

THE WEST PAKISTAN FAMILY COURTS ACT, 1964.

(WEST PAKISTAN ACT NO. XXXV OF 1964)

[18th July, 1964.]

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¹ Inserted vide N.W.F.P Act No. XVIII of 1996.

THE WEST PAKISTAN FAMILY COURTS ACT, 1964.

(WEST PAKISTAN ACT NO. XXXV OF 1964)

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AN
ACT

to make provision for the establishment of Family Courts.

WHEREAS, it is expedient to make prevision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith;

Preamble.

It is hereby enacted as follows:—

1. (1) This Act may be called the West Pakistan Family Courts Act, 1964.
(2) It extends to the whole of the ¹[Pakistan].

Short title,
extent and
commencement.

(3) It shall come into force in such area or areas and on such date or dates as Government may, by notification in the official Gazette, specify in this behalf.

²[(4) Nothing in this Act shall apply to any suit or any application under the Guardians and Wards Act, 1890 pending for trial or hearing in any Court immediately before the coming into force of this Act, and all such suits and applications shall be heard and disposed of as if this Act was not in force.

(5) Any suit, or any application under the Guardians and Wards Act, 1890, which was pending for trial or hearing in any Court immediately before the coming into force of this Act and which has been dismissed solely on the ground that such suit or application is to be tried by a Family Court established under this Act, shall, notwithstanding anything to the contrary contained in any law, on petition made to it in that behalf by any party to the suit or application, be tried and heard by such Court from the stage at which such suit or application had reached at the time of its dismissal.]

³[2. (1) In this Act, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them that is to say—

Definition.

- (a) “Arbitration Council” and “Chairman” shall, have the meaning respectively assigned to them in the Muslim Family Laws Ordinance 1961;
- (b) “Family Court” means a Court constituted under this Act;
- (c) “Government” means the ⁴[Provincial Government].

¹Substituted vide P. O. No. 4 of 1975.
²Added vide W. P. Ord. No. X of 1966.
³Renumbered vide W. P. Ord. No. X of 1966.
⁴Substituted vide P. O. No. 4 of 1975.

- (d) “party” shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute;
- (e) “prescribed” means prescribed by rules made under this Act.

¹[(2) Words and expressions used in this Act but not herein defined, shall have the meanings respectively assigned to them in the Code of Civil Procedure, 1908.]

3. Government shall establish one or more Family Courts in each District or at such other place as it may deem necessary and appoint a Judge ²[for] each of such Courts. Establishment of family courts.

³[(4) No person shall be appointed as a Judge of a Family Court unless he is or has been a District Judge, an Additional District Judge, or ⁴[a Civil Judge or a Qazi appointed under the Dastur-ul-Amal, Diwani Riasat Kalat]. Qualification of judge.

5. Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain hear and adjudicate upon matters specified in the Schedule. Jurisdiction.

6. Subject to any general or special orders of Government in this behalf a Family Court shall hold its sittings at such place or places within ⁵[the District or area for which it is established] as may be specified by the District Judge. Place of sitting.

7. (1) Every suit before a Family Court shall be instituted by the presentation of a plaint or in such other manner and in such Court as may be prescribed. Institution of suits.

(2) The plaint shall contain all ⁶[material] facts relating to the dispute and shall contain a Schedule given the number of witnesses intended to be produced in support of the plaint, the names and address of the witnesses and brief summary of the facts to which they would depose:-

Provided that parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

⁷[(3) (i) Where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time, deliver the document or a copy thereof to be filed with the plaint.

(ii) Where he relies on any other document not in his possession or power, as evidence in support of his claim, he shall enter such documents in a list to be appended to the plaint].

¹ Added vide W. P. Ord. No. X of 1966.
² Substituted vide W. P. Ord. No. X of 1966.
³ Added vide W. P. Ord. No. X of 1966.
⁴ Substituted vide W. P. Act No. I of 1969.
⁵ Substituted vide W. P. Ord. No. X of 1966.
⁶ Inserted vide W. P. Ord. No. X of 1966.
⁷ Substituted vide W. P. Act No. I of 1969.

(4) The plaint shall be accompanied by as many duplicate copies thereof including the Schedule and the lists of documents referred to in sub-section (3), as there are defendants in the suit for service upon the defendants.

¹[8. (1) When a plaint is presented to a Family Court, it—

Intimation
defendants.

(a) may fix a date ordinarily of not more than thirty days for the appearance of the defendant;

(b) shall issue summon to the defendant to appear on a date specified therein;

(c) shall, within three days of the presentation of the plaint, send—

(i) to each defendant, by registered post, acknowledgement due, a notice of the suit together with a copy of the plaint, a copy of the schedule referred to in subsection 2 of section 7 and copies of documents and a list of documents referred to in sub section 3 of the said section; and

(ii) to the Chairman of the Union Council with in whose jurisdiction the defendant or defendants, as the case may be, reside and where the defendants reside within the jurisdiction of different Union Councils, to the Chairman of every Union Council, a notice of the plaint having been presented.

(2) Every summons issued under clause (b) of sub-section (1) shall be accompanied by a copy of the plaint, and copies of the schedule referred to in sub-section (2) of section 7, and a copy of the documents and list of document referred to in sub-section (3) of the said section.

(3) On receipt of the notice under clause (c) of sub-section (1), the Chairman shall display the notice on the Notice Board of the Union Council for a period of seven consecutive days and shall, as soon as may be after the expiry of the said period, inform the Family Court of the notice having been so displayed.

(4) Service of the plaint and its accompaniments in the manner provided in clause (b) or clause (c) of sub section (1) shall be deemed to be due service of the plaint upon the defendant.

(5) Every notice and its accompaniments under clause (c) of sub-section (1) shall be served at the expenses of the plaintiff. The postal charges of such service shall be deposited by the plaintiff at the time of filing the plaint.

(6) Summons issued under clause (b) of sub-section (1) shall be served in the manner provided in the Code of Civil Procedure, 1908 order (v), Rules 9, 10, 11, 16, 17, 18, 19, 21, 23, 24, 26, 27, 28, and 29. The cost of such summons shall be assessed and paid as for summons issued under the Code of Civil Procedure, 1908.

¹ Substituted vide W. P. Act No. I of 1969.

Explanation—For the purposes of this section, the expression Union Council means a Union Council, Town Committee or Union Committee constituted under section 57 of the Electoral College Act, 1964 (IV of 1964).

¹[9. (1) On the date fixed under clause (a) of subsection (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement and attach there with a list of his witnesses along with a precis of the evidence that each witness is expected to give.

Written statement.

(2) Where a defendant relies upon a document in his possession or power, he shall produce it or a copy thereof in the Court along with the written statement.

(3) Where he relies on any other documents, not in his possession or power, as evidence in support of his written statement he shall enter such documents in a list to be appended to the written statement.

(4) Copies of the written statement, list of witnesses and precis of evidence referred to in sub-section (1) and the documents referred to in sub-section (2) shall be given to the plaintiff, his agent or advocate present in the Court.

(5) If the defendant fails to appear on the date fixed by the Family Court for his appearance, then-

- (a) if it is proved that the summons or notice was duly served on the defendant, the Family Court may proceed ex-parte; provided that where the Family Court has adjourned the hearing of the suit, ex-parte, and the defendant at or before such bearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Family Court direct, be heard in answer to the suit as if he had appeared on the day fixed for his appearance; and
- (b) If it is not proved that the defendant was duly served as provided in sub-section (4) of section 8, the Family Court shall issue fresh notices and summons to the defendant and cause the same to be served in the manner provided in clauses (b) and (c) of sub-section (1) of section 8.

(6) In any case in which a decree is passed ex-parte against the defendant under this Act, he may apply within reasonable time of the passing thereof to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree as against him and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that, it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also].

¹ Substituted vide W. P. Act No. I of 1969.

- 10.** ¹[(1) When the written statement is filed, the court shall fix an early date for a pre-trial hearing of the case. Pre-trial proceeding.
- (2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their Counsel.
- (3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or re conciliation between the parties, if this be possible.
- (4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for ²[recording] of evidence.
- 11.** (1) On the date fixed for ³[recording of the evidence] the Family Court shall examine the witnesses produced by the parties in such order as it deems fit. Recording of evidence.
- (2) The Court shall not issue any summons for the appearance of any witness unless, within three days of the framing of issues, any party intimates the Court that it desires a witness to be summoned through the Court and the Court is satisfied that it is not possible or practicable for such party to produce the witness.
- ⁴[(3) The witnesses shall give their evidence in their own words:
- Provided that the parties or their counsel may further examine, cross examine or re-examine the witnesses; Provided further that the Family Court may forbid any question which it regards as indecent, scandalous or frivolous or which appears to it to be intended to insult or annoy or needlessly offensive in form].
- ⁵[3-A. The Family Court may, if it so deems fit, put any question to any witness for the purposes of elucidation of any point which it consider material in the case].
- (4) The Family Court may permit the evidence of any witness to be given by means of an affidavit:
- Provided that if the Court deems fit it may call such witness for the purpose of examination in accordance with sub-section (3).
- 12.** (1) After the close of evidence of both sides, the Family Court shall make another efforts to effect a compromise or reconciliation between the parties. Conclusions of trial.
- (2) If such compromise or reconciliation is not possible, the Family Court shall announce its judgment and give a decree.
- 13.** (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed Enforcement of decrees.

¹ Substituted vide W. P. Act No. I of 1969.

² Substituted vide W. P. Act No. I of 1969.

³ Substituted vide W. P. Act No. I of 1969.

⁴ Substituted vide W. P. Act No. I of 1969.

⁵ Added vide W. P. Act No. I of 1969.

register.

(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment¹[or] the delivery of property, as the case may be, in the aforesaid register.

(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court, the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.

(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.

(5) A Family Court may, if it so deems lit, direct that money to be paid under a decree passed by it be paid in such installments as it deems fit.

14. ²[(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable:

Appeal.

(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and

(b) to the District Court, in any other case.

(2) No appeal shall lie from a decree passed by Family Court:

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower not exceeding rupees one thousand;

(c) for maintenance of rupees twenty-five or less per month.

15. (1) A Family Court may issue summons to any person to appears and give evidence, or to produce or cause the production of any document:

Power of Family Court to summon witness.

Provided that-

(a) no person who is exempt from personal appearance in a Court under sub-section (1) of section 133 of the Code of Civil Procedure, 1908, shall be required to appear in person;

(b) a Family Court may refuse to summon a witness or to enforce a summons already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable.

¹ Substituted vide W. P. Ord. No. X of 1966.

² Substituted vide W. P. Ord. No. X of 1966.

(2) If any person to whom a Family Court has issued summons to appear and give evidence or to cause the production of any document before it, willfully disobeys such summons, the family court may take cognizance of such disobedience and after giving such opportunity to explain, sentence him to a fine not exceeding one hundred rupees.

16. A person shall be guilty of contempt of the Family Court if he without lawful excuse.—

Contempt of Family Court.

- (a) offers any insult to the Family Court; or
- (b) causes an interruption in the work of the Family Court; or
- (c) refuses to answer any question put by the Family Court, which he is bound to answer; or
- (d) refuses to take oath to state the truth or to sign any statement made by him in the Family Court;

and the Family Court may forthwith try such person for such contempt and sentence him to a fine not exceeding rupees two hundred.

17. (1) Save as otherwise expressly provided by or under this Act, the provisions of the Evidence Act, 1872, and the Code of Civil Procedure, 1908, ¹[except section 10 and 11] shall not apply to proceeding before any Family Court.

Provisions of Evidence Act and Code of Civil Procedure not to apply.

(2) Sections 8 to 11 of the Oaths Act, 1892 shall apply to all proceedings before the Family Courts.

18. If a person required under this Act to appear before a Family Court, otherwise than as a witness, is a Pardah nashin lady, the Family Court may permit her to be represented by a duly authorised agent.

Appearance thorough agents.

19. Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court fees to be paid on any plaint filed before a Family Court shall be rupee one for any kind of suit.

Court fees.

20. Government may invest any judge of a Family Court with powers of Magistrate First Class to ²[make order for maintenance] under section 488 of the Code of Criminal Procedure, 1898.

Investment of powers so Magistrates on Judges.

21. (1) Nothing in this Act shall be deemed to affect any of the provisions of the Muslim Family Law Ordinance, 1961, or the rules framed there under; and the provisions of section 7,8,9 and 11 of the said Ordinance shall be applicable to any decree for the dissolution of marriage solemnized under the Muslim Law, maintenance or dower, by a Family Court.

Provisions of Muslim Family Law Ordinance to be application.

(2) Where a Family Court passes a decree for the dissolution of a marriage solemnized under the Muslim Law, the Court shall send by registered post within seven days of passing such decree, a certified copy of the same to the appropriate Chairman referred to in section 7 of the Muslim Family Laws Ordinance, 1961 and upon receipt of such copy, the Chairman shall proceed as

¹ Inserted vide W. P. Act No. XV of 1967.

² Substituted vide W. P. Ord. No. X of 1966.

if he had received an intimation of Talaq required to be ¹[given] under the said Ordinance.

(3) Notwithstanding anything to the contrary contained in any other Law, a decree for dissolution of marriage solemnized under the Muslim Law shall.—

- (a) not be effective until the expiration of ninety days from the day on which a copy thereof has been sent under sub-section (2) to the Chairman; and
- (b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family Laws Ordinance, 1961.

22. A Family Court shall not have the power to issue an injunction to, or stay any proceedings pending before, a Chairman or an Arbitration Council.

Bar on the issue of injunction by Family Courts.

23. A Family Court shall not question the validity of any marriage registered, in accordance with the provisions of the Muslim Family Laws Ordinance, 1961, or shall any evidence in regard thereto be admissible before such court.

Validity of marriages registered under the Muslim Family Laws Ord:1961, not to be questioned by family courts.

24. If in any proceedings before a Family Court it is brought to the notice of the Court that a marriage solemnized under the Muslim Law after the coming in to force of the Muslim Family Laws Ordinance, 1961, has not been registered in accordance with the provisions of the said Ordinance and the rules framed thereunder, the Court shall communicate such fact in writing to the Union Council for the area where the marriage was solemnized.

Family Courts to inform Union Councils of cases not registered under the Muslim Family Laws Ord.1961.

25. A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890 and notwithstanding anything contained in this Act, shall, in dealing with matters specified in that Act, follow the procedure prescribed in that Act.

Family court deemed to be a District Court for purpose of Guardians and wards Act 1890.

²[25-A.(1) Notwithstanding anything contained in any law, the High Court may, either on the application of any party or of its own accord, by an order in writing:-

Transfer of cases.

- (a) transfer any suit or other proceeding under this Act from a Family Court in one district to a Family Court in another district; and
- (b) transfer any appeal or other proceeding under this Act from a District Court in one district to a District Court in another district.

(2) A District Judge, within the district of his jurisdiction, may, either on the application of any party or of his own accord, by an order in wiring transfer any suit or other proceeding under this Act from one

¹ Substituted vide W. P. Ord. No. X of 1966.

² Inserted vide N.W.F.P Act No. XVIII of 1996.

Family Court to another family Court.

(3) Any Court to which a suit, appeal or other proceeding is transferred under the preceding sub-sections shall, notwithstanding anything contained in this Act, have the jurisdiction to dispose it of in the manner as if it were instituted or filed before it:

Provided that on such transfer, it shall not be necessary to commence the proceedings before the succeeding Judge denovo unless the Judge, for reasons to be recorded in writing, directs otherwise.]

26. (1) Government may, by notification in the Official Gazette, make rules to carry into effect the provisions of this Act.

Power to make rules.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the rules so made may, among other matters, provide for the procedure, which shall not be inconsistent with the provisions of this Act, to be followed by the Family Court.

SCHEDULE.

(See Section 5)

- 1. Dissolution of marriage.
- 2. Dower.
- 3. Maintenance.
- 4. Restitution of conjugal rights.
- 5. Custody of children.
- 6. Guardianship.
- ¹[7. Jactitation of marriage.]

¹Inserted vide W. P. Act No. I of 1969.