



Pakistan - Researched and compiled by the Refugee Documentation Centre of Ireland on Tuesday 23 April 2019

Information on divorce including rates and obstacles for women

In April 2019 *European Union News* states that:

“...women must request permission for a divorce from an Islamic family court, whereas men do not have to go through this arduous process” (European Union News (18 April 2019) *Register of Commission documents: Written answer : Pakistan's violation of the UN Convention on the Elimination of All Forms of Discrimination Against Women Document date: 2019-04-17 P8_RE(2019)001104 Answers to written questions*

In March 2019 *Al Jazeera* states in a document that:

“Aside from the cultural taboo surrounding divorce in Pakistan, women seeking to end their marriages face legal hurdles that men do not encounter as frequently” (Al Jazeera (7 March 2019) *Why women in Pakistan struggle to get 'divorced with dignity'*).

A report issued in March 2019 by the *United States Department of State* commenting on events of the preceding year notes that:

“Family law provides protection for women in cases of divorce, including requirements for maintenance, and sets clear guidelines for custody of minor children and their maintenance” (United States Department of State (13 March 2019) *2018 Country Reports on Human Rights Practices: Pakistan*,p.31).

A report published in December 2018 by the *Organisation for Economic Co-operation and Development* states that:

“Sharia law discriminates against women by allowing men to divorce at their will, simply by pronouncing the word ‘talaq’ and sending a written notice of divorce to their wife and to a representative of the local government (1961 Muslim Family Laws Ordinance, art. 7). By contrast, Muslim women can only divorce through court (khul’a divorce) under limited circumstances (e.g. abusive husband, desertion, husband suffering from leprosy or a virulent venereal disease) (art. 2 of the 1939 Dissolution of Muslim Marriages Act). An attempt is made to reconcile both parties in both cases, but if reconciliation fails the wife may be instructed by the Court to repay part of her dowry to her husband (1964 Family Courts Act, art 9). The United Nations has asked the government to revise the 1939 Dissolution of Muslim Marriages Act to repeal the discriminatory provisions against women...Case doctrine shows that despite these discriminatory provisions, judges have been using the ‘khul’a’ to expand women’s right to divorce...For instance, judges have ruled that the wife is not required to give ‘objective or cogent reasons’ for the divorce, nor is she required to justify her aversion to her husband...” (Organisation for Economic Co-operation and Development (December 2018) *SIGI - Social Institutions & Gender Index 2019 – Pakistan*, p.4).

This document also states that:

“There is high social stigma associated with divorce, which is why most women opt to remain with a violent husband rather than filing for divorce...” (ibid, p.4).

A publication issued by *Dawn* in October 2018 states that:

“Although the provision allowing a woman to dissolve her marriage is already present in the existing marriage certificate, it is often not enforced, leading women to opt for the tedious and costly path of obtaining a khula through a court. But a khula is conditional and not the same thing as a right to divorce one's husband. Khula is when a woman initiates dissolution of the marriage in court, which she can obtain even without her husband's consent provided she foregoes her mehr, maintenance and alimony. A woman has to get a lawyer, prepare a case and then the judge decides if she will be granted one or not. In contrast, when a woman is "delegated" the right to divorce in the document, she can simply opt out of the marriage using the same legal procedures as are ordinarily followed by men. Clauses 18-19 of the existing nikahnama accommodate right to divorce, the first of which asks whether the husband would like to delegate the right to divorce to his wife and the latter asks if the husband's right to divorce has been curtailed in any way. Often, these sections are struck out completely, sometimes by the qazi officiating the marriage or by family members because they don't want to think about the dissolution of the marriage at the auspicious time of its beginning or simply because they deem it unnecessary since a woman always retains her right to a khula if things go awry” (Dawn (22 October 2018) *CII 'not considering' nikahnama that would guarantee women's right to divorce husbands: spokesman*).

In October 2018 the *International News* states that:

“Women in Pakistan may soon be able to divorce their husbands without going to courts, according to a document being worked out by the government, a top official told The News on Friday. Although this provision is part of marriage document or Nikahnama under the current Pakistani law, it is almost never offered to a bride-to-be at the time of marriage, leaving women with no option but to go to court to seek divorce, which is called Khula. The Khula process is not only costly and tedious, but also enables men to exploit women wanting separation. Under the proposed changes to marriage documents, the language of Nikahnama will be changed to make the rights of women clear” (International News (20 October 2018) *Women soon to be able to divorce husbands*).

In June 2018 the *Asylum Research Centre* issued a compilation of COI sources which included stating that:

“The norms around divorce also ensure that men are free to marry again while women tend to be marginalised and unable to re-marry” (Asylum Research Centre (18 June 2018) *Pakistan: Country Report*, p.211).

Another source cited in this report notes that:

“Under the current Muslim Laws there are a number of contradictions in the laws, which again create hurdles in their fair implementation. For example, the Dissolution of Muslim Marriages Act, 1939, speaks about various grounds on which a woman can claim divorce. Under Section 5 of the Act, the right to dower of a wife filing a divorce suit under this law is not affected. Whereas; under procedural law, Family

Courts Act 1964, Section 10 clause says if during the suit for dissolution of marriage, the reconciliation attempted by the judge fails, the wife has to return the Haq Mehr (dower) received at the time of marriage, thus creating difficulties for the woman in getting a divorce...Clause 18 of the marriage contract allows the husband to delegate his right of divorce to the wife, but in practice families and elders usually cross out this clause before handing over the contract to the bride, on the pretext that it is a bad omen to talk of divorce when the marriage is being solemnized. If the right of divorce has not been delegated to her at the time of marriage then she must seek relief under the law, applying for dissolution of marriage, if any of the issues fall within the prescribed reasons why dissolution is allowed, or apply through khula whereupon the process must be taken through the courts" (ibid, p.211).

A publication in 2018 by *Clinical Social Work and Health Intervention* points out that:

"...the divorce rate in the Islamic State of Pakistan is relentlessly increasing" (Clinical Social Work and Health Intervention (2018) *High Ratio of Divorce and its Rationale in Pakistan*, p.25).

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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