of the husband.<sup>264</sup> As in Quran Allah says:

<sup>260</sup> Nasim Ahmad, *Women in Islam*, 506

<sup>261</sup> Al-Quran:4,:34

<sup>262</sup> Maulana Wahiduddin Khan, *Women in Islamic Shariah*, 84

<sup>263</sup> Al-Quran:2 215

<sup>264</sup> Dr Tahir Mansoori, *Family Law in Islam*, 98.

لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ  
عُسْرٍ يُسْرًا

*"Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease."*<sup>265</sup>

Prophet has divided the duties of Hazrat Ali and Hazrat Fatima which can be followed as good example. He has given outside home responsibility to Ali and Fatima was advised to look after the home affairs. At that time the flour was not easily available, it has to be prepared manually at home and water was also fetched from outside the home. As Hazrat Fatima used to look after internal home affairs so every Muslim woman need to follow it. But as husband has to provide maintenance of basic necessities', similarly he has to provide all other things related required for these basic necessities. If they are living in such area where water is not easily available, then there is no harm for women to bring water but it is husband's responsibility to provide the essential items for bringing water otherwise he has to do something for the availability of well near their house. It is also husband's duty to provide clothes to her at least after every six months according to the weather and status of women.<sup>266</sup>

### 3.2.6.2. Juristic views on *Nafaqah*

All jurists agree that husband is liable for wife's maintenance but they have difference of opinion regarding its being recommended or obligatory.

<sup>265</sup> Al-Quran:65:7

<sup>266</sup> Abdur-Rehman Al-Jaizairi, *Kitab-al-Fiqh*, vol IV, 1018-1019

*Hanafi* says that Nafaqah is wajib if wife fulfills certain conditions as she is not apostate, not involved in illegal relations, contracted a valid marriage, should not be in iddah period after husband's death, can bear sexual intercourse, must be in husband's house, should not be sick when she is bride, a female slave who has not any furnished house.<sup>267</sup>

*Maliki* School has given two categories, before intercourse and after intercourse: As far as before intercourse is concerned, they opine that if wife and her guardian does not show any interest in fulfillment of marriage contract then wife will not be given maintenance.<sup>268</sup>

She should be healthy for intercourse, if husband or wife any of them is sick and died the maintenance will not be given, if husband is minor and cannot have intercourse then he will not provide maintenance to his wife. But once wife has intercourse and she falls in some illness and is unable to have again intercourse still she will be entitled for maintenance. And after intercourse she has to fulfill his demand of intercourse otherwise she will not be entitle for it. If wife has any infectious disease after intercourse then she will not be entitled for maintenance. Irrespective of her condition if husband still have relations with her then she will be given maintenance.<sup>269</sup>

### 3.2.6.3. Entitlement of wife for maintenance

Women are entitled for maintenance when she is lawfully married to a man, if she is in revocable or in irrevocable divorce's *iddah* and pregnant women till the day of delivery<sup>270</sup> *Shafi* school has opinion that if wife says that I will spend my life according to your wish, she will be entitled for maintenance but if she does not utter these words, she will not be considered entitle for the

<sup>267</sup> Abdur-Rehamna, Al-Jaziari, *Kitab-ul-Fiqh*, Vol, IV, 1039.

<sup>268</sup> Ibid, 1040.

<sup>269</sup> Ibid, 1041.

<sup>270</sup> K.N Ahmad, Muslim Law of Divorce, 719.

maintenance. If husband or wife any of them is minor and cannot have sexual inter course, will not receive or give maintenance.<sup>271</sup>. They have another opinion as well that if both have minority then wife will be given maintenance. Wife should not go out of home without her husband's permission and should obey him in touching her, if refused maintenance will be stopped. If she leaves home for visiting some near relatives or she has to leave house for her security then she will not be considered disobedient and will deserve *Nafaqah*. But if she goes to some other work then she will be considered disobedient and maintenance will be stopped. If husband ask her not to travel with him but she still travels, will be entitled for maintenance as she is under her custody. *Hanbali* say that if women surrenders herself to husband, physically fit for intercourse and at least has to be 9 years old, but if she is less than nine years and can't have sexual intercourse then she will be not be given maintenance but if guardian think under nine she can have intercourse they can give her into husbands' custody and will enjoy maintenance as well. Wife will be liable for maintenance during menstruation, *Hanbali* also say that minor wife will be liable for maintenance through husband's guardian from his property. In husband's absence if wife ensures her obedience will be considered liable for maintenance. If husband is in jail for not giving maintenance or dower then wife will be entitled for the maintenance. But if wife is in jail then husband will not provide her maintenance.<sup>272</sup>

Wife is not entitled for maintenance if wife is not submissive and *mushuz* because of which marriage becomes in danger, if she refuses to live with him in the same house in which husband lives. When husband do not allow the relatives of wife who can create mischief among husband and wife but wife insists on calling them will not be given maintenance. If she is involved in adultery or apostasy, if goes on job without husband' valid permission, when she travels without

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<sup>271</sup> Ibid, 1042.

<sup>272</sup> Ibid, 1043, 1047.

her husband. Imam Abu *Hanifa*, *Shafi* and Muhammad say that if she goes on *hajj* without husband's permission, she will not be given maintenance. But Abu *Yusuf* says that if she travels with *mehram*, she will be entitled for maintenance.<sup>273</sup>

#### 3.2.6.4..Consequence of husband's failure to maintain

Jurists have difference of opinion about its effects, failure or refusal to maintain wife. *Hanafi* law say that marriage will not be dissolved but Qadi will allow woman to take loan on husband's name for her necessattities.Husband shall be considered responsible for its return. If wife borrows money without Qadi's permission then husband will not be responsible for return. Wife will also be authorized to use husband's property for her need without Qadi's permission. Under *Hanafi* law husband is liable to bear punishment in jail if he fails to maintain wife. Qadi will keep husband in jail till he does not realize the duty of maintaining wife but if he thinks it is not in his capability then he will be released from jail. *Hanafi* law does not dissolve marriage in non-payment of maintenance.<sup>274</sup> *Hanafis* give their argument on the basis of Quranic verse which says

لَيُنْفِقَنَّ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ  
عُسْرٍ يُسْرًا

"Allah lays not on any soul a burden beyond that which He has given him"<sup>275</sup>

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

"Allah brings about ease after difficulty"<sup>276</sup>

<sup>273</sup> Dr Tahir Mansoori, *Family Law in Islam Theory and Practice*, 99-100.

<sup>274</sup> K.N Ahmad, *Muslim Law of divorce*,p-739-740.

<sup>275</sup> Al-Qur'an:65:7

<sup>276</sup> Al-Qur'an:65:7

*Shafi* say that marriage can be dissolved if husband does not maintain or cannot maintain his wife.<sup>277</sup> They support their view from the Quranic injunction

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

*"To keep them (the wives) in kindness or to separate (from them) with humanity"*<sup>278</sup>

Imam *Shafi* says that the husband, who cannot provide maintenance to his wife, cannot live with kindness to the wife so he better leave her with kindness.<sup>279</sup>

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<sup>277</sup> K.N. Ahmad, *Muslim Law of divorce*, 741

<sup>278</sup> Al-Quran:2: 229.

<sup>279</sup> K.N Ahmad, *Muslim Law of divorce*, 741

## **Chapter 4**

# **Comparison of Muslim Family Laws Ordinance 1961 with Christian Marriage Act 1872**

#### 4.1 Comparison of Christian Marriage Act 1872 and Muslim Family Laws Ordinance 1961

The family in Islam is unit in which both husband and wife live their lives according to the injunctions laid down by Allah Almighty. Islamic concept of marriage in its start was considered as civil contract and also known as devotional act (*ibadat*). It is an institution which legalizes physical relations between man and woman and gives preservation to human race, which promotes love and union for building a good family life. Being natural religion Islam emphasizes on the principle that when man and women enter into the marital bond, they bring into existence a social unit known as family which is long-lasting relationship through principle of peace and harmony. Islam also demands both man and woman in family role to understand natural realities. This natural reality will help them to act on what are their responsibilities rather to focus more on duties.

Christianity family was the first institution designed by God. Man and his wife enjoy a most beautiful relationship on this planet. All acts are given by God and made family an institution. God has established family as an institution so that husband and wife live for whole life with each other with love, harmony respect and appreciate each other for all the acts done. Bible says marriage is between a male and female. From the creation of this world, God has always given the successful picture of marriages in the world e.g. Adam. Marriage is important for Christians as they considered it very important after the consummation and husband and wife cannot be separated as after consummation they become one and God becomes part of this marriage even they cannot break this relation. Christians especially Catholics give such an importance to marriage that if husband is ill and gives this illness to woman, he will not be considered guilty and cruel for this.



The Roman, Orthodox and Old Catholic churches consider marriage a sacrament contract and refer to it as the sacrament of Matrimony. This marriage contract is between baptized persons. Christian marriage Act 1872 also refers towards the monogamous marriage which should be between two baptized persons and also known as sacrament in Christianity. Christian marriage is a voluntary union for life between a man and a woman, to the exclusion of all others. Family matters among the Christian community are dealt with by the Christian Marriages Act of 1872 . Christian marriage act has total eight parts. This is for Christians and can be practiced if marriage is between two Christian people only. There are strong penalties of fine and imprisonment (in some instances up to 10 years) for violation of the provisions in the Christian Marriages Act by the parties and the Registrar. However implementation is very rare. For girl minimum age exceeding 13 years and for boy minimum age is 16 years. Priest is not suppose to solemnize the marriage unless both parties are christens. Both parties have to give their consent in front of public having two witnesses for their marriage. The parties have to give notice three months before the intention of getting married and the notice should be consecutive. Every marriage has to be registered without which the marriage will be considered void. Marriage certificate has great importance and should be there at the time of marriage. The strongly recommended marriage solemnization is in church but if they want to celebrate it at home they have to take special permission from church.

MFLO 1961 has importance because it has advanced women legal rights, reformulated a uniform way of divorce, even *khula* and delegated right of divorce were not only given, but delegated right is also added in Nikanama as a clause. For polygamy husband was made binding on taking in advance permission through Chairman Arbitration Council from first wife which indirectly restricted polygamous marriages. And if husband contracts second marriage, he has to pay immediately dower to the first wife of wives

their dower. This ordinance has also amended Child Marriage Restraint Act and identified the marriage age for female 14 and for male 16 years. The ordinance also talked about the inheritance of children from pre deceased son and matters such as dower, maintenance etc were implemented through this ordinance.

Christian marriage Act basically deals with the issues which are required at the time of contract of marriage whereas MFLO 1961 deals with the issues related to the contract start along with other factors necessary for married life.

Christian Marriage Act has formalities which are related to church and its rules. It focuses on the importance of systems rather than the rights after marriage whereas MFLO 1961 has clauses which focus on the needs of legal rights even after marriage. CMA 1872 mainly focuses on the clergyman for sake of marriage registration.

In Pakistan Christian Marriage Act 1872 is not followed as all Christians in practice follow the cultural practice of Pakistan whereas MFLO 1961 is dealt in solution of different family problems.

## Recommendations

After conducting this research, the researcher recommends that

1. Christian Marriage Act 1872 needs amendments regarding marriage laws.
2. New clauses about Christian Muslim marriages needs to be added.
3. Muslim and Christian scholars should recommend new laws and amendments to the policy makers about both laws.
4. MFLO 1961 and Christian Marriage Act 1872 should be part of curriculum on college and university levels.
5. Both religions scholars sit together for amendments and implementations of the both laws.

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8	وَأَنكِحُوا الْأَيَامَىٰ مِنكُمُ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ	An-Noor :32	13
9	وَمِنْ آيَاتِهِ أَن خَلَقَ لَكُمْ مِنْ أَنفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ	Ar-Rum: 21	14
10	وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَخَفَذَةً وَرَزَقَكُمْ	An-Nahl :72	14
11	فَأَنكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ	An-Nisa: 3	15
12	وَمَنْ لَّمْ يَسْتَطِعْ مِنْكُمْ طَوْلاً أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ	Al-Baqarah :232	15
13	يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَيْتُمْ بِذِينِ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكُتَبْ بَيْنَكُمُ الْكَاتِبُ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكُتَبْ وَلِيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ	Al-Baqarah: 282	43
14	وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ	Al-Baqarah:282	44

	<p>وَأَمْرَ اثْنَيْنِ إِذَا مَا دُعُوا وَلَا تَسْأَلُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكَمْ أَفْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ إِلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ</p>		
15	<p>لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا</p>	An-Nisa: 7	46
16	<p>وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَىٰ بَعْضٍ لِلرِّجَالِ نَصِيبٌ مِمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا اكْتَسَبْنَ وَاسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا</p> <p>يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا</p>	An-Nisa: 32	46
17	<p>وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ</p>	An-Nisa: 12	47

	<p>الَّذِينَ مِمَّا تَرَكْتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلَثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةُ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ خَلِيمٌ</p>		
18	<p>تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ</p>	An-Nisa :13	48
19	<p>وَإِنْ خِفْتُمْ أَلَّا تُفْسِدُوا فِي الْيَتَامَى فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِنْنَى وَثَلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَى أَلَّا تَعُولُوا (3) وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا (4) وَلَا تُوْثَرُوا السُّفَهَاءَ أَمْوَالُكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا</p>	An-Nisa: 3-5	54
20	<p>وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كِلَا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا</p>	An-Nisa: 130	54
21	<p>وَإِنْ خِفْتُمْ أَلَّا تُفْسِدُوا فِي الْيَتَامَى فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِنْنَى وَثَلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَى أَلَّا تَعُولُوا</p>	An-Nisa: 3	55

22	وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ	An-Nisa: 129	56
23	وَإِنْ خِفْتُمْ أَلَّا تَقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْلَىٰ وَثَلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَذْنَىٰ أَلَّا تَعُولُوا	An-Nisa: 3	56
24	النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُو الْمُؤْمِنِينَ الْأَرْحَامُ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا	Al-Ahzab: 6	57
25	لَا يَسْتَحْيِي مِنَ الْحَقِّ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ وَلَا أَنْ تَنْكِحُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا	Al-Ahzab: 53	58
26	فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ	Al-Baqarah :230	60
27	وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ	Al-Baqarah: 228	61
28	الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ	Al-Baqarah: 229	61



29	فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهَا	Al-Baqarah: 230	61
30	وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَّغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرَّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِيَتَّعِدُوا	Al-Baqarah :231	61
31	لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ	Al-Baqarah: 236	62
32	وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ	Al-Baqarah: 237	62
33	وَلِلْمُطَلَّقاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ	Al-Baqarah: 241	62
34	يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ	At-Talaq: 1	62
35	يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسَرَّحُوهُنَّ سَرَاحًا جَمِيلًا	Al-Ahzab: 49	63

36	فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا	Al-Baqarah: 230	66
37	وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ	At-Talaq: 6	67
38	وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ	Al-Baqarah: 228	68
39	الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ	An-Nisa: 34	71
40	أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِبَنَاتِكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسْتَزْضِعُ لَهُ أُخْرَى	At-Talaq: 6	71
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TEXT

**CHRISTIAN MARRIAGE ACT, 1872**  
**(XV OF 1872)**

[18<sup>th</sup> July, 1872]

**An**  
**Act**

*to consolidate and amend the law relating to the solemnization of the marriage of Christians.*

**Preamble.**— Whereas it is expedient to consolidate and amend the law relating to the solemnization of the marriage of persons professing the Christian religion: It is hereby enacted as follows:

**PRELIMINARY**

**1. Short title, extend, commencement.**— This Act may be called the Christian Marriage Act, 1872.

It extends to the whole of Pakistan and, so far only as regards Christian citizens of Pakistan to the Acceding States.

[Repealed by the Repealing Act, XVI of 1874].

**2. [Enactments repealed]** .— Rep. By the Repealing Act, 1938 (I of 1938). S. 2 and Sch.

**3. Interpretations.**— In this Act, unless there is something repugnant in the subject or context:-

“Church of England” and “Anglican” mean and apply to the Church of England as by law established:

“Church of Scotland” means the Church of Scotland as by law established; “Church of Rome” and “Roman Catholic” mean and apply to the Church which regards the Pope of Rome as its spiritual head;

“Church” includes any chappel or other building generally used for public Christian worship;

“minor” means a person who has not completed the age of twenty one years and who is not a widower or a widow;

the expression “Christians” means persons professing the Christian religion;

and the expression “Native Christians” includes the Christian descendants of Natives of Indo-Pakistan sub-continent converted to Christianity, as well as such converts;

“Registrar General of Births, Deaths and Marriages” means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886.

**PART-I**

**THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED**

**4. Marriages to be solemnized according to Act.**— Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

**5. Persons by whom marriages may be solemnized.**— Marriage may be solemnized in Pakistan.

(1) by any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a minister;

(2) by any Clergyman of the church of Scotland, provided that such marriage be solemnized according to the rules rites, ceremonies customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act ot solemnize marriage;

(4) by, or in the presence of a Marriage Registrar appointed under this Act;

9. **Grant and revocation of licenses to solemnize marriage.**— The Provincial Government so far as regards the territories under its administration, and the Central Government so far as regards any Acceding State may, by notification in the official Gazette, grant licenses to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may by a like notification, revoke such licenses.

7. **Marriage Registrars.**— The Provincial Government may appoint one or more Christians, either by name or as holding any office for any district subject to its administration.

Senior marriage Registrars. Where there are more marriage Registrars than one in any district, the Provincial Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar. When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or, ill, or when his office is temporarily vacant, the Magistrate of the district shall act, as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

8. **Marriage Registrars in Acceding States.**— The Central Government may, by notification in the official Gazette appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within any Acceding State.

9. **Licensing of persons to grant certificates of marriage between Native Christians.**— The Provincial Government or (so far as regards and Acceding State) the Central Government may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificate of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

## PART II

### TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

10. **Time for solemnizing marriage.**— Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, or

(3) a Clergyman of the church of Scotland solemnizing a marriage according to the rule, rites, ceremonies and customs of the Church of Scotland.

11. **Place of solemnizing marriage.**— No clergyman of the Church of England shall solemnize a marriage in any place other than a church, where worship is generally held according to the forms of the church of England:

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license. For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

## PART III

### MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12. **Notice of intended marriage.**— Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriage under this Act, one of the persons



- (a) the name and surname, and the profession or condition, of each of the persons intending marriage.
- (b) The dwelling-place of each of them.
- (c) The time during which each has dwelt there, and
- (d) The Church or private dwelling in which the marriage is to be solemnized: Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

**13. Publication of such notice.**— If the persons intending marriage desire it to be solemnized in a particular Church and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such Church.

Return or transfer of notice. But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein who shall thereupon cause the notice to be affixed as aforesaid.

**14. Notice of intended marriage in private dwelling.**— If it be intended that the marriage shall be solemnized in a private dwelling; Minister of Religion, on receiving the notice prescribed in section 15 shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

**15. Sending copy of notice to Marriage Registrar when one party is a minor.**— When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

**16. Procedure on receipt of notice.**— The Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrar in the same district, who shall likewise publish the same in the manner above directed.

**17. Issue of certificate of notice given and declaration made.**— Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required issue under his hand a certificate of such notice having been given and of declaration having been made.

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized.

**18. Declaration before issue of certificate.**— The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration--

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and when either one both of the parties is or are minor or minors.

(b) That the consent or consents required by law has or have been obtained there is no person resident in Pakistan having authority to give such consent, as the

the mother of such minor, may give consent to the minor's marriage, and such consent is hereby required for the same marriage unless no person authorized to give such consent be resident in Pakistan.

**20. Power to prohibit by notice issue of certificate.**— Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage by reason of which he or she is so authorized as aforesaid.

**21. Procedure on receipt of notice.**— If any such notice be received by such Minister he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has not lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

**22. Issue of certificate in case of minority.**— When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

**23. Issue of certificate to Native Christians.**— When any Native Christian about to be married takes notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

**24. Form of certificate.**— The certificate to be issued by such Minister shall be in the form contained in the Second Schedule hereto annexed, or to the like effect.

**25. Solemnization of marriage.**— After the issue of the certificate by Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

**26. Certificates void if marriage not solemnized within two months.**— Whenever a marriage is not solemnized with two months after the date of the certificate issued by such Minister as aforesaid such certificate and all proceedings (if any), thereon shall be void.

And no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in the manner aforesaid.

#### **PART IV**

#### **REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION**

**27. Marriages when to be registered.**— All marriages hereafter solemnized in Pakistan between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, be registered in the manner hereinafter prescribed.

**28. Registration of marriages solemnized by Clergymen of Church of England.**— Every Clergymen of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the Third Schedule hereto, annexed, every marriage which he solemnizes under this Act.

**29. Quarterly returns to Archdeaconry.**— Every Clergyman of the Church of England shall send four times in every year return in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or tithing the limits of which such place is situate.

Contents of returns Such quarterly returns shall contain all the entries of

December, of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the Registrar General of Birth Deaths and Marriages.

**30. Registration and returns of marriages solemnized by clergymen of Church of Rome.**— Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate, in which such marriage is solemnized,

and such person shall forward quarterly to the Register General of Births, Deaths and Marriages returns of the entries of all marriages registered by him during the three months next preceding.

**31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.**— Every Clergyman of the Church of Scotland shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act, and shall forward quarterly to the Registrar General of Births, Death and Marriages, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

**32. Certain marriages to be registered in duplicate.**— Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof be registered in duplicate by the same; (that is to say) in a marriage register-book to be kept by him for that purpose, according to the form contained in the Fourth Schedule hereto annexed and also in a certificate attached to be marriage-register-book as a counterfoil.

**33. Entries of such marriages to be signed and attested.**— The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

**34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.**— The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose.

And shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Registrar General of Births, Deaths and Marriages.

**35. Copies of certificates to be entered and numbered.**— Such copies shall be entered in order from the beginning to the end of the said book and shall bear both the number of the certificate as copied and also a number to be entered by the Marriage Registrar indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

**36. Registrar to add number of entry to certificate and send to Registrar General.**— The Marriage Registrar shall also add such last mentioned number of the entry of the in the book to the certificate, with his signature or initials, and shall, at the end of every month send the same to the Registrar General of birth Deaths and Marriages.

**37. Registration of marriages between Native Christians by persons referred to clauses (1), (2) and (3) of section 5.**— When any marriage between Native Christians is solemnized by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section 5, the person solemnizing the same shall

make over the same to the person succeeding to his duties in the said district.

Custody and disposal of register-book. Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to Senior Marriage Registrar, who shall send it to Registrar General of Birth, Deaths and Marriages, to be kept by him with the records of his office.

## **PART V**

### **MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR**

**38. Notice of intended marriage before Marriage Registrar.**— When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one, of the parties to such marriage shall give notice in writing, in the form contained in the First Schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

or if the parties dwell in different district, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized.

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

**39. Publication of notice.**— Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district who shall likewise affix the copy in some conspicuous place in his own office.

**40. Notice to be filed and copy entered in Marriage Notice Book.**— The Marriage Registrar shall file all such notices and keep them with the records of his office.

And shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Provincial Government and to be called the "Marriage Notice Book",

And the marriage Notice Book shall be open at all reasonable times, without fee, to a persons desirous of inspecting the same.

**41. Certificate of notice given and oath made.**— If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso provided-

That no lawful impediment be shown to his satisfaction why such certificate should not issue;

That the issue of such certificate has not been forbidden in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

That four days after the receipt of the notice have expired, and further, That four days after the receipt of the notice have expired, and further,

That where, by such oath it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

**42. Oath before issue of certificate.**— The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears

- (b) that both the parties have, or (where they have dwelt in the district of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such marriage Registrar.

And, where either or each of the parties is a minor,--

- (c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in Pakistan authorized to give such consent, as the case may be.

**43. [Petition to High Court to order certificate in less than fourteen days].—** omitted by A.O., 1949, Schedule.

**44. Consent of father or guardian. Protest against issue of certificate.—** The provision of section 19 apply to every marriage under this Part, either of the parties to which is a minor; and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which her or she is so authorized.

Effect to protest. When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

**45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.—** If any person whose consent is necessary to any marriage under this part is of unsound mind, or if any such person (other than the father) without just cause withholds his consent to the marriage, the parties, intending marriage may apply by petition, to the District Judge.

Procedure on petition. And the said District Judge may examine the allegations of the petition in a summary way:-

And, if upon examination such marriage appears proper, such District judge shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

And, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceeding may be had under this Part in relation to the Marriage as if the issue of such certificate had not been forbidden.

**46. Petition where Marriage Registrar refuses certificate.—** Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition to the District Judge.

Procedure on petition. The said District Judge may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such District Judge shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

**47. Petition when Marriage Registrar in Acceding State refuses certificate.—** Whenever a Marriage Registrar resident in any Acceding State refuses to issue his certificate either of the parties intending marriage may apply by petition to the Central Government, who shall decide thereon.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

**48. Petition when Registrar doubts authority of person forbidding.—** Procedure or petition. Whenever a Marriage Registrar, acting under the provisions of section 44, is do, the said



And the said District Judge shall examine into the allegations of the petition and the said circumstances of the case:

And if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such District Judge shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

And thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Reference when Marriage Registrar in Acceding State doubts authority of person forbidding. Whenever a Marriage Registrar appointed under section 8 to act within any Acceding State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto to the Central Government.

Procedure on reference. If it appears to the Central Government that the person forbidding the issue of such certificate is not authorized by law so to do, the Central Government shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

And thereupon such certificate shall be issued, and the like proceedings may be had in relation to such Marriage as if the issue of the certificate had not been forbidden.

**49. Liability of frivolous protest against issue of certificate.**— Every person entering a protest with the Marriage Registrar, under this Part against the issue of any certificate, on grounds which such marriage Registrar, under section 44 or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

**50. Form of certificate.**— The certificate to be issued by the Marriage Registrar under the provisions of provisions of section 41 shall be in the form contained in the Second Schedule to this Act annexed or to the like effect, and the Provincial Government shall furnish to every Marriage Registrar a sufficient number of certificates.

**51. Solemnization of marriage after issue of certificate.**— After the issue of the certificate of the Marriage Registrar, or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates, of the Marriage Registrars for such districts, Marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties declare as follows, or to the like effect:-

"I do not solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D."

And each of the parties shall say to the other as follows or to the like effect:-"I call upon these persons here present to witness that I, A.B. do take the, C.D., to be my lawful wedded wife [or husband]."

**52. When Marriage not had within two months after notice, new notice required.**— Whenever a marriage is not solemnized the marriage nor shall any Marriage Registrar enter the same, until, new notice has been given, and entry made, and certificate thereof given, at the time and the manner aforesaid.

**53. Marriage Registrar may ask for particulars to be registered.**— A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

according to the form of the Schedule hereto annexed, and also in a certificate attached to the marriage-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register- book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witness other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

**55. Certificates to be sent monthly to Registrar General.**— The marriage shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the Registrar General of Births, Deaths and Marriages.

Custody of register-book. The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.

**56. Officers to whom Registrars in Acceding States shall send certificate.**— The Marriage Registrar in Acceding States shall send the certificates mentioned in section 54 to such officers as the Central Government from time to time by notification in the official Gazette appoints in this behalf.

**57. Registrar to ascertain that notice and certificate are understood by native Christians.**— When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them as the case may be, to such Native Christian into a language which he understands;

Or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

**58. Native Christian to be made to understand declarations.**— When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and if he does not, the person solemnizing the marriage shall, at the time of the solemnization translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provision of this Act.

**59. Registrar of marriage between Native Christian.**— The registration of marriage between Native Christian under this Part shall be made in conformity with the rules laid down in section 37 (so far as they applicable), and not otherwise.

## PART VI

### MARRIGE OF NATIVE CHRISTIANS

**60. On what conditions marriages of Native Christian may be certificated.**— Every marriage between Native Christians applying for a certificate shall without the preliminary notice required under Part III be certified under this Part, if the following conditions to be fulfilled, and not otherwise:-

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years.

(2) Neither of the persons intending to be married shall have a wife or husband still living;

(3) In the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other.

"I call upon these persons here present to witness that I. A.B. in the presence of Almighty

Provided that no marriage shall be solemnized under this Part when either of parties intending to be married has not completed his or her eighteenth years, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

**61. Grant of certificate.**— When, in respect to any marriage solemnized under this Part, the conditions, prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

**62. Keeping of register-book and deposit of extract therefrom with Registrar.**— (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Provincial Government by which he was licensed may from time to time prescribe, a register-book of all Marriage solemnized under this Part in his presence, and shall deposit in the territories under the administration of the said Provincial Government in such form and at such intervals as the Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards and acceding State by the Central Government, references in sub-section (1) to the Provincial Government therein mentioned shall be read as references to the Provincial Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2) of the Births, Deaths and Marriages Registration Act, 1886.

**63. Searches in register-book and copies of entries.**— Every person licensed under his Act to grant certificates of marriages and keeping a marriage-register-book under section 62, shall, at all reasonable times allow search to be made in such book, and shall payment of the proper fee, give a copy, certified under his hand, of entry therein.

**64. Books in which marriages of native Christians under Part I or Part III are registered.**— The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, mutandis, apply to the books under section 37.

**65. Part VI not to apply to Roman Catholics, saving of certain marriages.**— This Part of this act, except so much of sections 62 and 63 as are referred to in section 64 shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part I of Act No. XXV of 1864, previous to the twenty-third day of February, 1865.

## **PART VII PENALTIES**

**66. False oath, declaration, notice or certificate for procuring marriage.**— Whoever, for the purpose of procuring a marriage or license of marriage, intentionally

- (a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Rome, makes a false oath or declaration, or,
- (b) Where a notice or certificate is required by this Act, signs a false notice or certificate.

Shall be deemed to have committed the offence punishable under section 193 of the Pakistan Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.



believing such representation to be false or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Pakistan Penal Code.

**68. Solemnizing marriage without due authority.**— Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize the absence of a Marriage Registrar of the district in which the ceremony takes place. Marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years, and shall also be liable to fine.

**69. Solemnizing marriage out of proper time, or without witnesses.**— Whoever knowingly and willfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license. This section does not apply in marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.

**70. Solemnizing without notice or within fourteen days after notice marriage with minor.**— Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained within fourteen days after the receipt by him of notice of such marriage knowingly and willfully solemnizes a marriage under Part II, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

**71. Issuing certificate, or marrying without publication of notice; marrying after expiry of notice: solemnizing marriage with minor within fourteen days without authority of Court or without sending copy of notice; issuing certificate against authorized prohibition.**— A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and willfully issues any certificate for marriage, or solemnize any marriage, without publishing the notice of such marriage as directed by this Act;

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage.

(3) Solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

(4) Issue any certificate the issue of which had been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term, which may extend to five years, and shall also be liable to fine.

**72. Issuing certificate after expiry of notice, or, in case of minor within fourteen days after notice, or against authorized prohibition.**— Any Marriage Registrar knowingly and willfully issuing any certificate for marriage after the expiration of two months after the notice has been entered by him as aforesaid,

or knowingly and willfully issuing, without the order of a competent Court

authorized in his behalf, shall be deemed to have committed an offence under section 166 of the Pakistan Penal Code.

**73. Persons authorized to solemnize marriage.**— (other than Clergy of Churches of England, Scotland or Rome); Issuing certificate or marrying, without publishing notice, or other expiry of certificate; issuing certificate for, or solemnizing marriage with minor; within fourteen days after notice; issuing certificate authorizedly forbidden; solemnizing marriage authorizedly forbidden. Whoever, being authorized under this Act to solemnize a marriage, and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of bans, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf.

Or not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church,

Or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church,

Knowingly and willfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him.

Or knowingly and willfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district;

Or knowingly and willfully issues any certificate the issue of which has been forbidden under this Act, by any person authorized to forbid the issue;

Or knowingly and willfully solemnizes any marriage forbidden by any person authorized to forbid the same;

Shall be punished with imprisonment for a term which may extend to four years and shall also be liable to fine.

**74. Unlicensed person granting certificate pretending to be licensed.**— Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is licensed, shall be punished with imprisonment for a term which may extend to five years, and shall be liable to fine.

Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or willfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.

**75. Destroying or falsifying register books.**— Whoever, by himself or another willfully destroys or injures any register-book or the counterfoil certificate thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or willfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**76. Limitation of prosecutions under this Act.**— The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

## **PART VIII MISCELLANEOUS**

**77. What matters need not be proved in respect of marriage in accordance with Act.**—

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

- (2) the notice of the marriage;
- (3) The certificate or translation thereof;
- (4) The time and place at which the marriage has been solemnized;
- (5) The registration of the marriage.

**78. Correction of errors.**— Every person charged with the duty of registering any marriage who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the Registrar General of Births, Deaths and Marriages such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

**79. Searches and copies of entries.**— Every person solemnizing a marriage under this Act, and hereby required to register the same, and Every Marriage Registrar or Registrar General of Births Deaths and Marriages having the custody for the time being of any register of marriages or of any certificate, or duplicate or copies of certificate, under this Act,

shall on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of an entry in the same.

**80. Certified copy of entry in marriage-register, etc., to be evidence.**— Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively or of such copy.

**81. Certificates of certain marriages for Central Government.**— The Registrar General of Births, Deaths, and Marriages and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them, respectively, during such quarter, the certificates of the marriages of which the Government by whom he was appointed may desire that evidence shall be transmitted to England, and shall send the same certificate, signed by them respectively, to the Central Government.

**82. Provincial Government to prescribe fees.**— Fees shall be chargeable under this Act for- receiving and publishing notices of marriages; issuing certificates for marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of certificates for marriage by the said Registrars;

searching register-books or certificates, or duplicates or copies thereof, giving copies of entries in the same under sections 63 and 79.

The Provincial Government shall fix the amount of such fees respectively

And may from time to time vary or remit them either generally or in special cases as it may seem fit.

**83. Power to make rules.**— The Provincial Government may make rules in regard to the disposal of the fees mentioned in sections 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

**84. Power to prescribe fees and rules for Appealing States.**— The powers conferred on

85. Power to declare who shall be District Judge.— The Provincial Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

**86. Powers and functions exercisable as regards Acceding States.—** (1) The powers and functions exercisable by the Central Government under section 6, 8, 9, 47, 48, 56 and 84 shall so far as regards any Acceding State which is within the political charge of a Provincial government be exercisable by that Provincial Government. The exercise under this section by any Provincial government of powers and functions under sections 6, 8, 9 and 56 shall be by notification in the local official Gazette.

(2) The powers and functions exercisable under this Act by the Central Government may be delegated to and exercised by such officers as it may from time to time appoint in this behalf.

**87. Saving of consular marriage.—** Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represent and according to the laws of such State.

**88. Non-validation of marriages within prohibited degrees.—** Nothing in this Act shall be deemed to validate any marriage, which the personal law applicable to either of the parties forbids him or her to enter into.

**THE MUSLIM FAMILY LAWS ORDINANCE, 1961**

**[ORDINANCE NO. VIII OF 1961]**

**[15th July, 1961]**

**Preamble.** WHEREAS it is expedient to give effect to certain recommendations of the Commission on Marriage and Family Laws;

**NOW, THEREFORE,** in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

**1. Short title, extent, application and commencement.** (1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) Its extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

**2. Definitions.** In this Ordinance, unless there is anything repugnant in the subject or context: --

(a) 'Arbitration Council' means a body consisting of the Chairman and representative of each of the parties to a matter deal with in this Ordinance:

Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council;

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

Provided that where the Chairman of the Union Council is non-Muslim or he himself wishes to make an application to 'the Arbitration Council, or is owing to illness or any other reason, unable to discharge the functions of Chairman, the Council shall select one of its Muslim members as Chairman for the purposes of this Ordinance;

(c) 'Prescribed' means prescribed by rules made under section 11;

(d) 'Union Council' means the Union Council or the Town Committee constituted under the Basic Democracies Order, 1959 (P.O (No, 18 of 1959), and having in the matter jurisdiction as prescribed;

(e) 'Ward,' mean a ward within a Union or Town as defined in the aforesaid Order.

**3. Ordinance to override other laws, etc.** (1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with these provisions.

(2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940 (X of 1940), the Code of Civil Procedure 1908 (Act V of 1908), and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.

**4. Succession.** In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

**5. Registration of marriages.** - (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.  
(2) For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.  
(3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.  
(4) Whoever contravenes the provisions of sub-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.  
(5) The form of nikahnama, the registers to be maintained by Nikah Registrars, the recorders to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikahnama shall be supplied to the parties, and the fees to be charged thereof, shall be such as may be prescribed.  
(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

**6. Polygamy.** - (1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.  
(2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.  
(3) On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions if any, as may be deemed fit, the permission applied for.  
(4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court.  
(5) Any man who contracts another marriage without the permission of the Arbitration Council shall,  
(a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue ; and  
(b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

**7. Talaq.** - (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.  
(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five



thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a conciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effect until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

**8. Dissolution of marriage otherwise than by talaq.** -Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply.

**9. Maintenance.**-(1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court. Any amount payable under Sub-section (1) or, (2) if, not paid in the due time, shall be recoverable as arrears of land revenue.

#### **PUNJAB AMENDMENT-PUNJAB ACT XI OF 1975**

**Amendment of Section 9 of Ordinance VIII of 1961.** In the Muslim Family Laws Ordinance, 1961 in section 9, in sub-section (2), the full-stop occurring at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely: - 'Provided that the Commissioner of a Division may, on an application made in this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a Collector to any other Collector, or to a Director, Local Government, or to an Additional Commissioner in his Division'.

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

**11. Power to make rules.** The Provincial Government may make rules to carry into effect the

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

**12. Amendment of Child Marriage Restraint Act, 1929 (XIX of 1929).**

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

(1) In section 2; --

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

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

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

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

(2) Section 3 shall be omitted.

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

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

(5) Section 11 shall be omitted.]

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

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

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

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

(2. Deleted by Ordinance XXVII of 1981.)

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

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

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