Family/Personal Laws for the Religious Minorities of Pakistan
Family /Personal Laws for Religious Minorities of Pakistan

The Religious Minorities Living in Pakistan should have their personal laws as per their religious values to ensure freedom of religion and belief.
Acknowledgment

Catholic Commission of Justice and Peace, CCJP would like to acknowledge the legal experts/ lawyers and community representatives from diverse religious backgrounds on sharing their opinion and concerns regarding the personal/family laws of religious minority community.

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Acronyms

**BC**: Before Christ

**BHU**: Basic Health Unit

**CCJP**: Catholic Commission for Justice and Peace

**CCMMAMRM**: Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage by UN (7-11-1962)

**CJ**: Chief Justice

**DHU**: District Health Unit

**EU**: European Union

**FoRB**: Freedom of Religion and Belief

**HRCP**: Human Rights Commission of Pakistan

**ILO**: International Labor Organization

**NADRA**: National Database & Registration Authority

**PBHU**: Peace Be Upon Him

**UN**: United Nation

**UNESCO**: United Nation Education, Scientific, Cultural Organization
Content

1. Introduction ...................................................................................................................................1

2. Laws of Religious Minority; Situation of Religious Minority in the Absence of Personal Laws ........................................................................................................................................3

3. Analysis of Personal Laws for Religious Minorities ......................................................................4

4. Recommendations from Legal Experts and Community Representatives ........................................5

5. Proposed Principles for Personal/Family Laws of Hindu Community in Pakistan & Amendments in Hindu Marriage Act ........................................................................................................9

6. Proposed Principles for Personal/Family Laws of Kalasha Community in Pakistan ....................27


8. Proposed Principles for Personal Laws of Sikh Community in Pakistan & Amendments in Anand Marriage Act ..................................................................................................................59

9. Proposed Principles for Personal/Family Laws for Baha’i Community in Pakistan ....................73
Preface

At the time of independence in 1947, the total ratio of religious minorities was 15% which has now reduced to only 3% of the total population. It is a historical fact that the religious minorities have not been given equal political status and rights guaranteed by the constitution of Pakistan. The social, political and economic space for minorities seems to be reduced over the passage of time. Their worship places have been continuously targeted time and again by the religious fundamentalists. In particular, the Christian and Hindu girls are forcefully converted to Islam through marriage. The state of Pakistan has failed to provide protection to both ethnic and religious minorities due to which they have started leaving the country.

The 18th Amendment, although has its plus points but this division has also created problems for the religious minorities particularly related to marriage and divorce. At the same time, absence of personal laws for religious minorities denies them of their basic civil rights. Though, the constitution of Pakistan recognizes minorities as equal citizens yet the religious minorities are facing judicial problems due to lack of personal laws. For some religious communities no legal document is there to prove their marriage. There is a dire need to formulate legislative procedures to register minorities' marriage, divorce and other family matters. Marriage registration, divorce, child custody, inheritance, illegitimacy and even the matters related to cross-religion marriages and conversions of Christians, Hindus, Sikhs, Bahais and Kalasha need to be addressed accordingly to their personal laws.

In some religions, the provision of separation or divorce or remarriage is criticized and discouraged. Whereas, in the modern times the concept of 'eternal relation' or 'till death do us apart' needs to be reconsidered. Time and again, the Christians are forced to convert just to get a divorce or release from an unwanted matrimonial relation. In order to secure women, the legislations or laws related to family matters need to be reviewed and revised. In this regard, where few religious communities need drafting of personal/family laws, others need certain amendments to address the issue.
We strongly believe that it is time to draft personal laws for minorities and secure their civil rights as equal citizens of Pakistan. Separate family laws should be devised for all religious minorities in order to solve their personal/family issues according to their own religious teachings and values. Formulation of personal laws can provide legal protection to religious minorities, in particular, minority women through registration of their solemnization of marriages, divorce and maintenance or other factors to solve their matrimonial or family disputes.

Cecil S. Chaudhry,
Executive Director
Abstract

This research study analyzes the different personal laws of minorities in Pakistan and its implications. It also states the conflicts that arise due to the absence of such laws. This research seeks to answer the question with the provisions on how some issues can be resolved which harm the human rights of the individual. The study present principle proposals for personal/family laws for religious minorities, along with amendments in existing marriage laws of minorities. Considering the recent human rights situation of religious minorities in Pakistan, the absence of personal laws have led to human rights violations, religious fundamentalism, social intolerance and lack of understanding on different religions, traditions & customs.

With the 18th constitutional amendment the provinces were declared autonomous bodies under which provincial assemblies were allowed to draft and approve legislations. Formulation of laws, especially the personal laws is entirely a provincial matter now. Under the project, 'Freedom of Religion and Belief,' the commission has devotedly observed the matters related to marriage and its registration, divorce, custody of children, inheritance and other elements governed under personal laws of different religious communities. The project includes activities related to personal law bills which will provide a basis and room for further consensus building among communities, advocacy lobby activity with legislators/decision makers.

“The minorities are entitled to get a definite assurance and ask: 'Where do we stand in the Pakistan that you visualize?' That is an issue of giving a definite and clear assurance to the minorities. We have done it. We have passed a resolution that the minorities must be protected and safeguarded to the fullest extent and as I said before any civilized government will do it and ought to do it. So far as we are of our own history, our Prophet (P.B.U.H.) has given the clearest proof that non-Muslims have been treated not only justly and fairly but generously.”

(Muhammad Ali Jinnah, S. Gopal; Nehru; Oxford University Press; Vol. II; pp.507-8)
Introduction

“You are free; you are free to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion, caste or creed—that has nothing to do with the business of the State.”\[1\]

(Quaid-e-Azam Muhammad Ali Jinnah)

It has been observed and studied that in law binding developed countries, all citizens are treated equally. The UN convention\[2\] and articles of UN Declaration of Human Rights (UDHR) elaborated in detail that every human being should have freedom, equal rights for recognition, justices, peace and life with dignity of all human being.\[3\]

Ideally, a state should have secular laws under which all citizens, despite of their gender, religion, caste or creed, must be treated equally as per the constitution of Pakistan.\[4\] Unfortunately, owing to the Islamization agenda in 1973, Pakistan is highly influenced by Sharia Law. These laws are enforced and have penetrated into the judicial processes of Pakistan. The glorification of Islamic laws during the 1980s (General Zia-ul-Haq regime) has led towards misunderstanding of other religious doctrines. The students are discouraged to study comparative religions or their doctrines. This insufficient knowledge about other religions increases stereotypes; as a result the religious minorities living in Pakistan usually face trials under Islamic Sharia Law and not their personal laws. Every citizen should be treated equally in the eyes of law; therefore, the state should implement a secular law for all or draft laws in accordance with the religious values of the respective religious minorities. It is important and just to trial each individual as per his/her religious values particularly under the matters of personal/ family laws.

Furthermore, after the 18\textsuperscript{th} Constitutional amendment the provinces are autonomous bodies. The formulation and implementation of laws is entirely a provincial subject and so is the legislation related to personal laws of religious minorities. The existing Personal laws or marriage and divorce laws for religious

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1. Quaid-e-Azam Muhammad Ali Jinnah speech to the first constituent assembly on August 11, 1947
2. Human rights/ law talking about equal rights of all
minorities are almost a century old and incompatible to current human rights situation. Furthermore, some religious community in Pakistan do not have personal/family laws. Concerns have been raised time and again about the need to amend the existing laws and to introduce new family laws for those who do not have it. The founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah in his speech of March 23, 1940 stated, "That adequate, effective and mandatory safeguards shall be specifically provided in the constitution for minorities in the units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights of the minorities."

The Catholic Commission for Justice and Peace, CCJP is an organization of Pakistan Catholic Bishops' Conference working for the rights of the religious minorities living in Pakistan. The commission strongly believes that the personal laws for religious minority are significant, therefore after the discussion with various legal experts and scholars, it was decided that religious minorities should have their respective personal laws and the following themes should be addressed in the each personal law of various religions;

- Age at the time of marriage
- Marriage registration
- Dower
- Dissolution of marriage
- Divorce
- Maintenance
- Succession/Inheritance
- Will
- Adoption
- Child custody
- Illegitimacy
Laws of Religious Minority; Situation of Religious Minority In The Absence of Personal Laws

"At present I am only Governor-General-designate. We will assume for a moment that on August 15, I shall be really the Governor-General of Pakistan. On that assumption, let me tell you that I shall not depart from what I said repeatedly with regard to the minorities. Every time I spoke about the minorities I meant what I said and what I said I meant.

Minorities to whichever community they may belong, will be safeguarded. Their religion or faith or belief will be secure. There will be no interference of any kind with their freedom of worship. They will have their protection with regard to their religion, faith, their life, their culture. They will be, in all respects, the citizens of Pakistan without any distinction of caste or creed. They will have their rights and privileges and no doubt, along with it goes the obligation of citizenship. Therefore, the minorities have their responsibilities also and they will play their part in the affairs of this State. As long as the minorities are loyal to the State and owe true allegiance and as long as I have any power; they need have no apprehension of any kind."[5]

As per discussed above, in order to reduce or eliminate the persecution of religious minorities it is important to develop/draft and implement personal laws related to minorities. The objective of the drafting necessary personal laws for religious minorities was shared among the legal experts and representatives from different religious communities. The purpose of drafting personal laws is to create a conducive environment for all religious minorities, so that they are free to exercise their religio-cultural practices. In order to efficiently implement the program, the commission identified likeminded experts/lawyers. These experts/lawyers gave their valuable feedback through analyzing, drafting and proposing amendments of legislations related to personal laws. Such legislations will provide basic human rights without any discrimination or threat of faith-based intimidation or violence to marginalized religious communities.

In Pakistan there are few personal laws/bills for the religious minorities i.e., Christian Marriage Act, 1872, Anand Marriage Act, 1909, Parsi Marriage and Divorce Act 1936 and Hindu Marriage Bill, 2014. These laws have not been amended during the course of history, therefore, are not entirely applicable, considering the needs of modern times. The following amendments in the laws were consulted with community representatives, religious leaders and other stakeholders and their respective comments and recommendations have been mentioned below and also been incorporated in the law.

Unfortunately, religious minorities such as Baha'i, Ahmedis and Kalash Community have no personal laws which make them marginalized people of the society. In order to put emphasis on the cause, the advocates were requested to assist CCJP in developing/drafting personal laws for these marginalized communities. The community representatives have supported the research work and provided necessary information to help find research gaps and their possible solutions.

**Analysis Of Personal Laws for Religious Minorities**

The commission identified likeminded experts/lawyers and encouraged them to share their valuable feedback on drafting the bills. The purpose of such initiative for minorities or relevant community and others will improve basic human rights situation. The research unit at CCJP had keenly studied the personal laws of the religious minorities. Following is the list of personal laws for religious minorities in Pakistan;

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the Personal Laws</th>
<th>Religion/Community</th>
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<tbody>
<tr>
<td>2.</td>
<td>Anand Marriage Act, 1909</td>
<td>Sikh Community</td>
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<tr>
<td>3.</td>
<td>Parsi Marriage and Divorce Act, 1936</td>
<td>Parsi Community</td>
</tr>
<tr>
<td>4.</td>
<td>West Pakistan Muslim Personal Laws (Shariat) Act, 1961</td>
<td>Muslim Community (shunni &amp; Shia)</td>
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<td>5.</td>
<td>Hindu Marriage Bill, 2014 (Sindh Province)</td>
<td>Hindu Community</td>
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<tr>
<td>Religious Communities without any personal/family laws</td>
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<td>6.</td>
<td>Baha’i Community</td>
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<td>7.</td>
<td>Ahmedi Community</td>
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<td>8.</td>
<td>Kalash Community</td>
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Themes to evaluate the Personal Laws; As per mentioned above, the following themes were selected to evaluate the personal laws for religious minorities in Pakistan.

Recommendations from Legal Experts and Community Representatives

“Minorities belonging to different faiths living in Pakistan or Hindustan do not cease to be citizens of the respective States by virtue of their belonging to a particular faith, religion or race. I have repeatedly made it clear, especially in my opening speech to the Constituent Assembly, that the minorities in Pakistan would be treated as our citizens and will enjoy all the rights and privileges that any other community gets. Pakistan shall pursue that policy and do all it can to create a sense of security and confidence in the non-Muslim minorities in Pakistan.”[6]

Quaid e Azam Mohammed Ali Jinnah said that in Pakistan all minorities will enjoy equal rights and will be safeguarded. But we can see that minorities; to whichever communities they belong to, are suffering from discrimination. Even some basic rights like that of being able to get their birth or marriage registered are not being given. There is a need to increase the protection and promotion of their rights. In this regard the Catholic Commission for Justice and Peace, under its project; Freedom of Religion and Belief has taken up the task to draft the necessary principles of personal/family laws for religious minorities and necessary amendments in existing laws of minorities. In order to achieve this goal, the commission held Focus Group Discussions to identify the thematic areas and finalize the content of the laws.

The participants of Focus Group Discussion belonged to different fields of life, such as, lawyers, judges, social activists, community representatives, experts, scholars, parliamentarians and others. The participants actively contributed during the Focus Group Discussion and shared the following recommendations for personal laws;

- The legislations and judicial process should be approachable and understandable for general public
- Only registration of individual, marriages and children can avoid the problem of illegitimacy, forced marriages and forced conversions. Therefore, the government and policy makers should initiate a campaign to register every child at birth, health workers, BHU, DHU and hospitals should be appointed to ensure birth registration.
- The age of marriage should be according to international standards or at least 18 or more.
- It is not necessary that all married relations are healthy, therefore, Divorce should be an option in every religion and it should be made easy for marginalized communities, in particular women.
- It was also suggested that women's right to divorce should be taken under consideration and all religious minorities should develop consensus on the issue. However, the religious belief and references from a certain sect should be taken under consideration while drafting such bills or amendments. In other words the consensus developed should be according to the international human rights laws while keeping in mind the religious believers of the community.
- Special judicial benches should be appointed for personal laws, registration of marriage, child birth registration and other legal rights for religious minorities of Pakistan
- It was suggested that religious leaders/ representatives from various religions should be appointed to review or assist in drafting of the bills or amendments.
- It was suggested that the commission should also focus on educational reforms in the curriculum because it can used as an effective medium for promotion of tolerance and peace. The reformed curriculum should include renowned
personality from religious minorities, who played a vital role during independence. It was also recommended that the curriculum also teach 14 points of Quaid-e-Azam. We need to emphasize on the August 11th speech of Quaid-e-Azam Mohammad Ali Jinnah.

· The Supreme Court order of June 19, 2014 on the protection of religious minority stresses on the formation of special task forces in order to protect the religious worship place of minorities. This is a welcome initiative. The implementation of such laws and legislations will help in protection of minorities. It was suggested that a separate cell/division should be developed for the protection of worship places of minorities.

· It was suggested that religious reference should not be taken under consideration and legislation should be drafted solely on the basis of state and public benefit. In other words, religion should not be a part of personal laws instead; it should be treated as secular law which is beneficial for the public. It was suggested strongly by the participants that secular laws; beneficial for all and catering to the need to all citizens, should be introduced.

· A pressure group of civil society organizations in particular women development organizations and government department should commence dialogue for human rights and legal facilitation.

· Intra and inter religion groups should be included to work for the uniform laws where people can consider themselves as equal citizens of Pakistan. Ahmedi being the marginalized community should be included in judicial processes.

· Coordination mechanism should be strong between judiciary and civil society organizations. The judgment from CJ should be considered as stepping stone for minority rights policies.

· A committee of different religious and civil society representatives should be formed to meet with Ulema (religious scholars) ensuring; a common opinion to develop legislations.

· Lobby and advocacy meetings should be held with minority community parliamentarians to advocate the implementation of policies and laws.

· Media sensitization should be used as an instrument for advocacy.

· Detailed mechanism of Data Collection of cases of minority rights violation should be recorded.
· Developing a complaint mechanism for UN as the judgment also refers to the UN clauses.
· Developing a complaint mechanism for the 3 members' bench of supreme court
· Civil society must build pressure on government to form a minority commission.
· There should be a civil society forum on minority rights.
· Committee of different religious and civil society representatives must meet with the legislators.
· Analysis of the Supreme Court judgment June 19, 2014 must be implemented in letter and spirit to ensure the constitutional rights of religious minorities in Pakistan.
Proposed Principles for Personal / Family Law of Hindu Community in Pakistan & Amendments in Hindu Marriage Act

Introduction to
Hinduism........................................................................................................................................11
History of Hinduism.......................................................................................................................11
Hindu Festivals...............................................................................................................................11
Proposed principles for Hindu personal/family laws and amendments in Hindu Marriage Act; to be introduced in the National Assembly/Provincial Assembly.................................................................................12
  1. Short title, extent and commencement...........................................................................12
  2. Application of the Bill....................................................................................................13
  3. Definitions......................................................................................................................13
  4. Requisites for Marriage Validity.....................................................................................13
  5. Ceremonies for Hindu Marriage.....................................................................................15
  6. Marriage Registration.....................................................................................................15
  7. Dower..............................................................................................................................17
  8. Dissolution of Marriage..................................................................................................17
  9. Divorce...........................................................................................................................19
 10. Maintenance/Alimony.....................................................................................................20
 11. Succession/Inheritance...................................................................................................21
 12. Will..................................................................................................................................23
 13. Child Custody...............................................................................................................23
 14. Adoption.......................................................................................................................24
 15. Illegitimacy....................................................................................................................25
Conclusion......................................................................................................................................25
**Introduction to Hinduism**

Hinduism (known as Hindū Dharma in modern Indian languages), is a polytheistic religion originated in the Indian subcontinent around 2000 B.C.[7] In contemporary usage Hinduism is also referred to as Sanātana Dharma, a Sanskrit phrase meaning “eternal path.”[8] With its origins in the Vedic civilization it has no known founder, being itself a conglomerate of diverse beliefs and traditions. It is the world's oldest existent religion.

Hinduism contains a vast body of scriptures. These sacred texts have been revealed, remembered and developed over the millennia. These scriptures illustrate theological, philosophical and mythological insights and guidance on the practice of dharma (religious living).[9] Among such texts, the Vedas and the Upanishads are the foremost in authority. Other major scriptures include the Tantras, the sectarian Agamas, the Purāṇas and the epics Mahābhārata and Rāmāyaṇa. The Bhagavad Gītā, a passage from the Mahābhārata, is sometimes called a summary of the spiritual teachings of the Vedas. Prominent themes include Dharma (ethics/duties), Samsāra (The continuing cycle of birth, life, death and rebirth), Karma (action and subsequent reaction), Moksha (liberation from samsara), and the various yogas (paths or practices).[10]

**History of Hinduism**

Hinduism is the oldest religion in the world with its ancestors has well thought of the need to record some of the important incidents in the history. This history is known to the practitioners/believers in the form of eighteen puranas (old) and itihasas (history).[11] The history told through puranas and itihasas are thousands of years old, illustrating in detail the key people lived during the ancient time, in particular kings, demigods, sages, demons and their remarkable achievements (both spiritual and worldly). These texts are source of inspiration for believers through the illustrated heroes of the past and their righteous path.

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7. www.patheos.com/library/Hinduism.html
10. Ibid,
11. Puranas is a Sanskrit word meaning ancient times. Puranas are also ancient Hindu texts eulogizing various deities, primarily the divine Trimurti God in Hinduism through divine stories
12. Itihasas is a Sanskrit word meaning history. Itihasas is a religious story that talks about what happened in the past. They are usually epic poems, e.g., Ramayana, Mahabharata and Gita
Although in Hinduism some parts of the puranas is recited in daily worships in temples along with Vedas. The purpose is to spread the knowledge of ancient past through designed pauranikas.

**Hindu Festivals**

In Hinduism many festivals are celebrated throughout the year. These festivals are typically an illustration or reenactment or celebration of Hindu mythology. There are festivals which primarily are celebrated by specific sects or in certain regions of the Indian subcontinent,

- Dussera, or Durga Puja, celebrates Hindu mythology of the triumph of good over evil;
- Diwali, the festival of lights;
- Ganesh Chaturthi, the festival celebrating Ganesha;
- Maha Shivaratri, the festival dedicated to Shiva;
- Ram Navami, celebrates the birth of Rama, the seventh incarnation of Vishnu;
- Krishna Janmastami, celebrates the birth of Krishna, the eighth incarnation of Vishnu; Holi, a spring festival of color and light;[13]

**Proposed principles for Hindu personal/family laws and amendments in Hindu Marriage Act; to be introduced in the National Assembly/Provincial Assembly**

To provide for Hindus living in Pakistan

It is to be enacted as following:-

**1. Short title, extent and commencement:**

(1) This Bill may be called the Hindu Family Bill, 2015.
(2) It extends to the whole of Pakistan and to all citizens of Pakistan professing Hindu religion in any of its form in the country
(3) It shall come into force upon the approval of the national/ provincial assembly by the notification in the official gazette

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2. Application of Bill:
(1) This bill shall apply to;
(a) All persons who profess Hindu religion in any of its forms throughout Pakistan.

3. Definitions

1) Dower: In Hinduism, dowry in its earliest form was designed for women's safeguard and known as 'Streedhan'. It was girl's share from her parent's property and was exclusively for her disposal.

2) Forced, includes threats or physical or psychological or criminal means including abduction

3) Free and full consent, would imply to living in a state of freedom for at least three month preceding marriage

4) Shahdi Parat: Marriage registration certificate for Hindu Community

4. Requisites for Marriage Validity

A marriage shall be solemnized under this bill on fulfillment of the following requisites,

1) Religion at the time of marriage: Each party for marriage belongs to or professes Hindu religion.

2) Age at the Time of Marriage: The international standards, in particularly the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, the minimum age of marriage should be 18 years of age. The bill concerning Hindu marriages proposed by Dr Darshan Ramesh Lal (2014) states in its Section 5(1) that the parties to the marriage shall be of 18 years of age or above; even constitution of Pakistan declares the age of maturity as 18 years for all citizens of Pakistan; irrespective of their gender. Therefore, we endorse the bill proposed in the National Assembly in particular Section5 (1) concerning the age of the bride and the bridegroom.

   a) A marriage cannot be solemnized between parties until both the parties
have attained a minimum age of 18 years at the time of marriage.
b) No marriage can be attained in case one or either party is less than 18 years of age.
c) A Hindu male or female child born out of Hindu marriage cannot be married to a fellow Hindu or a person following another religion until he/she has fully attained the age of 18 years and the rights to custodianship rests with Hindu parent only

3) Free consent at the time of marriage: each party at the time of marriage shall freely give consent to marry each other.
   a) Any Hindu male or female of 18 years of age or above shall be free to choose his/her life partner without any coercion or force. A person is considered to be forced into marriage if they are forced by another person to enter into wedlock without having given their free and full consent.

4) Prohibition at the time of marriage: either party practicing Hindu religion, shall not by any reason, be prohibited from marrying each other.
   a) one is a lineal ancestor of the other
   b) one was the wife or husband of the lineal ancestor or descendant of the other
   c) one was the wife of the father's or mother's brother or of the grandfather's or grandmother's brother of the other
   d) one was the husband of the father's or mother's sister or of the grandfather's or grandmother's sister of the other
   e) they are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of brothers or sisters; or
   f) they have a common ancestor not more than two generations distant if ancestry is traced through the mother of the descendant or four generations distant if ancestry is traced through the father of the descendant

5) Neither of the parties to the married has a spouse living at time of the marriage
5. Ceremonies for Hindu Marriage: *A marriage may be solemnized in a manner prevalent within the customary rites and ceremonies of either party recognized as valid and complete solemnization of a Hindu marriage.*

6. Marriage Registration

The community professing the religion of Hinduism in Pakistan is deprived of their rights of marriages registration and other matters involving the subject. It is necessary to make laws covering registration of Hindu Marriage, appointment of Marriages Registrar or legalization of the Hindu Marriages,[14]

The absence of a marriage registration document leads to multifarious socioeconomic woes, especially for women. When a proof of marriage is asked, widows cannot claim their rights to the property of their deceased husband. To file a lawsuit for separation, divorce or maintenance becomes almost impossible without proof of marriage.

In this regard it is important that the pandit (clergy) conducting the marriage ceremony or an elder of the community to be assigned the powers of marriage registrar as stated in section 20 of The Hindu Marriage Amendment bill, 2014;

1) *The Government by notification may invest all the powers of Marriage Registrar to a Pandit/Maharaj/Panch or any other such elder of community in their respective areas. Functions of authorized persons shall be to register marriages solemnized during their jurisdiction, and issue license accordingly.*

   a. Hindu marriage Registration Authority: i) the government shall establish Hindu marriage registration authority under the federal cabinet ministry/ provincial cabinet ministry, which shall be responsible for the registration of all Hindu marriages solemnized in Pakistan. ii) The authority shall have its head office in Islamabad, four provincial offices in provincial capitals and a registration office in each district of Pakistan. iii) The government by notification appoint marriage registrar in consultation with Pakistan Hindu Council. iv)

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Government through notification may invest all power of the marriage registrar to a Pandit/Maharaj/Panch or any other such elder of the community with recommendation of the Pakistan Hindu Council in their respective areas. Functions of authorized persons shall be to register marriage solemnized within their jurisdiction and issue license accordingly. v) a person shall not function as marriage registrar, unless he has a valid register for the purpose of entering the particulars in the Shahdi Parat; the Shahdi parat shall be issued by the Marriage registrar. vi) Marriage registrar shall issue five copies of Shahdi parat to the person for such solemnization. The form will be duly filled by the respective parties and returned to the marriage registrar. The marriage registrar will fill in the information in the register, such as, the time of marriage, age of the couple, consent from both parties etc. Marriage registrar will verify and acquire the signature of the parties and witnesses and put this signature seal on the marriage register. One copy each shall be issued to bride, bridegroom, offices of district marriage registrar, provincial marriage registrar and central marriage registrar.

b. Marriage register to be open for the public inspection: the marriage register shall be a public document and it shall remain open to public inspection during working hours. Certified copy of the Shahdi Parat shall be issued by the Marriage registrar, attested by registrar within seal and sign on the application by person relevant to the marriage on a prescribed form with minimum fee

c. Admissibility as evidence: the marriage register shall be admissible as evidence of the statement contained therein and certified extract shall on application be given by the register, on payment of the fee, which shall be assigned by the competent authority.

d. Shahdi Parat shall serve as legal document for matters pertaining to changes in NADRA/CNIC records, passports, family inheritance/succession or any other relevant legal or financial matters. i) Shahdi parat entitles a Hindu women and a Hindu man to inherit property of the spouse
2) Every marriage solemnized under this bill shall be registered within 15 days in accordance with the provisions of this bill. The parties to such marriage shall give their particulars to the respective marriage registrar for the purpose of entering the particulars in Shadi Parat.

It also must be notified that in section 19 of The Hindu Marriage Amendment bill, 2014 [15] both the parties have to provide the respective particulars to the Marriage Registrar. In this regard it is important for the Hindu community that their birth is registered to obtain a valid CNIC

7. Dower

Some people choose to blame religion for the malfunctioning of the word 'dowry'. In Hinduism, dowry in its earliest form was designed for women's safeguard and known as 'Streedhan'. It was girl's share from her parent's property and was exclusively for her disposal. Generations of preposterous lust for power and greed evolved this custom into present day form.[16]

Thus, it must include that;

1) "any demand of dowry or its confiscation by the husband or his family will be considered as an unlawful and a punishable offence.
   a) Whereas, the Bari given or wedding gifts received by bride at the time of wedding by the bride's family is solely the property of bride and cannot be taken away.

2) If a woman is respondent to a petition for a dissolution of marriage, nothing contained in this bill shall affect any rights she may have to her dower or any part thereof on the dissolution of her marriage

8. Dissolution of Marriage

Judicial separation can be allowed only if the marriage is valid. It is a temporary suspension of marital rights between the spouses. During the course of judicial separation, either party may be entitled to get maintenance from the other if the situation so warrants.[17]

15. Section 19 Registration Of Marriages.- Every Marriage under this act shall be registered within fifteen days in accordance with the provisions of this Act. The parties to such marriage shall give their respective particulars to the Marriage Registrar, for the purpose of entering the particulars of 'Shadi Parat'


“Mental illness and virulent disease” can be one of the grounds of dissolution of marriage. Where the problems associated to living with a partner (wife or husband) who is suffering from mental retardation or incurable illness is quite valid, it also must be understood that this provision is prone to be abused. Therefore, it is important to have valid supporting documents (certificate from doctor) to prove it in a court of law. Therefore, it is needed to add Judicial Separation in case of following;

1) Either party to a marriage may present a petition to a court of competent jurisdiction for a decree for judicial separation on the ground that a party to marriage
   a) Has, after the solemnization of the marriage, treated the petitioner with cruelty; or
   b) Has deserted the petition for a continuous period of not less than three years immediately preceding the presentation of the petition;
   c) Has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent;
   d) Has been suffering from virulent and incurable form of disease

2) After the solemnization of the marriage, no timeframe is fixed, under this law, for the filing of a petition for the dissolution or annulment of marriage in any court, especially in case of forced marriage or marriage without consent

3) Women's right to dissolution of marriage: Under this bill any Hindu married women shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds;
   a) That the whereabouts of the husband have not been known for a period of seven years
   b) That her husband has neglected or has failed to provide for her maintenance for a period of two years
   c) That the husband has been sentenced to imprisonment for a period of five years or more
   d) That the husband has failed to perform, without reasonable cause, his martial obligation for a period of three years
4) **Dissolution of marriage with mutual consent**: Subject to the provisions of this bill a petition for dissolution of marriage by a decree of separation may be presented to a competent court by both the parties to a marriage together whether such marriage was solemnized before or after the commencement of this bill, on the ground that they have been living separately for a period of three years or more that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

9. **Divorce**

In Hinduism divorce is permitted only in extreme conditions or probably because it is still considered as a taboo in our society. Generally speaking, for Hindus, marriage is considered sacred and is more like a duty. A divorce is the legal termination of a marriage by a court in a legal proceeding. Under Shastric Hindu law, wedlock was unbreakable and the marital bond existed even after the death of a party to marriage. Divorce was known only as a matter of exception in certain tribes and communities which were regarded uncivilized by the Hindu elite.[18]

The Hindu Marriage act does talk about adultery as reasonable ground for divorce. Adultery has a reasonably recognized meaning in the marital laws and is considered a valid ground for applying for divorce, if either partner breaches the marital vows and commits an act of infidelity. Marriage is a highly regarded as an institution, and is a sacrament as well as civil contract, so infidelity in marriage is definitely a sin. Adultery is considered as an offence against marriage.[19]

Under section 13 of The Hindu Marriage Act (amendment bill), 2014- Divorce; another ground for divorce must be added that;

1) **If a spouse, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse**;

2) **That the consent to the marriage given was not free**

3) **That the consent of the petitioner was obtained by forced or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or wedlock in result of forced marriages and forced conversions or abduction.**

4) *That another spouse was living at time of the marriage and this fact was concealed by design.*

5) *That the parties are within the prohibited degree of relationship or sapinda;*

6) *That age of the any party to the marriage is less than 18 years*

A spouse's inability to be intimate with the other spouse may also be a ground to file a divorce. As with all fault grounds for divorce, impotency or infertility must be supported by evidence or testimony, or the case could be dismissed. As a general rule, the spouse suing for divorce must provide medical or other expert testimony to prove the other spouse's impotence. Therefore, in Section 13 of The Hindu Marriage Act (amendment bill), 2014-

7) *Divorce in case of Impotency or Infertility with supported evidence must be added; the marriage has not been consummated owing to the impotence of the respondent.*

8) *Reconciliation proceedings: during pendency of a petition before a competent court under this bill, the concerned court shall have/make an attempt of reconciliation between the parties at pre-trial and post-trial stages.*

10. **Maintenance/Alimony**

One of the most important rights under divorce and matrimonial laws is the right to receive and claim alimony (maintenance) and divorce. The Hindu Marriage Amendment Bill, 2014 does not talk about the maintenance or alimony.

Section 25 in The Hindu Marriage Act, 1955 in India where Hindu community are found in majority states that both the husband and wife are legally entitled to claim permanent alimony and maintenance.[20]

When a couple gets divorced the decision on whether any alimony/maintenance is to be paid is decided by the court as stated in The Hindu Married Women's Right To Separate Residence And Maintenance Act, 1946.[21]
amount of permanent alimony is entirely the court's discretion depending on the; the status and position of the husband, his income, his assets and his lifestyle –or the reasonable wants and the earnings of the wife. When a minor child is living with the mother, the necessities of the child are also considered. [22]

Therefore, it must be included in the amendment act, 2014 that;

1) The spouse who is economically stable shall support his/her partner since the instigation of separation and even after the divorce has been granted. This allowance provided will be determined by the court

2) If a wife is respondent to a petition for the dissolution of marriage by decree of separation, she may oppose the grant of a decree on the grounds that the dissolution of the marriage will result in grave financial hardship to her unless arrangements have been made to her satisfaction to eliminate the hardships;

3) The court shall not pass a decree of separation unless the court is satisfied that adequate provision for the maintenance of children borne out of the marriage has been made consistently with financial capacity of the parties to the marriage.

However, if there is any change in circumstances, that is, the spouse is unable to maintain the assigned alimony amount due to a financial crisis or any other adverse situation and the spouse who was being supported is then financially independent earning a decent salary, a petition to the court may be filed. The court may, taking into account the facts, evidences and circumstances prevailing at that point of time, modify the order.[23] Considering these conditions the act must also include;

4) The court may, taking into account the facts, evidences and circumstances prevailing at that point of time, modify, vary or rescind the order.

11. Succession /Inheritance

Law of inheritance in Pakistan is different for different religions, keeping in view their respective religious background. Hindus living in Pakistan ought to get

23. The Hindu Marriage Act,1955: Section25(2); If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.
equal inheritance. Inheritance and succession laws in Pakistan for Hindu community includes; Hindu Inheritance (Removal of Disabilities) Act, 1928 and Hindu Law of Inheritance (Amendment) Act, 1929.\[24\]

While giving a judgment on the inheritance of Hindu citizens of Pakistan the both school of thought; Mitākṣarā, and Dāyabhāga\[25\] be considered as per the convenience of the honorable court.

Section 2 of Hindu Inheritance (Removal of Disabilities) Act, 1929 states that anyone professing Hindu religion and is of sound mind, is entitled by the law to inheritance. But in case of a person who by birth is lunatic or lacking judgment, it does not mention any share or a part in the act. They being the less privileged becomes a major responsibility on the parents. They need a substantial amount for their maintenance. The ratio of the share does not discriminate, thus the act must include a section saying;

1) A guardian must be assigned who is liable for the share, given to a person (lunatic or lacking judgment by birth as mentioned in Section 2 of Hindu Inheritance (Removal of Disabilities) Act) and the guardian should be accountable and must abide by law and if any term is breached by the guardian it will be considered punishable.

Neither The Hindu Inheritance (Removal of Disabilities) Act, 1928 nor the Hindu Law of Inheritance (Amendment) Act, 1929 talk about distribution of inheritance. The Hindu Succession (Amendment) Act, 2005, (India) amended and revised rules on inheriting property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system. Therefore it must be added in the law that

2) “Children despite gender receives equal share of inheritance. There is also no distinction between gender and legitimate or illegitimate child.”

\[24\] http://pklegal.org/inheritance-and-succession
\[25\] The Dāyabhāga does not give the sons a right to their father’s ancestral property until after his death, unlike Mitākṣarā, which gives the sons the right to ancestral property upon their birth. The digest has been commented on more than a dozen times

22
Where the rights of a widow and a widower are concerned while talking about inheritance it also must be added that;

3) *A husband surviving his wife has the same rights in respect to her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.*

12. Will

The Succession Act 1925 Section (VI) 59 clearly states that every person of sound mind not being a minor may dispose of his property by will. The person making the will can by law change or redraft his will at any time when he is competent to dispose his property by will. Whereas, the Act also states that any person who is not physical (dumb, deaf or blind) or mental healthy may not be allowed by law to dispose a will.

1) “Every person, irrespective of their gender or marital status, who is of the sound mind and not being a minor, may dispose of his property or assets by will.”

13. Child Custody

It is important to draw attention to another emotional landmine- the issue of child custody, which continues to languish as a neglected corner of our jurisprudence. The Hindu Marriage Amendment Bill, 2014 does not talk about the child custody in case of divorce or separation. It is important to consider the fact that which parent may be able to give a proper standard of maintenance and education of minor children, consistently with their wishes before handing in the custody of child.(26)

Therefore, it must be added that;

1) “The children should be given equal opportunity for living a better life for which the parent who can provide a healthy lifestyle should be given preference.”

26. Section 26 in The Hindu Marriage Act, 1955

Custody of children. —In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made: [Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent. 

23
a) In case a child is dependent on the mother the court (if appropriate) give the child custody to the wife while the husband should be responsible for the maintenance and child support cost.
b) If court thinks it to be fit, the children; when has attained the age of maturity, can also be asked to choose between their parents”

14. Adoption

Adoption has been thought as a new birth which is a term sanctioned by the theory of Hindu law. The theory itself involves the principle of a complete severance of the child adopted from the family in which it is born and complete substitution into the adoptive family, as if it was born in it. The fundamental idea is that the adopted child gives up the natural family and everything connected with it.[27] Until now there is no law in Pakistan that addresses solely the issue of adoption. Such word is alien to the law books of Pakistan. However, the process of adoption is carried out in the name of custody of the person of the child under Guardians and Wards Act 1890. The adoptive parents apply to the court under section 7 of the said Act and in case of child with known parentage, make the biological parents of the child as respondent who usually give consenting statement in favor of the applicant (adoptive parent).[28]

Though there is no legal bar for minorities to adopt or to apply for the custody of a baby, however, under Guardians and Wards Act, 1890, the court may prefer that the adopting parents should be Muslims. At the same time, it is the environment and the level of religiosity of the adoptive non-Muslims parents which may actually decide the issue.

From the date of the adoption, the child is under the legal guardianship of the new adopted parent(s) and thus should enjoy all the benefits from those family ties. Therefore, a clause must be added under the title of adoption;

28. Power of the Court to make order as to guardianship. (1) Where the Court is satisfied that it is for the welfare of a minor that order should be made:-
   (a) appointing a guardian of his person or property, or both; or
   (b) declaring a person to be such a guardian, the Court may make an order accordingly.
   (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.
   (3) Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.
1) **Children should be adopted by families who can contribute positively towards mental and physical growth of the child despite their religious background.**

2) **The family shall take oath in front of the court that the child adopted by them will be raised according to his/her religion and culture.**

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**15. Illegitimacy**

In Pakistan, law consider all children equal as per the constitution in terms of inheritance, however, in case of family laws the illegitimate children do not receive any share in inheritance of both their biological parents. In Pakistan Registration of births and deaths is still low, particularly of Hindu community. This renders them to become 'invisible' and unable to access services.

Another issue raised of legitimacy of a child is in a void or voidable marriages. Section 15 of Marriage Amendment bill, 2014 is completely endorsed as it was expressly declared that children born in a void or voidable marriage should be legitimate and must receive all the benefits.

**1) Legitimacy of children of void and voidable marriage.**

   a. *Without prejudice to having declared marriages as null and void, the children would be entitled to all the benefits available under the law, if born within nine months of such annulment, unless proved otherwise.*

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**Conclusion**

Hindus are a sizeable religious minority in Pakistan. Their family affairs including marriage, inheritance, succession, women's rights and religious endowment of property are all governed by Hindu religious laws in Pakistan. Hindu law, as it operates in Pakistan, needs appropriate amendments. The modern wife is entitled to a better legal say and entitled to separation and divorce by the law. Hindus living in Pakistan ought to get equal inheritance, divorce, adequate maintenance and regulated adoption as per their intended laws. Hindu women have often been victims of abduction, forcible conversion, and marriage – even married women have not been spared. But their relatives cannot get relief in courts of law, as they lack documentary proof of previous marriage. Their misery is compounded as most of them belong to the
lower class (known as the scheduled caste), which has to face the double jeopardy of being minority and poor. In certain cases, if a husband refuses to acknowledge his child, the mother is left with no option to prove her marriage.

Personal laws that govern matters related to marriage, divorce, custody of children and inheritance have been an issue of great concern and debate in Pakistan. The prevailing Hindu personal laws in Pakistan are insufficient in contrast to the laws in India that provide these rights. Unlike India, the family matters amongst the Hindu community in Pakistan are governed largely by customs. Very few families' matters amongst the Hindu community go to the family courts and most issues are settled through community forums.

There have been demands for decades for new legislation because personal laws did not exist for some religious minorities, whereas, for others they are outdated and incompatible with standards of gender equality and justice. The bill concerning Hindu marriages – introduced by Dr Darshan Ramesh Lal – is being reviewed by the Standing Committee on Law, Justice and Human Rights of the National Assembly.

On the whole and the bill covers some important features like establishing a minimum age (18) for marriage, free consent for marriage and valid grounds for divorce and procedures for registration of marriage that will make them authentic. However, some parts of the bill need more attention to avoid condemnation or tricky situation that might occur. For example, Section 5 of the amendment bill, states that a wife who “cannot conceive should not be contracting a marriage. If this becomes an eligibility criterion, either for divorce or marriage, than infertile divorced women will not be eligible for second marriage.

Another questionable provision is about making “mental illness and virulent disease” as one of the grounds of dissolution of marriage.

Proposed Principles for Personal / Family Law of Kalasha Community in Pakistan

Introduction and Historic Background of Kalasha Culture ................................................................. 29
Proposed principles for Kalasha personal/family; to be introduced in the National Assembly/Provincial Assembly ............................................................................................................... 31

1. Short title, extent and commencement ...................................................................................... 31
2. Application of Bill ..................................................................................................................... 31
3. Definitions ................................................................................................................................. 31
4. Validity of Marriage .................................................................................................................. 31
5. Marriage Registration ................................................................................................................ 33
6. Dowry ...................................................................................................................................... 34
7. Dissolution of Marriage / Divorce ............................................................................................ 35
8. Maintenance / Alimony ............................................................................................................ 35
9. Succession/ Inheritance ............................................................................................................ 36
10. Will ......................................................................................................................................... 37
11. Child Custody .......................................................................................................................... 37
12. Adoption ................................................................................................................................ 38
13. Illegitimacy ............................................................................................................................... 38
Conclusion ....................................................................................................................................... 39
Introduction and Historic Background of Kalasha Cultural

The Kalasha people, also called Kafir (Non-believer), Black Robe and Siah Posh, live in the three sub-valleys of Kalash; Bumboret, Rumbor and Birir, in the modern-day District Chitral, Pakistan.[31] The Kalasha are ancient tribes of Pakistan and they have their own way of life, their own religion, language, rituals and their own identity. It is believed to be a more than 2000 years old religion.[32] This part of Pakistan is considered to be a well preserved ethnic and cultural museum. Owing to this value, Kalasha culture has been listed by UNESCO for consideration as World Heritage Site.[33]

The Kalashas believes that their origin homeland is Tsyam (however, no one is aware of the geographic or global location of the land Tsyam). It was believed by the indigenous Kalashas that their forefather 'Shalak Shah'[34] visited Chitral[35] with his army. During his stay in Chitral, four sons were born to him among whom he divided Chitral equally. However, folk tale about Shalak Shah reflects a historical gap, as it fails to elaborate what happened to Shalak Shah after division of Chitral.

Kalasha religion by its native people is classified under two types of religious events celebrated among the Kalasha society. The first type is ceremonies and festivities Kalasha community celebrates many festivals throughout the year. Their major festivals are; Joshi,[36] Uchaw,[37] Pul/Poh[38] and Chaumos.[39]

33. Kalash culture's inclusion in world heritage list sought by The Kalasha Times, July 24, 2012: https://thekalashatimes.wordpress.com/page/11/
36. Festival celebrated to welcome spring organized in the month of May.
37. Festival celebrated to ensure good crops of wheat and is organized in the month of August
38. Festival celebrated only in Birir Valley for harvest of grapes and walnut and also the occasion for shepherd returning from high pastures celebrated in the month of September
39. Festival celebrated for Divine, living and death relatives, for the crops, for the goats to be safe guided and while the community, the village and the valley are purified prior to the coming year.
As the Kalashas believed themselves to be the descendants of Greek and Aryan, due to which the second type of religious events are spiritual and meditative in nature. Most of the anthropologists consider Kalasha religious as polytheistic because they believe on various deities, such as, Sajigor,[40] Mahandeo,[41] Balumain,[42] Dezalik,[43] Ingaw[44] and Jestak/Jatch/Zaz.[45]

40. Sajigor (the Warrior God) means to equip or to be armed. The concept of this god is the result of cultural diffusion and was introduced by king Rajawai in 100AD. This is a warrior god, the most important god who is considered as the protector and guardian of the territory. This is also responsible for the safety of livestock which consequently brings wealth and lushness. This god has the power to intervene over the spring rains. The temple is made in a circular shape made of oak wood surrounded poles. The Kalash elders insisted that sajigoris a sanctuary a place for worship and to offer sacrifices the perception that Kalash regard sajigoras a god is a false statement and is based on misinformation.

41. Mahadeo (God of Promise) is borrowed from the Sanskrit language meaning great god. Devis referred for a giant or evil spirit. This god is regarded as the messenger between the creator and man. He is popular in the masses and accepts a great deal of homage and offerings. He is known as a god of kept promises, concerned by transgression and soiling of purity and above all protector of population. His altar Maloshis well attended and people approach him on daily basis by offering a sacrifice of bull or goat. His altar is situated in all the valleys the altars are transplant from waigal to Kalash territory. The altar happens to be an open air worship place under the shaft of large rock. The large rocks are surrounded by carved poles with four horse head carved on wood. The place is also called deradur where the spirits dwell.

42. Bulimain (Divider of Riches) Bulish in Kalash language means divider of riches, where as in Sansikrat bala means force or strength, Mayin is referred to magician who has the ability to change. Myth is that a great deo who loves in Tsyam comes to Kafiristan once a year markedly in the month of December. It is believed that god Bulimain with glowing appearance, blistering face, comes on a horse and brings salvation, prosperity and good health for the Kalash people. The festivities last for 40 days in the presence of their invisible god who is often symbolized by a horse. Due to the cruel winters the Kalash confine themselves to their homes and hibernate. They rely on their stored food items and pass the time while praying, feasting and entertaining themselves to endure the harsh winter's atrocities.

43. Dezalik/Disini (goddess of Fertility), this goddess holds power over life and death and controls the souls of the unborn children. Her temple is located in every menstruation home; it is represented by a vertical roughly flat timber in form of female vulva. The temple is considered as a labor room for pregnant women and here they remain till complete recovery. The male members and pure women of the society are forbidden to enter this temple. Every Kalash girl enter this house when she has her first periods and takes part in a religious custom 'tus'ul'ek' performed by the other females present in the Bashalini. Special offering are made when women enters with labor pain for delivery.

44. Ingaw (gods of Prosperity), this god is responsible for good crops and prosperity in the region. People offer sacrifice of a lamb or a goat without any defect to this god, before the seeds are sown. The lamb is especially selected at birth and is embarked for sacrifice. The animal is reared with special care. If it gets hurt or dies it is considered as a bad omen and the crop would be in scarce. The sacrifice is offered at the Ucaw festival which is celebrated on 18th to 25th August every year.

45. Jatch/Zaz (a Super National being), this god is responsible for breeding goats. A sacrifice of a goat is offered to him when they are leaving for summer pastures for the purpose of grazing goats and other domestic animals. Afterwards another sacrifice is arranged when the cattle's are returned from the high pastures in autumn. Special prayers and offerings are made during the numerous rites in the chawmos festival.

Proposed principles for Kalasha personal/family laws; to be introduced in the National Assembly/Provincial Assembly

A Bill

To provide for Kalasha Community living in Pakistan
It is to be enacted as following:-

1. **Short title, extent and commencement:**
   (1) This Bill may be called the Kalasha Personal/Family Act 2015.
   (2) It extends to the whole of Pakistan and to Kalasha citizens of Pakistan
   (3) It shall come into force upon the approval of the national/ provincial assembly by the notification in the official gazette.

2. **Application of Bill:**
   (1) This bill shall apply to;
   (a) All persons who profess and are practicing pagan religion of Kalasha culture in any of its forms.

3. **Definitions**
   1) **Bride price:** means an amount given to the girl's father before marriage is solemnized
   2) **Don dond:** means twice the amount paid by the new husband to the former husband of the wife in order to attain his agreement
   3) **Dowry:** means a transfer of wealth in form of money or property or gold or other goods, usually given by a woman's parents or family to the man or his family, when she is to be married. It is considered as a wife's contribution, to the husband or his family
   4) **Genealogical suitability:** means the study of family history. The history of a particular family showing how the different members of the family are related to each other

4. **Validity of marriage:**
1) **Age at the Time of Marriage**
   Age of marriage is not determined in the Kalasha community, neither for a man nor for a woman. A “istariza gauk”[46] in Kalasha are “dek”[47] in marriage at an earlier

46. Girl is referred as “istariza gauk” in Kalash Community
47. Dek is a term used when a girl is 'given' in marriage
age. In order words their hand is given in marriage during their childhood before the girls can understand the meaning of marriage or relationship. Mostly, a young girl child is given into matrimony relationship at a very early age (1-9). In such cases the age of the bride and bridegroom are same, however, it does not apply to all marital relations.

As per the custom of the community the girls are given in arranged marriages at a young age. This custom is contradictory to the Child Restraint Act, 1929 (No. XIX of 1929).[48] However, in light of traditions, if a bride is given in marriage at a young age[49] she at least should not be sent to her in-law or husband until she gains the age of maturity as per above mentioned Act.

According to traditions and customs of Kalasha the marriage is prohibited in blood relations, however, as the population is small there is always a complexity of lineal descents. In order to avoid such marriages the parents prefer arrange marriages in early childhood. It is important to make the community aware that marriages at young age create health issues for females (mother) and child. A girl is not medically, physically or mentally mature enough to produce a healthy baby herself. Therefore, marriages should not take place in early age.

The National Registration Act 1973 Section 4[50] declares that the age of maturity is 18 years for all citizens of Pakistan despite their gender. Therefore, it can be emphasized that age of marriage should also not be less than 18 years of age as stated in the above mentioned Act.

Therefore, in Kalasha family Laws it must be written that; a)“In order to avoid child marriage, the minimum age for both parties[51] (husband and wife) at the time of marriage should not be less than 18 years of age.”
5. Marriage Registration

The customs and traditions related to a wedding are different in Kalasha community. There are three ways in which a marriage may take place; Arranged Marriage (Khaltabare), Elopement or Love Marriage, Wife Elopement (the new trends developed in contemporary Kalasha).

The wedding rituals formally start with a prayer in jistak han (traditional sanctuary) or at home. It is customary in Kalashas that the couple (bride & groom) must offer a sacrifice to Jistak which is the god and protector of the family, married life, children and fertility. Like every religious community, a religious preacher or Qazi solemnizes the marriage ceremony.

To keep and maintain the purity of lineage they encourage their male child to marry their own ethnic group. However, there is a restriction on marriage particularly the ones in which there are traces of a family relationship or kinship. In order to preserve the cultural heritage of the Kalasha community, there should be 1) a system for genealogical registration which can ensure the eligibility of arranging a matrimonial union with “genealogical suitability”. It must be included in the law that 2) “Marriages among any couple should be permitted according to the genealogical suitability records of the Kalasha Community. Marriage in kinship is discouraged, however, if there is such a marriage the community elders or Qazi or civil suit will consider the matter.”

There is no information found regarding the registration format or record keeping of marriages of Kalasha Communities. 3) “The religious head/preacher who conducts the marriage must also keep a database of all the marriages; irrespective of their type.” Such records can prove the lineage of the child or the legitimacy of a child or any other matter related to family laws. Therefore, Kalasha marriages must be registered at the district level.

4) “The Chitral district government or provincial government or any other

52. Ibid.,
53. Jistak Han is a traditional sanctuary or temple of the god jistak, protector of family, married life, children and fertility.
55. Genealogical means the study of family history. The history of a particular family showing how the different members of the family are related to each other (http://www.merriam-webster.com/dictionary/genealogy)
competent authority may appoint one or more registrar, for the registration of the marriages of Kalasha Community according to their culture. The registrar can be a Qazi of Kalasha religion and will also be responsible for maintaining the record of the marriage and further submit them in the office of the respective authority.”

6. Dowry

Dowry can be defined as a transfer of wealth in form of money or property or gold or other goods; usually given by a woman's parents or family when she is to be married. It is considered as a wife's contribution, to the husband or his family.[56]

Often, the husband brings various forms of goods and wealth to a new house. The bride at the time of marriage is also given a’’bride wealth’’ by the husband. It is a tradition which ensures the well being of the newlywed bride. The dowry or the bride wealth is prearranged according to the economic status of the bride and the groom.

1) “In order to fulfill and content the religious responsibility or custom of the land, a husband may pay Bride wealth according to his economical status and the family of the bride may give bridal gifts (dowry) according to their economical status.

2) The bride price should be discouraged, however, if both the parties agree on such arrangement and the community finds it to be necessary; a) the bride price may be arranged according to the economical status of the father or shall be waved off by the bridegroom as per his convenience. b) These arrangements shall be agreed upon with mutual consent of both parties.”

The bridal gifts received by the girl are a way to ensure that even after her marriage she may enjoy her usual lifestyle and in case of divorce she may be able to avoid discomfort or poverty. Considering the fact that the possession right of all such assets or property belongs to the wife only. It must be written in the Kalasha Law;

3) “Wedding gifts (wealth) or the dowry received by bride upon getting married is only her property and cannot be taken away from her under any circumstances by the bridegroom or his family.”

7. Dissolution of Marriage/Divorce

In the Kalasha custom, more than one marriage is allowed. The permission for second marriage is recommended only in cases of sterility or when the first wife fails to produce a male child, which according to the Kalashas, is necessary to continue the family name. The wives often share the same roof and divide the portion of the house according to their requirement.[57]

Besides, if a husband suspects his wife for adultery, he may leave her. A Kalasha woman also has an ability to dissolve her marriage.

It is commonly found that if a person having a wife marries another woman; his first wife is set free to go back to her parents or to marry again. In case of wife's second marriage the husband is liable to claim the given bride price.[58] The new husband has to pay twice the amount of the initial bride price to the former husband.[59] This custom is known as don dond.[60]

1) “Both, parties (wife and husband) shall have a right to a divorce or dissolution of marriage”
2) “Divorce in Kalasha Community can be obtained on the following grounds by the husband or even by the wife;
   a) Adultery (both parties) or
   b) Impotency (both parties) or
   c) Discontentment in a relation (both parties) or
   d) Elopement (both parties)
   e) Second marriage of husband with the consent of the first wife”

8. Maintenance/Alimony

The bride wealth may also be seen as a custom of maintenance for the wife even after the divorce or leaving of matrimonial relation. The maintenance cost is also granted, in case the husband does not provide an adequate amount to his wife or her child in his will. This bride wealth/maintenance also add up to the disincentive for the husband to divorce his wife and discourage divorce in society.[61]

58. An amount given to the girl's father before marriage is solemnized
60. The word “Don dond” is twice the amount paid by the new husband to the former husband of the wife in order to attain his agreement.
The custom says if the husband remarries before the wife remarries, then he cannot claim his right over the bride wealth. But if the wife leaves her husband in case of elopement and remarries then she is obliged to return what was given to her by her husband at the time of their marriage.\[62]\]

When a husband remarries the wives often share the same roof and divide the portions the house according to their own personal needs.\[63]\] It is the responsibility of the husband to fulfill the needs of his wife whether living with him or in her father's house. The Kalasha law for maintenance shall state that;

1) “**It the choice of the wife to remarry until then the husband is liable for her maintenance.**

2) **The husband shall support his wife when he has remarried.**

3) **In case the wife is divorced on the ground of infertility, the husband is liable to pay her the additional cost of maintenance along with the bride wealth; which shall not be returned.**

4) **The bride wealth provided shall be a source of maintenance or alimony (in case of divorce) and at no cost will be taken away by the husband except adultery.”**

9. Succession /Inheritance

In Kalasha Community there is no restriction over the division of the property among heir and heiress, however, in general practice daughters mainly do not receive any share of inheritance and usually the division is among the sons only. It is believed that if the daughters are not given their due share, such as livestock, domestic good, beddings, etc they will curse the family. Therefore, daughters and sisters and their children are given gifts in form of inheritance. In the Kalasha custom 1) “**the older son will be assigned the duties and rights of his father but the house where the family lives goes to the youngest son.** 2) **The rest is divided equally among children, who despite their gender shall receive equal share of inheritance. 3) There shall be no distinction between gender and legitimate or illegitimate child.”**

In Kalasha community the religious conversion (willful and forced) is

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increasing. Therefore, it should be noted that 4) “the property of the father shall be divided among children according to the Kalasha religion. a) In case any child is converted the division will be according to his/her birth religion. b) However, if the converted child dies the spouse of said person will not receive any share, however, his/her children might receive gifts.”

10. Will

As per the Succession Act 1925 Section (VI) 59 every person of sound mind and not being a minor, may dispose of his property by will. The person making the will can by law change or redraft his will at any time when he is competent to dispose his property by will. Whereas, the Act also states that any person who is not physically (dumb, deaf or blind) or mentally healthy may not be allowed by law to dispose a will. Therefore, under Kaslash Family/ Personal law it should also state that, 1) “Every person (male or female/ married or unmarried) of the sound mind and not being a minor, may dispose of his property (both movable and immovable) by will.”

11. Child Custody

The husband in a Kalasha community usually claim the rights of children to continue the family name but an infant or toddlers needs a mother to take care of him/her. A case was reported in the year 2006, when a Kalasha girl 14, embraced Islam and married Chiragh Ahmed. But her new husband allegedly started abusing and beating her. After the birth of the child she was given divorce and the child was also taken away by the husband. Therefore, it must be noted that, 1) “In case a child is, dependent on the mother the custody of the child must be given to the wife while the husband should be responsible for the maintenance and child support cost.”

2) “The children should be given equal opportunity for living a better life, therefore, the custody of child shall be given or preferred to the parent who can provide a healthy lifestyle while keeping the surname of his/her biological father for genealogical identity.”
12. Adoption

Kalasha culture has been listed by UNESCO as World Heritage Site. As an indigenous group these people and their heritage must be protected. It is the duty of the government that the children adopted from the Kalasha community may be allowed to remain in the same religion and not forcefully converted to another religion on adoption. However, the child may be allowed to choose between the cultures when has attained the age of maturity as defined in the law.

1) “Kalasha Children shall be adopted by the families who can contribute positively towards mental and physical growth of the child. a) The family shall take oath in front of the court that the child adopted by them will be raised according to his/her religion and culture.”

13. Illegitimacy

As soon as a man brings a wife he has to offer a sacrifice called “sisa istongas”[64] however, nowadays people do not consider the importance of such ceremonies. The elders and Dehars[65] said that a child born without this ceremony is considered as illegitimate.[66]

In Kalasha community if the pregnancy occurs during the period of courting, the marriage is often solemnized immediately and the girl leaves her parents house to live with the boys family. Marriages of such nature are not appreciated or favored but are tolerated and children born are considered legitimate.[67]

In the eyes of the state the illegitimacy of the child is associated with registration of marriage. Therefore, the government should emphasize on the registration and record keeping of the marriages of religious communities. 1)“The illegitimate children are defined by law as an offspring of physical relationship

64. Sisa'istongas means formal ceremony of marriage. In this ceremony the married couple stands side by side and an animal is sacrificed and asked for their successful marriage. This ceremony was practiced as soon as a girl was brought in a house as a wife before she knew her husband.

65. Deharr means shamans who are spiritualists and are capable of understanding the language of heaven. They get in to a state of trance where they are able to communicate with the holy spirits or deities. They are the carriers who pass on the revelations of god to the masses. They are healers and often possess unlimited magical powers and countering spells to cure the people from their misery.


outside or before marriage. Nevertheless, it is not the fault of the child itself. 2) Therefore, illegitimate children should be recognized by their biological parents and families and provided a living cost by their biological parents, in case they are not living with them. 3) They should also be entitled to succeed, in the same manner as legitimate children.”

Conclusion

The Kalasha valleys are among the remote and undeveloped part of the country. Although, Kalasha valleys are richly endowed with cultural assets and natural resources, the government of Pakistan has ignored this regional treasure. The people belonging to Kalasha religio-cultural traditions are very strong footed about their identity. These people stand out from the remaining tribes, cultures and communities of Pakistan, due to their distinct culture, religious practices and festivals. Unfortunately, previously the NADRA database did not identify Kalasha religion, which has been highly problematic. Institutionally, according to NADRA data there were no individuals belonging to Kalasha ethnicity or religion in the government record. As a result, they are forced to indicate Islam, Buddhist, Parsi etc. on their identity cards and passports. After a long struggle the religious column for Kalasha community has now been add on the National Identity Card.

The Kalasha community faces a number of discrimination which included lack of economic development and recognition as a separate religious entity. There is no instrument, law or legal protection of the culture, faith and property of the Kalasha minority in the prevailing legal system in Pakistan.

Proposed Principles for Personal / Family Law of Christian Community in Pakistan & Amendments in Christian Marriage Act

Introduction to Christianity........................................................................................................43
Proposed Amendments in Christian Marriage Act, 1872..........................................................44
Proposed principles for Christian personal/family laws to be introduced in the National Assembly/ Provincial Assembly........................................................................45
  1. Short title, extent, commencement.................................................................................45
  2. Application of Bill..........................................................................................................45
  3. Definitions......................................................................................................................45
  4. Validity..........................................................................................................................46
  5. Marriage Registration....................................................................................................47
  6. Dowry.............................................................................................................................48
  7. Dissolution of Marriage/Divorce...................................................................................49
  8. Maintenance /Alimony..................................................................................................51
  9. Child custody................................................................................................................52
 10. Succession/ Inheritance................................................................................................53
 11. Will.................................................................................................................................55
 12. Adoption.........................................................................................................................55
 13. Illegitimacy....................................................................................................................56
  Conclusion..........................................................................................................................57
Introduction to Christianity

Christianity is the largest practicing monotheistic religion of the world. It essential elements of religion roots in the life, teaching, death and resurrection of Jesus Christ of Nazareth, the savior and anointed One of God. The religion initiated in the 1st century AD. The main sects/groups are the Roman Catholic Church, the Eastern Orthodox Churches, the Presbyterian Churches, the Methodists Churches, the Lutheran Churches and the Protestant Churches; in addition to these churches there are several independent churches as well as numerous sects throughout the world. Traditionally Christianity is not merely a system of religious beliefs but rather generates a culture, lifestyle, practices and artifacts/archives which have been brought down through generations. Christianity is living faith as it believes in the resurrection of Jesus Christ. Believers of Christianity have a strong faith in redemption and salvation through Jesus Christ polytheism and atheism has long been rejected in Christianity.[69]

Gospel according to John, New Testament, states that Jesus is not only “the way” and “the life” but also as “the Truth.” This means that “all the reality there is and was” is a reference to Jesus and one God.

Christian believers and scholars strongly advocate, “The Risen Jesus is the Ascended Lord.” That is to say, the scripture, the Holy Bible, clearly states that Jesus was “Risen,” raised from the dead, and, has “Ascended,” to heaven and will come again. After the “Risen Jesus” had become the divine reality, “Ascended Lord” and was no longer a visible physical presence, Jesus remained a present reality to all.

The essence of reality of the Divine God in Christianity has been inherited from the Jews. God among Jews is the one Who made the universe, starry heavens, and then carried on discourse with humans, making covenants with them, giving commandments and rewarding or punishing them. Whereas, in Christianity God is not only the creator but the Father to mankind, Who is kind and forgiving for His children/mankind.

Proposed Amendments in Christian Marriage Act, 1872

For most Christians and particularly for all churches, marriage is a gift from God and a sacred institution.\[70] Marriage is the most intimate of human relationships in which husbands and wives learn to lead their lives as a model of Christ's love for His congregation.\[71] While marriage is honored among Christians and throughout the Bible, in the modern times it is not seen as necessary for everyone. Single people who either have chosen to remain unmarried or who have lost their spouse for some reason are neither incomplete in Christ nor face personal failures rather observe their social freedom.

Furthermore, marriage is no longer a forever notion; in these modern times happily ever after is an unrealistic idea and needs practical reflection. In a violent and unsatisfactory relationship the victims, usually tend to look for religious conversion as a way out. This mainly occurs due to the restriction in the marriage laws. Thus, it is essential to add necessary amendments in the Act to make it according to the modern needs.

The Christian marriage Act, 1872 and the Divorce act, 1869 was structured by the British, for the people who professed Christian religion in the Indian Subcontinent. These particular acts included the British, the Anglo Indians as well as native Indians. Till now, these acts are used in Pakistan with only a few procedural amendments.

Divorce or dissolution of marriage is generally seen from a Christian perspective as less than the ideal, with specific opinions ranging from it being universally wrong to the notion that it sometimes is inevitable. Divorce, while not God's desire, is sometimes the only alternative when all else has failed.

Civil laws recognize marriage as having social and political status. Christian

70. Christian views on marriage typically regard it as instituted and ordained by God for the lifelong relationship between one man as husband and one woman as wife, and is to be "held in honor among all..." Heb13:4
71. God has created marriage, the most intimate of human relationships, for the purpose of refining us, chisel off our selfish human nature, and making us more “other-centered.”http://www.crosswalk.com/family/marriage/relationships/a-biblical-perspective-on-marriage-1208405.html
theology on the other hand affirms the secular status of marriage, but additionally views it from a moral and religious perspective that transcends all social interests.[72]

**Proposed principles for Christian personal/family laws to be introduced in the national assembly/ provincial assembly**

A Bill

To provide for the Christians living in Pakistan;

It is to be enacted as following

1. **Short title, extent and commencement**
   1) This bill may be called the Christian Personal laws Act, 2015
   2) It extends to the whole of Pakistan.
   3) It shall come into force upon the approval of the national/ provincial assembly by the notification in the official gazette.

2. **Application of Bill:** (1) This bill shall apply to;

   (a) All persons who profess Christianity / follow the teachings of Jesus Christ in any of its forms.

3. **Definitions**
   1) **Bari:** as defined in Dowry & bridal gift (restriction) Act 1976; includes gifts, gold or other items given to bride at the time of marriage by bridegroom and his family
   2) **Church:** includes any chapel or other building generally used for public Christian worship;
   3) **Church of England and Anglican:** mean and apply to the Church of England as by law established:
   4) **Church of Pakistan:** was established as a union of Anglicans (Church of England), Presbyterians (Church of Scotland), United Methodists and Lutheran Churches

5) **Church of Rome and “Roman Catholic”**: mean and apply to the Church which regards the Pope of Rome as its spiritual head;

6) **Church of Scotland**: means the Church of Scotland as by law established;

7) **Dowry**: As per Dowry and bridal gift (restriction) Act 1976; Dowry means any property given before or after marriage whether directly or indirectly to bride by parents in connection with marriage but does not include property which wife may inherit under law of inheritance and succession applicable to her

8) **Minor**: means a person who has not completed the age of eighteen years and who is not a widower or a widow;

9) **Christians**: means persons professing the Christian religion;

10) **Mensa et toro**: The literal meaning of the term is "from bed and board." A divorce a mensa et toro, is rather a separation of the parties by act of law, than a dissolution of the marriage. It may be granted for the causes of extreme cruelty or desertion of the wife by the husband. This kind of divorce does not affect the legitimacy of children, nor authorize a second marriage.

11) **Native Christians**: includes the Christian descendants of native of Indo-Pak sub-continent converted to Christianity during the British era. The current natives include all citizens of Pakistan professing Christianity as a religion

4. **Validity:**  
**1) Age at the time of Marriage :**

The Christian Marriage Act (XV of 1872) was taken up at the time of adoption of Central Acts and Ordinances Order, 1949 (G.O.4 of 1949) and this Act is applicable to entire Pakistan. 

Part VI, Marriage of Native Christians Section 60 (1) of the Christian marriage Act, 1872 states that the age of marriage for a male is 16 years and for female 13 years.  

The age mentioned in the act is in contradiction with international laws and standards. As per the international standards in particular ILO and CCMMAMRM the minimum age of marriage should be 18 years of age. The constitution of Pakistan

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73. Subs. By A.O.,1961, Art.2 and Sch. For 'subject of her Majesty' (with effect from the 23rd March, 1956)

74. Manual of Family Laws by Hakim Amir Bakhsh Awan; Christian Marriage Act 1872, Part VI, Section 60(1) pg no. 806

75. The 55 parties to the 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages have agreed to specify a minimum marriage age by statute law, to override customary, religious, and tribal laws. The mentioned website elaborates the convention document in detail:
http://www.ohchr.org/Documents/ProfessionalInterest/convention.pdf
and various other legislations contradict international laws in the matter of age for an adult. However, the National Registration Act, 1973 Section 4[76] declares the age of mutuality as 18 years for all citizens of Pakistan irrespective of their gender.

Therefore, the commission would like to appeal that below mentioned amendments should be consider a replacement of Part VI, Marriage of Native Christians Section 60 (1) of the Christian marriage Act 1872.

a) “The minimum age for both parties[77] (husband and wife) at the time of marriage should not be less than 18 years of age. Any marriage registered where both parties (husband and wife) are less than 18 years of age will be considered illegal.”[78]

b) a marriage of a minor is not valid whose parents are either unaware of it or reasonably opposed to it;[79]

2) A marriage is invalid which was entered into by reason of force or of grave fear imposed from outside, even if not purposely, from which the person has no escape other than by choosing marriage.[80]

5. Marriage Registration

The process of marriage registration under Section 7 is well explained and does not need any amendments. In 1970, Church of Pakistan was established as a union of Anglicans (Church of England), Presbyterians (Church of Scotland), United Methodists and Lutheran Churches.[81] Whereas, the Roman Catholic Church and its hierarchy will remain the same in the Act. The Church of England should be replaced by Church of Pakistan following the same procedures laid down by the Church of England in the Act. The current Act also recognizes other local churches that lack affiliation with the above mentioned churches and are dealt under the term/section of Native Christians.

76. The National Registration Act 1973: Section 4 (Registration of Citizens) (a): every citizen in or out of Pakistan who has attained the age of 18 years shall get himself registered.
77. Parties is defined as; the two persons (male and female) getting married in the church or registrar office
78. Illegal is defined as; an unlawful act and punishable offence against the state.
80. Ibid,(Canon 1103,pag. 156)
81. Mittha, Maroof, Religious Minorities and Marriage Laws in Pakistan; A report on existing legal structure regulating marriage and divorce of non-Muslim Pakistanis and related issues and problems by Community World Service Asia, 2014, pg. 6
To ensure uniformity in the law; Part III; Marriages solemnized by ministers of religion licensed under this Act- Section 12 (notice of intended marriage) should include an additional statement as i.e.,

1) “The persons intending to marriage should also provide their birth certificates or National Identity cards for the verification of their age.”

The Section 19&44 - consent of father, or guardian, or mother, should also be amended and the reviewed Act should clearly indicate by law that;

2) “No member of the family (father or mother or elder) or in case of guardianship should be allowed to give their consent in case of marriage of any minor person, particularly in case of interfaith marriage.”

6. Dowry

Dowry is the property which a woman brings to husband in marriage. Dowry or Jahaiz is not mentioned in the Christian Marriage Act, 1872. However, as per Family Act, 1964 it is stated that any property or bridal gifts given to a female at the time of marriage is considered dowry. However, it is illegal for bridegroom to ask for any dowry in form of property or gifts from the bride's family. Therefore, it should be mentioned clearly in the Christian Marriage Act, 1872 Part VIII- Miscellaneous that any such advances will be punishable as per the law.

1) “The gifts, gold, electronic items, vehicles or property given to the bride before marriage by her family as a wedding present solely belong to the wife and the husband or his family is not liable to claim any item.

2) Custody of dowry by the husband or his family is considered unlawful and a punishable offence.

3) Whereas the bridal gift or Bari given by bridegroom side at the time of marriage is solely the property of bride and cannot be snatched away from her.”

82. Legal dictionary by Dr. Tanzilur Rehman
83. As per Dowry and bridal gift (restriction) Act 1976; Dowry means any property given before or after marriage whether directly or indirectly to bride by parents in connection with marriage but does not include property which wife may inherit under law of inheritance and succession applicable to her
84. Bari define in Dowry & bridal gift (restriction) Act 1976; Gifts, gold or other items given to bride at the time of marriage by bridegroom and his family
7. Dissolution of Marriage/ Divorce

The divorce and matrimonial matters of people professing Christian religion, was framed by the British in view of diverse sections of Christians in the Indian Subcontinent, including white British and Anglo Indians. Till date, in Pakistan, this act has not met any amendments and reforms, except the few procedural amendments in 1949 & 1976, in which petitions under the divorce act were given to the civil judge, which earlier came under the jurisdiction of district and high courts.

Divorce Act, 1869 is relation to the divorce of persons professing the Christian religion, and to confer upon certain Court jurisdiction in matters of matrimonial. There are three modes described for seeking Divorce:

- Dissolution of Marriage
- Nullity of Marriage
- Judicial Separation

Section 10 of the Divorce Act states that, in order to divorce a Christian female, a Christian male has to impute the charge of adultery against her and then prove it before divorcing her. Otherwise, there are no other grounds on which a Christian male can divorce his wife. This is a blatant violation of human rights and women's rights. In other countries, where Christians are in majority, a Christian male can divorce his wife on just and reasonable grounds and often even through mutual consent. However, in Pakistan, there is only one ground, which is adultery. Therefore such section should be softened, under Part III: Dissolution of Marriage- section 10 the following should also be stated,

1) “Any party (husband or wife) shall be given equal rights to present a petition of the dissolution of marriage or divorce with a logical reason for their petition, such as,
   a) Domestic violence,
   b) Sexual violence,
   c) Mental or terminal physical illness,
   d) Intentionally not fulfilling any financial, emotional or physical obligations.”
The divorce should not be limited to adultery only. It is stated in the Canon law that divorcing a spouse who is physically or emotionally abusive is not a sin. It is clearly stated in CIC 1153 that, 'a spouse who occasions grave danger of should or body to the other or to the children, or otherwise makes the common life unduly difficult, provides the other spouse with a reason to leave, either by decree of the local ordinary (e.g., Bishop) or, if there is danger in delay, even his or her authority.'[85]

Nullity of Marriage (Section 18 of the Divorce Deed, 1869) According to the Section 18 of the Divorce Act, 1869, any husband or wife may present a petition to the Court of Civil Judge, praying that his or her marriage may be declared null and void. Part IV: nullity of Marriage- Section 19 should also include;

2) The court may declare the marriage annulled at the time of petition, if it thinks fit, in case any party (husband or wife) is minor or under the age of consent (18 years of age).
3) The court may declare the marriage annulled at the time of petition, if it thinks fit, in case any or both party (husband or wife) did not give their consent for marriage.
4) According to Canon law, the following are incapable of contracting marriage, therefore, **annulment can be granted to either party on these grounds:**
   a) Lack sufficient use of reason;
   b) Sufferings from a grave lack of discretionary judgment concerning the essential
   c) Matrimonial rights and obligations to be mutually given and accepted;
   d) Because of causes of a psychological nature, are unable to assume the essential obligations of marriage.[86]

According to Section 22 of the Divorce Act, 1869, no decree shall hereafter be made for a divorce a mensa et toro,[87] but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse.

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87. The literal meaning of the term is "from bed and board." A divorce a mensa et toro, is rather a separation of the parties by act of law, than a dissolution of the marriage. It may be granted for the causes of extreme cruelty or desertion of the wife by the husband. This kind of divorce does not affect the legitimacy of children, nor authorize a second marriage.
The grounds for judicial separation are much the same as for divorce, except that there is no requirement to prove that the marriage has broken down irretrievably, and the couple does not have to be married for any minimum length of time. As with divorce petitions, grounds for judicial separation are adultery, unreasonable behaviour, desertion for at least two years, separation with consent for two years or separation without consent for five years. There is also the additional ground for judicial separation of 'being habitually drunk'. Unlike in the case of divorce, only one decree is issued, once the court is satisfied that the requirements for judicial separation have been met. The main circumstances under which judicial separation takes place are when one or both of the parties are opposed to divorce, perhaps for religious reasons; when the couple have been married for less than a year, during which there is an absolute ban on divorce; or when it may be difficult to provide the evidence of irretrievable breakdown of the marriage which is necessary for divorce.

8. Maintenance/Alimony

Section (X) 36 Alimony: both parties (husband and wife) have the right to institute a petition for alimony suits. However, there are many cases and judgments where a wife was given no right to file a petition during the pendency of the proceedings under Divorce Act. Even the Bible states that a man is responsible to provide for his family and his house and if he fails to fulfill his obligations he is considered as nonbeliever. Even the Code of Canon law number 1154 states that; When a separation of spouses has taken place, provision is always, and in good time, to be made for the due maintenance and upbringing of the children.

Maintenance at the time of separation needs to be decided, as in most of the cases, due to church and peer pressure the parties do not file suit for divorce. During the period of separation the woman is considered unmarried by law. Section 24 of

88. Petition u/s.488, Cr.P.C.
89. AIR 1955 NUC 3591
90. 1 Timothy 5:8, “But if any provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an infidel.”
92. The Divorce Act-1869, Section (V) 24-Separated wife deemed spinster with respect to after-acquired property: The wife shall, from the date of the sentence, and whilst the separation continues be consider as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.
Divorce Act should also incorporate that;

1) “The women are not liable to return any gift or property provided to her at the time of marriage.”

However, it is observed that due to socio-economical condition of Christian women, they may face financial constraints at the time of separation. Therefore, in order to make these laws more women friendly it is important that the court, if may think possible, may grant an amount as a maintenance cost for the wife. Therefore, the Section 37 of the Act shall also state that;

2) “The husband shall be liable to support his wife since the commencement of the ordered separation.
   
a. This allowance provided to the wife by the husband during the separation will be determined by the court”

9. Child Custody

During the divorce the custody of children (biological or adopted) is the most sensitive part of the legislation. In cases of judicial separation there are no restrictions in rules or regulations considering the custody of children. Court is free to decide on the custody cases considering the welfare and well being of the children. This may include financial stability, upbringing, future prospects, education and others.

Section 42 of The Divorce Act 1869 should also state that,

1) “The children despite their gender should be given equal opportunity towards better life and the parent who can provide a healthy lifestyle should be preferred.

2) In case of an infant or a toddler; dependent on the mother, the court should give the child custody to the wife and the husband/ father will be responsible for the maintenance and child support cost.

3) In such cases were the child has not attained that age of maturity, the court at its own discretion may choose to summon the child, if court thinks it to be fit and asked their priority to choose between parents.”

Children are in need of both their parents therefore if court thinks it appropriate,

4) “The parents (either father or mother) should be given day(s) of week with the children in case they do not have the custody.”
10. Succession /Inheritance

The Succession Act 1925 was announced during the time of British for strengthening law of intestate belonging to various religious communities. This law was adopted by the government of Pakistan via Adaptation of Acts and Ordinances Order 1949. The Act continued to be applicable to different religious communities. The Christian citizens of Pakistan are also governed by this act for the purposes of their succession and inheritance.\(^{[93]}\)

Determination of heirs for Christian and their shares have been clearly determined in Section 32-49 of the Succession Act 1925.\(^{[94]}\) In particular, according to section 37 of the Act, it should be added in Christian Marriage Act 1872,


Section 32. The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this chapter.

Section 33. Where the intestate has left a widow:

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

(b) save as provided by section 33A, if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Section 34. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Government.

Section 35. A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate. Distribution where there are lineal descendants

Section 36. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40

Section 37. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

Section 38. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is only one, or shall be equally divided among all his surviving grandchildren

Section 39. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Section 40. (1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.
Part VIII- Miscellaneous that,

1) **Children despite their gender receives equal share of inheritance.**
2) **There is also no distinction between maternal kindred and paternal kindred or full blood or half blood relations.**
3) **The Act also provide 1/3 share to the widows and even to the widowers.**

The issue is that the community is not aware of such laws and often misjudged but there are many historical cases where females were given equal share in light of Succession Act 1925.[95] Section 32 to 49 should also be mentioned in Christian personal laws,2015.

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Section 41. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow shall be those contained in sections 42 to 48

Section 42. If the intestate's father is living, he shall succeed to the property.

Section 43. If the intestate's father is dead, but the intestate's mother living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares

Section 44. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children or each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death

Section 45. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. (A), the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister, Mary, and two children of a deceased brother, George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Section 46. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Section 47. Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Section 48. Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Section 49. Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

95. Supreme Court of Pakistan judgment Ms. Inayat Bibi vs Issac Nazirullah (PLD 1992/355)
11. Will

As per the Succession Act 1925 Section (VI) 59 every person of sound mind not being a minor may dispose of his property by will. The person making the will can by law change or redraft his will at any time when he is competent to dispose his property by his/her free will. Whereas, the Act also states that any person who is not physically (dumb, deaf or blind) or mentally healthy, may not be allowed by law to dispose a will.

The section of this Act is gender bias. Although, the section 59 does speak for every person in sound mind can dispose a will but does not explain any statement about unmarried women. The Christian Marriage Act 1872, Part VIII- Miscellaneous should additionally state that,

1) Every person (male or female/ married or unmarried) of the sound mind not being a minor may dispose of his property (both movable and immovable) by will.

12. Adoption

Child adoption in Pakistan is fairly a simple and quick process. It takes approximately 6 to 8 weeks if you are Muslim by faith. However, by law a Christian couple no matter how much financially stable, will not be allowed to adopt. It is stated by the family Court that the adoptive parents have to be Muslim by faith (unless the agencies know they are placing a Christian Child, they would not place a child with Christian family).

The proposal to be added in Christian family bill, 2015 is that

1) Children should be adopted by families who can contribute positively towards mental and physical growth of the child despite their religious background.
2) The family shall take oath in front of the court that the child adopted by them will be raised according to his/her religion and culture.
3) The family will support the children’s wellbeing and ensure that the children are provided with healthy environment to prosper.
4) Religious Conversion will not be valid until the child is minor and does not reach the age of maturity.
5) In case of marriage (in case of arrange marriage) of the adopted children

96. Succession Act 1925, Part VI-Testamentary Succession Chapter II of Wills and Codicils Section 59.
belonging to other religion/faith, the parents should ensure that his/her marriage takes place with the individuals belonging to the respective religion.

13. Illegitimacy

Illegitimacy by law means the condition before law, the social status, of a child whose parents were not married to each other at the time of his or her birth.\(^{98}\) In Pakistan law consider all children equal as per the constitution in terms of inheritance, however, in case of family laws the illegitimate children does not receive any share in inheritance of both their biological parents, as they are born out of adultery or fornication and any sexual relationship held before marriage, which is a taboo in Pakistan society. The Canon law also elaborates its position on illegitimacy while emphasizing on institution of marriage and considering the children born out of the wedlock as legitimate in the eyes of God. It also states that the parents are obligatory to provide for the rights and upbringing of their children as per the spiritual values of Christianity.\(^{99}\)

Unfortunately, the constitution fails to define the term illegitimacy which directly affects rights of illegitimate children as it contradicts with Islamic jurisprudence. Therefore, we need to create space for such children in terms of recognition\(^{100}\) and inheritance as they have nothing to do with their parent's wrong doings. There are many examples that can be found in the political, historical and societal trends of how women have been punished by snatching away the rights of their children, whose only fault was being born outside the socially and religiously sanctioned matrimony. The worst brunt of this unjust ordeal falls on children, who have nothing to do with their parents' actions.\(^{101}\)

Another factor elaborated by the legal experts for recorded illegitimacy is non registration of marriage of minority community. The marriage in Christian community in many areas has not been registered, which at the time of birth of

\(^{98}\) Legal dictionary: http://legal-dictionary.thefreedictionary.com/illegitimacy
\(^{100}\) UN Declaration of Human right Article 5&6:
\(^{101}\) Article on Illegitimate children in Pakistan, Friday, January 9, 2015, Daily Times
children make them illegitimate and registration of such children is difficult. In order to avoid difficulty every marriage should be registered by the state as per the direction of the law.

The section 21 of the Divorce Act 1869 elaborated that child of annulled marriage are considered legitimate and are entitled to succession and inheritance. However, this law fails to express status of the children born out of wedlock. As elaborated above the children should not be considered responsible for the actions of their parents. Therefore,

1) “The illegitimate children should be recognized and provided a living cost by their biological parents.
2) They should also be entitled to succeed, in the same manner as legitimate children.”

Conclusion

In addition, Section 77 of the Act states that the changes occurring from time to time to the Matrimonial Causes Act in England will be taken into consideration while updating the law. The Matrimonial Causes Act in England allows a Christian couple to seek divorce on just and reasonable grounds rather than proving a charge of adultery. It is unfortunate that the legislature in Pakistan has not paid attention to the rights of Christians. It has not incorporated amendments to the Christian Divorce Act of 1869, which entitle Christians to file for a divorce suit either, through mutual consent or on just and reasonable grounds.

Christian marriage act was drafted by the British in the year 1872 and till date no amendments have been made in the act. There is a dire need to make some necessary changes owing to need of the people in present era.
Proposed Principles for Personal / Family Law of Sikh Community in Pakistan & Amendments in Anand Marriage Act

Introduction to Sikhism .................................................................................................................. 61

Proposed principles for Sikh personal laws and amendments in Anand Marriage Act;
to be introduced in the National Assembly/Provincial Assembly ............................................. 61

1. Short title, extent and commencement .................................................................................. 62
2. Application of Bill .................................................................................................................. 62
3. Definition ............................................................................................................................... 62
4. Validity .................................................................................................................................. 63
5. Marriage Registration ........................................................................................................... 64
6. Dowry ................................................................................................................................... 65
7. Dissolution of Marriage/Divorce ......................................................................................... 66
8. Maintenance/Alimony .......................................................................................................... 67
9. Child Custody ....................................................................................................................... 67
10. Succession/Inheritance ......................................................................................................... 68
11. Will ....................................................................................................................................... 69
12. Adoption ............................................................................................................................... 69
13. Illegitimacy .......................................................................................................................... 70

Conclusion ..................................................................................................................................... 71
Introduction to Sikhism

Sikhism favors, rather recommends, a married social life for all the believer/followers. Hinduism, gives importance to asceticism, renunciation and celibacy, whereas a married life is considered honorable in Sikhism. The lifestyle of yogis, sadhus and ascetics are strongly condemned and considered escapism. Such ways are merely deemed as getaway from the hard realities of life.

According to the Guru,[102] one need not forsake one's home and hearth and wander in woods and wilderness to seek God who is omnipresent and pervades in each one of us. Therefore, in Sikhism married life (grihasth)[103] is a superior and natural way of life. According to Sikhism the purpose of all human life is union of souls with the eternal soul and life of a house holder.[104]

Bhagat Kabir's words, “If God can be attained by abstinence from sex, why don't the eunuchs attain Him”[105] authenticate the obligation of marriage. All the Gurus of Sikhism teaches to live a married and family life except one who died at a tender age.[106]

Marriage in Sikhism is based on mutual love and faithfulness in order to exemplify faith and fidelity between couple. Polygamy is criticized and strongly condemned in Sikhism and only approve of matrimonial relationship with one man or one woman. Beside polygamy sexual pleasure is also religiously disapproved in Sri Guru Granth Sahib.[107]

Proposed principles for Sikh personal laws and amendments in Anand Marriage Act; to be introduced in the National Assembly/Provincial Assembly

A Bill

To provide for Sikhs living in Pakistan

102. Kahe re ban khojn jaee Sri Guru Granth Sahib (SGGS), 684. Kart phire ban bhekh moht reht nirar, SGGS 543
103. Sagl Dharm meh grihst pardhan hai Bhai Gurdas
105. Bind rakh jo triay bhai, Khure kyon na parm gat pane SGG 324
107. Mane rang bhoge bhu nari SGG 176,
It is to be enacted as following:-

1. **Short title, extent and commencement:**

(1) This Bill may be called the Sikh Family Act 2015.
(2) It extends to the whole of Pakistan and to Sikh citizens of Pakistan
(3) It shall come into force upon the approval of the national/ provincial assembly by the notification in the official gazette.

2. **Application of Bill:**

(1) This bill shall apply to;
(a) All persons who profess Sikh religion in any of its forms.

3. **Definitions**

1) **Amitdhari;** means any man or woman who has undergone traditional Amri initiation and therefore practices the prescribed Sikh code in daily life
2) **Anand Marriage:** All marriages which maybe or may have been duly solemnized according to Sikh marriage ceremony called Anand Karaj shall be, and shall be deemed to have been with affect from the date of the solemnization of each respectively, good and valid in law.[108]
3) **Bari:** means gifts or gold given to the bride from the bridegroom side
4) **Consent:** permission and agreement from bride and bridegroom to solemnize marriage ceremony
5) **Dowry:** means money or property or gold or gifts brought by the bride to her husband
6) **Gender:** means the range of characteristic pertaining to, and differentiating between masculinity and femininity.[109]
7) **Gurdwara:** means the gateway to the guru, it is the worship place of Sikhs
8) **Khalsa:** means sovereign/free collective body of all initiated Sikhs represented by the five beloved ones and can be called the Guru Panth, the embodiment of the Guru and the final temporal Guru/leader of the Sikhs.[110]
9) **Minor:** means a person of either gender who is under eighteen years as per

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109. www.who.int/topics/gender/en/
110. www.sikh.org/khalsa.htm
National Registration Act 1973

10) **Pakistan Sikh Gurudwara Parbandhak Committee**: means a Sikh religious organization, sole guardian of Sikh institutions entrusted with the maintenance of Sikh institutes and places of worship in Pakistan.

11) **Panj Piaray**: means literally the five (beloved ones), is the name collectively given to the five Sikh men.\[111\]

12) **Prohibited degrees of relationship**: any marriage between persons who are related to each other in degree of consanguinity or affirmity which would, according to the customary laws of Sikhs, render a marriage between them illegal.

13) **Sangat**: means a company, fellowship and association (men and women) of Sikhs meeting religiously especially in the presence of the Guru Granth Sahib.\[112\]

14) **Sri Guru Granth Sahib**: The Holy book, considered central religious text of Sikhism, final, sovereign guru among the lineage of 11 Sikh Gurus of the religion.\[113\]

4. **Validity**:

1) **Age at the Time of Marriage**

   According to Sikhism, when a girl attains maturity, it is incumbent upon her parents to look for a suitable match for her. It is neither desirable nor proper to marry a girl at tender age. The daughter of a Sikh should be given in marriage to a Sikh. If a man is a believer in Sikhism, humble by nature, and earns his bread by honest means, with him matrimony may be contracted without a question and without consideration for wealth and riches.\[114\]

   The age of marriage is maturity which can be calculated as 18 year of age as per National Registration Act 1973 Section 4.\[115\] It declares 18 years as the age of mutuality for all citizens of Pakistan despite their gender.

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111. En.wikioedia.org/wiki/Panj_Pyare
112. En.wikioedia.org/wiki/Sangat_(term)
113. En.wikioedia.org/wiki/Guru_Granth_Sahib
115. The National Registration Act 1973: Section 4 (Registration of Citizens) (a): every citizen in or out of Pakistan who has attained the age of 18 years shall get himself registered.
As per the international standards[116] the minimum age at the time of marriage should be 18 years. Therefore, the following amendment should be incorporated in Section 2[117] of the Anand Marriage Act; a) “The age of maturity for both parties[118] (husband and wife) at the time of marriage should not be less than 18 years of age as per the National Registration Act 1973.” The Sikh religion does not allow child marriage. It is forbidden by the religious code of conduct.[119]

The Section 5[120] of the Act should also include that, b) “Any marriage solemnized where both parties (husband and wife) are of minor age will be considered invalid or void and a legal offence according to the Child Restraint Act 1929 section 2 (d) "minor" means a person of either gender who is under eighteen years of age.”[121]

2) Exemption of certain marriage from bill; nothing in this bill shall apply to (a) any marriage between persons not professing the Sikh religion, or (b) any marriage which has been judicially declared to be null and void,[122] or (c) any marriage solemnized without the consent of the either party, or (d) any marriage solemnized between minors, or (e) any marriage solemnized within prohibited degrees of relationship.

5. Marriage Registration

Anand Karaj (Sikh Marriage) can take place in a Gurudwara and an Amritdhari[123] (Baptized) Sikh may perform the marriage ceremony.[124] Section 2[125] of the Act indicates that all Sikh marriages according to the Anand ceremony are valid under law.[126]

116. The 55 parties to the 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages have agreed to specify a minimum marriage age by statute law, to override customary, religious, and tribal laws. The mentioned website elaborates the convention document in detail: http://www.ohchr.org/Documents/ProfessionalInterest/convention.pdf
118. Parties is defined as; the two persons (male and female) getting married in the church or registrar office
120. The Anand Marriage Act, 1909 (VII of 1909) Section 5. Non-Validity of marriage within prohibited degrees
122. The Anand Marriage Act, 1909 (VII OF 1909); Manual of Family Laws in Pakistan, Civil and Criminal Law publication, pg. 461
123. Amritdhari Sikh means any man or woman who has undergone traditional Amrit initiation and therefore practices the prescribed Sikh code in daily life
126. Ibid
In the Section 5 of the proposed bill (2007) it is stated that, the Government of Pakistan, through the, 1) “Pakistan Sikh Gurdwara Parbandhak Committee shall issue appropriate marriage certificates as per proposed in Sikh Anand Marriage Bill 2007. Provide, such marriages are solemnized either at one of the following Gurdwaras:

- Gurdwara Dera Sahib Lahore
- Gurdwara Janam Asthan Chunna Mandi Lahore
- Janam Asthan Nanaka Sahib
- Gurdwara Panja Sahib Hassan Abdal
- Gurdwara Bhai Joga Singh Peshawar
- Gurdwara Kartarpur Sahib Narowal

2) Or in case the families belong to distant districts or provinces the marriage of a Sikh couple can be solemnized according to Sikh religious ceremony.”

3) NADRA should recognize Sikh marriages upon the documentary approval by Pakistan Sikh Gurdwara Parbandhak Committee or any other registered Gurdwara.

6. Dowry

Dowry is the property which a woman brings to the husband in marriage.[128] Dowry or Jahaiz is not allowed in Sikhism,[129] 1) “accept, ask, or pay a bride price, dowry, or other monetary consideration, when arranging a match for either bride or groom is prohibited by Sikhism.” [130] Therefore, it should be stated in the law that as per the rituals and traditions of Sikhism 2) “the demand of dowry is inappropriate and custody of dowry by the husband or his family is considered unlawful and punishable offence according to the law. Whereas, the bridal gift or Bari[131] given by the bridegroom's side at the time of marriage or wedding gifts received by bride at the time of wedding by the bride's family is solely the property of bride and cannot be snatched away from her by the bridegroom or his family.”

128. Legal dictionary by Dr. Tanzilur Rehman
131. Bari define in Dowry & bridal gift (restriction) Act 1976; Gifts, gold or other items given to bride at the time of marriage by bridegroom and his family
7. Dissolution of Marriage/ Divorce

According to the Sikh religious beliefs the concept of marriage is considered holy, therefore, there is no provision of divorce in Sikhism. The couples are pressurized to resolve their differences in a harmonious manner and seek help from senior members of the Gudwara or Sangat. Sikh marriages take place in the presence of Sri Guru Granth Sahib, therefore, in case of marital discord takes place, the community intervenes. The intervention to resolve the issues/difference start with a senior member of the community (Sangat), however, if the Sangat fails to find a solution Panj Piaray are asked for help and counseling. In the extreme and very rare case where one side simply refuses to reconcile they may ask permission from the Sangat or Panj Pyaray to seek divorce and later re-marry.[132]

Although there is no provision for divorce in Sikhism, divorces do occur among Sikhs. Parties (husband and wife) seeking for divorce must follow the civil law of the land and proceed accordingly. Therefore, as per the civil law an agreement of divorce should be allowed by the above mentioned list of Sikh Gurdwara or Pakistan Sikh Gurdwara Parbandhak Committee, the Sikh Family Act 2015 should affirm;

“The parties (husband and wife) can seek divorce on the following conditions;

1) When an underage minor; bride or groom, who are according to the religious beliefs are neither emotionally or physically mature, nor are ready for the responsibilities of marriage.[133]

2) Consent; if either party (bride or bridegroom) does not give their respective consent at the time of marriage.

3) Adultery; Engage in pre-marital or extra-marital affairs, polygamy, divorce or remarry, or otherwise take second spouse, while the first is living (as a general rule).[134]

4) If the partner is guilty of rape, sodomy or bestiality

5) Domestic violence (physical and sexual violence) and other forms of violence

6) Psychopathic disorder [135]

134. Ibid
135. The expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it require or is susceptible to medical treatment: http://www.khalsanews.org/newspics/2012/05May2012/20%20May%2012/20%20May%2012%20Sikh%20Marriage %20Act%20-%20Gurtej%20S.htm
7) Impotency or infertility upon medical approval

8) If the issue or difference among both parties cannot be resolved by Sangat or Panj Paray or parties simply disagree to reconcile.”

8. Maintenance/Alimony

According to the teachings of Sikh Gurus, women are equal partners in marriage. The purpose of alimony in any personal laws is to avoid any sort of unfair economical division during or after the divorce. Alimony is also considered as an important matter during the litigation process of divorce with the motive to support other partner (female) financially; post the separation or the divorce.

In order words, alimony is a term used for spousal support or simple maintenance or a legal responsibility to give financial support to one's former spouse after separation or divorce. The support or alimony should be provided irrespective of the gender. The calculation of the alimony or maintenance should be as following;

1) “The maintenance can be anything between your 1/3 - 1/5th of the income.
2) Reason of divorce has nothing to do with quantum of maintenance. If wife is unemployed husband is directed to provide maintenance for sure.
3) If wife is incapable to earn, alimony must be granted. But if otherwise, no excuse of not doing a job should be considered.
4) Court would consider the actual gross salary. [136]
5) The amount and duration of the alimony depend upon the duration of the marriage e.g., marriages lasting more than 10 years are entitled to be granted a lifelong alimony.[137]
6) In order to equalize the economic condition of both spouses the higher earning spouse is entitled to pay alimony until the other spouse has a prosperous career.”[138]

9. Child Custody

As per the Khalsa doctrine and Sikh Minority and Guardianship Act of India the father and mother should be made joint guardian of their children. Even United

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137. Divorce law and procedures-alimony; http://parting.hpage.co.in/alimony_48809808.html
138. Ibid
Nations Declaration of Human Rights of the Child, 1959 stresses that a child of tender years shall not be separated from his mother.

In case the court favors the father in custody case, it is suggested that a child should be allowed to stay with the mother till the age of 14 or more. After that, it should be left to the wishes of the minor as to whom he/she chooses as a guardian, if he / she is mature enough to exercise his / her discretion.

Other criteria for appointing a guardian include the past behavior of the person towards the child and socio-economic and emotional capacity of the person to look after the child. However, the following should be incorporated in the Sikh Family Act, 2015

1) “The children despite their gender should be given equal opportunity towards a better life and the parent who can provide a healthy lifestyle should be preferred. In case of an infant and a toddler, dependent on the mother, the court if thinks fit, should give the child’s custody to the wife and the husband/ father will be responsible for the maintenance and child support cost. If the court thinks it to be fit, the children can also be asked to choose between their parents.”

2) Children are in need of both their parents, therefore, if court thinks it fit, “the parents (either father or mother), with the court consent, should be given day(s) of week to meet the children in case they do not have their children custody or according to the civil law.”

10. Succession /Inheritance

Many marital rituals victimized the female and discord their right for inheritance. Dowry in fact is a way to disinherit a woman. Whereas, in Sikh religion both male and female is treated equally, woman from birth should be equal partners in the ancestral property as well as self acquired property. This is just not only her right but would also obviate the need of dowry.[139]

Therefore, the Anand Marriage Act should also state that 1) “Children despite their gender receive equal share of inheritance. There is also no distinction between maternal kindred and paternal kindred or full blood or half blood relations however adopted children will only be entitled to inheritance if mentioned in the will of an descent.” As according to Guru Nanak Dev Ji’s teaching of equality, both sons and daughters should be provided with equal inheritance.[140]

As Sikh women are considered equal in Sikh matrimonial relationship, the Act also includes that 2) “women (wife) should be given equal right in matrimonial property.”[141]

11. Will

As per the Succession Act 1925 Section (VI) 59 every person with a sound mind, not being a minor, may dispose of his property by will. The person making the will can by law change or redraft his will at any time when he is competent to dispose his property by will. Whereas, the Act also states that any person who is not physical (dumb, deaf or blind) or mentally healthy may not be allowed by law to dispose a will. Therefore, the Anand Marriage Act should also state that, 1) “Every person (male or female/married or unmarried) of the sound mind not being a minor may dispose of his property (both movable and immovable) by will.”

12. Adoption

The concept of adoption should be considered according to religious ideas; however, it should not be made mandatory. The concept of adoption or IVF (In vitro fertilization) in case the husband is the sperm donor for the fertility of the wife, is not discouraging in Sikh religion. Adoption of a child is considered as Seva[142] in Sikhism. The Gurus did emphasize on providing every child with secure and loving family environment.

141. Matrimonial property means any property house or agricultural land or other movable or immovable property acquired by both parties (husband and wife) to marriage during th subsistence of marriage.: Journal; Women and Sikh Personal laws-Institute of Sikh Studies: http://sikhinstitute.org/sikh_p_1/ch_12.htm
142. Seva as a word is rooted in Sanskrit, Sev means to sever: wait or attend upon; honor or worship; pay homage, to adore or to reverence. According to Sikhism Seva means Selfless Service as per instructed by Guru, 'one who perform selfless service, without thought of reward, shall attain his Lord and Master.' In Sikhism three things are necessary to obtain salvation and liberty and they are: To perform Seva, to follow Gurbani and to do Simran.
The bill should also state that 1) “children should be adopted by families who can contribute positively towards mental and physical growth of the child, despite their religious background. Children belonging to Sikh religion should be adopted by Sikh guardian(s) in order to secure their religious identity. In case the religion of the child is not clear the foster family shall act according to the honorable court and ensure that the child adopted by them will be raised according to his/her culture identity.

2) The family will support the wellbeing of the adopted child(ren) and ensure that child(ren) provided with healthy environment to prosper.

3) Religious Conversion will not be valid until the child is minor and does not reach the age of maturity. Religious conversion can only take place with his/her consent for religious preference

4) The parents should ensure that the marriage (in case of arrange marriage) of the adopted child(ren), belonging to other religion/faith, takes place with the individuals belonging to the respective religion.

5) Inheritance of adopted child depend on the will of the guardian(s).

13. Illegitimacy

Illegitimacy by law means the social condition of a child where he/she is born before wedlock. The constitution of Pakistan considers all children equal under the state law but the social status is contradictory. The illegitimate children are not given any inheritance or recognition by their biological partners because it is believed that they are born out of adultery, fornication, rape or bigamy which is an offence by law and consider a sin by the khalsa doctrines. Therefore, we need to create space for such children in terms of recognition[143] or inheritance as they have nothing to do with their parent's wrong doings. Another factor elaborated by the legal experts for recorded illegitimacy is non registration of marriage of minority community. The marriages in Sikh community have not been registered, therefore, at the time of birth, a child becomes illegitimate. The birth registration of such children is difficult as the proof of wedlock cannot be provided to the competent authority. In order to avoid difficulty every marriage should be registered by the state as per the direction of the law.

143. UN Declaration of Human right Article 5&6:
Therefore, 1) “the illegitimate children should be recognized by the state as per the constitution of Pakistan. As per the law the illegitimate children will be adopted by the state and the elected President of Pakistan will be considered their father/ guardian. However, their religious and cultural values will remain intact. Such children will not be entitled to inheritance of the elected President of Pakistan.

3) In case the biological father is known, they should be entitled to succession of father's wealth, in the same manner as legitimate children.”

4) “Notwithstanding that if a marriage is null and void, any child born before or after the commencement of mentioned will be considered legitimate.”

Conclusion

Sikhism is an independent religious system founded by Guru Nanak Dev. The Sikh concept of God, nature of the ultimate reality, goal of life, mode of worship, etc., are distinct and cannot be confused with any other religion. It must be notified that despite being a different religion they were wrongfully and forcibly clubbed under Hindu Laws. The Anand Marriage Act, 1909 does not talk at length about will, legitimacy inheritance etc., therefore, we would like to propose the above mentioned bill.
Proposed Principles for Personal / Family Law of Baha’i Community in Pakistan

Brief History & Background............................................................................................................................75
Special Features of Bahá’í Jurisprudence........................................................................................................78
Introduction to Baha'i religion.......................................................................................................................83
Proposed principles for Baha'i personal/family laws to be introduced in the National Assembly/ Provincial Assembly..........................................................................................................................84
1. Short title & extent.......................................................................................................................................85
2. Application of Bahá’í Personal Law to Bahá’í..........................................................................................85
3. Definition....................................................................................................................................................85
4. Power to make a Declaration....................................................................................................................86
5. Regulation and Record...............................................................................................................................86
6. Rule-Making Power..................................................................................................................................86
7. The Age of Maturity in Bahá’í...................................................................................................................87
8. Validity of Marriage..................................................................................................................................87
9. Marriage Registration.................................................................................................................................88
10. The Dowry (Mahriyyih)............................................................................................................................90
11. Divorce /Dissolution of Marriage.............................................................................................................91
12. Maintenance/Alimony...............................................................................................................................93
13. Child Custody..........................................................................................................................................93
14. Inheritance...............................................................................................................................................94
15. The Writing of a Will...............................................................................................................................97
16. Adoption..................................................................................................................................................98
17. Illegitimacy..............................................................................................................................................99
Conclusion.....................................................................................................................................................100
"Say: From My laws the sweet-smelling savour of My garment can be smelled, and by their aid the standards of Victory will be planted upon the highest peaks. The Tongue of My power hath, from the heaven of My omnipotent glory, addressed to My creation these words: “Observe My commandments, for the love of My beauty.” Happy is the lover that hath inhaled the divine fragrance of his Best-Beloved from these words,...By My life! He who hath drunk the choice wine of fairness from the hands of My bountiful favour will circle around My commandments that shine above the Dayspring of My creation. Think not that We have revealed unto you a mere code of laws. Nay, rather, We have unsealed the choice Wine with the fingers of might and power. Meditate upon this, O men of insight!"

(Bahá'u'lláh, The Kitáb-i-Aqdas)

**Brief History & Background**

In order to draft Personal Laws for Bahá'í Community it is important to understand a brief history of the Bahá'í Faith, its Laws and Ordinances. The Bahá'í Faith is the youngest monotheistic religion of the world emerged from Iran and was founded by Bahá'u'lláh (1817-1892), in the line of Messengers of God stretching beyond Abraham, Moses, Buddha, Krishna, Zoroaster, Christ and Muhammad(PBUH). The Bahá'í Faith shares the same root of other Abrahamic tradition and faith emphasizing on spiritual unity of all humankind with three core principles i.e., unity of God, unity of religions and unity of humanity. In other words, the essential teaching of the Bahá'í Faith is rooted in beliefs of international law and an optimism of the value of global cooperation.

An infinitely precious, divinely-ordained Revelation, glorious in its essence, dramatic in the circumstances of its birth, majestic in the person of its Bearer, distinguished by the universality of its Message and incomparably rich in the vastness of its Scriptures, was vouchsafed to humanity over a century ago by Bahá'u'lláh, the
Manifestation of God for this age. Its light broke upon the world, unnoticed by the vast majority of mankind, from the confines of a dark and pestilential underground dungeon, the Siyah-Chal of Tihran. Here Bahá'u'lláh, in company with a handful of the followers of the Báb and surrounded by over one hundred and fifty criminals and assassins, lay imprisoned during the latter months of 1852.

Bahá'u'lláh, whose name was Mirza Husayn-'Ali, was a nobleman of the province of Nur in Persia. A great Bahá'í scholar, Mirza Abu'l-Fadl, through extensive historical research has verified that Bahá'u'lláh was descended from Zoroaster and the Sasaniyan kings of Persia, thereby fulfilling certain traditions that the great Redeemer of mankind would be of pure Persian lineage. Bahá'u'lláh was also descended from Abraham through His third wife Katurah, thus uniting in His own person two branches of the Aryan and Semitic religions. He was born in Tihran in 1817 and His father Mirza Abbas, known in royal circles as Mirza Buzurg, was at the court of the Shah.

The veneration shown to Him, coupled with His open proclamation of the Cause of the Báb, aroused the opposition of enemies who had already persecuted Him on various occasions and now awaited only an excuse, provided by the attempt on the life of Nasiri'd-Din Shah by a few irresponsible Bábís, to imprison Him in the Siyah-Chal. He was arrested and forced to walk before royal horsemen and at their pace from Niyavaran to Tihran, a distance of about fifteen miles, in the burning heat of a summer day, barefoot and in chains. To further humiliate Him they removed His hat which in those days was the very symbol of a man's dignity.

When Bahá'u'lláh came out of prison, stripped of His possessions, His back bent by the weight of the fetters, His neck swollen and injured and His health impaired, He did not intimate to anyone His experience of Divine Revelation. Yet those who were close to Him could not fail to witness a transformation of spirit, a power and a radiance never seen in Him before.

144. Siyah-Chal (Black Pit): Literally “the Black Pit”. The dark, foul-smelling, subterranean dungeon in Tihrán where Bahá'u'lláh was imprisoned for four months in 1852. The Siyah-Chal was no ordinary prison, but a huge underground pit which once had served as a reservoir for one of the public baths of the city, and had only one entrance. It was situated in the heart of Tihran close to a palace of the Shah and adjacent to the Sabzih-Maydan. This dungeon was occupied by many prisoners, some of whom were without clothes or bedding. Its atmosphere was humid and dark, its air fetid and filled with a loathsome smell, its ground damp and littered with filth, and these conditions were matched by the brutality of the guards and officials towards the Bábí victims who were chained together in that dismal place. The notorious chains of Qara-Guhar and Salasil (Qara-Guhar, heavier than Salasil, weighed about seventeen 'man' that is fifty-one Kilos), one of which was placed around Baha'u'llah's neck at all times, cut through His flesh and left their marks on His blessed body till the end of His life. They were so heavy that a special wooden fork was provided to support their weight.
Having been released from the Siyah-Chal prison in Tihran, the presidential decree, in consultation with the Ottoman Empire was for Bahá'u'lláh to leave Iran and the destination was Baghdad, Iraq. The successive exiles of Bahá'u'lláh after release from Siyah-Chal till His ascension\[145\] is as follows:

Baghdad 1853-63
Adrianople 1863-68
Akka(Acre), The Early Years 1868-77
Mazra'ih and Bahji (Akka)1877-92

Bahá'u'lláh\[146\] departed from Tihran for Iraq on 12 January 1853. Among those who accompanied Him in His exile was His eldest son, nine-year-old Abbas, who later assumed the title of 'Abdu'l-Baha (Servant of Bahá).\[147\] The journey to Baghdad, undertaken in the middle of a severe winter across the snow-bound mountains of western Persia, inflicted much hardship and suffering on the exiles. Bahá'u'lláh remained about ten years in Iraq, spending two years alone in the wilderness of Kurdistan and most of the remaining time in Baghdad.

The enemies of Bahá'u'lláh, among whom were the Persian Consul-General in Baghdad and certain divines, eventually succeeded in having Him banished again. As a result of representations made by the Persian to the Ottoman Government, the Sultan's decree was issued and Bahá'u'lláh was called to Constantinople. On the eve of His departure from Iraq in 1863, Bahá'u'lláh, outside the city of Baghdad, declared His station to His companions as 'Him Whom God shall make manifest', the One foretold by the Bab\[148\] and anticipated by His followers.

After He had remained five months in the capital city of the Ottoman Empire, His enemies again sought to banish Him. They succeeded, and He was sent to...
Adrianople, a city called by Him 'the remote Prison'. There the Sun of His Revelation ascended to its zenith and He proclaimed His Message for the whole world. Having endured five years of tribulations in this city, Baha'u'llah was finally exiled to the prison-city of Akka in the Holy Land.

The last twenty-four years of Baha'u'llah's ministry were spent partly in Akka and partly in the surrounding countryside. The sufferings He endured during the first nine years of His imprisonment within the walls of Akka were so grievous that, as Baha'u'llah remarks in one of His Tablets, 'upon Our arrival at this Spot, We chose to designate it as the "Most Great Prison". Though previously subjected in another land [Tihran] to chains and fetters, We yet refused to call it by that name...'

**Special Features of Bahá'í Jurisprudence**

As to the laws themselves, a careful scrutiny discloses that they govern three areas: the individual's relationship to God, physical and spiritual matters, which benefit the individual directly, and relations among individuals and between the individual and society. They can be grouped under the following headings: prayer and fasting; laws of personal status governing marriage, divorce and inheritance; a range of other laws, ordinances and prohibitions, as well as exhortations; and the abrogation of specific laws and ordinances of previous Dispensations. A salient characteristic is their brevity. They constitute the kernel of a vast range of law that will arise in centuries to come. This elaboration of the law will be enacted by the Universal House of Justice[149] under the authority conferred upon it by Bahá'u'lláh Himself.

In the opening chapter of the Kitáb-i-Aqdas Bahá'u'lláh declares:"The first duty prescribed by God for His servants is the recognition of Him Who is the Dayspring of His Revelation and the Fountain of His laws, Who representeth the Godhead in both the Kingdom of His Cause and the world of creation. Whoso achieveth this duty hath

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149. **Universal House of Justice**: During the thirty-six years of his ministry, Shoghi Effendi raised up the structure of elected Spiritual Assemblies—the Houses of Justice referred to in the Kitáb-i-Aqdas, now in their embryonic stage—and with their collaboration initiated the systematic implementation of the Divine Plan that 'Abdu'l-Bahá had laid out for the diffusion of the Faith throughout the world. He also set in motion, on the basis of the strong administrative structure that had been established, the processes which were an essential preparation for the election of the Universal House of Justice. This body, which came into existence in April 1963, is elected through secret ballot and plurality vote in a three-stage election by adult Bahá'ís throughout the world. The revealed Word of Bahá'u'lláh, together with the interpretations and expositions of the Centre of the Covenant and the Guardian of the Cause, constitute the binding terms of reference of the Universal House of Justice and are its bedrock foundation. Elected every five years, it is the International Governing Body of the worldwide Bahá'í community.
attained unto all good; and whoso is deprived thereof hath gone astray, though he be
the author of every righteous deed. It behoveth every one who reacheth this most
sublime station, this summit of transcendent glory, to observe every ordinance of Him
Who is the Desire of the world. These twin duties are inseparable. Neither is
acceptable without the other. Thus hath it been decreed by Him Who is the Source of
Divine inspiration."

And

"They whom God hath endued with insight will readily recognize that the
precepts laid down by God constitute the highest means for the maintenance of order
in the world and the security of its peoples. He that turneth away from them is
accounted among the abject and foolish. We, verily, have commanded you to refuse
the dictates of your evil passions and corrupt desires, and not to transgress the bounds
which the Pen of the Most High hath fixed, for these are the breath of life unto all
created things. The seas of Divine wisdom and Divine utterance have risen under the
breath of the breeze of the All-Merciful. Hasten to drink your fill, O men of
understanding! They that have violated the Covenant of God by breaking His
commandments, and have turned back on their heels, these have erred grievously in
the sight of God, the All-Possessing, the Most High."

"O ye peoples of the world!" Bahá'u'lláh emphatically declares, "Know
assuredly that My commandments are the lamps of My loving providence among My
servants, and the keys of My mercy for My creatures. Thus hath it been sent down
from the heaven of the Will of your Lord, the Lord of Revelation. Were any man to
taste the sweetness of the words which the lips of the All-Merciful have willed to utter,
he would, though the treasures of the earth be in his possession, renounce them one
and all, that he might vindicate the truth of even one of His commandments, shining
above the Dayspring of His bountiful care and loving-kindness."

And

"Say: From My laws the sweet-smelling savour of My garment can be smelled,
and by their aid the standards of Victory will be planted upon the highest peaks. The
Tongue of My power hath, from the heaven of My omnipotent glory, addressed to My
creation these words: “Observe My commandments, for the love of My beauty.”
Happy is the lover that hath inhaled the divine fragrance of his Best-Beloved from
these words, laden with the perfume of a grace which no tongue can describe. By My life! He who hath drunk the choice wine of fairness from the hands of My bountiful favour will circle around My commandments that shine above the Dayspring of My creation."

"Think not that We have revealed unto you a mere code of laws. Nay, rather, We have unsealed the choice Wine with the fingers of might and power. To this beareth witness that which the Pen of Revelation hath revealed. Meditate upon this, O men of insight!"

The Bahá’í Faith considers family as the basis for unity and a building block of healthy and unified society. Bahá’ís believe in monogamous marriage as the foundation of family life. Bahá'u'lláh has explicitly stated that marriage is a fortress for well-being and salvation and marriage couples should strive to become loving companions and comrades.

Bahá’í Laws and Ordinances are considered as a fundamental part of Bahá’í practices and are recorded in the the Kitáb-i-Aqdas and other Writings revealed by Bahá'u'lláh, the Writings and interpretations by 'Abdu'l-Baha and Shoghi Effendi[150], the Guardian of the Bahá’í Faith, and by the Universal House of Justice, the International Governing Body of the Bahá’í Faith.

The Bahá’í laws are a set of general principles and guidelines for individual Bahá’ís. These laws are methods to maintain order and security in the world. Some laws are empowered by the Bahá’í governing bodies, however, emphasis is given on conscience, understanding and reasoning of individual to follow the law. Of the more than one hundred volumes comprising the sacred Writings of Bahá'u'lláh, the Kitáb-i-Aqdas is of unique importance. “To build anew the whole world” is the claim and challenge of His Message, and the Kitáb-i-Aqdas is the Charter of the future world civilization that Bahá'u'lláh has come to raise up. Its provisions rest squarely on the foundation established by past religions, for, in the words of Bahá'u'lláh, “This is the changeless Faith of God, eternal in the past, eternal in the future.” In this Revelation the concepts of the past are brought to a new level of understanding, and the social

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150. Shoghi Effendi: Shoghi Effendi (1897-1957), Guardian of the Bahá’í Faith from 1921-1957. He was the eldest grandson of 'Abdu'l-Bahá and was appointed by Him as the Head of the Faith
laws, changed to suit the age now dawning, are designed to carry humanity forward into a world civilization the splendours of which can as yet be scarcely imagined.

In its affirmation of the validity of the great religions of the past, the Kitáb-i-Aqdas reiterates those eternal truths enunciated by all the Divine Messengers: the unity of God, love of one's neighbour, and the moral purpose of earthly life. At the same time it removes those elements of past religious codes that now constitute obstacles to the emerging unification of the world and the reconstruction of human society.

Through His Law, Bahá'u'lláh gradually unveils the significance of the new levels of knowledge and behaviour to which the peoples of the world are being called. He embeds His precepts in a setting of spiritual commentary, keeping ever before the mind of the reader the principle that these laws, no matter the subject with which they deal, serve the manifold purposes of bringing tranquillity to human society, raising the standard of human behaviour, increasing the range of human understanding, and spiritualizing the life of each and all. Throughout, it is the relationship of the individual soul to God and the fulfilment of its spiritual destiny that is the ultimate aim of the laws of religion. “Think not”, is Bahá'u'lláh's own assertion, “that We have revealed unto you a mere code of laws. Nay, rather, We have unsealed the choice Wine with the fingers of might and power.” His Book of Laws is His “weightiest testimony unto all people, and the proof of the All-Merciful unto all who are in heaven and all who are on earth”.

An introduction to the spiritual universe unveiled in the Kitáb-i-Aqdas would fail in its purpose if it did not acquaint the reader with the interpretive and legislative institutions that Bahá'u'lláh has indissolubly linked with the system of law thus revealed. At the foundation of this guidance lies the unique role which Bahá'u'lláh's Writings—indeed the text of the Kitáb-i-Aqdas itself—confer on His eldest son, 'Abdu'l-Bahá. This unique figure is at once the Exemplar of the pattern of life taught by His Father, the divinely inspired authoritative Interpreter of His Teachings and the Centre and Pivot of the Covenant which the Author of the Bahá'í Revelation made
with all who recognize Him. The twenty-nine years of 'Abdu'l-Bahá's ministry endowed the Bahá’í world with a luminous body of commentary that opens multiple vistas of understanding on His Father's purpose.

The laws revealed by Bahá'u'lláh in the Aqdas are, whenever practicable and not in direct conflict with the Civil Law of the land, absolutely binding on every believer or Bahá’í institution whether in the East or in the West.

"Unique and stupendous as was this Proclamation, it proved to be but a prelude to a still mightier revelation of the creative power of its Author," Shoghi Effendi clearly recounts, "and to what may well rank as the most signal act of His ministry—the promulgation of the Kitáb-i-Aqdas. Alluded to in the Kitáb-i-Iqán, the principal repository of that Law which the Prophet Isaiah had anticipated, and which the writer of the Apocalypse had described as the “new heaven” and the “new earth”, as “the Tabernacle of God”, as the “Holy City”, as the “Bride”, the “New Jerusalem coming down from God”, this “Most Holy Book”, whose provisions must remain inviolate for no less than a thousand years, and whose system will embrace the entire planet, may well be regarded as the brightest emanation of the mind of Bahá'u'lláh, as the Mother Book of His Dispensation, and the Charter of His New World Order. In this Charter of the future world civilization its Author—at once the Judge, the Lawgiver, the Unifier and Redeemer of mankind—announces to the kings of the earth the promulgation of the “Most Great Law”; pronounces them to be His vassals; proclaims Himself the “King of Kings”; disclaims any intention of laying hands on their kingdoms; reserves for Himself the right to “seize and possess the hearts of men;” warns the world's ecclesiastical leaders not to weigh the “Book of God” with such standards as are current amongst them; and affirms that the Book itself is the “Unerring Balance” established amongst men. In it He formally ordains the institution of the “House of Justice,” defines its functions, fixes its revenues, and designates its members as the “Men of Justice”, the “Deputies of God”, the “Trustees of the All-Merciful”; alludes to the future Centre of His Covenant, and invests Him with the right of interpreting His Holy Writ; anticipates by implication the institution of Guardianship; bears witness to the revolutionizing effect of His World Order; enunciates the doctrine of the “Most Great Infallibility” of the Manifestation of God;
asserts this infallibility to be the inherent and exclusive right of the Prophet;…..

The laws and ordinances that constitute the major theme of this Book, Bahá’u’lláh, moreover, has specifically characterized as “the breath of life unto all created things”, as “the mightiest stronghold”, as the “fruits” of His “Tree”, as “the highest means for the maintenance of order in the world and the security of its peoples”, as “the lamps of His wisdom and loving-providence”, as “the sweet-smelling savour of His garment”, and the “keys” of His “mercy” to His creatures. “This Book”, He Himself testifies, “is a heaven which We have adorned with the stars of Our commandments and prohibitions.” “Blessed the man”, He, moreover, has stated, “who will read it, and ponder the verses sent down in it by God, the Lord of Power, the Almighty.

Say, O men! Take hold of it with the hand of resignation...By My life! It hath been sent down in a manner that amazeth the minds of men. Verily, it is My weightiest testimony unto all people, and the proof of the All-Merciful unto all who are in heaven and all who are on earth.” And again: “Blessed the palate that savoureth its sweetness, and the perceiving eye that recognizeth that which is treasured therein, and the understanding heart that comprehendeth its allusions and mysteries. By God! Such is the majesty of what hath been revealed therein, and so tremendous the revelation of its veiled allusions that the loins of utterance shake when attempting their description.” And finally: “In such a manner hath the Kitáb-i-Aqdas been revealed that it attracteth and embraceth all the divinely appointed Dispensations. Blessed those who peruse it! Blessed those who apprehend it! Blessed those who meditate upon it! Blessed those who ponder its meaning! So vast is its range that it hath encompassed all men ere their recognition of it. Erelong will its sovereign power, its pervasive influence and the greatness of its might be manifested on earth.” If there is one word that can describe the Bahá’í Faith, it is "unity".

Introduction to Baha'i religion

The essential teaching of Baha'ism is rooted in beliefs of international law and an optimism of the value of global cooperation. Bahá’í: The word 'Bahá’í' applies to a person who is the follower of Bahá'u'lláh

152. Bahá’í: The word 'Bahá’í' applies to a person who is the follower of Bahá'u'lláh
Islam, Baha'i believes in monogamous marriage as the foundation of family life. Baha'ullah said that marriage is a fortress for well-being and salvation and marriage couples should strive to become loving companions and comrades and at one with each other for time and eternity. The ceremony takes place in the presence of witness designated by local Baha'i governing council after the parental permission. However, the marriage celebrations are designed culturally depending on the family, resources, cultural traditions and others. According to Baha'i faith men and women are equal; the role of husband and wife within a Baha'i marriage are not the traditional ones, e.g., women are free to pursue careers that interest them and men are expected to share on household duties and child rearing.

Baha'i laws are and ordinances are considered as a fundamental part of Baha'i practices and are legislated by the Universal House of Justice. The Baha'i law is a set of general principles and guidelines for individual following Baha'i faith. These laws are methods to maintain order and security in the world. Some laws are empowered by the Baha'i governing bodies, however, emphasizes is given on conscience, understanding and reasoning of individual to follow the law.

Proposed principles for Baha'i personal/family laws to be introduced in the national assembly/ provincial assembly

A Bill

To make provision for the application of the Bahá'í Personal Law to the Bahá'ís living in Pakistan. And whereas the National Spiritual Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action; Now Therefore, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following:-

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153. Marriage and Family Life: http://info.bahai.org/article-1-6-4-1.html
154. Ibid.,
157. National Spiritual Assembly: Elected annually, it is the highest administrative institution for the religious affairs of the Baha'is in a country comprising of nine
1. Short Title & Extent.
   a) This ordinance may be called the Bahá'í Personal Law application ordinance 2014.
   b) It extends to the whole of Pakistan.

2. Application of Bahá'í Personal Law to Bahá'ís
   Notwithstanding any custom or usage to the contrary, in all questions regarding will, inheritance, intestate succession, adoption, legacy, marriage, divorce, maintenance, dowry, guardianship, gifts, trusts and trust properties and Auqaf,[158] the rule of decision in cases where the parties are Bahá’ís shall be Bahá’í Personal Law.

3. Definitions
   a) Bahá’í Personal Law: It means the religious laws ordained in the Kitáb-i-Aqdas, the Writings of Bahá'u'lláh, 'Abdu'l-Bahá and Shoghi Effendi, the successors of Baha'u'llah and authorized interpreters of His Writings, and as stated in the writings of, or provided by the Universal House of Justice, the Supreme Institution of the Bahá’ís of the world.
   b) Dowry: The term dowry as used in context of the Bahá’í marriage is not a demand by the bridegroom to the bride's family but a religious responsibility called “Den Mahr” in Urdu or “Mahriyyih” in Arabic

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158. Auqaf: It means Endowments. An Endowment is a dedication of property by a grant, gift, or devise for religious or charitable use. It is a formal dedication of renunciation of one's right in property in favor of a religious or charitable object. As clarified by the Universal House of Justice, "Endowments, whether local of national, are normally pieces of property held in the name of the National or Local Spiritual Assembly as an investment and asset...". "Bahá’í Endowments, in a general sense, can of course apply to all properties held in the name of the Faith, There are local as well as national Endowments.
   i) National Endowments: A national endowment should be regarded as an investment in real estate owned by the National Spiritual Assembly. It may be anywhere in the country and can be a small, inexpensive piece of land donated by one of the friends, or else acquired out, of the resources of the National Fund."
   ii) Local Endowment. "A local endowment can be quite a small piece of land; it can be purchased by the Local Spiritual Assembly or more usually the gift of one or more of the believers. If the Local Assembly is incorporated, the endowment should be registered in its name, but if it is not, the endowment can be held by one or more of the believers on behalf of the community. For example, if one of the believers gives a small piece of land he can continue to hold it in his name, but it will be known that he does so on behalf of the Local Spiritual Assembly and that the land will in time be transferred legally to the Assembly when that is possible...
c) **Local Spiritual Assembly**:[159] It is the Local administrative institution for the religious affairs of the Bahá'ís in a locality registered with the National Spiritual Assembly.

d) **National Spiritual Assembly**: It is the highest administrative institution for the religious affairs of the Bahá’ís in Pakistan registered under the Law of Pakistan.

4. **Power to Make a Declaration**

1) Any person who satisfies the National Spiritual Assembly: a) that he/she is a Bahá’í, and b) that he/she is competent to contract within the meaning of section 11 of Contract Act, 1872 (9 of 1872) and, c) That he/she is a resident of Pakistan, may by declaration in the form prescribed by the National Spiritual Assembly of Pakistan and filed before it to declare that he desires to obtain the benefit of the provisions of this section, and thereafter the provisions of section 3 shall apply to the declarant and all his/her minor children and their descendants.

2) Where the National Spiritual Assembly refuses to accept a declaration under subsection, a) the person desiring to make the same may submit application to it for review.

5. **Regulation and Record**

The National Spiritual Assembly shall have the power and authority to make regulations appoint registrar and provide forms and registers for the maintenance of the record of birth, marriage, divorce, death and guardianship of the Bahá’ís of Pakistan and for issuing certificates in the above mentioned matters.

6. **Rule-Making Power**

1) The Federal or Provincial Government may make rules to carry into effect the purposes of this act. 2) Rules made under the provisions of this section shall be published in the official Gazette and shall thereupon have effect as if enacted in this Ordinance.

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[159] **Local Spiritual Assembly**: It is an administrative institution(Council) locally elected by the Bahá’ís of a locality annually for administering the religious affairs of the community and is registered with the National Spiritual Assembly. It has nine elected members.
7. The Age of Maturity in Bahá’í

Bahá’u’lláh defines the “age of maturity with respect to religious duties” as “fifteen for both men and women in katab-e-Aqdas.”

8. Validity of Marriage

Marriage in Baha’i religion is highly recommended but not obligatory for the believers.

1) Marriage is conditioned upon both parties having attained minimum age of maturity as per describe in the religion. The age of maturity for Baha’i individuals is determined by their spiritual maturity which is 15 years of age. The age requirement for Baha’i marriage for each partner (husband and wife) is over 15 years of age or as per the civil law of their respective country. The National Registration Act 1973 Section 4 declares that the age of mutuality is 18 years for all citizens of Pakistan despite gender. Therefore it can be concluded that the age of maturity at the time of marriage should be calculated 18 years of age as per mentioned Act. The Baha’i family law of Pakistan should state that, “In order to avoid child marriage, the minimum age for both parties (husband and wife) at the time of marriage should not be less than 18 years of age.”

2) Plurality of wives is forbidden.

3) Marriage is conditioned on the consent of both parties and their parents, whether the woman be a maiden or not.

4) It is incumbent upon both parties to recite a specifically revealed verse indicating their content with the will of God.

5) Marriage with one's stepmother is forbidden.

6) All matters related to marriage with one's kindred are to be referred to the House of Justice.

7) Marriage with unbelievers is permitted.

8) Betrothal:


162. The National Registration Act 1973: Section 4 (Registration of Citizens) (a): every citizen in or out of Pakistan who has attained the age of 18 years shall get himself registered.

163. Parties is defined as; the two persons (male and female) getting married in the church or registrar office
a) The period of engagement must not exceed 95 days.
b) It is unlawful to become engaged to a girl before she reaches the age of maturity.

9. Marriage Registration

According to Bahá’í teachings, marriage is recommended but it is not obligatory.

1) Marriages are considered as assistance to one's self and benefit for society in form of physical and spiritual relationship that would continue in all the worlds of God.

2) Marriage is performed with the consent of biological parents in order to strengthen the ties between families.

3) According to Bahá’í religious tradition and Universal House of Justice, the role of the Local Registrar is to serve as the representative of Local Assembly ensuring that the legal process designed by government as marriage requirements are met, once the ceremony has taken place. As per the directives of the Universal House of Justice, the Registrar of Local Spiritual Assembly is authorized to register a marriage in the Marriage Register of the Assembly.

4) If an Assembly is unincorporated or if the Marriage Registrar is unavailable, Assembly may request a Registrar from another Local Spiritual Assembly to serve in its jurisdiction.

5) The Registrar cannot serve acting in the role of 'clergy' nor become involved in the responsibility of the Witnesses; the Registrar is only responsible for the legal aspects of registering the marriage.

6) The Bahá’í community takes guidance from the Kitáb-i-Aqdas and the Universal House of Justice for all matters including matrimonial. Although believers of the Bahá’í Faith can approach Family Courts but mostly Local Spiritual Assemblies is preferred for settlement in marital disputes or other family matters.

7) Thus, a Baha’i is issued Marriage Registration License by Federal Auqaf
Department. However, after passage of 18th Amendment, this matter was devolved to the provinces but no province has yet implemented this act.

8) Keeping the 18th amendments in view, the following recommendation should be incorporated in the Bahá'í Family Law under registration of marriage.

a) “Neither party (man or woman) at the time of marriage should have attained the age of maturity as per the law of the land.

b) Neither party should have a living wife or husband at the time of marriage (as Monogamy is practiced in the Bahá'í Faith).

c) Either party should have parental consent at the time of marriage.

d) Marriage with one's stepmother is forbidden and should not be registered.

e) Under the Special Marriage Act 1987, the provincial government may appoint one or more Registrar. The following Bahá'í Community Centers can be appointed as Registrar's office:

i. National Spiritual Assembly of the Bahá'ís of Pakistan, Islamabad.

ii. Local Spiritual Assembly of the Bahá'ís throughout Pakistan, such as, Karachi, Hyderabad, Multan, Sargodha, Sialkot, Abbottabad, Mirpurkhas, Sahiwal, Rawalpindi, Quetta, Lahore, Islamabad, Muzaffarabad, and others.

iii. One of the parties must give a written notice for marriage to the appointed Registrar.

iv. In a period of 95 days, the Local Spiritual Assembly concerned will provide clarification for marriage of the parties. Any engagement before the age of maturity will be considered unlawful.

v. The Registrar is responsible for furnishing and maintaining the record of the marriage in 'Marriage Notice Book' and further submit them in the Office of the competent authority.
10. The Dowry (Mahriyyih)

In the Bahá’í Faith, marriages are conditioned on the payment of a dowry (Mahriyyih) by the bridegroom to the bride. The dowry is fixed at 19 mithqals of pure gold for the city-dwellers and 19 mithqals of silver for village-dwellers, depending on the permanent residence of the husband and not of the wife. It is also forbidden in the Bahá’í Faith to pay more than 95 mithqals at the time of marriage; however, it is preferable for a man to content himself with 19 mithqals of silver.

As per the Bahá’í Law from Universal House of Justice in case full payment of dowry is not possible a promissory note can be issued. It is also stated in the law that taking back of dowry is not permitted, however, only if the marriage was conditioned on virginity the dowry needs to be refunded and the expense incurred may be demanded and the marriage is invalidated. It is also stated that in such case the matter should be concealed as it is highly meritorious in the sight of God.

1) Marriage is conditioned on payment of a dowry by the husband.
2) The dowry is fixed at 19 mithqals of pure gold for city-dwellers, and 19 mithqals of silver for village-dwellers, depending on the permanent residence of the husband, and not of the wife.
3) It is forbidden to pay more than 95 mithqals (either gold or silver).
4) It is preferable that a man content himself with the payment of 19 mithqals of silver.
5) If the full payment of dowry is not possible the issue of a promissory note is

164. The term dowry as used in context of the Bahá’í marriage is not a demand by the bridegroom to the bride's family but a religious responsibility called “Den Mahr” in Urdu or “Mahriyyih” in Arabic.

165. *Mithqál*: A unit of weight, equivalent to a little over 3 1/2 grammes, used in the Kitáb-i-Aqdas with reference to quantities of gold or silver for various purposes, usually in amounts of 9, 19 or 95 mithqals. The equivalents of these in the metric system and in troy ounces (which are used in the measurement of precious metals), are as follows:

- 9 mithqals = 32.775 grammes = 1.05374 troy ounces
- 19 mithqals = 69.192 grammes = 2.22456 troy ounces
- 95 mithqals = 345.958 grammes = 11.12282 troy ounces

This computation is based on the guidance of Shoghi Effendi, conveyed in a letter written on his behalf, which states “one mithqál consists of nineteen nákhuds. The weight of twenty-four nákhuds equals four and three-fifths grammes. Calculations may be made on this basis.” The mithqál traditionally used in the Middle East had consisted of 24 nákhuds but in the Bayán this was changed to 19 nákhuds and Bahá’u’lláh confirmed this as the size of the mithqál referred to in the Bahá’í laws.
permissible.

6) Should either party, following the recital of the specifically revealed verse and the payment of the dowry, take a dislike to the other before the marriage is consummated, the period of waiting is not necessary prior to a divorce. The taking back of the dowry, however, is not permitted.

7) The husband must fix for his wife the time of his return when intending to travel for a longer period. If, for a legitimate reason, he is prevented from returning at the appointed time, he must inform her and strive to return to her. If he fails to fulfill either condition, she must wait 9 months, after which she may remarry, though it is preferable for her to wait longer. If news of his death or murder reaches her, and the news is confirmed by general report or by 2 reliable witnesses, she may remarry after the lapse of 9 months.

8) If the husband departs without informing his wife of the date of his return, and is aware of the law prescribed in the Kitáb-i-Aqdas, the wife may remarry after waiting a full year. If the husband is unaware of this law, the wife must wait until news of her husband reaches her.

9) Should the husband, after the payment of the dowry, discover that the wife is not a virgin; the refund of the dowry and of the expenses incurred may be demanded.

10) If the marriage has been conditioned on virginity the refund of the dowry and of the expenses incurred may be demanded and the marriage invalidated. To conceal the matter, however, is highly meritorious in the sight of God.

11. Divorce/Dissolution of Marriage

Divorce is strongly condemned in the Bahá’í Faith and laws set forth by the Universal House of Justice. However, if hatred and bitterness develops between a husband and wife they are permitted to seek a divorce that is matured after a period of one year known as the 'Year of Patience; this year of patience starts from the day Local Spiritual Assembly or National Spiritual Assembly is informed by the couple about their intent to seek divorce.
Both parties (husband and wife) have the equal right to seek divorce. This period of time needs to be witnessed by two or more witnesses and registered by judicial officer of Universal House of Justices. Sexual intercourse during the Year of Patience is forbidden by the law and the punishment to break this law is payment of 19 mithqâls of gold. Bahá'u'lláh has set forth the following provisions in the Kitáb-i-Aqdas on divorce:

1) If antipathy or resentment develop on the part of either the husband or the wife, divorce is permissible, only after the lapse of one full year. The beginning and end of the year of waiting must be testified by two or more witnesses. The act of divorce should be registered by the judicial officer representing the House of Justice. Intercourse during this period of waiting is forbidden, and whoever breaks this law must repent and pay the House of Justice 19 mithqâls of gold.

2) A further period of waiting after divorce has taken place is not required.

3) The wife who is to be divorced as a result of her unfaithfulness forfeits the payment of the expenses during the waiting period.

4) Remarrying the wife whom one has divorced is permissible, provided she has not married another person. If she has, she must be divorced before her former husband can remarry her.

5) If at any time during the waiting period affection should recur, the marriage tie is valid. If this reconciliation is followed by estrangement and divorce is again desired, a new year of waiting will have to be commenced.

6) Should differences arise between husband and wife while travelling, he is required to send her home, or entrust her to a dependable person, who will escort her there, paying her journey and her full year's expenses.

7) Should a wife insist on divorcing her husband rather than migrate to another country, the year of waiting is to be counted from the time they separate, either while he is preparing to leave, or upon his departure.

8) The Islamic law regarding remarriage with the wife whom one has previously divorced is abrogated.
12. Maintenance/Alimony

Concerning maintenance/alimony, the following passage from the Kitáb-i-Aqdas reads: "Should a woman be divorced in consequence of a proven act of infidelity, she shall receive no maintenance during her period of waiting. Thus hath the day-star of Our commandment shone forth resplendent from the firmament of justice."

As per international laws, maintenance or alimony is a sum of amount paid for spousal support in order to maintain a similar economic lifestyle achieved within marriage by each party. In other words, Maintenance as a term can be considered as rehabilitation cost for the economic disadvantage caused to one spouse due to his/her lack of professional growth.

1) **Alimony or maintenance during or after marriage or divorce is ordained by Baha’u’llah as 19 mithqals of gold in all cases, whether of people living in town or in the countryside.**

2) **According to basic principles of the Bahá'í laws the husband is responsible to support his wife and children until the divorce is enacted upon.**

3) **Whereas, after the divorce husband does not have any financial obligation towards his wife but as per direction of Universal House of Justice he will continue to provide necessary funds for child support.**

4) **However, if the National Spiritual Assembly fails to get an agreement of couple, they should leave the matter to the civil court.**

13. Child Custody

According to Bahá'í Faith mothers have a special role in the upbringing of the children. Mothers are considered as the early teachers for the children especially during the first few years of life during which basic values and characters of every individual is formed. Bahá'ís give great importance to education and in particular religious teachings are considered as paramount importance in Bahá'í families. From their earliest years, the children are encouraged to develop the habits of prayer and meditation, and to acquire knowledge, both intellectual and spiritual.(166)

In the Bahá’í Faith children are not only the responsibility of parents but of

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166. [http://info.bahai.org/article-1-6-4-1.html](http://info.bahai.org/article-1-6-4-1.html)
community too. However, if the divorce or separation is preceded through civil law, the matter of child custody can also be resolved through civil courts. In this context, it is suggested that the following should be made part of the Bahá’í Family Act.

1) “The children either biological or adopted should be parented with love, care and affection. Despite gender all children should be provided with equal opportunities, toward better lifestyle, in particular, education and security.

2) As per the laws of nature the infants and toddlers are in need of their mother for nourishment and nutrition therefore children who are either infants or toddler or dependent on the mother, if the court thinks fit, should grant the child custody to the mother or father whoever is responsible, natural bonding, physical & emotional or mental security of the child.

3) If the court decides in favor of mother, in that case the father should bear expenses of maintenance and child support costs. If court thinks it to be fit, the children age of 10 years or above should be consulted at the time of child custody.”

4) Children need both their parents for a healthy mental and physical growth therefore if court thinks it fit, “the parents (either father or mother) should be given day(s) of week with the children in case they do not have their children custody.”

14. Inheritance

Inheritance in the Bahá’í Faith is a method of dividing the estate to be applied in cases of intestacy. Any person is at liberty to will his possessions as he/she sees fit provided he/she makes provisions for the payment of Huqúqu'lláh[167] and the discharge of his debts.

167. Huqúqu'lláh means the Right of God. "The Right of God": one of the fundamental Bahá’í ordinances of the Bahá’í Faith, it is a great law and a sacred institution laid down by Baha'u'llah in the Kitab-i-Aqdas. It is one of the key instruments for constructing the foundation and supporting the structure of the "World Order of Bahaullah. Its far-reaching ramifications extend from enabling individuals to express their devotion to God in a private act of conscience that attracts divine blessings and bounties for the individual, promotes the common good, and directly connects individuals with the Central Institution of the Faith, to buttressing the authority and extending the activity of the Head of the Faith. The law prescribes that each Bahá’í shall pay a certain portion of his accumulated savings after the deduction of all expenses and of certain exempt properties such as one's residence. These payments provide a fund at the disposition of the Head of the Faith for carrying out beneficent activities. Huqúqu'lláh is administered by the Universal House of Justice, and payments are made to trustees appointed by the Universal House of Justice in every country or region. In providing a regular and systematic source of revenue for the Central Institution of the Cause, Baha'u'llah has assured the means for the independence and decisive functioning of the World Centre of His Faith. The fundamentals of the law of Huqúqu'lláh are promulgated in the Kitáb-i-Aqdas. Further elaborations of its features are found in other Writings of Baha'u'llah and in those of ‘Abdu'l-Bahá, Shoghi Effendi, and the Universal House of Justice. The law was codified in 1987 and made universally applicable as of Ridvan 1992 to all who profess belief in Baha'u'llah.
The inheritance of a Baha'i follower should not be divided until as per the religious doctrine after the payment of the Huqúqu'lláh (The Right of God), or any debts contracted by the deceased and of any expenses incurred for a befitting funeral and burial. The division of inheritance as per the Bahá’í religious doctrine is among children, husband or wife, father, mother, brother, sister and even to the teachers.

It is interesting to observe that the share of “children (both male and female) is divided or allotted in equal portion and further reduced from each of the remaining beneficiaries” as the teaching of Báb and Bahá'u'lláh. It is also stated in the inheritance law by the Universal House of Justice that “in case where there is no issue the share of the children reverts to the House of Justice to be expended on orphans and widows and for whatever will profit mankind.”

The law talks in length on the further division of the inheritance and states that “if the son of the deceased be dead and leave issue, these will inherit the share of their father. If the daughter of the deceased be dead and leave issue, her share will have to be divided into the seven categories” as specified in the Kitáb-i-Aqdas.

The inheritance law in the Bahá’í Faith also stated the stakeholders who do not receive any share from inherit. These stakeholders include the following:

- A non-Bahá’í teacher does not inherit.
- Non-Bahá’í heirs do not inherit.

1) Inheritance falls into the following categories in absence of drafted Will:
   a) Children 1,080 out of 2,520 shares.
   b) Husband or Wife 390 out of 2,520 shares.
   c) Father 330 out of 2,520 shares.
   d) Mother 270 out of 2,520 shares.
   e) Brother 210 out of 2,520 shares.
   f) Sister 150 out of 2,520 shares.
2) The share of the children, as allotted by the Báb, is doubled by Bahá'u'lláh, and an equal portion correspondingly reduced from each of the remaining beneficiaries.

3) In cases where there is no issue the share of the children reverts to the House of Justice to be expended on orphans and widows and for whatever will profit mankind.

4) If the son of the deceased be dead and leave issue, these will inherit the share of their father. If the daughter of the deceased be dead and leave issue, her share will have to be divided into the seven categories specified in the Most Holy Book.

5) Should one leave offspring but either part or all of the other categories of inheritors be nonexistent, two thirds of their shares reverts to the offspring and one third to the House of Justice.

6) Should none of the specified beneficiaries exist, two thirds of the inheritance reverts to the nephews and nieces of the deceased. If these do not exist, the same share reverts to the aunts and uncles; lacking these, to their sons and daughters. In any case the remaining third reverts to the House of Justice.

7) Should one leave none of the aforementioned heirs, the entire inheritance reverts to the House of Justice.

8) The residence and the personal clothing of the deceased father pass to the male not to the female offspring. If there be several residences the principal and most important one passes to the male offspring. The remaining residences will together with the other possessions of the deceased have to be divided among the heirs. If there be no male offspring two thirds of the principal residence and the personal clothing of the deceased father will revert to the female issue and one third to the House of Justice. In the case of the deceased mother all her used clothing is to be equally divided amongst her daughters. Her unworn clothing, jewels and property must be divided among her heirs, as well as her used clothing if
she leaves no daughter.

9) Should the children of the deceased be minors their share should either be entrusted to a reliable person or to a company for purposes of investment, until they attain the age of maturity. A share of the interest accrued should be assigned to the trustee.

10) The inheritance should not be divided until after the payment of the Ḥuqúqu'lláh (The Right of God), of any debts contracted by the deceased and of any expenses incurred for a befitting funeral and burial.

11) If the brother of the deceased is from the same father he will inherit his full allotted share. If he is from another father he will inherit only two thirds of his share, the remaining one third reverting to the House of Justice. The same law is applicable to the sister of the deceased.

12) In case there are full brothers or full sisters, brothers and sisters from the mother's side do not inherit.

13) A non-Bahá'í teacher does not inherit. If there should be more than one teacher, the share allotted to the teacher is to be equally divided among them.

14) Non-Bahá'í heirs do not inherit.

15) Aside from the wife's used clothing and gifts of jewellery or otherwise which have been proven to have been given her by her husband, whatever the husband has purchased for his wife are to be considered as the husband's possessions to be divided among his heirs.

16) Any person is at liberty to will his possessions as he sees fit provided he makes provisions for the payment of Huqúqu'lláh and the discharge of his debts.

15. The Writing of a Will

As per law of the Kitáb-i-Aqdas, Bahá'ís are required to write a Will. In fact, writing a Will is considered a religious duty by Bahá'u'lláh Who wrote in the Kitáb-i-Aqdas that “unto everyone hath been enjoined the writing of a will.”[168]

168. Bahá'u'lláh, Kitáb-i-Aqdas, para. 102.
The Succession Act 1925 Section (VI) 59 states that, “every person of sound mind not being a minor may dispose of his property by will.” It is also stated that, “the person making the will can by law change or redraft his will at any time when he is competent to dispose his property by will.” Whereas the Act also states that any person who is not physical (dumb, deaf or blind) or mental healthy may not be allowed by law to dispose a will. Therefore, the Act should also state that, “Every person (male or female/married or unmarried) of the sound mind not being a minor may dispose of his property (both movable and immovable) by will” as even Baha'u'llah in the Kitáb-i-Aqdas states that all Bahá'ís are required to draft their respective will.

Required elements of a will include provisions to “cover funeral costs and settling any outstanding debts.”[169] The “distribution of the decedent's assets or the estate are divided into two thousand five hundred and twenty parts and then shared among seven categories of heirs: children, spouse, father, mother, brothers, sisters, and finally the teachers of the deceased”[170] If there is no surviving male offspring, then one third of the decedent's estate passes to the local House of Justice.”[171]

16. Adoption

In the Kitáb-i-Aqdas Bahá'u'lláh says, “…He that bringeth up his son or the son of another, it is as though he hath brought up a son of Mine; upon him rest My Glory, My Loving-kindness, My Mercy, that have compassed the world.”[172] Baha'ullah and Abdu'l-Baha praise those who adopt children and states that, “it was a pleasure to Shoghi Effendi to receive your letter of May 26th and to hear about your adopted children. This is a truly Bahá’í act especially as it was often lauded both by Baha'ullah and Abdu'l-Baha…”[173]

According to the Bahá’í Faith the orphans are given the utmost importance. It is the duty of every Bahá’í to teach, train and educate orphan children. “I supplicate God", 'Abdu'l- Bahá firmly recounts, " that thou mayest become a kind parent to orphaned children, quickening them with the fragrances of the Holy

169. Id. at para. 109.
170. Schaefer, supra note 19, at 340; see also paragraphs 20-28 in the Kitáb-i-Aqdas.
171. Id. at 341.
173. From a letter written on behalf of Shoghi Effendi to an individual believer, June 20, 1931 (http://en.bahaitext.org/Lights_of_Guidance/Adopted_Children_and_Orphans)
Spirit, so that they will attain the age of maturity as true servant of the world of humanity and as bright candles in the assemblage of mankind.”[174]

As mentioned above, it is a religious recommendation for the Bahá’í to adopt or parent an orphan child. The state law differs and that non-Muslim parents should not be allowed adoption of child until it is confirmed that the child belongs to same religion as adopting parents.

As per article 35 of the Constitution, protection of children is responsibility of state[175] therefore children should be protected despite religious background and their best interest should be emphasized on. It should be stated that the family adopting a child should be responsible for the well-being of the child. The court should direct the family at the time of adoption to raise the child according to his/her religious faith and cultural. The following points should be added in the Bahá’í Family Act;

- “The family will support the wellbeing and ensure that children are provided with healthy environment to prosper.
- Religious Conversion needs to be willful and will not be valid until the child is minor and does not reach the age of maturity.

17. Illegitimacy

Children born outside a marriage are considered illegitimate. The cost of illegitimacy have been mainly paid by a child' by snatching away its rights of inheritance and by a denial to bear the father's surname or title. Illegitimacy has also had consequences for the mother's and child's right to support. In Persia, according to Polak (German 1865), abortion is regularly practiced to prevent illegitimate births; and legislation ignores the crime.[176] However in the Bahá’í faith, The Bab, knew that Persian women used potion to enduce abortions. He did not agree with the Shi’ite Muslims that a 'soul' did not enter the womb until the 4th month. The Bab wrote that the soul came into being at conception. This is why the Bab in 'His book of the Holy Laws'[177] outlawed abortion.[178] In this regard, the issue of illegitimacy should be dealt under the civil laws.

174. Abdu'l-Baha: Baha'i Education, p.46
175. 1973 constitution of Islamic republic of Pakistan; Article 35-Protection of Family, etc (http://www.na.gov.pk/uploads/documents/1333523681_951.pdf)
177. The book of Holy Laws is the Qayyumu'l-Asma.
178. The Baha'i faith and Abortion; Abortion in Baha’i and Baha’i Holy Law (http://www.angelfire.com/mo/baha/abortion2.html)
The state law of Pakistan considers all children as equal but the children who are born out of adultery, fornication, rape or bigamy is objectionable from the social perspective. Thus, they are not given their rights in inheritance. There is a need to change these prevailing stereotypes as it is not the fault of the children but the blame is to be put on the part of the biological parents. Such children must be given recognition in the society by the law. As a minority community; Baha'is also face a problem of non registration of marriages. This ultimately titles their children as illegitimate. It is the duty of the state to register all the legal marriages so that such nuisance can be avoided and all the children get their birth registered.

Therefore, “the illegitimate children should be recognized and provided a living cost by their biological parents. They should also be entitled to succeed, in the same manner as legitimate children.”

Conclusion

Quaid e Azam Mohammed Ali Jinnah said that in Pakistan all minorities will enjoy equal rights and will be safeguarded. But we can see that minorities; to whichever communities they belong to, are suffering from discrimination. Some forces are threatening all minority religions in Pakistan.

Even some basic rights like that of being able to get their birth or marriage registered are not being given. There is need to increase the protection and promotion of their rights. About 33,000 people declared themselves as followers of the Baha'i faith who are living in Pakistan.[179] There is a need to propose separate personal laws for Baha'i community. In this regard the above mentioned relevant points need to be incorporated as a part of family laws for Baha'i community in Pakistan.
