

# **West Pakistan Family Courts Act 1964**

## **THE WEST PAKISTAN FAMILY COURTS ACT, 1964**

**(W.P. Act XXXV of 1964)**

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## SCHEDULE

# THE WEST PAKISTAN FAMILY COURTS ACT, 1964

## (W.P. Act XXXV of 1964)

[18 July 1964]

*An Act to make provision for the establishment of Family Courts*

**Preamble.**— WHEREAS it is expedient to make provision 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;

It is hereby enacted as follows:-

**1. Short title, extent and commencement.**— (1) This Act may be called the <sup>[2]</sup>[\* \* \*] Family Courts Act, 1964.

(2) It extends to the whole of <sup>[3]</sup>[Pakistan].

(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.

<sup>[4]</sup>(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.]

**2. Definitions.**— <sup>[5]</sup>(1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

(a) “Arbitration Council” and “Chairman” shall have the meanings respectively assigned to them in the Muslim Family Laws Ordinance, 1961;

- (b) “Family Court” means a Court constituted under this Act;
- (c) “Government” means <sup>6</sup>[the Provincial Government];
- (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.

<sup>7</sup>[(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.]

<sup>8</sup>**[3. Establishment of Family Courts.]**—(1) Government shall establish one or more Family Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Court:

Provided that at least one Family Court in each District, shall be presided over by a woman Judge to be appointed within a period of six months or within such period as the Federal Government may, on the request of Provincial Government, extend.

(2) A woman Judge may be appointed for more than one District and in such cases the woman Judge may sit for the disposal of cases at such place or places in either District, as the Provincial Government may specify.

(3) Government shall, in consultation with the High Court, appoint as many woman Judges as may be necessary for the purposes of sub-section (1)].

<sup>9</sup>**[4. Qualifications of Judge.]**—No person shall be appointed as a Judge of a Family Court unless he is or has been <sup>10</sup>[or is qualified to be appointed as] a District Judge, an Additional District Judge, <sup>11</sup>[a Civil Judge or a Qazi appointed under the Dastur-ul-Amal Diwani, Riasat Kalat].

**5. Jurisdiction.**— 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.

**6. Place of sittings.**— 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 <sup>12</sup>[the District or area for which it is established] as may be specified by the District Judge.

**7. Institution of suits.**— (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.

(2) The plaint shall contain all <sup>13</sup>[material] facts relating to the dispute and shall contain a Schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses 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.

<sup>144</sup>[(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.]

(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.

<sup>145</sup>**8. Intimation to defendants.**— (1) When a plaint is presented to a Family Court, it—

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

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

<sup>146</sup>[(c) shall, within three days of the presentation of the plaint, send to each defendant, by registered post, acknowledgment due, a notice of the suit, together with a copy of the plaint, a copy of the Schedule referred to in sub-section (2) of section 7 and copies of the documents and a list of documents referred to in sub-section (3) of the said section].

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

(3) [*Deleted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971)*].

(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 expense of the plaintiff. The postal charges for 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.

*Explanation*— [*Deleted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971)*].

<sup>147</sup>**9. Written statement.**— (1) On the date fixed under clause (a) of sub-section (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 therewith a list of his witnesses alongwith a precis of the evidence that each witness is expected to give.

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

(3) Where he relies on any other document, 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 defendant at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Family Court directs, 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 summons and notices 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 a 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.]

**10. Pre-trial proceedings.**— <sup>18</sup>[(1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.]

(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 reconciliation 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 <sup>19</sup>[recording] of evidence.

**11. Recording of evidence.**— (1) On the date fixed for <sup>[20]</sup>[recording of the evidence] the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

(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.

<sup>[21]</sup>(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.]

<sup>[22]</sup>(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 considers 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. Conclusion of trial.**— (1) After the close of evidence of both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties.

(2) If such compromise or reconciliation is not possible, the Family Court shall announce its judgement and give a decree.

<sup>[23]</sup>**12-A. Certain cases to be disposed of within a specified period.**— Notwithstanding anything contained hereinbefore, a suit for dissolution of marriage shall finally be disposed of within a period of four months from its institution:

Provided that where an appeal lies against the dissolution of marriage, such appeal shall be disposed of within four months.]

**13. Enforcement of decrees.**— (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 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 payment <sup>[24]</sup>[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 fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.

**14. Appeals.**— <sup>[25]</sup>(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—

(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 <sup>[26]</sup>[fifteen thousand];

(c) for maintenance of rupees <sup>[27]</sup>[five hundred] or less per month.

**15. Power of Family Court to summon witnesses.**— (1) A Family Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

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.

(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, wilfully 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. Contempt of Family Courts.**— A person shall be guilty of contempt of the Family Court if he without lawful excuse—

- (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. Provisions of Evidence Act and Code of Civil Procedure not to apply.**— (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, <sup>[28]</sup>[except sections 10 and 11,] shall not apply to proceedings before any Family Court.

(2) Sections 8 to 11 of the Oaths Act, 1872, shall apply to all proceedings before the Family Courts.

**18. Appearance through agents.**— 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.

**19. Court fees.**— 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 <sup>[29]</sup>[fifteen] for any kind of suit.

**20. Investment of powers of Magistrates on Judges.**— Government may invest any Judge of a Family Court with powers of Magistrate First Class to <sup>[30]</sup>[make order for maintenance] under section 488 of the Code of Criminal Procedure, 1898<sup>[31]</sup>.

<sup>[32]</sup>**21. Provisions of Muslim Family Laws Ordinance, 1961 not affected.**— Nothing in this Act shall be deemed to affect any of the provisions of Muslims Family Laws Ordinance, 1961, or the rules made thereunder.]

**22. Bar on the issue of injunctions by Family Court.**— 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.

**23. Validity of marriages registered under the Muslim Family Laws Ordinance, 1961, not to be questioned by Family Courts.**— A Family Court shall not question the validity of any marriage registered in accordance with the provisions of the Muslim Family Laws Ordinance, 1961, nor shall any evidence in regard thereto be admissible before such Court.

**24. Family Courts to inform Union Councils of cases not registered under the Muslim Family Laws Ordinance, 1961.**— 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 into 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.



**25. Family Court deemed to be a District Court for purposes of Guardians and Wards Act, 1890.**— 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.

<sup>[33]</sup>**25-A. Transfer of cases.**— (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—

(a) transfer any suit or proceeding under this Act from one Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district; and

(b) transfer any appeal or proceeding under this Act, from the District Court of one district to the District Court of another district.

(2) A District Court may, either on the application of any party or of its own accord, by an order in writing, transfer any suit or proceeding under this Act from one Family Court to another Family Court in a district or to itself and dispose it of as a Family Court.

(3) Any Court to which a suit, appeal or 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 the transfer of a suit, it shall not be necessary to commence the proceedings before the succeeding Judge *de novo* unless the Judge, for reasons to be recorded in writing directs otherwise.

**25-B. Stay of proceedings by the High Court and District Courts.**— Any suit, appeal or proceeding under this Act, may be stayed—

(a) by the District Court, if the suit or proceeding is pending before a Family Court within its jurisdiction; and

(b) by the High Court, in the case of any suit, appeal or proceeding.]

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

(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 Courts.

## SCHEDULE

[see SECTION 5]

1. Dissolution of marriage.
2. Dower.
3. Maintenance.

4. Restitution of conjugal rights.

5. Custody of children.

6. Guardianship.

<sup>[34]</sup>[7. Jactitation of marriage.]

<sup>[35]</sup>[8. Dowry.]

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<sup>[1]</sup>For statement of objects and reasons *see* Gazette of West Pakistan (Extraordinary), dated 6th April, 1964, pages 1153-P to 1155-W.

This Act was passed by the West Pakistan Assembly on 30th June, 1964; assented to by the Governor of West Pakistan on 14th July, 1964; and, published in the West Pakistan Gazette (Extraordinary), dated 18th July, 1964, pages 2427-34.

<sup>[2]</sup>The words “West Pakistan” omitted by the Family Court (Amendment) Act, 1996 (Federal Act X of 1996).

<sup>[3]</sup>Substituted by the Federal Adaptation of Laws Order, 1975 (P.O. 4 of 1975), for “the Province of West Pakistan except the Tribal Areas”.

<sup>[4]</sup>Added by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

<sup>[5]</sup>Section 2 re-numbered as sub-section (1) of that section and a new sub-section (2) added by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

<sup>[6]</sup>Substituted by the Federal Adaptation of Laws Order, 1975 (P.O. 4 of 1975), for “the Government of West Pakistan”.

<sup>[7]</sup>Section 2 re-numbered as sub-section (1) of that section and a new sub-section (2) added by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

<sup>[8]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1994 (Federal Act XXI of 1994).

<sup>[9]</sup>Substituted by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

<sup>[10]</sup>Inserted by the West Pakistan Family Courts (Amendment) Act, 1994 (Federal Act XXI of 1994).

<sup>[11]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969), for “a Civil Judge”.

<sup>[12]</sup>Substituted by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966), for “the Districts”.

<sup>[13]</sup>Inserted *ibid.*

<sup>[14]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

<sup>[15]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

<sup>[16]</sup>Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

<sup>[17]</sup>Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

<sup>[18]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

<sup>[19]</sup>Substituted *ibid.*, for “the hearing of”.

<sup>[20]</sup>Substituted *ibid.*, for “the hearing of the evidence”.

<sup>[21]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

<sup>[22]</sup>Added *ibid.*

<sup>[23]</sup>Added by the Family Courts (Amendment) Act, 1996 (Federal Act X of 1996).

<sup>[24]</sup>Substituted, for the word “and”, by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

<sup>[25]</sup>Substituted *ibid.*

<sup>[26]</sup>Substituted by the West Pakistan Family Courts (Amendment) Act, 1994 (Federal Act XXI of 1994).

<sup>[27]</sup>*Ibid.*

<sup>[28]</sup>Inserted by the West Pakistan Family Courts (Amendment) Act, 1967 (XV of 1967).

<sup>[29]</sup>Substituted by the Punjab Finance Act, 1973 (XIV of 1973), for “one”.

<sup>[30]</sup>Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971), for “to hear the case”.

<sup>[31]</sup>V of 1898.

<sup>[32]</sup>Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

<sup>[33]</sup>Added by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

<sup>[34]</sup>Added by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

<sup>[35]</sup>Added by the Family Courts (Amendment) Act, 1997 (Federal Act VII of 1997).

**Note:** This amendment shall not effect pending cases (section 3 *ibid*).