
Family Justice System



"A family is a place where principles are hammered and honed on the anvil of everyday living." – Charles R. Swindoll

RCBHC



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE GUL HASSAN TAREEN BHC
SUBJECT: FAMILY LAW
DATE: 07TH JANUARY 2025
BY: Waseem Ahmed Raees Research Officer

FAMILY JUSTICE: CHALLENGES AND WAY FORWARD

The family justice system exists to resolve dispute, arising in respect of family matters, for expeditious settlement and disposal of cases and with the minimum pain caused to those involved. The family justice system in Pakistan is deeply entrenched in *Islamic principles* as the subject being governed by Personal Law. Given that majority of citizens are (*Sunni*) Muslims, as such the Family Justice System is designed to address the marital issues and family disputes including *marriage, divorce, maintenance and custody of children* in the light of *Islamic Family Laws* or Muslim Personal Laws¹

The 1973 Constitution of the Islamic Republic of Pakistan, include provisions that protect and uphold *family as an institution, women and children' rights* and enable Muslims adopt an Islamic way of life through the *Principles of Policy*; specially the articles 9, 14, 25 and 35. Article 25(3) of the Constitution of Pakistan, *mandates the state to take affirmative action for the protection of women and children* and Article 35 *obligates the state to protect marriage, the family, the mother, and the child*.

Prior to legislation of Muslim Family Laws Ordinance 1961, there was no codified law to regulate marriage, divorce and polygamy and the family disputes were resolved in Ordinary Courts under the Code of Civil Procedure 1908 according to "*fiqh*" and "*Sharia*". Enacting MFLO (and subsequent laws) was an attempt to engage in legal reasoning consistent with the principles of Islamic jurisprudence and allow the state to achieve more stability in the sphere of family laws. This reform attempt and the constitutional mandates, resulted in promulgation of the West Pakistan Family Courts Act in the year 1964, which was enacted to establish specialized courts to expedite the resolution of family disputes, thereby reinforcing the constitutional commitment to uphold the rights and dignity of individuals within the family unit.

The family justice system in Pakistan is fundamentally *therapeutic in nature*, emphasizing rehabilitation of familial relationships and the best interests of individuals, *particularly children*, involved in family disputes. The system aims to provide support and guidance to families, facilitating reconciliation and fostering a nurturing environment for children. By focusing on the therapeutic aspects of justice, the family courts seek to address the underlying issues that contribute to familial discord, thereby promoting healthier family dynamics and ensuring that the rights and well-being of all family members, especially vulnerable ones, are safeguarded²

➤ *Legislative Framework*

The family justice system in Pakistan is governed by a combination of religious principles and statutory laws.³ The primary legislation governing family matters in Pakistan is the *Muslim Family Laws Ordinance, 1961 (MFLO)*: Mainly governs matters related to marriage, divorce and maintenance among Muslims. Important provisions include the requirement for registration of marriages, regulation of polygamy, and the procedure for divorce (Talaq). *Family Courts Act, 1964*: Establishes family courts for expeditious resolution of family disputes. Empowers courts to handle cases such as dissolution of marriage, custody, maintenance, and restitution of conjugal rights. *Guardians and Wards Act, 1890*: Governs guardianship and custody matters, focusing

on the welfare of minors. ***Dissolution of Muslim Marriage Act***: Allow Muslim women to obtain decree from Court vis-à-vis dissolution of marriage in different circumstances. ***Dowry and Bridal Gifts (Restriction) Act, 1976***: Restricts the exchange of dowry to mitigate financial burdens on families, and Christian Marriage Act, 1872 and Divorce Act which governs marriages and divorces among Christians in Pakistan.⁴

➤ Challenges in Family Justice

Delay in case disposal

The enactment of the West Pakistan Family Courts Act 1964 is meant to provide a specialized forum for speedy settlement and disposal of family disputes. Explicit exclusion of the provisions of Code of Civil Procedure 1908 and the Qanoon-e-Shahadat Order 1984 to free the process from complexities of rigid rules and technicalities in order to simplify the process and allow the Courts to mould the procedure according to the circumstances with an aim to achieve the purpose of FCA.

Delays in case disposals are a significant impediment to achieving justice, particularly in family law cases. Despite legislative efforts like the Family Courts Act, 1964, which mandates a six-month disposal timeframe for matrimonial disputes, compliance remains inconsistent. A detailed study of 890 family cases from various districts in Pakistan highlights that while 70% of cases are resolved within the prescribed period, 30% exceed this limit due to systemic and procedural inefficiencies⁵ Several factors contribute to these delays, including:

1. ***Excessive Workload***: Family courts in populous districts, handle over 70 cases daily, making effective adjudication challenging.
2. ***Judicial Transfers***: Frequent changes in presiding officers disrupt proceedings and delay case resolutions as new judges require time to acclimatize.
3. ***Litigant Tactics***: Frivolous applications and incorrect addresses often prolong proceedings.
4. ***Resource Constraints***: Summoning parties who reside outside jurisdictions or abroad adds logistical complexity.
5. ***Barriers in Execution***: Execution of decrees frequently takes more than six months, particularly in cases involving maintenance and dower recovery.

Lack of Specialized Courts

Family matters require a nuanced understanding of social, psychological, and cultural contexts, in addition to the applicable law and principles. In this context, the Family Court Act 1964, mandates that the Government ***shall establish one or more Family Courts in each District*** and further makes it mandatory that ***at least one Family Court in each District shall be presided over by a woman Judge***. In many jurisdictions, however, cases are handled by general courts, where judges may lack the specialized training necessary to address the complexities of family disputes.

Accessibility Issues:

Financial constraints, geographic barriers, conducive environment within the Court premises and lack of legal literacy prevent many individuals, especially women and economically disadvantaged groups, from accessing family justice mechanisms.⁶

Gender Bias and Societal Pressures:

Deep-rooted gender biases in society often influence the resolution of family disputes. Patriarchal attitudes and societal stigma often deter women from seeking legal recourse. Even within the judiciary, implicit and explicit biases can influence decisions, leading to inequitable outcomes in cases involving divorce, child custody, and maintenance.⁶

Emotional and Psychological Toll:

Family disputes, particularly those involving children, impose a heavy emotional and psychological burden on all parties. The adversarial nature of litigation exacerbates this toll, often leaving lasting scars on relationships.

Inadequate Child-Centric Mechanisms:

Family justice systems frequently fail to prioritize the best interests of children. Mechanisms for child custody, visitation, and welfare assessments are often insufficient or inconsistently applied.

Insufficient Alternate Dispute Resolution (ADR) Mechanisms:

While mediation and arbitration offer less adversarial and more cost-effective ways to resolve family disputes, their integration into the justice system remains limited in many countries.

Awareness and Education:

A lack of legal literacy, particularly in rural areas, prevents individuals from understanding their rights and the mechanisms available to them. This gap in awareness perpetuates inequities, as many are unable to effectively navigate the legal system.⁶

➤ Way Forward

The need for legal and structural reform in Pakistan's family courts is increasingly apparent in light of the persistent challenges faced by individuals navigating the family law system. These reforms are essential to enhance access to justice, improve the efficiency of court processes, and better protect the rights of vulnerable populations, particularly women and children. Several key areas highlight the necessity for reform:

1. Establishing Specialized Family Courts

As per the mandate of the FCA, dedicated family courts, at least one Court comprising a woman judge in each District, with trained judges and staff can significantly enhance the quality and efficiency of family justice. These courts should adopt a holistic and dynamic approach, addressing legal, social, and psychological aspects of disputes.

2. Promoting Alternate Dispute Resolution (ADR)

Governments and legal systems should institutionalize ADR mechanisms, such as mediation and conciliation, for family disputes. ADR not only reduces the burden on courts but also fosters amicable resolutions, preserving relationships.

3. Ensuring Child-Centric Policies

Legislations and judicial practices must prioritize the best interests of children in all family disputes. This includes establishing child welfare committees, involving psychologists, and conducting thorough assessments of custody and visitation arrangements.

4. Addressing Gender Bias

Training programs for judges, lawyers, and court staff should focus on recognizing and eliminating gender bias. Ensuring diversity within the judiciary and fostering a culture of equality can also help address this challenge.

5. Enhancing Legal Literacy and Accessibility

Public awareness campaigns and community-based legal aid services can empower individuals to understand their rights and access the justice system. Digital platforms can further bridge accessibility gaps, particularly in remote areas.

6. Leveraging Technology

E-courts, online dispute resolution (ODR), and digital case management systems can expedite the resolution of family disputes. Virtual hearings and electronic documentation reduce costs and improve accessibility.

7. Providing Psychological Support

Integrating counseling and psychological support services within family justice systems can alleviate the emotional strain on parties. Court-appointed mediators and counselors should be available to assist litigants throughout the process.

8. Streamlining Procedural Laws

Simplifying procedural laws and adopting a more flexible approach to family litigation can minimize delays and reduce the adversarial nature of disputes. Summary procedures for uncontested matters can further expedite resolutions.

9. Enhancing Legal Awareness and Education:

A significant barrier to accessing justice is the lack of awareness regarding legal rights and the family court process. Reforms should include comprehensive public awareness campaigns aimed at educating individuals about their rights under family law and the procedures available to them. Legal literacy programs, particularly in rural and underserved communities, can empower individuals to seek legal recourse and navigate the system effectively.⁷

10. Addressing Gender Bias and Promoting Gender Sensitivity:

Gender bias within the judicial system continues to undermine the effectiveness of family law. It is crucial to implement reforms that promote gender sensitivity training for judges and court staff. This training should focus on understanding the societal context of family disputes, recognizing implicit biases, and ensuring that women and children receive fair treatment in court proceedings. Creating a gender-sensitive judicial environment can significantly improve the outcomes of family law cases.⁸

11. Reviewing and Revising Existing Legislation:

Continuous review and revision of existing family laws are necessary to ensure that they align with contemporary societal needs and protect the rights of all individuals. This includes assessing the effectiveness of the Family Courts Act of 1964 and related legislation, identifying gaps or inconsistencies, and proposing amendments that address these issues. Engaging stakeholders, including legal professionals, activists, and community members, in this process can facilitate more inclusive and effective legal reforms.¹¹

12. Context-Specific Reforms for Balochistan

In the context of Balochistan, family justice reform must address unique socio-economic and cultural challenges: **Geographic Accessibility:** Establish mobile family courts and e-justice platforms to serve remote areas, ensuring that even isolated communities can access legal mechanisms. **Awareness Campaigns:** Launch targeted initiatives to educate communities about family laws and rights, particularly focusing on women in rural regions. **Cultural Sensitivity Training:** Equip judges and court staff with training on local customs and cultural norms to foster trust and understanding in dispute resolution. **Enhanced Legal Aid:** Expand government-funded legal aid services and partner with NGOs to support economically disadvantaged families.

Conclusion

Family justice is not merely a legal issue but a societal necessity that directly impacts the well-being of individuals and the fabric of society. Addressing the challenges in this domain requires a multifaceted approach, combining legal reforms, technological advancements, and societal change. By fostering accessibility, efficiency, and empathy in family justice systems, we can create a framework that truly upholds the principles of fairness and equity, ensuring better outcomes for all parties involved.

References:

- 1- *The **Shariat Bench of Peshawar High Court**, in the case of **The Federation of Pakistan v Mst. Farishta (PLD 1981 Supreme Court 12 (Shariat Bench))** defined Muslim Personal Law as “the portion of Civil Law in Pakistan that is exclusively applied, or which authorizes application of certain specified law to Muslim residents of this country as special or personal law for them.” A more restrictive definition was also adopted by the **Federal Shariat Court** in the case of **Dr. Mahmood-ur-Rehman Faisal vs The Government of Pakistan (PLD 2013 Federal Shariat Court 55)***
- 2- ***Therapeutic justice: role in family court cases in Pakistan:** Therapeutic justice involves a shift from adversarial proceedings to a collaborative and supportive approach: [Dr Shahid Hussain Kamboyo](https://tribune.com.pk/story/2408142/therapeutic-justice-role-in-family-court-cases-in-pakistan#:~:text=Therapeutic%20justice%20in%20family%20cases,than%20simply%20enforcing%20legal%20rules.) March 26, 2023.
<https://tribune.com.pk/story/2408142/therapeutic-justice-role-in-family-court-cases-in-pakistan#:~:text=Therapeutic%20justice%20in%20family%20cases,than%20simply%20enforcing%20legal%20rules.>*
- 3- ***Law on the Custody of Children in Pakistan: Past, Present and Future by Dr. Mudasra Sabreen**
<https://sahsol.lums.edu.pk/node/12832#:~:text=The%20Guardian%20and%20Wards%20Act%201890%20was%20promulgated%20during%20the,principles%20of%20Islamic%20Family%20Law>*
- 4- ***A list of Family Laws in Pakistan,** <https://pklegal.org/list-of-family-laws-in-pakistan-marriage-divorce-khulla-custody/#:~:text=Family%20laws%20in%20Pakistan%20encompass,marriage%2C%20divorce%2C%20maintenance%2C%20inheritance&text=Family%20laws%20in%20Pakistan%20encompass,rights%20are%20transparent%20and%20enforceable.>*
- 5- *Fast-track Procedure and Slow-track Results: Time Frame of Family Law Case Disposals in Pakistan: By Muhammad Muneer. LUMS.
<https://sahsol.lums.edu.pk/node/12898#:~:text=a%20Family%20Court%20shall%20dispose,on%20expiry%20of%20thirty%20days>*
- 6- ***Enhancing Access to Justice in Pakistan’s Family Courts: Challenges and Legal Reforms: by Uzma Khan¹ Fazail Asrar Ahmed^{2*}***
- 7- *Constitutional exceptions of right to speech: Evidence from the apex courts of Pakistan. Journal of Humanities, Social and Management Sciences (JHSMS), 2(1), 72-84. By Javed, K., Jianxin, L., & Khan, A. (2021).*
- 8- *Advancing Gender Equality within the Legal Framework of Pakistan: Navigating Progress and Overcoming Persistent Challenges. International Review of Social Sciences (IRSS), 9(5), 310-316. By USMAN, M., KANWEL, S., KHAN, M. I., & Khan, A. (2021).*
- 9- *Navigating Constitutional Challenges: An In-depth Exploration of Pakistan's Constitutional Landscape. International Review of Social Sciences (IRSS), 8(11), 273-279.*

The End

RCBHC