

PREVAILING LAWS FOR WOMEN IN PAKISTAN

موجودہ قوانین برائے پاکستانی خواتین



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INTRODUCTION

The premier Women Welfare Organization in Pakistan known as All Pakistan Women Association, (APWA), was founded by Begum Ra'ana Liaquat Ali Khan in 1949. She was the wife of the first Prime Minister of Pakistan. APWA focused on the promotion of the socio-economic uplift and constitutional rights of women and children. APWA's mobilized the supported for the acknowledgement of Muslim Personal Law of Sharia in 1948, which recognized the Woman's Right of Inheritance. APWA struggled to include a Chapter of Women's Rights in the 1956 constitution, which unfortunately could not be materialized.

APWA was the spirit behind the legislation of the Muslim Family Laws Ordinance (MFLO) 1961 and Family Courts Act 1964. These laws prescribed comprehensive procedures of marriage and divorce, under the Muslim laws. The Family laws introduced compulsory marriage registration, placed restrictions on the practice of polygamy and reformed the law relating to dower and maintenance in marriage and divorce. Moreover APWA single-handedly mobilized the women and the civil society and lobbied with the then government to enact the family laws which provided legal empowerment to women and children. It was due to the active and relentless lobbying of APWA, that three clauses upholding women's equal status were inserted in the 1973 Constitution.

Unfortunately despite many pro women laws and Constitutional guarantees discrimination against women is rampant. The lack of commitment and apathy of the successive governments is lamentable. This BOOKLET is focusing on the main laws affecting women's status. It identifies the legal remedies available for the elimination of discrimination against women. This is an effort for an easy and simple guide for the multiple legal issues faced by women in our society. APWA's aim is to provide a comprehensive and concise guideline that is beneficial for all organisations and groups working for Women's rights and legal awareness including NGOs, CSOs, CBOs, NPOs and civil society at large.



Major laws concerning women in Pakistan

The Constitution of the Islamic Republic of Pakistan, 1973.

The Constitution is the supra law, or the source from which all other legislation takes its route/flows.

Women's rights have a direct and manifold link with good governance. It is therefore imperative that any inquiry into the discrimination against women should begin by taking a close look at the country's Constitution.

Salient Features of the 1973 Constitution

a) **Preamble:**

Paras three and four of the preamble of the Constitution read 'wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed'

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the holy Quran and Sunnah'.

Fundamental rights should thus in all matters be regarded as they are meant to be – **fundamental**. Not only should all laws conform to them but the rest of the Constitution too should be interpreted so as to fully accord with them in letter and spirit.

c) **Article-25:**

Article-25 in the chapter on fundamental rights states:

1. All citizens are equal before law and are entitled to equal protection of law.
2. There shall be no discrimination on the basis of sex.
3. Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.





Article: 25A Right to Education

25A. Right to education.—The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

Article 26:

“Article 26 of the Constitution provides that:

- 1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.
- 2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Principles of Policy

Article 29: Principles of Policy.

- (1) The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those principles in so far as they relate to the functions of the organ or authority.

Article 32: Promotion of Local Government Institutions.

The state shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.



COMMENTS

Under Pakistan's dual system of civil and Islamic law, females are considered equal under the law and in religious practice, rights accorded to them by Pakistan's Islamic Republic Constitution of 1958 and consolidated in 1973, which outlawed gender discrimination on all levels.

Pakistan's constitution places no constraints on female participation in government.

In 1965 Mohtarma Fatima Jinnah, Mother of the Nation, contested Presidential election against President General Muhammad Ayub Khan. She was the presidential candidate for the 5-party Opposition. The election showed that people had no prejudice against a woman becoming the head of state.

In 1988, Benazir Bhutto became the first female prime minister of a Muslim state and is Pakistan's first female prime minister.

Before 1947 Muslim women in the sub continent generally and Punjab specifically voted for the Muslim League and women were organized into large scale public demonstrations.

Pakistani women were granted the suffrage in 1947. The provision of reservation of seats for women in the Parliament existed throughout the Constitutional history of Pakistan from 1956 to 1973



FORCED





THE MUSLIM FAMILY LAWS ORDINANCE

1961

APWA put forward the Muslim Family Laws Ordinance (MFLO) in 1961, which prescribed the comprehensive procedure of marriage and divorce, under the Muslim laws.

Salient sections of MFLO 1961.

Marriage.

Registration of marriage. (Section 5)

Union **Council** Registration Process: (Section 5)

Marriage Record: (Section 5)

Polygamy.

Polygamy. (Section 6)

Permission from first wife : (Section 6)

Payment of Dower: (Section 6)

Divorce.

Talaq/ Divorce (Section 7)

Time Period for effectiveness of divorce: (Section 7)

Arbitration Council : (Section 7)

Revocation of Divorce and Remarriage: (Section 7)

Maintenance.

Maintenance of Wife: (Section 9)

Dower.

Dower: (Section 10)



The Guardians and Wards Act, 1890.

The Guardians and Wards Act. 1890. was enacted 90 years back. Child custody is governed by the Guardians and Wards Act 1890.

The objective of Guardians and Wards Act 1890 is promoting the interests of the minors to make sure that the minor may not suffer any discrimination or disadvantage because of the marital status of his or her parents. It has been held in custody cases 'that lap of mother is God's own cradle for children'.





CHILD MARRIAGE RESTRAINT ACT, 1929

Child marriage, was introduced in 1927 in the Indian Legislative Assembly.

Salient Sections of Child Marriage Restraint Act, 1929.

An Act to restraint the solemnization of child marriages.

This Act extends to the whole of Pakistan and applies to all citizens of Pakistan wherever they may be.

Definitions.

- (a) "child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age;
- (b) "child marriage" means a marriage to which either of the contracting parties is a child;

Punishment for male adult above eighteen years of age marrying a child. Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both. Punishment for solemnizing a child marriage.

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for parent or guardian concerned in a child marriage.



The Dissolution of Muslim Marriages Act, 1939.

An Act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married woman on her marriage tie.

Grounds for Dissolution of Marriage

A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;





- (ii-A) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961.
- (iii) Husband been sentenced to seven Years imprisonment.
- (iv) Failed to perform marital obligations for three years.
- (v) impotent husband
- (vi) insane & Diseased husband
- (vii) girl not attained a age of eighteen.
- (viii) cruel treatment by husband
 - (a) Physical ill-treatment or habitually assaults
 - (b) Associates with women of evil repute of leads infamous life, or
 - (c) Attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or
 - (e) obstructs in her religious believes
 - (f) if he has more wives than one, and does not treat her equitably

Divorce Decree



THE FAMILY COURT ACT, 1964

It deals with the matters of marriage, divorce, dower, maintenance and custody of children etc.

SCHEDULE

1. Dissolution of marriage (including Khula).
2. Dower.
3. Maintenance.
4. Restitution of conjugal rights.
5. Custody of children (and the visitation rights of children to meet them).
6. Guardianship.
7. Jactitation of marriage.
8. Dowry
9. Personal Property and belongings of Wife.





The Dowry And Bridal Gifts (Restriction) ACT, 1976

The payment of dowry despite being generally regarded as an evil practice and a legacy still persists in our society. Legal prohibition on payment of excess dowry notwithstanding, such dowry is given and openly displayed and exhibited. the Dowry and Bridal Gifts (Restriction) Act, 1976 was enacted to curtail extravagant expenditure in marriage functions, to impose ban on demand of dowry and to protect the rights of brides in respect of their belongings and to resolve future disputes between the spouses. The present law of dowry and bridal gifts needs review and reformation.

The present limit of marriage expenses, marriage presents and bridal gifts which were fixed earlier in 1976 should be rationalised.



Protection of Women (Criminal Laws Amendment) Act, 2006

The Hudood Ordinance 1979

Pakistan's notorious Hudood Ordinances were promulgated in 1979 by the military regime of General Ziaul Haq. The most controversial of these are the two laws pertaining to sexual offences, i.e. the Zina and Qazf Ordinances.

This law was considered intrinsically misogynistic since its application resulted in women being convicted of adultery/fornication if they reported a case of rape, as their report was treated as a confession. Furthermore, in addition to other problems created by these laws, their judicial application also made it easier to get away with crimes against women such as honour killings and general degradation and humiliation of women in society. Women were frequently accused of adultery by their husbands and parents in retaliation for defying their authority.

Women's Protection Act, 2006 was passed in 2006 by the National Assembly to remove some of the anomalies in the infamous Hudood Ordinances that caused havoc in women's lives

The Women Protection Act, 2006 addresses some of the most controversial aspects of the Hudood Ordinances, – those pertaining to adultery and rape, which the new bill categorises as two separate offences.

Rape is made punishable with 10 to 25 years of imprisonment and death or life imprisonment in case of gang-rape. Rape victims are not required to produce four male pious Muslims witnesses

Though this legislation does not redress all the problems introduced by the Hudood Ordinances, substantial changes have been made, which is a step in the right direction.





Qanun-e-Shahadat Order, 1984 (Law of Evidence)

Discriminations against Women:

The role of women as witness has been excluded in Hadood cases and has been reduced to half in matters pertaining to proving of instruments relating to financial matters or future obligations.

“The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the Injunctions of Islam as laid down in the Holy Quran and Sunnah.

Any instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly.



The Criminal Law (Amendment) Act, 2004 (on ‘honour’ crimes)

A legislation to provide protection to citizens, especially women and girls; to make illegal and criminalize all murders committed under the name of honour; and to punish the perpetrators, aiders, abettors and supporters of these crimes. The 2004 Act amended the Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) to define karo kari (honour killings) as murder with penal punishments. With the implicit consent of society, the murderers are given protection and impunity from within the community, which extends to the police, courts and other implementing agents and agencies. Apart from the inherent biases within these bodies, problems also lie with the methods of investigations, lack of up-dated machinery and tools etc.





The Protection against Harassment of Women at the Workplace Act, 2010

In order to create a safe working environment for women, which is free of harassment, abuse and intimidation with a view toward fulfillment of their right to work with dignity an Act of Parliament to make provisions for the Protection against Harassment of Women at the Workplace has been promulgated in March 2010.

Definition of Harassment: Any unwelcome sexual advance, request for sexual favour or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or request or is made a condition for employment.

Punjab Ombudsperson: cases of sexual harassment at workplace are the mandate of the Punjab Ombudsperson. Women workers, employed at homes or offices, facing sexual harassment or any kind of blackmailing may lodge complaints by post or e-mail with the Ombudsperson.



The Prevention of anti Women practices Criminal Law Amendment Act, 2010.

The purpose of this law was to uproot the customs and malpractices prevailing in the society that resulted in Violence against Women.

Some discriminatory sections of the existing laws were amended and new sections were also inserted in the existing laws.

One important amendment was made in Section 310/A of the Pakistan Penal Code(P.P.C.), wherein 'Badl-e-sulah'; 'Vani'; 'Swara' and other such anti women practices were criminalized. Any person compelling any woman to marry forcibly and under duress can be sentenced to seven years imprisonment.

Another positive aspect of this Act is that any person depriving a woman of her inheritance rights would be punished with ten years imprisonment and a fine of Rs.One Million.

- Forcing a woman into marriage for settling a dispute to be a non- bailable offence
- Bartering a woman in such a way to be punishable by three to five years jail and a fine of Rs0.5 million
- Depriving a woman of her inheritance can lead to imprisonment of between five and 10 years or a fine of Rs1 million or both
- Forced marriages (other than those for settling disputes) to be punishable by between three and 10 years jail and a fine of Rs0.5 million
- Forcing a woman to "marry" the Holy Quran to result in a jail term of three to seven years and a fine of Rs0.5 million





The Acid Control and Acid Crime Prevention Act, 2010

Fourteen - year jail term for acid-throwers.

The Acid Control and Acid Crime Prevention Bill 2010. The bill on Acid control and Acid Crime recommends 14-year to lifetime imprisonment sentences and levies fines up to Rs1 million for the perpetrators of the crime.

The purpose of the bill is to control the import, production, transportation, hoarding, sale and use of acid to prevent misuse and provide legal support to acid and burn victims.



Amending the Pakistan Penal Code 1860. The amendment in Section 336-B states: "Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years with a minimum fine of Rs1 million."

The Act of 2010 falls short of its preventative goal by relying on deterrence, which does not address the range of factors that feed violence against women and which also creates barriers for women who try to pursue justice. The Act of 2010 falls short of adequately protecting victims of acid attack. A more comprehensive bill, tailored with barriers to addressing violence against women.





The Christian Marriages Act of 1872.

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 and the Divorce Act of 1869. One of the problems facing the community is the contradiction between the Christian Marriage Act and the Child Marriage Restraint Act of 1929.

In the Christian Marriages Act of 1872, minimum age: girl: exceeding 13 years boy: exceeding 16 years.

In the Child Marriage Restraint Act of 1929, minimum age: girl: 16 years boy: 18 years.

the Christian Marriages Act of 1872 and the Divorce Act of 1869, are archaic laws and need to be amended urgently.

Christian Divorce Act 1869

This act relates to the divorce of persons professing the Christian religion, and to confer upon certain court jurisdiction in matrimonial matters. There are three modes described for seeking divorce:

Dissolution of marriage section 10 of the divorce act 1869

Nullity of marriage section 18 of the divorce deed 1869

Judicial separation section 22 of the divorce 1869



SPECIAL MARRIAGE ACT 1872

An act to Provide a form of Marriage in certain cases

Preamble: Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion and to legalize certain marriage the validity of which is doubtful;

1. Local extent. This Act extends to the whole of Pakistan.

2. Conditions upon which marriages under Act may be celebrated. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion.





The Women in Distress and Detention Fund (Amendment Act) 2010.

Women in Distress and Detention Fund (Amendment) Bill 2011, to provide financial and legal assistance to distressed women languishing in jails of the country on account of different allegations and facing extreme hardships.

The bill says that the Human Rights wings, of Ministry of Law, Justice and Human Rights was administering the fund under the Act of Parliament, however the funds were transferred to the Ministry of Human Rights after its establishment.

Women In Distress And Detention Fund Act, 2011 has been enacted to provide funds to the following categories of women, this law, would assist Women in detention, disabled women, deserving women suffering from serious ailments including mental ailments or those who are in distress and need medical aid, burn cases, distressed women and their minor children in need of shelter, women seriously maltreated by their husbands, similar cases of grave distress and legal help to women in detention or distress.





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