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Country Marriage Pack

Pakistan

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1. Types of Marriage

Civil marriage

In January 2013 research issued by the *Immigration and Refugee Board of Canada* notes:

> "Sources state that the government of Pakistan does not recognize common law marriages (US 2012, 7; Evangelical Asian Church Toronto 12 Dec. 2012). One of these sources also states that the government of Pakistan does not recognize civil marriages (US 2012, 7). However, in 3 January 2013 correspondence with the Research Directorate, an academic at McGill University, who specializes in Islamic law and the history of Pakistan, indicated that civil marriages are "accepted in Pakistan legally," but the "social acceptance" is very low." (*I*mmigration and Refugee Board of Canada (14 January 2013) *Pakistan: Information on marriage registration, including mixed marriages*)

Religious marriage

A publication in May 2013 by the *United States Department of State* notes that:

> "The government does not recognize either civil or common law marriage. Marriages generally are performed and registered according to one's religious group; however, there is no legal mechanism for the government to register marriages of Hindus and Sikhs. The marriages of non-Muslim men remain legal upon conversion to Islam. If a non-Muslim female converts to Islam and her marriage was performed according to her previous religious beliefs, the marriage is considered dissolved. Children born to Hindu or Christian women

who convert to Islam after marriage are considered illegitimate. The only way to legitimize the marriage and render the children legitimate and eligible for inheritance is for the husband to convert to Islam. The children of a Muslim man and a Muslim woman who both convert to another religious group are considered illegitimate, and the government can take custody of the children." (United States Department of State (20 May 2013) *International Religious Freedom Report for 2012, Pakistan*)

Published in June 2013, a report by *Freedom House* commenting on events of the previous year states:

> "Most interfaith marriages are considered illegal, and the children of such unions would be illegitimate." (Freedom House (10 June 2013) *Freedom in the World 2013 - Pakistan*)

Traditional marriage/other Marriages

A research query published in December 2013 by the *Immigration and Refugee Board of Canada* states:

> "Several sources indicate that, in practice, a man does not need the approval of his first wife to marry a second wife (Gender Studies Consultant 12 Dec. 2013; HRCP 13 Dec. 2013; Yilmaz 30 Dec. 2011). The Gender Studies Consultant indicated that "a husband can and does marry a second wife without the approval of the first wife" and added that some husbands are open about their second marriages, while others hide it due to "social and economic problems" (12 Dec. 2013). The Professor of Law at Warwick University indicated that, although the MFLO requires a man to obtain permission to marry another wife, "this does not normally happen" (8 Dec. 2013). The WEWA Secretary-General indicated that the Chairman of the Union Council can still permit a husband to marry a second wife, even without the permission of his first wife (11 Dec. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.
>
> Several sources indicate that, in practice, a first wife cannot stop her husband from marrying a second wife (Professor of Law 8 Dec. 2013; Gender Studies Consultant 12 Dec. 2013; Shirkat Gah 11 Dec. 2013). The Professor of Law at Warwick University indicated that a wife can refuse to give her husband permission to marry a second wife, and can seek assistance from the court (8 Dec. 2013). However, she added that this "will only lead to her receiving her mahr and a right to divorce, but she cannot prevent the second marriage of her husband going forward" (Professor of Law 8 Dec. 2013). The Manager of Advocacy at Shirkat Gah stated that a first wife can only divorce her husband, because legally a man can have four wives at a time (11 Dec. 2013). The Professor of Law said that "in practice, very few women go to the court or seek support from the law, which is limited" (8 Dec. 2013). The HRCP representative indicated that first wives rarely are able to refuse second wives because of "culture and economic dependence" (HRCP 13 Dec. 2013; ibid. 12 Dec. 2013). The WEWA Secretary-General indicated that, if a first wife refuses a second wife, the husband may use violence against her, steal her belongings, or keep her children from her in an attempt to get her to agree to the second wife (11 Dec. 2013). The HRCP representative indicated that if a

first wife refuses a second wife, she "may [be] subject to violence" (13 Dec. 2013).

The Gender Studies Consultant indicated that although the MFLO states the requirement that women must approve of their husbands marrying another wife, the Quran, Sunnah and Sharia law do not mention any such requirement (12 Dec. 2013). Yilmaz, writing in *The Journal of Research Society of Pakistan*, similarly indicates that "[i]n Muslim law, a man is not required to have permission of an existing wife or wives to contract a further marriage" (30 Dec. 2011). The Gender Studies Consultant said that "clergy in Pakistan out rightly reject this clause of the MFLO" (Gender Studies Consultant 12 Dec. 2013). The Consultant of Gender Studies also said that, in the Quran, Hadith and Sharia law, there is no mention of any rights that a first wife has to stop her husband from marrying another wife (ibid.)." (Immigration and Refugee Board of Canada (18 December 2013) *PAK104701.E Pakistan: Practice of polygamy, including legislation; rights of the first wife versus the second, including whether she has the right to refuse a second wife (2011-2013)*)

A report issued in April 2013 by the *United States Department of State* commenting on events of the previous year points out that:

> "The traditional settling of family feuds in tribal areas, particularly those involving killing, could result in giving daughters of the accused in marriage to the bereaved. Many tribal councils instituted harsh punishments, such as the death penalty, "honor killings," or watta-satta marriages (exchange of brides between clans or tribes)." (United States Department of State (27 February 2014) *2013 Country Reports on Human Rights Practices – Pakistan*)

This document also states:

> "Although the government generally did not interfere with the right to marry, local officials on occasion assisted influential families in preventing marriages that the families opposed. The government also failed to prosecute cases in which families punished members (generally women) for marrying or seeking a divorce against the wishes of other family members." (ibid)

It is also noted in this report that:

> "Many young girls and women were victims of forced marriages arranged by their families. Although forced marriage is a criminal offense and many cases were filed, prosecution remained a problem. There were reports of citizens abroad bringing their daughters back to the country, taking away their legal documents, and forcing them into marriage against their will.
> The practice of buying and selling brides also continued in rural areas, although prohibited by law. Many tribes, communities, or families continued the practice of sequestering women from all contact with men other than their relatives. Despite prohibitions on handing over women as compensation for crimes or as a resolution of a dispute (also known as "vani" or "swara"), the practice continued in Punjab and KP. In rural Sindh landowning families continued the practice of "marriage to the Quran," forcing a female family member to stay unmarried to avoid division of property. Property of women married to the Quran remained under the legal control of their fathers or eldest brothers, and such women were prohibited from contact with any man

older than age 14. These women were expected to stay in the home and not to contact anyone outside their families." (Ibid)

Also

> "The Senate passed the Prevention of Anti-Women Practice Amendment Act in 2011. The law criminalizes and punishes giving a woman in marriage to settle a civil or criminal dispute; depriving a woman of her rights to inherit movable or immovable property by deceitful or illegal means; coercing or in any manner compelling a woman to enter into marriage; and compelling, arranging, or facilitating the marriage of a woman with the Koran, including forcing her oath on the Koran to remain unmarried or not to claim her share of an inheritance. The Senate also unanimously passed the Acid Control and Acid Crime Practice Bill 2010, which makes maiming or killing via corrosive substance a crime and imposes stiff penalties against perpetrators. As with other laws, these measures are not applicable to the FATA and PATA unless the president issues a notification to this effect.
>
> A third bill, passed in 2011, provides for economic and other support to women in prison who were unable to defend themselves legally or post bail for lack of familial support and funds." (ibid)

A publication from the *Social Institutions and Gender Index* published in 2012 points out that:

> "Polygamy is legal, but only under strict pre-conditions and the practice is generally frowned upon. No official data on the prevalence of polygamy exist, but it is estimated that around 5 per cent of married men are involved in polygamous relationships. Reportedly, men who decide to take more than one wife rarely obtain consent and the required letter of permission from their first wives." (Social Institutions and Gender Index (2012) *Gender Equality and Social Institutions in Pakistan*)

In March 2011 a publication by the *United Nations Children's Fund* states:

> "Child marriage is both a consequence and a cause of poverty. In Pakistan, parents often approve of child marriage as a way of reducing the number of mouths to feed in large families." (United Nations Children's Fund (16 March 2011) *UNICEF works to convince remote communities in Pakistan to abandon child marriage*)

Research carried out by the *Refugee Review Tribunal* in December 2009 states:

> "Marriage outside your own ethnic community is generally disapproved of by most Pakistani families. Arranged marriages within a person's own ethnic community tend to be the norm. This is very much the case across Pakistan as a whole." (Refugee Review Tribunal (9 December 2009) *1 Please advise if in some cities the hijab and burqa is not commonly worn, such as Islamabad or Lahore or Karachi and whether women in those cities face any difficulties as a result. 2 Please advise if there are any laws regarding the wearing of the hijab or burqu. 3 Please advise whether the police protect women against harassment, by others and by their own family, who chose not to wear the*

hijab and burqua. 4 Please advise whether marriage between persons from different ethnic groups (eg: Pashtun, Punjabi, Mohajir, Sindhi, Baluchi, etc) are common and how a family might react to such a marriage)

In November 2009 a research report published by the *Immigration and Refugee Board of Canada* states:

> "In a 28 October 2009 telephone interview with the Research Directorate, the Eastern Canada Regional Amir of Ahmadiyya Muslim Jama'at Canada stated that marriages between non-Ahmadi Muslims and Ahmadis are rare (28 Oct. 2009)…According to the General Secretary of Ahmadiyya Anjuman Lahore, since Ahmadis have been declared non-Muslims in Pakistan, intermarriage between a non-Ahmadi Muslim and an Ahmadi "would not be recognized as legal marriage" (2 Nov. 2009). The General Secretary also noted that Pakistani society does not consider such marriages valid (Ahmadiyya Anjuman Lahore 2 Nov. 2009). In contrast, the National General Secretary and the Eastern Canada Regional Amir of Ahmadiyya Muslim Jama'at Canada both stated that intermarriage between a non-Ahmadi Muslim and an Ahmadi is legal in Pakistan (Ahmadiyya Muslim Jama'at Canada 3 Nov. 2009; ibid. 28 Oct. 2009). However, the Eastern Canada Regional Amir stated that while such a marriage is legal in Pakistani courts, religious leaders are "not concerned with the courts" (28 Oct. 2009)." (Immigration and Refugee Board of Canada (19 November 2009) *Pakistan: Intermarriage between a non-Ahmadi Muslim and an Ahmadi; whether the marriage would be legally recognized; the consequences for the couple and the officiant of the marriage*)

In March 2009 the *Inter Press Service* notes:

> "…Pakistan's Muslim Family Law states that, in a marriage, a girl must be at least 16 (age of puberty) and must give her consent. There is a Child Marriage Restraint Act, dating back to 1929, which has never been implemented and remains in the statute books. In March 2004, the Law and Justice Commission came out with a draft amendment to the Pakistan Penal Code seeking to penalise the act of offering or accepting a woman against her free will, or any child in marriage by way of compensation. That amendment was never passed and estimates say that 30 percent of all marriages fall into the category of child marriage." (Inter Press Service (8 March 2009) *Rights-Pakistan: Child Marriages Mock Laws, UN Conventions*)

A report issued in January 2008 by the *World Bank* notes:

> "Bride exchange, known locally as watta satta (literally, 'give-take'), usually involves the simultaneous marriage of a brother-sister pair from two households. Remarkably, watta satta accounts for about a third of all marriages in rural Pakistan." (World Bank (January 2008) *Watta Satta: Bride Exchange and Women's Welfare in Rural Pakistan, p.1*)

The *United Nations Population Fund* in November 2007 states:

> "What is a "Compensation Marriage"? This ancient custom, prevalent in Pakistan's Northwest Frontier Province, Afghanistan, and parts of the Middle East, refers to the practice of forcing girl children into arranged marriages as compensation for a murder perpetrated by her family, to offset debts, or to

> settle other inter-clan or family disputes…In Pakistan this practice is called Swara, in other regions it is known as Vanni. Whatever it is called, compensation marriages are widely accepted as a way of keeping the peace between tribes and families. However, under-aged girls torn from their homes in this manner often end up systematically abused and forced into a life of virtual slavery in the homes of their "enemies"." (United Nations Population Fund (27 November 2007) *Virtual Slavery: The Practice of "Compensation Marriages)*

A report published in October 2007 by the *United Nations Population Fund* & *Rahnuma* points out that:

> "There seems to be a dearth of material on Early Marriages in Pakistan. The topic is largely unresearched and even ignored. As early marriages are unregistered, their prevalence is hard to determine quantitatively. This problem is further exacerbated by the fact that most births in Pakistan's rural areas are also unregistered, making it hard to determine the age of a child at the time of marriage. It is unquestionable, however, that the custom of child marriage is widely prevalent throughout Pakistan." (United Nations Population Fund & Rahnuma (27 October 2007) *Child Marriage in Pakistan, A Taboo, p.4*)

IRIN News in March 2007 states:

> "In watta satta, one brother and sister are married to another pair from another family – often close relatives…About a third of all marriages in rural Pakistan are carried out on a watta satta basis, according to research. The rate is higher in some parts of the country, such as the southern Sindh province." (IRIN News (8 March 2007) *Pakistan: Marriage by exchange*)

In March 2007 an *IRIN News* story points out:

> "Seven years ago, Zubaida Ali witnessed a bizarre ceremony in her ancestral village in Sindh. Her cousin Fareeba was being married to the Holy Quran, the holy book of Islam…The tradition under which Fareeba was 'wed' is known as 'Haq Bakshish', which literally translates into giving up the right to marry. Families use Haq Bakshish to prevent property leaving the family when a girl weds someone who is not a relative. Fareeba, who can now never wed a man…The Haq Bakshish tradition, most common in Sindh, but also followed in parts of the Punjab, is most often practiced by feudal families..." (IRIN News (8 March 2007) *Pakistan: Haq Bakshish: No right to wed*)

A paper published in August 2006 by the *Heinrich Boll Foundation* states:

> "In Pakistan, there is the Muslim Family Law Ordinance which has been passed in 1961. Under this law, polygamy was allowed but restrained or limited." (Heinrich Boll Foundation (August 2006) *Roundtable Conference "Comparative Analysis of Family Law in the Context of Islam", August 15-17, 2006 Kabul, Afghanistan, p.31*)

This report also notes:

> "In Pakistan if a man wants to remarry, under the law, he has to go to the arbitration council. The arbitration council consists of a chairperson and the representatives of both the woman and the man. In this council, there has to be an acceptance on the part of the existing wife for the second marriage of her husband. But there have to be reasons strong enough to be given from the husband and the wife has to confirm whether it is right or not. However the reality is very different. There are very few husbands who go to the arbitration council. There is a social pressure on behalf of the wife because she has to retain her children and she has to retain her position in the society as she understands that a divorced woman has very little social respect." (ibid, p.32)

In May 2006 *IRIN News* states:

> "In traditional Pakistani society, especially in rural areas, marriages outside clan boundaries are often regarded as unacceptable." (IRIN News (10 May 2006) *Pakistan: Couples marrying by choice face many dangers*)

The *Asian Development Bank* point out in an undated report that:

> "A majority of women are married to their close relatives, i.e., first and second cousins. Only 37 percent of married women are not related to their spouses before marriage." (Asian Development Bank (Undated) *Women in Pakistan*)

Proxy marriage

A report issued by the *United Kingdom Home Office* where other sources are cited, states:

> "In an email dated 24 June 2008, the FCO British High Commission (BHC), Islamabad, stated that in Islam a Muslim woman and a non-Muslim man cannot marry. If such a couple were to have a child, that child would be considered illegitimate on the grounds that the parents would not, and could not, be legally married. Should a Muslim woman marry a non-Muslim it would be considered adultery. The BHC went on to say that the Islamic punishment for adultery is stoning to death although in reality the penalty would be at least a lengthy prison sentence and —considerable social stigma." (United Kingdom Home Office (9 August 2013) *Pakistan, Country of Origin Information (COI) Report, p.137*)

This report also notes:

> "On marriages by proxy, a Foreign and Commonwealth Office official from the British High Commission (BHC) in Islamabad stated in an email dated 10 November 2010 that: '... proxy (telephonic) marriage is acceptable in Islam and also under the Muslim Family laws ordinance 1961. The condition is that both the parties (Bride and the Groom) should be present at both ends with their witnesses. Whereas in Ahmadis the proxy marriage can be contracted even without the presence of the bride and the groom and with only the presence of their Waliys (representatives).

> ‘If a marriage is contracted with one of the above procedures and the marriage certificate has all the necessary attestations and is registered with the concerned authorities it can be considered as a valid marriage.’
>
> A further email from an official in the Consular Section of the BHC, dated 9 November 2010, stated that they ‘... do not recognise a proxy marriage done where one of the party was in the UK, and the other was in Pakistan.‘ (ibid, p.202)

2. Formalities of Marriage (Consent, Minimum Age, Registration, Documents required)

The *Federal Office for Migration and Asylum* (Germany) states:

> “Pakistan
> Province of Sindh introduces mandatory minimum marrying age of 18 for women
> The parliament of the province of Sindh is the first Pakistani province to promulgate a law under which marrying off a girl under the age of 18 is a criminal offence punishable with a prison sentence of up to three years or a fine. In the remainder of Pakistan the marrying age is 16 for women and 18 for men. In reality, children are married off at much younger ages, generally without the parents incurring any punishment or only minor punishment. (Federal Office for Migration and Asylum (Germany) (5 May 2014*) Information Centre Asylum and Migration Briefing Notes*)

In April 2013 a publication by the *United States Department of State* reviewing events of 2012 notes that:

> “Women are legally free to marry without family consent, but women who did so often were ostracized or faced becoming the victims of honor crimes.” (United States Department of State (19 April 2013) *2012 Human Rights Report: Pakistan*)

This report also points out that:

> “Despite legal prohibitions, child marriages occurred. The law sets the legal age of marriage at 18 for men and 16 for women and prescribes punishment and fines, ranging from imprisonment up to a month, 1,000 rupees ($10), or both. In practice, the penalties were too low to have any deterrent effect. A World Population Foundation survey in 2009 found that 49 percent of women between the ages of 20 and 24 were married before the age of 18. In 2008 the Family Planning Association of Pakistan estimated that child marriages made up 32 percent of marriages in the country. In rural areas poor parents sometimes sold their daughters into marriage, in some cases to settle debts or disputes. (ibid)

A research query by the *Immigration and Refugee Board of Canada* states under section 2.2 Lesbians:

> “According to *The Independent*, lesbians are "completely invisible" in Pakistani society (27 Mar. 2013). Similarly, the *New York Times* states that lesbians are "even less visible" than gay men (3 Nov. 2012). The President of

> Neengar Society said that the situation for lesbians in Pakistan is particularly difficult (20 Dec. 2013). He explained:
>
> Because of the situation of women's rights in Pakistan, lesbians rarely get access to good education, awareness about human rights or even their own sexuality. Lesbians will be forced to get married and they face pressure from both their in-laws and parent's family." (Neengar Society 20 Dec. 2013)
>
> He cited an example in which a lesbian woman was forced by her family to get married and then suffered marital rape (ibid.). Corroborating information for this case could not be found among the sources consulted by the Research Directorate within the time constraints of this Response." (Immigration and Refugee Board of Canada (13 January 2014) *PAK104712.E Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013)*)

In January 2013 research issued by the *Immigration and Refugee Board of Canada* notes:

> "Sources indicate that Nikah Nama, a "marriage certificate" for Muslims (US n.d.; BBC 17 Feb. 2011) or "marriage contract" (Academic 5 Dec. 2012; Pakistan Jurist 5 Apr. 2012), is issued by Nikah Registrar (US n.d.; Academic 5 Dec. 2012). Nikah Registrar, or "marriage registrar" (Lahore n.d.), is appointed by the municipality, Panchayat Committee, Cantonment Board or Union Council (US n.d.; BBC 17 Feb. 2011). The Union Council is located in every municipality (Belgium n.d.; Academic 5 Dec. 2012). The Pakistan Jurist, a website created by Pakistani legal firm AHS - Advocates & Legal Consultants (Pakistan Jurist n.d.a), explains that Nikah Nama is a "legal document certifying the solemnization of marriage between a husband and a wife" (ibid. 5 Apr. 2012). The Pakistan Jurist points out that, according to the Muslim Family Laws Ordinance 1961, which applies to all Muslim Pakistani citizens (ibid. n.d.b), Nikah Nama must be registered with a local Union Council, where an original copy of Nikah Nama is kept as public record (ibid. 5 Apr. 2012). According to the Pakistan Jurist, individuals may obtain a copy of the Nikah Nama at the Union Council by paying a prescribed fee (ibid. n.d.b)." (Immigration and Refugee Board of Canada (14 January 2013) *Pakistan: Information on marriage registration, including mixed marriages*)

A 2012 publication from the *Social Institutions and Gender Index* states:

> "Under the Child Marriage Restraint Act of 1929, the minimum age of marriage is 16 years for females and 18 years for males. The incidence of early marriage has fallen in the last decade. A 2004 United Nations report estimated that 21 percent of girls between 15 to 19 years of age were married, divorced, separated or widowed. [1] The 2007 Demographic and Health Survey (DHS) found that 16% of girls between 15 to 19 years of age were married, divorced, separated or widowed. It also found that 13.4 percent of married women aged 20-49 were married by their 15th birthday, a figure that rose to 39.5 percent of women married before they turned 18. Significantly, the DHS indicated a decline in the number of girls married before 18 as well as a rise in the median age at first marriage among younger women, from 18.5 for women aged 40-49 to 20.3 for women aged 25-29. [2] Although Pakistani law allows all citizens to choose their spouse freely, in practice many women are denied this right. A 2007 Pew survey found that 55

> percent of respondents believed that a family should choose a husband for a woman; just six percent believed that a woman should be free to choose her own husband without the input of her family.[3] Marriages are sometimes arranged in order to settle disputes between different clans, particularly in rural areas. A 2004 amendment to the Code of Criminal Procedure prohibits and punishes this by imprisonment of three to ten years." (Social Institutions and Gender Index (2012) *Gender Equality and Social Institutions in Pakistan, p.1*)

In April 2011 *Xinhua* states:

> "In Pakistan marriage registration facility is so far provided to Muslim community in the form of "Nikah Naama," and to Christians in the form of "Certificate of Marriage." All other communities are deprived of this right of registration of marriages. Under the new legislation, every marriage solemnized under the Hindu religion and other religions will be registered." (Xinhua (22 April 2011) *Pakistan to legislate marital laws for minorities*)

In January 2011 a report issued by *Peace Women* states:

> "Regarding a woman's right to marry a person of her choice… numerous court judgments have upheld it and consent is considered vital in an Islamic marriage." (Peace Women (25 January 2011) *Pakistan: Vigilante Justice Haunts Women, Says Daily*)

In October 2010 a report published by the *Right to Education Project* analysing United Nations publications on children in Pakistan states:

> "Minimum age for marriage
> From 3rd and 4th reports combined
> 104. Child Marriages Restraint Act, 1929 prohibits the marriages of children under 18 for boys and 16 for girls. It treats the conclusion of such marriages as an offence for those arranging the marriage or registering it. However, in spite of the law prohibiting child marriages, there have been cases where children are getting married earlier than the prescribed, ages especially in rural areas.
> 105. The Law and Justice Commission of Pakistan therefore has examined the Child Marriages Restraint Act 1929. Punishment of imprisonment and fine provided under different sections of the Act for violation of the law has been enhanced for increasing the deterrence value of the law.
> From concluding observations
> 26. The Committee reiterates its previous concern (see CRC/C/15/Add.217) about legal inconsistencies concerning the definition of a child at federal, provincial and territorial levels and between secular and sharia law. It notes in particular the difference between the minimum legal age for marriage of boys (18 years) and that of girls (16 years) and the definition of a girl child contained in the Zina and Hadood Ordinances (1979) (until 16 years or puberty).
> From 2nd report
> 55. The meaning of "child" for the purposes of marriage is governed by the Child Marriage Restraint Act, 1929 (Annex 7, Appendix XVII). According to this act, a child is a person who, if a male, is under 18 years of age and, if a female is under 16 years of age (sect. 2 (a)). A "child marriage", under the Act, means a marriage any of the contracting parties to which is a child (sect.

2 (b)). The Act aims to ban child marriages. If such a marriage takes place, the parties are to be punished with imprisonment or with fine or with both. Persons performing the contract or directing it are to be punished in the same way.
108. Where the marriage of a young girl is arranged by her guardian, she can repudiate the marriage on the attainment of puberty. This provision of Islamic law is called the option of puberty and is incorporated in the Dissolution of Muslim Marriages Act, 1939 (Annex 19) as section 2 (vii) and provides an additional ground to a woman on the basis of which she can have her marriage dissolved." (Right to Education Project (October 2010) *National law and policies on minimum wages - Pakistan*)

In October 2008 a report in the *Associated Press* notes:

> ""Police raided a wedding between a 7-year-old boy and a 5-year-old girl in Pakistan's largest city, arresting the Muslim cleric officiating at the ceremony and the children's parents, a senior officer said Friday." The cleric had not yet begun the ceremony in Karachi, which was attended by 100 guests, said deputy superintendent of police Malik Mazhar. Pakistan law forbids marriage below the age of 18, but some Muslim scholars say it is permissible if the bride and groom have reached puberty." (Associated Press (31 October 2008) *Pakistan: Police raid child wedding*)

In August 2008 the *Asian Centre for Human Rights* states:

> "Abduction, rape and forcible marriage of Hindu minority females by Muslim men are common in Pakistan. When the police arrest the accused, the accused produce certificates issued by any Muslim seminary certifying that the Hindu women voluntarily converted to Islam and the police release the accused." (Asian Centre for Human Rights (1 August 2008) *South Asia Human Rights Index - 2008, p.73*)

The *United Nations Committee on the Elimination of Discrimination against Women* in June 2007 report:

> "The Committee is concerned about the inadequacy of registration of birth and marriages." (United Nations Committee on the Elimination of Discrimination against Women (11 June 2007) *Concluding comments of the Committee on the Elimination of Discrimination against Women: Pakistan, p.6*)

This publication also notes:

> "The Committee expresses concern that under the Dissolution of Muslim Marriage Act of 1939 women do not enjoy equal rights with men during the dissolution of marriage. It also notes with concern that under the Child Marriage Restraint Act of 1929 the minimum age for marriage for boys is 18 years and for girls 16 years. The Committee is further concerned about the persistence of forced and early marriage." (ibid)

In April 2007 a paper issued by *Shirkat Gah-Womens Resource Centre points* out that:

> "Public ignorance combined with untrained marriage registrars commonly leads to a flouting of legal provisions to women's detriment: family men and marriage registrars frequently delete protective clauses of the marriage contract without consulting the woman…" (Shirkat Gah-Womens Resource Centre (April 2007) *Talibanisation and Poor Governance, Undermining CEDAW in Pakistan, p.21*)

In August 2006 a paper published by the *Heinrich Boll Foundation* notes:

> "For example the Muslim Family Law Ordinance does not extend to the tribal areas of Pakistan. So there is no certification, there is no written marriage contract and even if there was the documents are kept with the federal government which is somewhere far away in Islamabad." (Heinrich Boll Foundation (August 2006) *Roundtable Conference "Comparative Analysis of Family Law in the Context of Islam", August 15-17, 2006 Kabul, Afghanistan, p.18*)

It is also reported in this document that:

> "Under the Muslim Family Law Ordinance there is a marriage certificate for the purpose of providing protection for the marriage gift (Mahr), providing a record that this woman is the wife of this man, and to provide the marrying woman with any special clauses and conditions that she wants to place on the marriage and divorce." (ibid, p.19)

In May 2006 a *World Bank* report states:

> "Before the introduction of Family Laws Ordinance in 1961, Muslims of the Indian sub continent were governed by their personal law as laid down in the Quran & Sunnah, and interpreted by the Muslim scholars. There was no codified law and rule with regard to registration of marriages or of divorce. The non registration of marriages caused great problems and legal battles in cases of more than one marriage of a person…The Muslim Family Laws Ordinance (MFLO) 1961 provided for an Arbitration Council, a Chairman, a Union Council and defined the word "ward". The law under Section 3 overrides all other laws relating to customs or usage of registration of Muslim marriages etc…Section 5 of the MFLO made registration of a marriage compulsory. The law provided for the appointment of Nikah Registrars also." (World Bank (4 May 2006) *Pakistani Women in Context: A Companion Volume to the Pakistan Country Gender Assessment - Paper 4: Family & Juvenile Laws*)

This report also notes:

> "The Nikahnama means a contract which gives the details of the terms and conditions under which a marriage takes place and as such is a very important document. It can also be termed the Contract of Marriage. The present form of Nikahnama contains 25 clauses. Clause 2 mentions the names of the bridegroom, his father and addresses. Clause 3 mentions the age of the bridegroom. Clause 4 mentions the name of the bride, her father and her residential addresses. Clause 5 seeks if the bride is a maiden, widow or divorcee. Clause 6 mentions the age of the bride. These clauses clearly discriminate as while the particulars of the bride whether she is a maiden, widow or divorcee are questioned there is no such question in regard to the

bridegroom. The Nikahnama should have some additional clauses indicating if the bridegroom is already married, has never married or a widower or if marriage has been terminated through divorce in any form, the same should be specified. Further if there is any existing wife that should also be mentioned. In such a case, the particulars of the existing wife, her name and address should also be mentioned in the Nikahnama. Further in such cases if the bridegroom has taken permission from the first wife or the competent authority, a duly attested document to that effect should be produced. Further if there are any children from the previous marriage, detailed information in regard to the said children and as to in whose custody these children are and who is responsible to maintain them should be specified. The same particulars can be mentioned or asked about the wife also. Clause 7 of the Nikahnama deals with the appointment of a Wakil by the bride and his name and address and Clause 8 deals with the name of witnesses and their addresses. Similarly Clause 9 and 10 deal with the appointment of the Wakil of the bridegroom, their witnesses and their details. Of special concern in the Nikahnama is Clause 18 which mentions whether the husband has delegated the right of divorce to his wife, and if so, under what conditions. Generally speaking, the Nikah Registrar even before handing over the blank forms to the concerned parties strikes off this clause. There is a general lack of awareness with regards to the importance of this clause particularly for the bride and her family. As such this clause must be amended and it should be mentioned whether the delegated right of divorce has been given by the husband to his wife under general conditions or under some specific conditions and in case this clause is struck off and there is nothing in writing, it should be presumed that the husband has delegated the power of divorce to his wife." (ibid)

In March 2005 a report published by the *World Bank* states:

> "Since 1961, contracting marriage for any female under age 16 has been illegal in Pakistan. Well-known to human development experts and human rights advocates in Pakistan, the problems associated with child marriage are discussed in Annex 2. The age minimum of 16 was established as part of a set of legal initiatives—collectively known as The Muslim Family Law Ordinance (MFLO) of 1961—to improve the status of women in Pakistan (please see Annex 2 for elaboration). The 16-year age minimum was an improvement upon the previous age minimum of 14 for females and 16 for males, set in 1929 under the Child Marriages Restraint Act (CRMA), before which there had been no minimum age for marriage." (World Bank (3 March 2005) *Improving Gender Outcomes, The Promise for Pakistan*)

This report also notes:

> "Practically no woman chooses her own husband in rural Pakistan." (ibid)

It is also stated in this report that:

> "…legal protections regarding girls' marriages appear to have limited scope and effectiveness: girls and sometimes their families often are ignorant of legal restrictions on child marriage; moreover, when their families do know of these rights, they can afford to flout them because enforcement is absent." (ibid)

This report also states:

> "The nikahnama is the centerpiece of the Muslim Family Law Ordinance of 1961. By requiring the registration of a marriage contract, and that it contain specific protections for both male and female parties, the MFLO attempted to make marital practices more transparent and accountable to the law." (ibid)

This report also points out:

> "The government of Pakistan has taken pains to incorporate protections for women and girls into marriage law by emphasizing the importance of the marriage contract (nikahnama) and abiding by its requirements. In addition to The Muslim Family Law Ordinance (MFLO) of 1961, there has been The Dissolution of Muslim Marriages Act (DMMA) of 1939; the Government Servants (Marriages with Foreign Nationals) Rules (1962); the West Pakistan Family Courts Act (1964) and West Pakistan Family Courts Rules (1965); the Dowry and Bridal Gifts (Restriction) Act (1976) and the Dowry and Bridal Gifts (Restriction) Rules (1976)." (ibid)

In June 2004 the *Centre for Reproductive Rights* states:

> "The principal law relating to Pakistani citizenship is the 1951 Pakistan Citizenship Act. The act was amended most recently in 2000 with the Pakistan Citizenship (Amendment) Ordinance. Under the act, any person who was born in Pakistan, or any of whose parents or grandparents were born in Pakistan, after the commencement of the act is a citizen of Pakistan. Pursuant to the 2000 ordinance, a person born of wedlock between a Pakistani citizen and a foreign citizen is entitled to Pakistani citizenship by descent, regardless of whether it is the mother or father who has Pakistani citizenship. Prior to this amendment, only children of Pakistani fathers had this right. The act permits the foreign wife of a Pakistani man to acquire Pakistani citizenship, but a Pakistani woman who marries a foreign man cannot confer citizenship upon her husband." (Centre for Reproductive Rights (1 June 2004) *Laws And Policies Affecting Their Reproductive Lives, Pakistan, p.175*)

This report also notes:

> "Family laws in Pakistan are an amalgam of religion-based personal laws and codified laws that may apply to specific communities or all Pakistani citizens." (ibid, p.175)

This report also points out the:

> "The Special Marriage Act allows individuals who do not ascribe to a particular faith or are not of the same faith to register their marriage legally." (ibid, p.176)

It is also noted in this report that:

> "Muslim personal law treats marriage as a civil contract. Therefore,all the requisites of a valid contract must be present, including a proposal and an acceptance in the presence of two Muslim male witnesses,or one Muslim

> male and two Muslim female witnesses,and the consent of both parties at the time of marriage. The parties to a marriage must also be of sound mind and have attained puberty, which is presumed to occur at the age of 15. Although the Muslim Family Laws Ordinance establishes the statutory age for marriage at 16 for girls and 21 for boys, the ordinance applies to Muslim Pakistanis "notwithstanding any law, custom or usage," pointing to the authority of customary practices over personal matters." (ibid, p.176)

The report also states that:

> "Pursuant to the Muslim Family Laws Ordinance, all Muslim marriages must be registered and offenders are liable to be punished with imprisonment or a fine, or both.504 Courts have held that where the fact of marriage is regarded with serious doubt between the parties,non-registration could cast further suspicion on its existence and solemnization.505 Since the introduction of the 1979 Offence of Zina (Enforcement of Hudood) Ordinance,couples whose marriage has not been registered face the possibility of the serious charge of zina (fornication or adultery), the maximum punishment for which is stoning to death.506 However, courts have also recognized that although non-registration of marriage is punishable under the ordinance, it does not invalidate an otherwise legal marriage." (ibid, p.176)

BBC News in December 2003 notes:

> "Pakistan's supreme court has declared that adult Muslim women can marry anyone of their own free will." (BBC News (19 December 2003) *Pakistan women to marry freely*)

A report issued in April 2002 by *Amnesty International* points out that:

> "Courts do not mandatorily maintain records of marriages which could be used to prove that a marriage was lawfully contracted." (Amnesty International (16 April 2002) *Pakistan, Insufficient Protection of Women, p.29*)

A publication by *Women Living Under Muslim Laws* in 1998 notes that:

> "Following the creation of Pakistan, women recognized some of their demands through the legal code. Women attained voting rights, and the Family Laws Ordinance was passed in 1961. Under this law, women were officially able to inherit agricultural property (in consonance with Islamic law), second marriages were made contingent upon agreement by the first wife, divorce was made more difficult for the male, women attained the right to initiate divorce for the first time, and a system of registration of marriages was also introduced." (Women Living Under Muslim Laws (1998) *Women's movement in Pakistan: State, Class, Gender*, p.11)

An undated report published by *Emory Law* states:

> "…penal sanctions for those in violation of mandatory registration requirements for marriage; failure to register does not invalidate the marriage." (Emory Law (Undated) *Pakistan, Islamic Republic of*)

The *Government of Pakistan* in 1961 states:

"Registration of marriage.
(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 marriage under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case shall more than on 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 such-section (3) shall be punishable with simple imprisonment for a term which may extent 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 records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikhanama shall be supplied to 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." (Government of Pakistan (1961) *Muslim Family Laws Ordinance, 1961*)

3. Divorce

A report published by the *United States Department of State* states:

> Although the government generally did not interfere with the right to marry, local officials on occasion assisted influential families in preventing marriages the families opposed. The government also failed to prosecute cases in which families punished members (generally women) for marrying or seeking a divorce against the wishes of other family members. (United States Department of State (27 February 2014) *2013 Human Rights Report: Pakistan*)

Also

> "Women who tried to report abuse faced serious challenges. Police and judges were sometimes reluctant to take action in domestic violence cases, viewing them as family problems. Instead of filing charges, police typically responded by encouraging the parties to reconcile. Authorities usually returned abused women to their abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were hesitant to report abuse due to fear of dishonoring the family. (*Ibid*)

Also

> Discrimination: Women also faced legal and economic discrimination. The law prohibits discrimination on the basis of sex, but authorities did not enforce it. Women faced discrimination in family law, property law, and the judicial system. Family law provides protection for women in cases of divorce,

> including requirements for maintenance, and lays out clear guidelines for custody of minor children and their maintenance. Many women were unaware of these legal protections or unable to obtain legal counsel to enforce them. Divorced women often were left with no means of support, as their families ostracized them. Women are legally free to marry without family consent, but women who did so frequently were ostracized or faced becoming the victims of honor crimes. (Ibid)

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> "*Discrimination:* Women also faced legal and economic discrimination. The law prohibits discrimination on the basis of sex, but authorities did not enforce it. Women faced discrimination in family law, property law, and the judicial system. Family law provides protection for women in cases of divorce, including requirements for maintenance, and lays out clear guidelines for custody of minor children and their maintenance. Many women were unaware of these legal protections or unable to obtain legal counsel to enforce them. Divorced women often were left with no means of support, as their families ostracized them. Women are legally free to marry without family consent, but women who did so frequently were ostracized or faced becoming the victims of honor crimes." (ibid)

Citing other sources a research report published in November 2010 by the *Immigration and Refugee Board of Canada* states:

> "According to the SDPI, while a man has the "unilateral right of talaq" (n.d.b)-the "absolute and inherent power to repudiate his wife" without offering any reason (Daily Star 3 July 2010)-women legally dissolve their marriage under the following three circumstances (SDPI n.d.b): If the husband has "unconditionally delegated" the right of divorce in the nikahnama or marriage contract (SDPI n.d.b). If the wife files suit in family court for khula, which means "'untying the knot'" (ibid.) or "to put off as a man is said to khula his garment when he puts it off" (Kakakhel Law Associates 23 Sept. 2008). If, under the Dissolution of Muslim Marriages Act, 1939, she files suit for judicial divorce in family court (SDPI n.d.b)." (Immigration and Refugee Board of Canada (17 November 2010) *Pakistan: Circumstances under which a woman has the legal right to get a divorce through the courts (judicial divorce) through her own initiative; circumstances under which single women can live alone*)

This report also notes that:

> "Under the Dissolution of Muslim Marriages Act, 1939, a woman who "regards the husband [as] at fault" can initiate a judicial divorce through a family court (SDPI n.d.b), which were established under the West Pakistan Family Courts Act, 1964, to "adjudicate upon ... matters relating to the dissolution of marriage" (Kakakhel Law Associates 23 Sept. 2008). According to the SDPI, unless the couple reconciles, the family court issues a decree dissolving the marriage and sends it to a union council (SDPI n.d.b), an elected local government body of 13 councillors headed by a nazim, or mayor, and a naib nazim, or deputy mayor (UN HABITANT et al.). The divorce does not come into effect until the end of iddat (SDPI n.d.b), a prescribed waiting period during which a woman cannot remarry (Omar July 2007); iddat can last either 90 days after the union council has received the dissolution decree or, if the

wife is pregnant, until the birth of a child (SDPI n.d.b). If the divorce is granted, the union council issues a divorce certificate and the woman keeps her mehr (ibid.), or mahr (Shahid Sept. 2009), a dower given to the wife by the husband (Omar July 2007)." (ibid)

This publication also states:

"Section 2 of the Dissolution of Muslim Marriages Act, 1939 permits divorce on any one of the following grounds:
(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 filed [sic] 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) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
(v) that the husband was impotent at the time of the marriage and continues to be so;
(vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; ...
(viii) that the husband treats her with cruelty, that is to say,
(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
(b) associates with women of evil repute of leads an 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 her in the observance of her religious profession or practice, or
(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran,
(ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim Law .... (Pakistan 1939)." (ibid)

A paper published in August 2006 by the *Heinrich Boll Foundation* states:

"The first law introduced about divorce in Pakistan still applies now. It is the Dissolution of Muslim Marriages Act 1939 under which, a woman could go to court and seek divorce. The second law is the Muslim Family Laws Ordinance 1961, which regulates the laws of divorce in Pakistan." (Heinrich Boll Foundation (August 2006) *Roundtable Conference "Comparative Analysis of Family Law in the Context of Islam", August 15-17, 2006 Kabul, Afghanistan*)

In June 2004 the *Centre for Reproductive Rights* states:

"Divorce among Muslims is governed by Muslim personal law. Two relevant codified laws are the Muslim Family Laws Ordinance and the 1939 Dissolution of Muslim Marriages Act. Under Muslim jurisprudence, there are several forms of divorce. Talaq traditionally refers to the right of the Muslim male to unilaterally and irrevocably repudiate the marriage contract without specifying any cause. Muslim jurisprudence recognizes three modes of talaq, dependent upon the number and occasions of the pronouncement of divorce.

> The husband's prerogative of talaq may also be delegated to the wife (talaq-i-tafweez) either conditionally or unconditionally through a clause that may be inserted in the nikahnama. However, despite its inclusion in the standard nikahnama, the option of talaq-i-tafweez is trumped by customary practice and invariably removed at the time of signing." (Centre for Reproductive Rights (1 June 2004) *Laws And Policies Affecting Their Reproductive Lives, Pakistan, p.178*)

This report also notes:

> "Generally, talaq is followed by a period of iddat, whereby the divorced wife is bound not to contract a new marriage if the existing marriage has been consummated. The period of iddat is three months, unless the wife is pregnant, in which case iddat continues until delivery of the child. The purpose of iddat is to avoid any confusion regarding paternity. Under the Muslim Family Laws Ordinance,any man who wishes to divorce his wife may pronounce talaq and must give written notice to the chairman of the Union Council and a copy to his wife." (ibid, p.178)

This report also states:

> "Khula is a form of divorce whereby the wife takes the initiative in dissolving the marriage. It is not a unilateral right and requires the wife to justify her desire for divorce and agree to forego her dower and other material benefits given by her husband at the time of marriage. If both spouses mutually agree to khula, the marriage is dissolved without court interference. If the husband does not consent to khula, a court may order dissolution of the marriage if it is convinced of the wife's case. In addition, the woman must observe the period of iddat. Where the spouses mutually consent to terminate the marriage contract based on mutual aversion,the dissolution of marriage is termed mubarat. Contrary to the khula form of divorce, the wife is not bound to give benefits to the husband to be released from the marriage. Like khula, the woman must undergo a period of iddat." (ibid, p.178)

An undated report published by *Emory Law* states:

> "…grounds on which women may seek divorce include: desertion for four years, failure to maintain for two years or husband's contracting of a polygamous marriage in contravention of established legal procedures, husband's imprisonment for seven years, husband's failure to perform marital obligations for three years, husband's continued impotence from the time of the marriage, husband's insanity for two years or his serious illness, wife's exercise of her option of puberty if she was contracted into marriage by any guardian before age of 16 and repudiates the marriage before the age of 18 (as long as the marriage was not consummated), husband's cruelty (including physical or other mistreatment, unequal treatment of co-wives), and any other ground recognised as valid for the dissolution of marriage under Muslim law; judicial khul' may also be granted without husband's consent if wife is willing to forgo her financial rights…" (Emory Law (Undated) *Pakistan, Islamic Republic of*)

An undated report published by the *National Commission on the Status of Women* states:

> "The Muslim Family Laws Ordinance, 1961, deals with inter alia., the modes for the dissolution of Muslim marriage, maintenance and dower. The Dissolution of Muslim Marriage Act, 1939 provides grounds for the dissolution of marriage at the instance of the wife under specified conditions, beside the right of the wife to apply to the court. Under section 8 of the Muslim Family Laws Ordinance,18 the wife can pronounce divorce on herself if so delegated in the nikah nama (marriage contract form)." (National Commission on the Status of Women (Undated) *The Impact of Family Laws on the Rights of Divorced Women in Pakistan, p.6*)

4. Marriage between Non Nationals and Nationals

The *United States Department of State* in a report published in April 2011, reviewing events of 2010, note:

> "Women can acquire citizenship through marriage to a Pakistani man; it is unclear whether a man can acquire citizenship through marriage to a Pakistani woman" (United States Department of State (8 April 2011) *2010 Human Rights Report: Pakistan*)

A report published in April 2002 by *Amnesty International* states:

> "…foreign women can acquire Pakistani citizenship through marriage with Pakistani men but Pakistani nationality is not extended to foreign husbands of Pakistani women." (Amnesty International (16 April 2002) *Pakistan, Insufficient Protection of Women, p.8*)

Marriage between Two Non Nationals

No information on this issue could be found among sources available.

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