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Female Muslim Petitioners in Pakistani Family Courts - Cases, Problems and Solutions

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Abstract:

The Family Courts Act, 1964 deliberates about the expeditious provision of justice to Muslim petitioners in family disputes. It is but witnessed that the ratio of satisfied petitioners is very low in Pakistani Family Courts, especially the female petitioners mostly share their bitter experiences in the court during their suits. This research paper aims to discuss the problems faced by female petitioners in Pakistani Family Courts and their solutions. However, there are multiple natured problems faced by female petitioners in Pakistani Family Courts witnessed by us during this study. Therefore, We conducted surveys by the female grievant in cases of maintenance, divorce, khul' and custody. The results showed the problems were unusually long suit, unbearable expenses, insufficient legal support, unbearable false accusations, bribery, nepotism, improper action taken on legal requirements and false witnesses. The reasons for these problems are unawareness about laws and legal procedures, illiteracy, no suitable approach to legal experts, improper family support and no regular study about religion and Sharī'ah Law. We collected data from 500 female respondents and found out the ratio of each problem. This study consists of facts. Thus, the findings of this study are useful for the experts in reaching to proper action plans for the improvement in legal procedures of Family Courts of Pakistan in providing justice and expediting the procedures.

Key words: Muslim family law, Pakistani family courts, Khul'.

1. Introduction:

Laws and court systems of a state, help in fulfilling a state's basic responsibility of providing justice regarding the provision of basic human rights and the constitutional rights to her citizens. States make their laws and the procedures of implementation of laws as per their constitutions. The successful construction of laws and procedures of implementation of

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laws are internationally harmonious with the basic human rights as well as nationally accepted by local understandings of citizen's rights. Pakistan, as an Islamic state, has an article in its constitution that the state is responsible for making and implementing laws and court systems in compliance with *Shariah*. (Rafiq, 2014) However, laws of Pakistan are based on British law which is Code of Criminal Procedure (CrPC) 1861. Before British rule in sub-continent the traditional system of justice was based on *Qazi* and *Punchayats* especially in Mughal era (Awan, 1994). British appointed Muslim *Qazis* for the resolution of family disputes of Muslim petitioners in the court with the base of Muslim family acts and amendments (CrPC 1898, The Dissolution of Muslim Marriage Act 1939 etc) implemented by the British time to time. After the division, the state of Pakistan is responsible for amending the laws to make them in compliance with *Shariah*. (Rafiq, 2014) In 1961, government of Pakistan implemented Muslim Family Law Ordinance in this regard.

1.1 Family Law: *Family* is a noun meant by the unit consisting upon parents and their children. (Dictionary, 2017) *Family law* is a document consists of the statutes and the precedents which help to set the responsibilities of family members. It also deals with their family disputes like husband-wife separation/divorce, child custody, maintenance and domestic violence and so on.

1.2 Family Courts: *Family Courts* are the courts which convene and order about the family disputes as per family laws. These courts hear the domestic disputes. The Family Courts Act 1964 deliberates that the government establishes family courts in all districts and appoints judges ranked as district judges or the additional district judges in these courts. There should be one or more female senior judges also in these courts. This procedure of establishing a family court takes place in accordance with high court. The provision of justice to Muslim citizens by these courts should be in line with the provision of Muslim Family Law Ordinance 1961 with all the amendments made by the competent authorities time to time.

2. Understanding of 'Family' in Muslim Society: Muslim society expresses the oldest informal social institution of family to be strong. The strength of a family is based on the recognition of the rights and duties of all members of a family. In the meaning, family is described as bonding of legal and blood relations living together. (Ibn e Manzoor, 1988) *Shariah* reveals the rights and responsibilities of family members in detailed and comprehensive manner. *Surah Al-Baqarah*, verse No 187 reveals that wives are garments of their husbands and husbands are garments of their wives. Verse 34 of *Surah Al-Nisa* explains that men are in charge of women. This verse presents a base for status of a husband and a wife in the specification of their rights and duties. The husband is responsible for fulfilling the financial requirements of his wife and children. He is a protector for his family in social setup for

providing them education and training. (Tirmidi, h3895) The wife is bound to make a comfortable and pleasant environment for her husband and children. (Al Rum30: 21) She is a protector of herself and her husband's home in her husband's absence. She, as a mother, is responsible for the training of her children in her husband's (father of these children) home. The general environment of a normal, happy and healthy home should show behaviors of love, attention and obedience for each other. (Nasai, h3233) Thus, the unit of a family in Muslim society acquires a great opportunity of Islamic order of fulfilling the rights of blood relations and their bonding (*Sila i Rahmi*). Nevertheless, family members support each other in performing positive actions for the society and protect each other from doing bad for the society. Family unit in Muslim society is constructed by *nikah* of a man (groom) and a woman (bride groom). They should be well sensible for fulfilling their social duties (religious obligations) to make the society healthy and strong in line with *shariah* compliance. (Ibn i Majah, h2610) This benefit of *nikah* guides us to make family laws very comprehensive, simple, easy to understand by a Muslim man (groom) and a Muslim woman (bride groom) as a citizen of Pakistan. But in fact our literacy rate and complex wording of our family laws do not relate with each other and do not make sense of understanding in majority of Pakistani Muslim families.

3. *Nikah Nama*: *Nikah Nama* is a legal document in Pakistan which is a basic document for the making of a family. It is a proof for a man and a woman of being a husband and a wife of one another. It always needs to be improved and studied by the legal experts and *shariah* scholars frequently to make it more simple, comprehensive and understandable. The *nikah Nama* should be filled with the mutual understanding of both sides of husband and wife. It is witnessed during this research that in many of the family disputes, the document of *nikah nama* does not help for the solution of a dispute. Both parties from husband and wife are not interested in seeking help with the commitments they made themselves in the document of *nikah nama* because at the time of *nikah* they did not try to fill this document seriously or vigilantly. People even do not bother to state the information in *nikah nama* with truth. They easily try to write wrong statements regarding the age, education, *mehar*, property, *nafqa* and other marriages and children etc. They never show interest in educating their young children who have reached to the age of marriage about *nikah*, *nikah nama*, their rights and responsibilities as husband or wife or as a family.

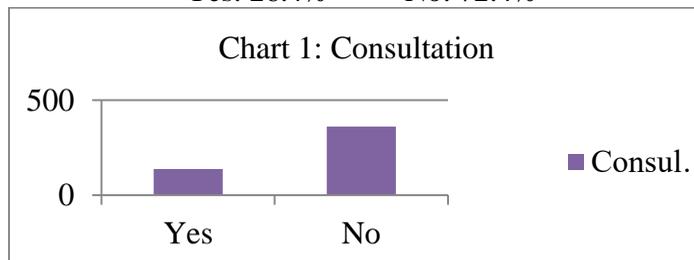
4. Petitioners of Family Courts in Pakistan:

Family courts hear and resolve the disputes of families as per their religious legal procedures in Pakistani family courts. For Muslim petitioners they adopt the procedures of Muslim family ordinance 1961. In these courts, male and female petitioners/plaintiff consult for their disputes. During our research, we saw that the Muslim family law ordinance provides full support

to females but the environment of court, social support and social behaviors are with males. Ratio of divorce cases is increasing day by day. The child custody cases and demand of maintenance cases are also increasing. We can say that ratio of consultation to the court is increasing by the time. Awareness and understanding of law and legal procedures is alarmingly low in the petitioners/plaintiff. That is why, frustration in society is not decreasing. This situation brought us to the court environment to study about the petitioners/plaintiff. We made our study limited to *female petitioners* of family courts and tried to find out their problems in the court. We collected data from 500 female respondents and found out that mostly they face the problems of unusually long suit, unbearable expenses, insufficient legal support, unbearable false accusations, bribery, nepotism, improper action taken on legal requirements and false witnesses. We asked few questions from them and concluded the ratio of their answers. We present our findings here with the help of charts:

- a. Consultation of Courts for Justice:** To find out the ratio of satisfied female grievant in consultation of courts for justice we prepared an instrument of CCJ consisting upon a set of questions. We asked these questions from a group of female grievant whether they feel a relief by consulting the court for their problems. 362 out of 500 women replied as negative while 138 said yes. The ratio is:

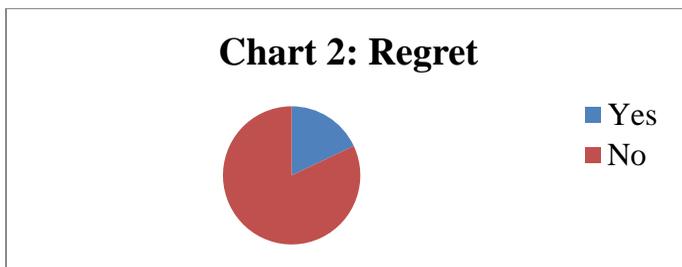
Yes: 26.4% No: 72.4%



The result shows that female petitioners felt mistrust on the court's decision about their suit. Most of the petitioners are illiterate or they do not understand the legal language so they do not know about the nature of their problems, the procedures of solutions and the decisions. They conclude court's decision a failure in providing a positive change in their life by the consequences of decision.

- b. Regret for not consulting the Court:** The ratio of a feeling of regret for consulting the court for justice was found out with the help of instrument RCJ. The female grievant were asked about their feelings of regret for not consulting the court for justice. This survey showed the following ratio:

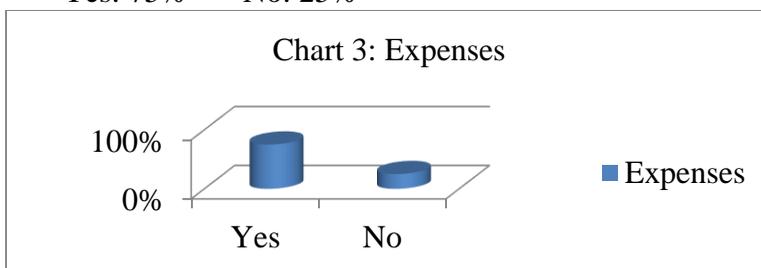
Yes: 18% No: 82%



This result showed, basically, the unawareness of female petitioners/plaintiff and their helpers from family about the justice system. The fear of social pressure also keeps the grievant away from legal help for justice.

c. Bribery/Unbearable Expenses: The female petitioners were asked about facing the demand of bribery inside or outside the court. They replied with the following ratio:

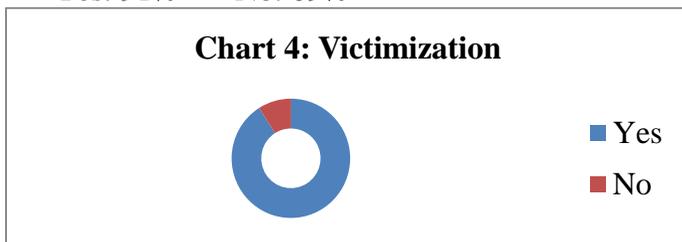
Yes: 75% No: 25%



This resulted in unbearable expenses and withdrawal of the suit. The court fee is nominal but the demand of bribery makes the situation unbearable.

d. Victimization: The female petitioners have an option to not go themselves in court and can send their representatives. Still they face severe victimization from the society. We surveyed those females who went to the court themselves. The ratio they faced victimization was:

Yes: 91% No: 09%



This situation results in the increase of frustration, negativity and violence in the society.

5. Reasons of Problems:

The reasons for the problems faced by female petitioners in family courts are the unawareness about laws and legal procedures, illiteracy, no suitable approach to legal experts, improper family support and no or less study about religion and *shari'ah* law. They know very little about the religious concepts like *nikah*, *wali*, *khyar i bulugh*, *nafqah*, *nushuz*, *hurmat* etc. Women are the remarkable asset of a society. They teach, educate and train a nation specifically in positive or negative manner. If nation is showing increasing rates of crime, corruption, illiteracy, joblessness and decreasing rate of economy, then there will be less rate of educated females. The discrimination on gender base in the provision of justice is not the trend of a Muslim society.

6. Solutions and Recommendations :

During our study we found that many remarkable steps have been taken by the authorities for the provision of justice to female petitioners. One of which is the increase in the number of judges in family courts. We present following recommendations for improvement in the situation:

Educate Law: Education and awareness can solve a problem well. This is a well known fact described by social scientists and experts in their research.(Casil, 2006) Education and awareness enhance the abilities of communication which is the only way to understand the nature of a problem and its solution. In our study we have seen that more than 70% of the plaintiff of family courts in Pakistan are uneducated regarding the education and awareness of law. They cannot convey the real nature of their problems to the court. It is therefore, unavoidable that the education of law should be made compulsory for all. It should be the part of curriculum in intermediate level. The teaching of truth(*Sadaqat*) and honesty(*Dyanat*) should be the part of teaching methodologies.

Simplification of Language of Law: Simplification of the legal language for public is an important aspect of study worldwide. Social and language experts work on this issue to reduce the problems regarding understanding and communication. Plain language may be used by the legal experts for increasing the co-operation and motivation for seeking help for justice.(Tiersma, 2006) In Pakistan, it is still needed to work on simplification of language of legal documents. This kind of study will help reducing the problems of plaintiff in family courts.

Training: Training and learning of basic social behaviors as part of curriculum is badly needed in Pakistani society. It has been observed by this study that the general behaviors and reactions of plaintiff and other people involved in a suit are nearly aggressive and intolerant. Behavioral psychologists have produced many useful studies about the behavioral changes and their impact on society.(Bandura, 1975) According to these

studies, by overcoming the human behavioral phenomena, many social problems can be solved successfully.

Fix Responsibly: The individual philosophy explains responsibility as a civic duty by which one is accountable for his actions as a member of a society to strengthen a society. Similarly, the responsible behavior of a family member is also important for a family.(Olafson, 2007) We see that Pakistani society is lacking in this regard. The awareness of social responsibilities is very important for the female and male citizens of Pakistan. Being a Muslim what should be their role as a family member? this is the responsibility of parents to teach them about it. If they are not able to perform this duty then the next important social institution(the educational institution) should perform this duty.

Religious Wisdom: Whitford and Wong's study on environmental sustainability proves the Islamic attitude as more environmental than other believes. By this type of studies we can conclude that the religious wisdom can make the social environment sustainable for humanity specifically for women. The environment a of court harmonious with *shariah* law or *shariah* obligations will also remain more welcoming and helpful for a female plaintiff for provision of justice.

Respect Females: The Islamic wisdom commands us to respect those females who come out of their homes to help achieving the indicators of social and economic progress. If a woman consults court for justice, there should be a fine arrangement of legal guidance available for her with full respect. The results of current study showed that 91% of female plaintiff faced victimization during their suit in court. This a very high ratio of unhealthy social behaviour proved by society for women who consult the court for finding the solution of their problems. We can control this ratio by promoting Islamic wisdom in the Muslims of Pakistan.

7. Conclusion: Female plaintiff face multiple natured problems in Pakistani family courts during their suit. This is why, they try to avoid consulting the court for seeking justice. On the other hand, the number of suits is increasing day by day in these courts. This situation shows that a lot of studies are required to be done in Pakistan in this regard to help reduce the number of family disputes, the problems in courts and the broken families. These studies will help in improving the law making harmonious with the ground realities of Pakistan.

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