Attention!
More than 58 years have passed since the birth of Pakistan, but the legal status of Pakistani women has only marginally improved. There are several reasons for this. For women to progress, they have to struggle for their rights. It is therefore imperative for women to be aware of their correct and accurate legal status, so that they can use the existing laws to their advantage and unite to fight for further reforms. This will give Pakistani women an equal status in society.

Dear Readers:
The progress so far made by Pakistani women has mainly been initiated and pursued by them alone. They have hardly been provided with any support from the government or other state institutions. Therefore, unless and until the women of Pakistan unite and fight for their rights unanimously, it is feared that they will not be given any kind of legal or constitutional protection. Experience tells us that wherever women have been given any kind of legal protection under the law in Pakistan, that law has been distorted over time to isolate them in society.

The various commissions set up in Pakistan for the protection of the rights of women have prepared four reports up to now, but the tragedy of the situation is that no tangent steps have been taken in light of the recommendations of these reports.

Points to Consider:
With relevance to the development of women, Pakistan is rated amongst the least developed countries of the world. In Pakistan, the number of women living below the poverty line is twice the number of men. Women have no say in the political process of the country. Women are increasingly being tortured and no significant step has been taken by the Government to put an end to this state of affairs.

It is our objective to make you aware of your rights through this pamphlet. However, if you still have any queries, please write to us about them. We will immediately clarify them to you through post.

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MUSLIM LAWS REGARDING MARRIAGE

Is there any law relating to Muslim marriages in Pakistan?
Yes. Many laws relating to marriage exist in Pakistan. The most important among them is the Muslim Family Laws Ordinance 1961 (MFLO). However, reforms are still required on a wide scale so that this piece of legislation can be brought into practice as a complete code.

Why was there a need to implement the Muslim Family Laws Ordinance?
In 1955, a Commission was formed in Pakistan as a result of the struggle and efforts of women so that Muslim family laws could be made in conformity with their demands. This Commission made its recommendations, but no practical step was taken to translate them into a law for many years. It was only much later that a handful of these recommendations were picked up to draft the Muslim Family Laws. Under these laws, women were given limited protection and safeguards. However, their rights were not completely acknowledged. For instance, a Muslim male could contract a second marriage and no effective restriction was imposed on this act of polygamy.

Similarly, no maintenance rights were provided to a woman after divorce. A man could divorce his wife without assigning any reason.

Before the promulgation of the MFLO, no record of marriages or divorces was maintained. This was because neither the marriages nor the divorces were registered. Due to this anomaly, it was almost impossible to prove the existence of a marriage or a divorce which led to controversy especially in matters of inheritance.

To worsen things, there was no standard Nikahnama (marriage form) for Muslims. The MFLO 1961 changed the whole situation. It was made compulsory to have all marriages and divorces registered with the relevant offices. Under this law, one standard Nikahnama was issued for all.

Through the law, the practice of polygamy was restrained. The method for the divorce to come into force was also outlined. This law gave the authority to the chairman of every union council to form an arbitration council, headed by the chairman of the union council and including the representatives of both the parties.

The MFLO 1961 also acknowledged the inheritance rights of orphaned grandchildren who were directly made legal heirs in the properties of their paternal and maternal grandparents. It must be noted that in 1999 the Federal Shariat Court (FSC) suspended this provision of the law. However, an appeal against this decision is pending adjudication before the Shariat Appellant Bench of the Supreme Court (SC).

In the light of the MFLO 1961, a divorced woman does not have to perform Halala' to marry her ex-husband unless it is the ‘third occasion’ when divorce has been pronounced on her by her husband. In other words, even if all divorce formalities have been completed, she can still remarry her former husband. In the case of a ‘second
divorce’ she may also remarry her former husband but not if she is divorced for the third time.

**The powers of the Arbitration Council are as follows:**
On receiving a notice of divorce from the husband, the chairman will constitute an arbitration council for the purpose of reconciliation between the two parties.

During the subsistence of marriage, on the complaint of the wife regarding her maintenance allowance, the arbitration council has the power to fix the amount of the maintenance allowance or issue an order for the payment of past maintenance allowance to the wife.

The council will consider the application of a husband who wants to marry another woman, while his first marriage/marriages exist, and may permit him for such a marriage or not.

In spite of the promulgation of the MFLO 1961, the lack of awareness amongst women about their rights and the improper implementation of this law have rendered it ineffective and thus it needs to be expanded further. For instance, even if a husband does not provide his wife with maintenance, he can divorce her. There is no law to stop him from doing so because in the legal system there is no restriction on the right of divorce of the husband.

**Essential features of a Muslim Marriage:**
1. Under Muslim Law, the consent of both the husband and the wife are mandatory for a marriage.
2. At the time of the Nikah, it is mandatory to fix the dower amount.
3. According to the MFLO 1961, it is important to get the Nikahnama signed by two witnesses who have witnessed the marriage ceremony.
4. It is also important to get the Nikahnama registered so that there is no doubt about the validity of the Nikah.

**Who can marry whom?**
A Muslim male may marry any Muslim woman or a woman of the Book (Ehl-e-Kitab). However, if a Muslim male marries a woman who is not of the Book, then this marriage will be irregular. If that woman embraces Islam or any other religion of the Book, then the marriage will become legal and regular. If this does not happen and children are born of this irregular wedlock, they will be entitled to inheritance from their parents, but the husband and wife will not inherit from each other.

If a Muslim woman marries a non-Muslim male, even if he is a man of the Book, such marriage will be void and considered illegal. Children born of such a wedlock will not inherit anything from their father.

**The following marriages are also illegal under the MFLO 1961:**
A Muslim male cannot marry his:
1. Mother, maternal grandmother, paternal grandmother, daughter, paternal granddaughter, maternal granddaughter, sister, stepsister, foster sister, and nieces.
2. Wife’s mother, maternal grandmother, paternal grandmother, daughter.
3. Father’s wife or his son’s wife.
4. Two sisters at the same time; aunt and niece at the same time.
The aforementioned marriages are also forbidden for a Muslim woman.

What is a Child Marriage?
In Pakistan, an 18-year-old boy and a 16-year-old girl can have a proper marriage. However, marriage of a boy under 18 and of a girl under 16 is an offence. Any adult person marrying a minor or any person, who gets a minor married, will be sentenced under such offence for a one-month imprisonment or a Rs.1000 fine. However, marriages of minors are not considered illegal. A minor girl, between the age of 16 and 18, can dissolve her marriage through court, and deny the legality of this marriage, provided the marriage has not been consummated.

What is a Nikahnama?
(A specimen copy of a Nikahnama is attached for your information)

A Nikahnama is a form which is filled at the time of marriage. There are 25 columns in the Nikahnama, all of which are to be filled. The following things are necessarily to be mentioned in the Nikahnama:

• names of the bride and groom,
• date of marriage,
• dower amount,
• kind of dower i.e. deferred or prompt,
• any special condition, the fact whether the husband has given his wife the right to divorce or not, and the bride’s marital status i.e. unmarried, divorsee, widow.

In short, Nikahnama is the contract in Pakistan upon which the validity of a Muslim marriage is determined.

Why is a Nikahnama important?
A Nikahnama is important because all the conditions of a marriage are stated in it. The status of a Muslim marriage is the same as a contract. Therefore, it is better to write down all the conditions clearly. It must be noted that neither parties can be bound by any of the conditions which do not have any legal obligation.

For example, at the time of marriage, the issue of custody of child and exchange marriages (wata-sata) cannot be decided. However, in the case of divorce or a second marriage by the husband. A condition can be imposed in lieu thereof. A condition restricting the rights of the other party cannot be enforced. For example, a husband cannot ask his wife to give up her dower.

Why is it important to register the Nikahnama?
Once the Nikahnama is registered, it is the complete and solid evidence of a marriage. It is the responsibility of the Nikah Khwan (a person who is authorized to perform the marriage ceremony) to get the Nikahnama registered. If he does not register the Nikahnama, he will be committing an offence under the MFLO 1961, the punishment for which is imprisonment for three months or fine which may extend up to Rs1000, or both. At the same time, all parties to the marriage must ensure that the Nikahnama is registered.

In case the Nikahnama is not registered?
1. If the Nikahnama is not registered, then in the case of death of either party, family members from either side can initiate legal proceedings to prove that the marriage was illegal in order to disqualify the other from inheritance.
2. The punishment under the Zina (Adultery) Ordinance, 1979, has made the registration of Nikah very important. If a husband and wife are charged with committing the offence of ‘Zina bil Raza’ (Adultery by Consent), they will then have to prove their marriage to avoid punishment. Hence, in the absence of a registered Nikahnama, it becomes difficult to prove otherwise.
3. Similarly, in case of a dispute, if one party denies the existence of a marriage, it becomes very difficult for the other party to prove it otherwise if the Nikahnama had not been registered.

From where can you get a Nikah form or the Nikahnama?
In every ward, a Nikah registrar has Nikah forms. If you lose your Nikahnama, you can apply to the office of the union council/committee to get a copy of the Nikahnama, after paying a minimal fee. This is your legal right. However, this application can only be filed in that union council/committee where the Nikah was performed.

What is Prompt and Deferred Dower?
Prompt dower is that amount which the husband is bound to pay to his wife at the time of marriage. If the husband refuses to pay the dower at the demand of the wife, she can get her dower amount through court. Deferred dower is paid to the wife in case of the death of the husband or divorce. In lieu of monetary amount, property may also be given. The amount of dower can be increased during the subsistence of marriage.

What is Mehr-e-Misal?
When the dower amount has not been fixed in the Nikahnama, then the wife is entitled to Mehr-e-Misal, which is the dower amount fixed by the court. This means that if appropriate dower has not been fixed between the two parties, then the court is entitled to fix the dower amount with regard to the financial condition of the husband, social status and also the lifestyle of both the parties.

Effects of the non-payment of dower at the time of marriage:
In case of non-payment of dower at the time of marriage, the wife may deny the conjugal rights of the husband and may refuse to live with him until he pays the dower. Moreover, a husband cannot force his wife to have physical relations with him.
To recover the dower, the wife must file a case in the court within six years of the dissolution of marriage or the death of her husband.

**What is a Delegated Right to Divorce (Talaq-eTafweez)?**
This is that right of divorce which the husband delegates to his wife at the time of marriage or at any time during the marriage with or without conditions. This right is stated in column 18 of the Nikahnama. If the woman secures this right at the time of marriage, at any stage of the marriage when divorce becomes inevitable, woman like men can also divorce their spouses by sending a notice to the union council/committee, which becomes effective after three months of the notice. Otherwise, to dissolve the marriage, women have to file a case in the family court. Usually at the time of marriage, the right to divorce is not secured and if someone insists, it is considered an ill omen, which later on creates problems for women. If the woman uses her right to divorce, she can claim her dower as well.

**Some More Points to note in the Nikahnama:**

A wife may also impose a condition on the right of divorce of the husband and make it a part of the Nikahnama. Conditions regarding the dower and pocket money may also be stated in the Nikahnama. There is a column in the Nikahnama in which further conditions of marriage may be stated. For instance, the wife’s pocket money, wife’s or her children’s (by some other marriage) maintenance allowance or separate house for wife. If a man is marrying for the second time while his first marriage exists, he must state this in the Nikahnama. If the husband performs a second marriage without getting proper permission from the Arbitration Council, he will have to suffer the following consequences:

1. The husband will have to pay the dower immediately, whether prompt or deferred to the previous wife or wives. If he fails to pay the dower, the same will be taken from his property, just as the government extracts arrears of land revenue. However, for this, the wife has to file a case in the court against the husband.
2. For second marriage without permission, the husband may be sentenced to one year imprisonment, or fine (which may go up to Rs5,000), or both. So far, nobody has served a sentence under this Penal Offence in Pakistan. The legal procedure for filing a complaint on the second marriage of a husband is cumbersome. The previous wife has to file the complaint. Mostly wives are hesitant to file a complaint against their husbands for fear of being divorced with no economic support or benefit.

It is important to save the name and address of the Nikah Khwan, because he is the best witness to a Nikah.

Note: Legally any man or woman may perform a Nikah.

**How to get the Maintenance Allowance?**
It is the legal duty of the husband to maintain his wife and provide her with all kinds of facilities. If, during the marriage, the husband does not maintain his wife properly, the wife can complain to the chairman of her relevant union council/committee. The chairman of union council can order a decree for the past and future maintenance of the wife. If the husband still fails to pay the maintenance, the wife can file a case in court for recovery of the maintenance amount. While the case is pending in the court, no lawyer will represent either of the parties in the union council.

A divorced woman can also file for the recovery of her past maintenance allowance in the court. A divorced woman can claim her maintenance allowance only to the extent of the period of her ‘Iddat,’ which is of three months and begins from the date the divorce becomes effective. In case of a widow, the Iddat period is of four months and 10 days. The limitation period for filing a maintenance case is six years after the dissolution of marriage.

Note: In family courts, a case should be pursued through an advocate.

**Stages of the Divorce Procedure:**
Step I: Filing of case.
Step II: Notice to the husband.
Step III: Written statement to be filed by the husband after appearance in court.
Step IV: Initial reconciliation i.e. the court will try to reconcile matters between the husband and wife. If reconciliation fails, the case will proceed.
Step V: Evidence and cross-examination.
Step VI: Second effort at reconciliation.
Step VII: Arguments.
Step VIII: Decree/ Decision/ Order.

The Family Court is bound to decide the case within six months. If the case is not decided in six months, the wife can file an application in the High Court for early conclusion of the case.

Where can you apply if the husband refuses to pay the dower?

Dower amount can be claimed by filing a case in the Family Court. The same procedure stated above will be adopted in this case also.

**Laws regarding Polygamy/more than one marriage:**
Although in the MFLO 1961, there is no effective restriction on polygamy, however, its promulgation has lessened the trend of polygamy to some extent in our society. This shows that laws do affect social trends.

Every man who wants to contract a second marriage has to get written permission from the Arbitration Council. He has to give reasons for second marriage and inform the Arbitration Council whether the first wife or wives have given him the permission for a second marriage. According to the law, whenever a husband wants to marry another
woman during the subsistence of his earlier marriage or marriages, he has to take permission from the Arbitration Council.

The Council will consist of one representative of each of the wives and one representative of the husband. The council has wide powers to give permission for a second marriage. Nevertheless, the following aspects have to be kept in mind when deliberating upon such a case:

1. If the wife is physically unfit to give birth.
2. If the wife is physically disabled or there is any physical deformity.
3. If the wife is unable to have matrimonial relations.
4. If the wife is mentally insane.
5. If the wife purposefully tries to avoid matrimonial relations with her husband.

At the same time, arbitration councils have granted permission for an additional marriage on very flimsy grounds. If the husband is given the permission and the first wife or wives are not satisfied with this decision, they can apply for the review of this order. This application is filed with the collector. The collector is the deputy commissioner/district officer revenue (D.O.R). No man can have more than four wives at one time.

**What are the consequences of a Second Marriage without permission?**

If a husband marries another woman without the permission of the arbitration council, he will face a number of problems when he tries to get the new Nikahnama registered. According to column 21 of the Nikahnama, the husband has to announce whether he has a prior wife. If so, then the husband has to show that he has taken permission from the arbitration council, in accordance with the provisions of the MFLO 1961. In spite of this prohibition, if the husband marries another woman, this marriage will be valid. However, a husband may be punished under Section 199 or 200 of the Pakistan Penal Code for the offence of marrying with an incorrect announcement. The punishment may include imprisonment for three years or fine or both. On the complaint by the wife, the husband can be punished under section 6, MFLO 1961. So far, no one has ever been punished for such an offence.

**What are the remedies available to the first wife in case of a second marriage by her husband without her permission?**

The first wife may file a complaint before the Magistrate of the area where she resides or where the second marriage has taken place. Under Section 6 of MFLO 1961, the husband may be punished if he has married another woman without the permission of his union council. In such a situation, the husband may be punished with a one-year imprisonment, a Rs 5,000 fine, or both.

The first wife also has the right to demand payment of the unpaid dower. She may file a case for recovery of dower in the family court. This amount can be recovered in the form of arrears of land revenue. If the husband is a salaried man, then the Family Court may order for the attachment of his salary to be recovered as dower. It is the duty of the husband to maintain his first wife just as he maintains his second wife.
What are the restriction on Dowry and Wedding Gifts?
The law has laid restrictions on the wedding expenditures, dowry and wedding gifts. It was enforced in 1976. Under this law, the following restrictions have been imposed:

1. The parents/guardians of the bride have been permitted to spend not more than Rs5,000 for the dowry. However, the property that the bride inherits is exempted from this restriction. ‘Neondra’ or ‘Salami’ is also not included in this restriction.
2. The parents/guardians of the bride and groom are both supposed to make sure that the wedding gifts or the gifts given to the bride should not value more than Rs.5,000. However, Neondra or Salami is not considered as a wedding gift.
3. The parents/guardians of the bride and groom cannot give gifts valued at more than Rs5,000 to the bride or groom within six months before or after the wedding.

Important Points of this Law:

- The guests at a wedding cannot gift something to the bride or groom worth more than Rs100. However, Neondra or Salami is also not included in this restriction.
- The gifts given to the groom by the parents of the bride may value more than Rs100. In any case, the dowry or gifts cannot exceed the value of Rs5,000.
- It is forbidden for officers of Grade 17 and above to accept gifts from anyone besides their relatives at their own or their children’s weddings.
- The bride will be the absolute owner of the property inherited by her, her gifts, and dowry. All these things are completely exempted from any kind of liability.
- The expenditures on all the customs of the wedding including ‘Mehndi’, ‘Baraat’, or ‘Valima’ shall not exceed the limit prescribed by law of Rs.2,500.
- The display of dowry articles is prohibited.
- Both the parties to the marriage are liable to provide a list of the wedding expenditures, the wedding gifts, the dowry articles and inherited property to the Nikah registrar so that this list can be sent to the Deputy Commissioner within 15 days of the marriage.
- The punishment for the violation of this law is six months imprisonment or fine. Both the punishments may be imposed at the same time.
- The Government can confiscate all gifts or dowry articles, which exceed the value prescribed by the law. The confiscated material or amount can be spent on the wedding of poor girls.
- Every person has the right to inform/complain, with complete details, to the deputy commissioner of any wedding taking place against the law.
- The Deputy Commissioner has the right of investigation suo moto or on the complaint of any person. If the case is genuine, then the matter can be taken to the family court for adjudication.
- The Deputy Commissioner can refer such a case to the family court only within three months of the Nikah or Rukhsati.
- After the prescribed time limit, such cases will not be filed by the government.

Note: However, this law has never been implemented anywhere, nor has anyone been punished for committing these offences.
Did You Know?
1. The MFLO 1961 was promulgated to protect family life, especially the rights of women and orphans.
2. An arbitration council consists of the chairman of the union council of the relevant ward and one representative from both the parties.
3. The registration of the Nikahnama after the wedding is in the interest of the woman.
4. If the Nikahnama is not registered, then the onus of proving the existence of the marriage is upon the parties concerned.
5. The woman can ask for her right to divorce at the time of the marriage or at any other time after the marriage. It is stated in column 18 of the Nikahnama.
6. The pocket money for the wife can be stated in the Nikahnama and it can be increased at anytime during the marriage.
7. It is the duty of the husband to maintain his wife.
8. A woman can demand her prompt dower at any time.
9. The court can fix Mehr-e-Misal for the woman if no dower is fixed at the time of marriage.
10. Dower is like a debt, which must be paid to the widow at the time of distributing the inheritance of the deceased.
11. A woman whose husband does not provide her with proper maintenance can apply to the union council or the family court for the payment of past and future maintenance.
12. A divorced woman can claim her past maintenance allowance through the Family Court.
13. The Iddat period for a divorced woman is three months and for a widow is four months and 10 days.
14. A girl of 16 years can get married. The marriage of a younger girl is an offence.
15. A young married girl, upon attaining the age of 16 years, can revoke her marriage, provided the marriage has not been consummated. This right can be exercised till she reaches the age of eighteen.
16. A man cannot marry two sisters at the same time.
17. A man cannot marry his real niece, aunt or sister.
18. Marrying another woman during the subsistence of the earlier marriage/marriages without the permission of the arbitration council is an offence.
19. If a husband marries another woman without the permission of the arbitration council, his earlier wife/wives can complain in the court of the area magistrate.
20. If a man marries a woman without announcing the existence of his earlier marriage, the second wife may also file a complaint in the court of the area magistrate.
21. The complaint can be registered with the magistrate of that area, where the wife resides or where the marriage took place.
22. A marriage performed without the permission of the arbitration council is legally valid.
23. In such a case, the first wife can legally pursue the payment of her prompt or deferred dower. She also has a claim to maintenance.
24. A widow or a divorced woman cannot marry before the completion of her Iddat period.
25. There are legal restrictions on wedding expenditures.
FORM II
(See Rules 8, 10)

Form of Nikahnama

Muslim Family Laws Ordinance (VII) 1961 and the rules 8 and 10 framed there under:

1) Name of Ward ______________ town/Union Committee ______________ Tehsil/Thana ______________ and District ______________ in which the marriage took place.

2) Name of the bridegroom and his father, with their respective residence ______________________________

3) Age of bridegroom

4) Name of bride and her father, with their respective residence ______________________________

5) Whether the bride is a maiden, a widow or a divorcee ______________________________

6) Age of the bride ______________________________

7) Name of Vakil, if any appointed by the bride, father’s name and his residence ______________________________

8) Names of the witnesses to the appointment of bride’s Vakil with their father’s names, their residence and their relationship with the bride ______________________________

9) Name of Vakil, if any appointed by the bridegroom, father’s name and his residence ______________________________

10) Names of the witnesses to the appointment of bridegroom’s Vakil with their father’s names, their residence and their relationship with the bridegroom

11) Names of witnesses to the marriage, their father’s names and residences

12) Date on which the marriage was contracted ______________________________
13) Amount of dower

14) The amount of Mahar Moajal

15) Whether any portion of the dower was paid at the time of marriage, if so, how much

16) Whether any property was given in lieu of the whole or any portion of the dower with specification of the same and its valuation agreed to between the parties.

17) Special conditions, if any

18) Whether the husband has delegated the power of divorce to the wife, if so, under what conditions.

19) Whether the husband's right of divorce is in any way curtailed

20) Whether any document was drawn up at the time of marriage relating to dower, maintenance, etc. If so, contents thereof in brief.

21) Whether the bridegroom has any existing wife, and if so, whether he has secured the permission of the Arbitration Council under the Muslim Family Laws Ordinance, 1961 to contract another marriage

22) Number and date of the communication conveying to the bridegroom the permission of the Arbitration Council to contract another marriage

23) Name and address of the person by whom the marriage was solemnized

24) Date of registration of marriage

25) Registration fee paid

Signature of the bridegroom  Signature of the witnesses to be appointment
or his Wakil

1.
2.

Signature of the bride  Signature of Vakil of the bride

1) ____________________  2) ____________________

Witnesses to the appointment of bride’s Vakil

Signature of the witnesses to the marriage

1) ____________________

Signature of the person who solemnizes the marriage

_________________________

Signature and Stamp of Nikah Registrar