

# TRAINING MANUAL

for Judges on  
Laws Relevant to  
Religious Minority  
Communities (RMCs) in  
Pakistan

**Ali Ahmad and Shabnaz Moswali Khan**

## Training Aims and Objective

According to the most recent census, Muslims constitute 96.47% of the total population of Pakistan, followed by 2.14% Hindus, 1.27% Christians, 0.09% Ahmadis, and 0.02% others.<sup>1</sup> The Constitution of Pakistan, particularly Article 20<sup>2</sup>, guarantees freedom of religion, while Article 25 ensures equality of all citizens.<sup>3</sup> Additionally, Article 10-A guarantees the right to a fair trial.<sup>4</sup> In this context, judges, as pivotal stakeholders in the justice system, are expected to administer justice impartially and ensure the right to a fair trial for all citizens of Pakistan, regardless of their religious beliefs.

In this regard, a research study conducted by the Legal Aid Society involving 165 Muslim members of the administrative and justice sectors across 10 districts in Sindh reveals significant gaps in knowledge, attitudes, and practices concerning non-Muslims who attempt to access the justice system in Pakistan.<sup>5</sup> The key findings include:

1. **Legal Knowledge and Awareness:** Pakistan has enacted personal laws in accordance with the religious injunctions of various religious communities to regulate matters such as marriage, divorce, and custody. However, our report highlights a lack of knowledge among justice sector actors about specific laws and processes relating to RMCs.
2. **Inclination towards Islamic Jurisprudence:** There is a prevalent inclination and preference for Islamic laws, principles, and beliefs to govern the personal lives and choices of RMCs. This reflects a belief that Islamic law is sufficient to provide the necessary protection and rights.
3. **Othering:** Muslim justice sector actors often perceive RMCs as an out-group when adjudicating their legal matters, fostering an "us vs. them" mentality.

---

<sup>1</sup> Pakistan Bureau of Statistics, Salient Features of Final Results Census-2017. [https://www.pbs.gov.pk/sites/default/files/population/2017/sailent\\_feature\\_census\\_2017.pdf](https://www.pbs.gov.pk/sites/default/files/population/2017/sailent_feature_census_2017.pdf)

<sup>2</sup> Constitution of Pakistan, (1973), art. 20

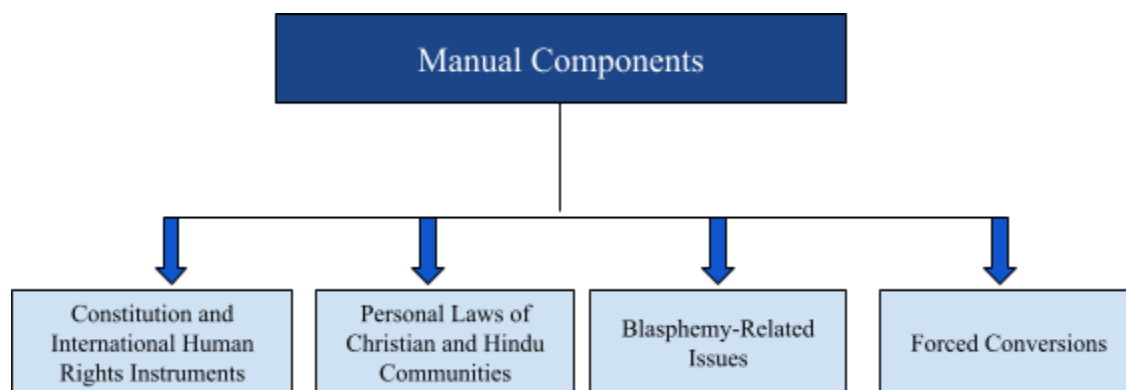
<sup>3</sup> Constitution of Pakistan, (1973), art. 25

<sup>4</sup> Constitution of Pakistan, (1973), art. 10 A

<sup>5</sup> Kashmala Tahir and Mashal Gilani, Knowledge, Attitudes and Practices : Justice system's response to legal issues of religiously marginalized communities, (2022), Legal Aid Society.

In light of these findings, this training manual has been developed to sensitize judges about the laws relevant to religious minority communities (RMCs) in Pakistan. The primary aim is to enhance their knowledge and improve their attitudes and practices to ensure equitable access to justice for RMCs in Pakistan.

This manual is divided into four sections:



- 1. International Human Rights Instruments and Precedents:** This section covers relevant international human rights instruments dealing with RMCs and the precedents set by constitutional courts in Pakistan regarding the implementation of these international commitments within its jurisdiction.
- 2. Blasphemy-Related Issues:** This section addresses the complex and sensitive issue of blasphemy, with a focus on how it affects RMCs, the gaps in the system in light of research study of LAS and a fair-trial-based framework to adjudicate on blasphemy cases.
- 3. Forced Conversions:** The final section is dedicated to the issue of forced conversions, providing police officials with the necessary legal framework and considerations to adjudicate such cases fairly.
- 4. Personal Laws of Christian and Hindu Communities:** This section delves into the personal laws specific to Christian and Hindu communities, covering aspects such as marriage, divorce, and custody.

**Role of Judiciary:**

Besides legislature and executive, judiciary is considered as the third pillar of the state. As the guardian of the Constitution, its main role is to interpret the law and protect the rights of the people. Besides that, in any case, it is under an obligation to decide any matter before it impartially. This goes for constitutional, criminal and civil matters, among others. Most importantly, the judiciary is also mandated to resolve the disputes of parties amicably. Since the instant manual is addressed to the newly inducted members at the Sindh Judicial Academy, it is imperative that they must understand the role they are taking in future.

As mentioned earlier, the manual entails Pakistan's International and constitutional obligations. For judges, this chapter serves as a blueprint for the adjudication in cases related to religious minorities. Secondly, the chapters related to blasphemy law and the forced conversions serve as a guide on the two most pressing issues faced by the Religious minorities cases. In both the cases, the judiciary, at the trial level, is the first judicial actor to step in. Therefore, it is mandatory that the magistrates/sessions judges must be equipped with the relevant laws. Most importantly, the focus should be maintained on safeguarding the rights of the accused in blasphemy and understanding the sensitivities surrounding the victim and her family in the cases of forced conversions. Lastly, the chapter on the personal laws must be understood in light of the needs of the evolving jurisprudence on the rights to inheritance and property, divorce and marriage of the Hindu and Christian communities in Pakistan.

By the end of this training, judges will be better equipped to handle cases involving RMCs with a deeper understanding of the relevant laws and a more inclusive attitude, ultimately contributing to a more just and equitable legal system in Pakistan.

## Section # 1.1 International Human Rights Instruments and Precedents of Constitutional Courts of Pakistan Regarding its Implementation

### Key Takeaways

- The capacity of the members of the judiciary is built around the international commitments of Pakistan towards the religious minorities in Pakistan.
- Members of the judiciary are made aware of the constitutional obligations towards the religious minorities in Pakistan
- Equipped with the evolving jurisprudence, judiciary is in a better position to resolve the issues of RMCs with the rights based approach.

Pakistan, as a member of the international community, has ratified numerous international human rights instruments that safeguard fundamental rights such as equality, non-discrimination, and religious freedom. These provisions have also been incorporated into domestic legislation. The key international instruments ratified by Pakistan include:

- Universal Declaration of Human Rights (1948)<sup>6</sup>
- International Covenant on Civil and Political Rights (1966)<sup>7</sup>
- International Covenant on Economic, Social and Cultural Rights (1966)<sup>8</sup>

---

<sup>6</sup> Universal Declaration of Human Rights, (1948)

<sup>7</sup> International Covenant on Civil and Political Rights, (1966)

<sup>8</sup> International Covenant on Economic, Social and Cultural Rights, (1966)

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)<sup>9</sup>
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)<sup>10</sup>
- Convention on the Rights of the Child (1989)<sup>11</sup>

By ratifying these instruments, Pakistan has undertaken the obligation to protect the rights embodied in these laws within its jurisdiction. The legislative body is tasked with incorporating the provisions of these international instruments into domestic law. The executive branch is obligated to ensure the effective implementation of these laws, while the judiciary is responsible for interpreting the provisions and holding the state accountable for any failures in compliance.

In this context, this section will examine key provisions of 3 most important international human rights laws that protect the rights of religious minorities in Pakistan. It will also analyze precedents set by Pakistan's constitutional courts, which have referenced these international instruments and their applicability within the country's jurisdiction.

Before proceeding, it is essential to distinguish between the types of international legal instruments. There are two main categories:

- 1. Binding Instruments:** These include treaties and conventions, which are signed by diplomatic representatives of participating states and must be ratified through each state's domestic processes.
- 2. Non Binding Instruments:** These include declarations, standards, and models, which are designed to recommend best practices and are aspirational rather than obligatory.

This discussion will focus on the relevant binding and nonbinding international instruments and their influence on the legal framework protecting religious minorities in Pakistan.

## Outline of Session

---

<sup>9</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1965)

<sup>10</sup> International Convention on the Elimination of All Forms of Discrimination Against Women, (1979)

<sup>11</sup> Convention on the Rights of Child, (1989)

1. Ask the participants if they are aware of international human rights instruments dealing with RMCs.
2. Ask the participants to write down the names of international human rights instruments relevant to RMCs on sticky notes.
3. Share the PPT with specific sections of relevant international human rights instruments dealing with RMCs.
4. Debrief and summarize all the important points discussed during the presentation.

## **Relevant International Instruments and their Applicability within Pakistan**

### **1. Universal Declaration of Human Rights (UDHR)**

The two World Wars exposed the international community to blatant violations of human rights, including mass murders, widespread destruction, and inhumane torture.<sup>12</sup> In response to these atrocities and to prevent their recurrence, the United Nations was established with a central purpose: to promote peace and safeguard human rights. As part of this mission, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948. That same year, Pakistan became a signatory to this historic Declaration.<sup>13</sup>

While the UDHR is a declaration and not legally binding, it is widely regarded as the cornerstone of International Human Rights Law, setting a global standard that has inspired numerous subsequent treaties and conventions. Pakistan, recognizing the significance of the UDHR, has incorporated several of its principles into the Constitution. Moreover, the Superior Courts of Pakistan have repeatedly underscored the nation's responsibility to uphold the rights enshrined in the UDHR for its citizens.

A notable example is the Supreme Court's judgment in the case of *Federation of Pakistan v. The Province of Sindh through the Secretary Labour and Human Resources Department*. The Court

---

<sup>12</sup> Pietro Ferrara, Ignazio Cammisa, Margherita Zona, Ida Giardino, Mario Pastore, Massimo Pettoello, War inflicts severe violations on the fundamental human rights of children, (2024), *Global Pediatrics*, Vol. 7.

<sup>13</sup> Universal Declaration of Human Rights, (1948)



invoked Article 23 of the UDHR to highlight the critical importance of ensuring fair minimum wages, which are essential for justice in the workplace.<sup>14</sup>

Given this backdrop, Pakistan is under an international and moral obligation to ensure compliance of the UDHR's provisions within its jurisdiction. As the custodians of law and justice, judges have a fundamental duty to enforce the principles outlined in the UDHR.

The provisions of the UDHR relevant to RMCs are outlined below:

Article 2	Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Article 7	All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
Article 16	<p>(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p> <p>(2) Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p>(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>
Article 18	Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

<sup>14</sup> Federation of Pakistan v. The Province of Sindh through the Secretary Labour and Human Resources Department. (PLD 2022 SC 298)



## Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## 2. International Covenant on Civil and Political Rights (ICCPR)

While the UDHR is not legally binding, its principles have been solidified and expanded through the International Covenant on Civil and Political Rights (ICCPR)<sup>15</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>16</sup> These covenants embody fundamental human rights and establish mechanisms to ensure compliance by the international community. The ICCPR, in particular, safeguards civil and political rights, including the right to freely practice one's religion without coercion. Pakistan ratified the ICCPR on June 23, 2010, thereby committing to uphold its provisions.<sup>17</sup>

Article 26 of the Vienna Convention on the Law of Treaties, 1969, states that "every treaty in force is binding upon the parties to it and must be performed in good faith." Accordingly, Pakistan is legally obligated to guarantee the rights enshrined in the ICCPR to its citizens.<sup>18</sup>

This obligation is further reinforced by the jurisprudence of Pakistan's superior courts. For example, in *Muhammad Ahmad Pansota v. Federation of Pakistan*<sup>19</sup>, the Lahore High Court affirmed that international instruments ratified by Pakistan are binding under the Constitution. Similarly, the Supreme Court of Pakistan, in *Muhammad Yasin v. State*<sup>20</sup> invoked Article 6 of the ICCPR to commute a death sentence to life imprisonment when no motive was established on the part of the accused. Additionally, the Lahore High Court, in *J. Nasira v. Judicial Magistrate and 5 others*<sup>21</sup> relied on Article 18 of the ICCPR to define religious conversion as "the adoption

<sup>15</sup> International Covenant on Civil and Political Rights, (1966)

<sup>16</sup> International Covenant on Economic, Social and Cultural Rights, (1966)

<sup>17</sup> Government of Pakistan, Ministry of Human Rights, Information and Learning Material on Core Human Rights Conventions Ratified by Pakistan, (2022).

<https://mohr.gov.pk/SiteImage/Misc/files/Information%20and%20Learning%20Material%20on%20Core%20Human%20Rights%20Convention.pdf>

<sup>18</sup> The Vienna Convention on the Law of Treaties, (1969), art. 26

<sup>19</sup> Muhammad Ahmad Pansota v. Federation of Pakistan (PLD 2020 Lahore 229)

<sup>20</sup> Muhammad Yasin v. State (2024 SCMR 128)

<sup>21</sup> Nasira v. Judicial Magistrate and 5 others (PLD 2020 Lahore 489)

of a set of beliefs identified with one particular religious denomination to the exclusion of others."

Thus, judges have a crucial duty to ensure that Pakistan complies with the obligations it has undertaken by ratifying the ICCPR.

The provisions of the ICCPR relevant to RMCs are outlined below:

Article 2	(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Article 18	<p>(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p> <p>(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</p> <p>(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</p> <p>(4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.</p>
Article 27	In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### 3. Convention on the Rights of Child 1989

The Convention on the Rights of the Child (UNCRC) is an international treaty that safeguards the rights of individuals under the age of 18.<sup>22</sup> Pakistan ratified the UNCRC on November 12, 1990, thereby committing to protect and promote the rights outlined in the Convention for all children within its jurisdiction, including their right to religious freedom.<sup>23</sup>

The judiciary in Pakistan has also recognized the importance of the UNCRC and has held the state accountable for upholding its international commitments. A notable example is the Balochistan High Court's ruling in the *Church Missionary Trust Association through Authorized Representative v. Federation of Pakistan through Ministry of Religious Affairs, Islamabad, and Others*<sup>24</sup>. In this landmark case, the Court, while interpreting the UNCRC alongside the ICCPR, emphasized that it is the duty of the state to take all necessary measures to ensure that individuals belonging to religious minorities can fully exercise their fundamental human rights without discrimination. This ruling underscores the judiciary's role in ensuring that Pakistan adheres to the obligations it has undertaken by ratifying the UNCRC.

The provisions of the UNCRC relevant to children belonging to religious minority communities (RMCs) are outlined below:

---

<sup>22</sup> The Convention on the Rights of the Child, (1989)

<sup>23</sup> Government of Pakistan, Ministry of Human Rights, Information and Learning Material on Core Human Rights Conventions Ratified by Pakistan, (2022).  
<https://mohr.gov.pk/SiteImage/Misc/files/Information%20and%20Learning%20Material%20on%20Core%20Human%20Rights%20Convention.pdf>

<sup>24</sup>Church Missionary Trust Association through authorized Representative v. Federation of Pakistan through Ministry of Religious Affairs, Islamabad and others (PLD 2022 Balochistan 36)

Article 2	<ol style="list-style-type: none"><li>1) States Parties shall respect and ensure the rights outlined in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</li><li>2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.</li></ol>
Article 14	<ol style="list-style-type: none"><li>1) States Parties shall respect the right of the child to freedom of thought, conscience and religion.</li><li>2) States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.</li><li>3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.</li></ol>

**Note for the Trainer:** Provide a handout of case laws and legislations discussed in the section (soft/hard copy) to all the participants.

## Section # 1.2 Relevant Articles in the Constitution of Pakistan. 1973

### Outline of Session

1. Ask the participants the difference between fundamental rights and principles of Policy
2. Ask the participants to write down the relevant articles in the constitution of Pakistan for the protection of religious minority communities on sticky notes.
3. Ask the participants about judgments of Constitutional Courts (Supreme Court and High Court) about the rights of religious minority communities.
4. Share the PPT with specific Articles of the Constitution of Pakistan and precedents of higher courts upholding the rights of RMCs as guaranteed under the Constitution of Pakistan.
5. Debrief and summarize all the important points discussed during the presentation.

### Constitutional Provisions Regarding Rights of RMCs and Its Interpretations by Courts

The Constitution of Pakistan serves as the supreme law of the land, functioning as a social contract between the state and its citizens. It enshrines numerous provisions to protect fundamental rights and upholds the principles of equality and freedom of religious belief. Article 2A of the Constitution mandates that the State of Pakistan must ensure adequate provisions for minorities to freely profess and practice their culture and religion.<sup>25</sup> Additionally, the state is obligated to safeguard the legitimate interests of minorities.

Article 20 of the Constitution explicitly guarantees that "every citizen shall have the right to profess, practice and propagate his religion." This right is not confined to Muslims alone but is extended to all citizens of Pakistan. The Supreme Court of Pakistan, in its interpretation of

<sup>25</sup> Constitution of Pakistan, (1973), art. 2A

Article 20, has affirmed that there is no distinction in the treatment of Muslims and non-Muslims concerning these fundamental rights. The Court has emphasized that the term "non-Muslims" in no way implies a lesser status as citizens.<sup>26</sup>

In the case of *Tahir Naqash and others v. the State and others*,<sup>27</sup> the Supreme Court further clarified that depriving non-Muslims of their religious beliefs or obstructing them from practicing and professing their religion is contrary to the democratic norms enshrined in the Constitution. Such actions violate the dignity and privacy rights of minorities. This jurisprudence underscores that the right to religious freedom, as enshrined in Article 20, is equally available to both Muslims and non-Muslims. Moreover, Article 36 of the Constitution obligates the State of Pakistan to safeguard the legitimate interests and rights of minorities.<sup>28</sup>

Moreover, a landmark development in the protection of religious minorities came in June 2014 with the judgment delivered by former Chief Justice Tassaduq Hussain Jilani. Taking suo moto notice after a tragic church attack, in which the Supreme Court addressed critical issues faced by religious minorities in Pakistan. The Supreme Court, after thorough deliberation and consultation with minority representatives and civil society, issued a landmark judgment that set forth seven key directives to the federal and provincial governments.<sup>29</sup> These includes:

- Establishment of a federal task force to devise a strategy for promoting religious tolerance.
- Development of curricula to foster religious and social tolerance.
- Measures to counter online hate speech and promote harmony.
- Creation of a national council for minorities to monitor and protect minority rights.
- Formation of a special police force dedicated to safeguarding places of worship for minorities.
- Implementation of quota reservations for religious minorities in federal and provincial government services.
- Swift action by law enforcement agencies in cases of rights violations against religious minorities.

---

<sup>26</sup>Mubarik Ali Babar v. Punjab Public Service Commission through its secretary and others (2023 SCMR 518)

<sup>27</sup> Tahir Naqash and others v. the State and others (PLD 2022 Supreme Court 385)

<sup>28</sup> Constitution of Pakistan, (1973), art. 36

<sup>29</sup> SMC No.1 of 2014 (PLD 2014 SC 699)

This judgment addresses some of the most pressing issues facing religious minorities and provides a clear roadmap for the state to ensure their protection. It also sets a crucial precedent for the lower judiciary in Pakistan, reinforcing the commitment to uphold the fundamental rights of religious minorities.

To ensure that judges are well-informed, the relevant constitutional articles addressing the rights of religious minorities are outlined above, serving as a vital resource in the ongoing pursuit of justice and equality for all citizens of Pakistan.

The relevant Articles Related to RMCs in the Constitution of Pakistan, 1973 are provided below:

Article 8	Laws inconsistent with or in derogation of fundamental rights to be void.
Article 10 A	For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.
Article 20	Subject to law, public order and morality: <ul style="list-style-type: none"> <li>A. every citizen shall have the right to profess, practice and propagate his religion; and</li> <li>B. every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.</li> </ul>
Article 21	No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.



Article 22	<ol style="list-style-type: none"> <li>1. No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.</li> <li>2. In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.</li> <li>3. Subject to law: <ol style="list-style-type: none"> <li>a. no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and</li> <li>b. no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.</li> </ol> </li> <li>4. Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.</li> </ol>
Article 26	<p>In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the grounds only of race, religion, caste, sex, residence or place of birth.</p>
Article 28	<p>Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.</p>
Article 36	<p>The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.</p>

## Section # 2 Right to Fair Trial in Blasphemy Cases in Pakistan

### Key Takeaways

- Judiciary is made aware of the laws related to blasphemy so that they understand the constituent elements of the crime for unbiased adjudication.
- With the knowledge of the procedural irregularities in the system, judiciary is better equipped with safeguarding the rights of the fair trial and due process of the accused of blasphemy

### Outline of session

1. Start the session with videos of mob violence in blasphemy cases of Jaranwala, Ichra and Sargodha
2. Discuss the sensitivities and nuances of Blasphemy law in Pakistan and the importance of fair trial in Blasphemy cases
3. Ask the participants to write down the principles of a fair trial
4. Share the PPT and explain the provisions of PPC dealing with Blasphemy law, the importance of fair trial in blasphemy cases, the precedents of Constitutional courts in the country and other relevant provisions
5. Divide the participants into groups to discuss strategies to deal with pressure in Blasphemy cases
6. Debrief and summarize all important points discussed during the session

## Right to Fair Trial in Blasphemy Cases in Pakistan

Blasphemy is a very sensitive issue in Pakistan, particularly in cases involving accusations against non-Muslims, where entire communities can be placed at risk, as tragically demonstrated in the incidents in Jaranwala<sup>30</sup> and Sargodha.<sup>31</sup> Even when Muslims are accused, the security risks remain significant. In this highly charged environment, it is imperative that the justice system and the state assert their authority and ensure the swift administration of justice. Judges, as the cornerstone of the judicial system, have a crucial role in upholding the right to a fair trial in blasphemy cases.

### **Right to Fair Trial as Provided under International Legislative Instruments and the Constitution of Pakistan**

The right to a fair trial, as outlined in the International Covenant on Civil and Political Rights (ICCPR), has been integrated into Pakistani law through the introduction of Article 10-A in the Constitution during the 18th Constitutional Amendment.<sup>32</sup> This right is grounded in two fundamental principles:

- A. The Division of Power:** An independent and impartial judiciary is essential to ensuring that justice is served. This principle embodies the concept that "no man may be a judge in his own cause," which is an essential characteristic of a fair judicial process.
- B. Impartiality of the Judiciary:** Judges must maintain neutrality, free from any bias or external pressure, to guarantee a just and fair trial.



These principles translate into specific rights for the accused, which judges must vigilantly uphold, especially in blasphemy cases<sup>33</sup>:

<sup>30</sup> National Commission for Human Rights, Jaranwala: Incident Report, (2023).

<sup>31</sup> Imran Gabol, and Sajjad Abbass Niazi, 26 arrested, over 400 booked for mob violence in Sargodha, (2024), Dawn.

<sup>32</sup> Constitution of Pakistan, (1973), art. 10 A

<sup>33</sup> Matti Joutsen, *International standards and norms as guidance in the criminal justice system*, (2016), *Resource Material Series No. 98*. Vol. 98. UNAFEI.

[https://www.unafei.or.jp/english/publications/Resource\\_Material\\_98.html](https://www.unafei.or.jp/english/publications/Resource_Material_98.html).

- **The Right to Be Informed of the Charges:** The accused must be clearly and promptly informed of the specific charges brought against them, enabling them to understand the case they must defend against.
- **The Right to Adequate Time and Facilities to Prepare a Defense:** The accused must be given sufficient time and access to all necessary documents and communication with their legal counsel to prepare an effective defense.
- **The Right to Cross-Examination:** The accused must have the opportunity to challenge the evidence presented against them through cross-examination of witnesses.
- **The Presumption of Innocence:** The burden of proof lies with the prosecution. The accused is presumed innocent until proven guilty beyond a reasonable doubt.
- **The Right to Appeal:** The accused has the right to appeal a conviction, ensuring that any judicial errors or injustices can be reviewed and corrected.
- **Compensation for Wrongful Conviction:** If the accused is wrongfully convicted, they are entitled to compensation, recognizing the harm caused by the miscarriage of justice.
- **The Right to Legal Representation:** The accused has the right to be represented by legal counsel, ensuring that they can effectively defend themselves in court.
- **Timely Dispensation of Justice:** Justice must be delivered within a reasonable timeframe to prevent prolonged and unjust detention, which can exacerbate the already sensitive situation in blasphemy cases.

In Blasphemy cases, Judges should adjudicate upon cases based on these fair trial provisions.

## **Application of Right to Fair Trial Principles in Light of Precedents of Constitutional Courts of Pakistan**

### **1. Justice to be dispensed within a reasonable timeframe**

The average total procedural time, encompassing investigation, prosecution, pre-trial and trial phases is revealed to be an average of 3 years and 4 months.<sup>34</sup> During this time, the accused, their

---

<sup>34</sup> Shabnaz Moswali Khan, Kiran Rahim, Fatima Aamir, Case File Analysis: Procedural gaps and fair trial compliance in blasphemy cases in Pakistan, (2024), Legal Aid Society.

family members and in the case of minorities, entire communities are under threat and face numerous human rights abuses. In this context, Judges have a responsibility to ensure the timely administration of Justice especially in BL cases provided the peculiar sensitivities attached to it. Some of the precedents of Higher Courts that provide for timely registration and adjudication of cases are provided below:

**a. Zeeshan Shani vs. The State (2012 SCMR 428)**

"Delay of more than one hour in lodging the FIR gives rise to the inference that occurrence did not take place in the manner projected by the prosecution and time was consumed in making effort to give a coherent attire to the prosecution case, which hardly proved successful."<sup>35</sup>

**b. Muhammad Fiaz Khan vs. Ajmer Khan (2010 SCMR 105)**

"When a complaint is filed after a considerable delay, which was not explained by the complainant, then in such a situation it raises suspicion as to its truthfulness."<sup>36</sup>

**c. Muhammad Aslam vs. The State (2023 YLR 2036)**

"The basic idea is to enable the accused to answer criminal prosecution against him, rather than let him rot behind bars. The accused is entitled to expeditious access to justice, which includes a right to a fair and expeditious trial without any unreasonable and inordinate delay."<sup>37</sup>

**d. Izhar Ullah vs. The State (2023 MLD 777)**

"After insertion of Article 10-A in the Constitution of Pakistan, the due process of law including speedy and fair trial has been recognized as a fundamental right of every accused person. The policy of criminal law is to bring an accused person to justice as speedily as possible and if he is found guilty, he may be punished and if he is found innocent he may be acquitted."<sup>38</sup>

---

<sup>35</sup> Zeeshan Shani vs. The State (2012 SCMR 428)

<sup>36</sup> Muhammad Fiaz Khan vs. Ajmer Khan (2010 SCMR 105)

<sup>37</sup> Muhammad Aslam vs. The State (2023 YLR 2036)

<sup>38</sup> Izhar Ullah vs. The State (2023 MLD 777)

## 2. Malicious Prosecution Against Complainant Filing Frivolous Cases with Malafide Intentions

Research of Legal Aid Society indicates that blasphemy law is misused and false cases are registered often driven by personal or political motives. Most common accusations stem from religious animosity, economic incentives and personal rivalry. Similarly, the Supreme Court of Pakistan held in *Malik Muhammad Mumtaz Qadri Vs. the State* (PLD 2016 SC 17)

*"The Majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community."*<sup>39</sup>

In this context, Judges should be mindful and make sure that there is no malafide intention behind the registration of BL cases by ensuring the implementation of the right to fair trial principles. Judges may also use their discretionary power to initiate malicious prosecution as provided under section 182 of the Pakistan Penal Code.<sup>40</sup>

## 3. Benefit of Doubt to Accused

In criminal cases the cases have to be proved beyond reasonable doubt and the benefit of doubt is provided to the accused. The Honorable Supreme Court reiterates this cardinal principle in the case of *Ayub Masih v The State* (PLD 2002 SC 1048);

“It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the **benefit of doubt as of right**. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a 'rule of prudence' which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".<sup>41</sup>

---

<sup>39</sup> *Malik Muhammad Mumtaz Qadri Vs. the State* (PLD 2016 SC 17)

<sup>40</sup> Pakistan Penal Code, 1860, ( Act XLV of 1860), s. 182

<sup>41</sup> *Ayub Masih v The State* (PLD 2002 SC 1048)

In simple words it means that utmost care should be taken by the Court in convicting an accused.

#### 4. The Presumption of Innocence

The case to be considered is that of *Muhammad Mahboob alias Boba v the State*, whereby a man accused of blasphemy was acquitted due to the doubts in the evidence. The relevant paragraphs from the judgment are reproduced herein below:

“Mere accusation should not create a prejudice or a bias and the duty of the Judge and as has also been ordained by our Holy Prophet (S.A.W.), is to ascertain the facts and the circumstances and look for the truth with all the perseverance at his command.”<sup>42</sup>

#### 5. Other relevant Provisions Relevant in BL Cases to be Considered by Judges

While adjudicating BL cases, Judges should be mindful of the following legal provisions:

- a. **Section 196 of CrPC:** Permission of federal or provincial government to take cognizance of case falling in ambit of section 295 A of PPC.<sup>43</sup>

In 1990 PCr. LJ 1708, the Honorable Court held that:

“No sanction from the Provincial Government or Federal Government for prosecution of accused was obtained as envisaged by Section 196 and 196-A, Cr. PC. Investigation carried on by police, submitting of challan before the Court and taking of cognizance by Court in the case were thus illegal and without jurisdiction. Proceedings pending before the Session Court against the accused were subsequently quashed.”<sup>44</sup>

- b. **Provisions of PPC related to Mental Health:** Research indicates that mental health patients are disproportionately affected in BL cases. Therefore, section 84 of PPC is relevant in the adjudication of BL cases by Judges.<sup>45</sup>

---

<sup>42</sup>Muhammad Mahboob alias Boba vs. the State

<sup>43</sup>Code of Criminal Procedure, (CrPC), ACT V OF 1898, s. 196

<sup>44</sup>1990 PCr. LJ 1708

<sup>45</sup>Pakistan Penal Code, 1860, ( Act XLV of 1860), s. 84



Act of a person of unsound mind: Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Similarly, in the case of *Muhammad Arshad Javed (1995 MLD 667)* it was observed that-

“...we are of the considered view that in the light of the evidence on record and the conduct of the convict it can legitimately be inferred that the convict was not aware of what he was doing. His act fell within the exception of section 84 of the P.P.C. We, therefore, do not confirm the death sentence awarded to him and set aside the judgment dated 9-2-1993 passed by the learned Additional Sessions Judge, Bahawalpur whereby he was convicted under section 16, M.P.O. to three years' R.I. and under section 295-C, P.P.C. to death sentence and acquit him of the said charges. He shall be released forthwith unless wanted in any other case. The articles recovered from him shall be returned to him.”<sup>46</sup>

- c. **Compliance with Section 156-A of CrPC:** Section 156A of CrPC deals with investigation of an offense under section 295C Pakistan Penal Code.

It provides that “ Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295C of the Pakistan Penal Code, 1860 (Act XLV of 1860).”<sup>47</sup>

However, this legal provision is not complied with<sup>48</sup>, and it is the Judge's duty to ensure the compliance of these legal provisions to ensure the right to fair trial.

---

<sup>46</sup> Muhammad Arshad Javed (1995 MLD 667)

<sup>47</sup> Pakistan Penal Code, 1860, ( Act XLV of 1860), s. 156 A

<sup>48</sup> Shabnaz Moswali Khan, Kiran Rahim, Fatima Aamir, Case File Analysis: Procedural gaps and fair trial compliance in blasphemy cases in Pakistan, (2024), Legal Aid Society.

## Provisions of PPC dealing with Blasphemy Offenses<sup>49</sup>

PPC Section	Offense	Prescribed Punishment	Bailable and cognizable
295	Injuring or defiling place of worship with intent to insult the religion of any class	Imprisonment for a term extending to 2 years or fine or both.	Bailable and cognizable
295-A	Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.	Imprisonment for a term which may extend to ten years or fine or both.	Non-bailable and non-cognizable
295-B	Willfully defiles, damages, or desecrates Holy Quran	Imprisonment for life	Non-bailable and cognizable
295-C	Use of derogatory remarks, etc., in respect of the Holy Prophet (PBUH)	Death, or imprisonment for life, and also fine.	Non-Bailable and cognizable
296	Disturbing religious assembly	Imprisonment for one year, or fine or both.	Bailable and cognizable
297	Trespassing on burial places, etc., to hurt the religious sentiments of others	Imprisonment for one year, or fine or both.	Bailable and cognizable

<sup>49</sup> Pakistan Penal Code, 1860, ( Act XLV of 1860), s. 295 to 298 C

<b>298</b>	Uttering words, etc., with deliberate intent to wound religious feelings	Imprisonment for a term which may extend to one year or a fine or both.	Bailable and cognizable
<b>298-A</b>	Use of derogatory remarks, etc., in respect of holy personages	Imprisonment for a term which may extend to three years, or fine or both.	Bailable and cognizable
<b>298-B</b>	Misuse of epithets, descriptions and titles, etc. reserved for certain holy personages or places	Imprisonment for a term which may extend to three years or fine or both.	Non-bailable and cognizable
<b>298-C</b>	Persons of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith	Imprisonment for a term which may extend to three years and a fine.	Non-bailable and cognizable

## Section # 3 Forced Conversions of the minor Hindu and Christian girls in Pakistan

### Key Takeaways

- Members of the judiciary are made aware of the laws related to Forced Conversions, helpful in the forced conversion cases.
- Members of the judiciary are made aware of the concepts of consent and age in conversion and marriage for informed adjudication of conversion cases
- Judiciary is sensitized with the sensitivities surrounding the victim and her family

With no law in place to penalize, the practice of forced conversions through marriage is widespread, particularly, in the interior Sindh and puts both the Christian and Hindu girls in a vulnerable position. In light of this, a Bill concerning the prohibition of forced conversions was introduced in the National Assembly. The Bill defined forced conversion as ‘any religious conversion by use of force, allurement or fraudulent means.’<sup>50</sup> In this regard, the Bill further proposed a punishment which may include imprisonment extendable to three years and fine extendable to rupees fifty thousand. However, the Bill did not get passed by the Assembly due to the resistance from the religious circles.

A similar Bill, however, had been introduced in the Sindh Assembly in the year 2016. This Bill provided eighteen as a minimum age to convert to any other religion. Furthermore, the forced conversion was made an offense which may be punishable with imprisonment of either description for a minimum of five years and maximum of life imprisonment.<sup>51</sup> Lastly, the offense was made cognizable, non-bailable and non-compoundable. However, the Bill having been

<sup>50</sup>Protection of Persons against forced religious conversions bill, 2019

<sup>51</sup>Criminal law (Protection of Minorities) Act, 2015

passed by the Assembly did not get the assent of the Governor and did not become a law. Thus, the existing legal framework lacks any law which addresses the issue of forced conversions. In the absence of such a law, the courts in Pakistan have relied upon other legal instruments to address the issue of forced conversions. Thus, in the following, these legal instruments have been mentioned alongside the jurisprudence evolved by the Court.

### Outline of Session

1. Participants are sensitized about the issue of forced conversions through marriage?
2. Ask the participants about the factors which lead to forced conversions in Pakistan?
3. Participants are brief about the laws of forced conversions and the judgements of the superior courts.
4. Through a mock litigation exercise, participants are trained on how to pursue a case related to forced conversions.

Instruments related to the forced conversions in Pakistan:

### **The Penal Code, 1860**

The provisions of the Penal Code, 1860 does not specifically address the issue of forced conversion, but the following provisions are used in cases of forced conversion:

<p>Section 295-A</p> <p>Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.</p>	<p>Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both.</p>
<p>Section 339</p> <p>Wrongful Restraint.</p>	<p>Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.</p>
<p>Section 340</p> <p>Wrongful Confinement.</p>	<p>Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said wrongfully to confine that person.</p>
<p>Section 361</p> <p>Kidnapping from lawful guardianship.</p>	<p>Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.</p> <p><b>Explanation.</b> The words “lawful guardian” in this section includes any person lawfully entrusted with the care or custody of such minor or other person</p>
<p>Section 362</p> <p>Abduction.</p>	<p>Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.</p>
<p>Section 364-A</p> <p>Kidnapping or abducting a person under the age of fourteen.</p>	<p>Whoever kidnaps or abducts any person under the age of fourteen in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.</p>

Section 365-B Kidnapping,  
abducting, or inducing a woman to  
compel for marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

Section 375

Rape.

A person A is said to commit 'Rape' if A:

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person B or makes B to do so with A or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of B or makes B to do so with A or any other person; or
- c. manipulates any part of the body of B so as to cause penetration into the vagina, urethra, anus or any part of body of B or makes B to do so with A or any other person; or
- d. applies his mouth to the vagina, anus, urethra or penis of B or makes B to do so with A or any other person, under the circumstances falling under any of the following seven descriptions, firstly, against B's will;
  - secondly, without B's consent;
  - thirdly, with B's consent, which has been obtained by putting B or any person in whom B is interested, in fear of death or of hurt;
  - fourthly, with B's consent, when A knows that A is not B's husband and that B's consent is given because B believes that A is another man to whom B is or believes herself to be lawfully married;
  - fifthly, with B's consent when at the time of giving such consent, by reason of un-soundness of mind or intoxication or the administration by A personally or through another of any stupefying or



## Section 498-B

### Prohibition of forced marriage.

un-wholesome substance, B is unable to understand the nature and consequences of that to which B gives consent;  
 sixthly, with or without B's consent, when B is under sixteen years of age; or  
 seventhly, when B is unable to communicate consent.

Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

[Provided that in case of a female child as defined in the Child Marriage Restraint Act, 1929 (XIX of 1929), or a non-Muslim woman, the accused shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than five years and shall also be liable to fine which may extend to one million rupees.

## Other Local Laws and Legislations

Since the implementation of eighteenth amendment in Pakistan, the issue of forced conversion and forced conversion through marriage has a provincial perspective as the matters related to marriage and divorce are delegated to respective provinces, including the Islamabad Capital Territory (ICT).

### **The Child Marriage Restraint Act, 1929:**

The Provinces of Baluchistan, Khyber Pakhtunkhwa, Punjab, and Islamabad Capital Territory (ICT) has enacted the Child Marriage Restraint Act, 1929, to restrain the solemnization of child marriages. The Child Marriage Restraint Act, 1929, as enacted in the aforementioned Provinces prescribes different ages for males and females to be categorized as a child. The table below provides the detail of ages for males and females in such Provinces:

Sr.	Province	Age (Years)	
		Male	Female
1.	Balochistan	18	16
2.	Khyber Pakhtunkhwa	18	16
3.	Punjab	18	16
4.	Islamabad Capital Territory (ICT)	18	18

The Sindh Child Marriages Restraint Act, 2013:

In 2013, the Sindh Provincial Assembly passed the Sindh Child Marriages Restraint Act, 2013, while repealing and replacing the Child Marriage Restraint Act, 1929. Though the preamble and structure of the Sindh Child Marriages Restraint Act was similar to the predecessor statute, but it made substantive changes to curb the practice of child marriage in the province. One of the noteworthy provisions was to amend in the definition of the word ‘Child’ which was defined in the following way:

2. *In this Act, unless there is anything repugnant in the subject or context –*

*(a) "child" means a person male or female who is under eighteen years of age.*

So, Sindh along with Islamabad Capital Territory (ICT) remains the two Provincial administrations, where any person, either male or female, under the age of eighteen is classified as a child.

### **The Muslim Family Law Ordinance, 1961:**

In Pakistan including all the provinces and the Islamabad Capital Territory (ICT), the Muslim Family Law Ordinance, 1961 is the applicable law for the marriages to be performed under the Muslim Law.<sup>5</sup> Since the phenomenon of forced conversion through marriage involves the conversion of religion of minor girls mainly, the abductor’s side often argue that their marriage is governed under the provisions of the Muslim Family Ordinance, 1961. However, the loophole in this argument is the

element of consent, which is the core part of the standardized Nikah Nama (the Marriage Certificate) as framed under the MFLO rules. Further, in cases of forced conversion through marriages, they are generally registered combined with non satisfaction of the requirement of witnesses and inefficient working of the Nikah Registrars.<sup>6</sup>

**The Punjab Protection of Women against Violence Act, 2016:**

The intention of the Punjab Assembly behind enactment of the Punjab Protection of Women against Violence Act, 2016 was to establish an effective system of protection, relief, and rehabilitation of women against violence. The Act defines violence in the following manner:

*(f) “violence” means any offence committed against the human body of the aggrieved person including abetment of an offence, domestic violence, sexual violence psychological abuse, economic abuse, stalking, or a cybercrime.*

**Explanations – In this Clause:**

- (1) ‘economic abuse’ means denial of food, clothing, and shelter in a domestic relationship to the aggrieved person by the defendant in accordance with the defendant’s income or taking away the income of the aggrieved person without her consent by the defendant; and*
- (2) ‘psychological violence’ includes psychologic deterioration of aggrieved person which may result in anorexia, suicide attempt or clinically proven depression resulting from the defendant’s oppressive behavior or limiting freedom of movement of the aggrieved person and that condition is certified by a panel of psychologists appointed by District Women Protection Committee.<sup>7</sup>*

Further, the Punjab Protection of Women against Violence Act, has empowered the Courts to pass protection order and residence order in case a violence is committed or is likely to be committed against the women.

### **The Sindh Domestic Violence (Prevention and Protection) Act, 2013**

The Province of Sindh has enacted its own law for protection against domestic violence known as the Sindh Domestic Violence (Prevention and Protection) Act, 2013. The act has laid a comprehensive definition of domestic violence and incorporates various aspects to ensure protection of women and children. Section 5 defines domestic violence as follows:

*5. Domestic Violence includes but is not limited to, all acts of gender based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship including but not limited to –*

- a. “abet” as defined in Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section as the said Code;*
- b. “assault” as defined in section 351 of the said Code;*
- c. “attempt” as defined in section 511 of the said Code to Domestic Violence. 4 commit any of the offenses enumerated in this section;*
- d. “criminal force” as defined in section 350 of the said Code;*
- e. “criminal intimidation” as defined in section 503 of the said Code;*
- f. “Emotional, psychological and verbal abuse” means a pattern of degrading or humiliating conduct towards the victim, including but not limited to –*
  - (i) obsessive possessiveness or jealousy constituting serious invasion of the victim’s privacy, liberty, integrity and security;*
  - (ii) insults or ridicule;*
  - (iii) threat to cause physical pain; (iv) threat of malicious prosecution;*
  - (iv) blaming a spouse of immorality;*
  - (v) threats of divorce;*
  - (vi) baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again;*
  - (vii) bringing false allegation upon the character of a female member by any member of the shared household; and*
  - (viii) willful or negligent abandonment of the aggrieved person;*
- g. “harassment” as defined in section 509 of the said Code;*

*h. "hurt" as defined in sections 332, 333, 335, 336A, 337, 337B, 337C, 337E, 337J, 337K, 337L of the said Code;*

*i. "mischief" as defined in section 425 of the said Code against the property of the aggrieved person;*

*j. "physical abuse" means any hurt caused by any act or 5 conduct as defined in section 5(f) of this Act;*

*k. "stalking" includes, but is not limited to –*

*i. accosting the aggrieved person against his or her wishes; and*

*ii. watching or loitering outside or near the building or place where the-aggrieved person resides or works or visits frequently;*

*l. "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person which may include –*

*i. compelling the wife to cohabit with anybody other than the husband;*

*ii. any kind of sexual abuse including sexual harassment of a member of the family; m.*

*"trespass" means entry into aggrieved person's residence either temporary or permanent without his or her consent, and includes workplace or frequently other place where the parties do not share the same residence;*

*n. "wrongful confinement" as defined in section 340 of the said Code; and*

*o. "economic abuse" includes deprivation of economic or financial resources or prohibition or restriction to continue access to such resources which the aggrieved person is ordinarily entitled to.<sup>8</sup>*

Further, similar to the domestic protection in Punjab, the Sindh Domestic Violence (Prevention and Protection) Act, 2013 has empowered the Courts to pass protection and residence orders to protect the victims of domestic violence.

## What is Forced Conversion through Marriage in Pakistan?

FC also referred to as “*manipulated*” and “*unethical*” conversions, is the term explaining the involuntary adoption of a different religion under enticement, duress or coercion.<sup>52</sup> There are various examples of how FC takes place in Pakistan, one of which is FCM, where a person, usually a girl or woman belonging to a non-Muslim community in Pakistan, purportedly involuntarily changes their religion to Islam and instantly marries a Muslim man.

FCM is a highly contested and hotly debated topic in Pakistan with varied views and perceptions on its existence, prevalence and impact. Since FCM is a significant and prominent issue in Pakistan, it has been emphasised that the practice targets under-age girls from RMCs, particularly those from the Christian and Hindu communities.<sup>53</sup> They assert that implications are profound, leading to increased insecurity, restricted freedom, and early marriages, which further perpetuate cycles of abuse, poverty, and limited access to education.<sup>54</sup> This not only affects the victims but also exacerbates the marginalisation of RMCs, undermining social cohesion and human rights.<sup>55</sup>

The lack of accurate, reliable, and validated statistics on the incidence of FCM, forms the basis of the argument put forth by those who challenge the substantive existence of FCM. They assert that the majority cases of FCMs are actually voluntary conversions and consensual marriages.<sup>56</sup> This reality, they argue, is obscured or overshadowed by patriarchal and socio-political narratives that reject love marriages, particularly interfaith unions and marriages initiated by women. Consequently, these consensual marriages are often misrepresented as FCMs to conform to these prevailing societal and political discourses. They further contend that this issue is politicised and weaponized by nationalist, secular, and left-wing political actors who aim to advance their

---

<sup>52</sup> Jacob, Peter. (2019, November 29). Silence of the Lamb II: A Working Paper on Forced Conversions, Centre for Social Justice, Pages 1-32, Available at: <  
[https://csjpk.org/pdf/Working%20Paper%20on%20Forced%20Conversions%20\(English\).pdf](https://csjpk.org/pdf/Working%20Paper%20on%20Forced%20Conversions%20(English).pdf)>

<sup>53</sup> Rasool, Aisha., and Abdullah Kamran. (2022). Forced Conversion of Minorities in Pakistan and Legal Challenges, Federal Law Journal, Volume No. 1, Issue No. 1, Pages 83-102

<sup>54</sup> Schaflechner, Jurgen. (2018). Hindus in Pakistan: A Long History of Forced Conversions. South Asia, Journal of South Asian Studies, Volume No. 41, Issue No. 1, Pages 233-256

<sup>55</sup> Khan. Sheharyar., Mallick, Ayyaz., and Ali, Khadija. (2022). Resilience, Community Security, and Social Cohesion Through Effective Women’s Leadership: A UN Women Research Study, United Nations (UN) Women, Pages 1-89, Available at: <  
<https://asiapacific.unwomen.org/sites/default/files/2022-01/pk-UN-WOMEN-RESEARCH-STUDY.pdf>>

<sup>56</sup> Hussain, Ghulam. (2020, October 20). Forced Conversions or Faith Conversions: Rhetoric and Reality, Institute of Policy Studies, Pages 1-82

one-sided agenda.<sup>57</sup> They argue that the propagation of such an agenda, is often characterised by a refusal to acknowledge the voluntary conversion of girls and women to Islam and is intended to “*malign the religious clerics, Islam, Pakistan and Muslims.*”<sup>58</sup>

In the absence of precise statistics on FCM, data collected by civil society and human rights organisations through media reports, reported incidents, and information received from lawyers, activists, and minority religious institutions, vary in methodologies and time frames, contributing to this inconsistency.<sup>59</sup> For instance, the People's Commission for Minorities Rights (PCMR) and the Centre for Social Justice (CSJ) reported a 177% increase in FC cases between 2020 and 2021<sup>60</sup> while the Movement of Solidarity and Peace estimates that approximately 1,000 underage girls are converted to Islam each year in Pakistan.<sup>61</sup> Despite these unofficial figures, official statistics on FCM are entirely absent.

Without specific laws addressing FCM, court cases often involve charges of rape, kidnapping, abduction, wrongful confinement, and child marriage, further making it difficult to ascertain official disaggregates of reported cases involving FCM. This lack of official data disaggregation fuels scepticism among those who believe the issue is exaggerated and those who are sympathetic to the plight of the victims.

Despite arguments to the contrary, the existence of FC and FCM is undeniable even if the numbers are not accurately tabulated or reported.<sup>62</sup> The myriad existence of first-hand stories and accounts of girls and women who have been a victim to FCM along with factual evidence from lawyers, activists, religious leaders and National Rights Commissions lend weight to the argument that there exists a long-standing history of the occurrences of FCM in Pakistan.

---

<sup>57</sup> Ibid (n 26) Page 71

<sup>58</sup> Hussain, Ghulam. (2021). Religious Conversions in Pakistan: Empirical Evidence from Sindh, Policy Perspectives, Volume No. 18, Issue No. 1, Pages 5-24

<sup>59</sup> Ibid (n 22)

<sup>60</sup> Chaudhry, Kamran. (2021, October 18). Pakistan Sees Record Leap in Forced Conversions, Union of Catholic Asian (UCA) News, Available at: <  
<https://www.ucanews.com/news/pakistan-sees-record-leap-in-forced-conversions/94582> >

<sup>61</sup> Movement for Solidarity and Peace (MSP). (2014, April). Forced Marriages and Forced Conversions in the Christian Community of Pakistan, Pages 1-34, Available at: <  
[https://d3n8a8pro7vymx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP\\_Report\\_-\\_Forced\\_Marriages\\_and\\_Conversions\\_of\\_Christian\\_Women\\_in\\_Pakistan.pdf?1396724215](https://d3n8a8pro7vymx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP_Report_-_Forced_Marriages_and_Conversions_of_Christian_Women_in_Pakistan.pdf?1396724215) >

<sup>62</sup> Ibid (n 22) Page 7



### **FCM Reported to the National Commission on Human Rights**

The National Commission on Human Rights reported the case of a young Christian woman who was allegedly abducted and made to marry a Muslim man after he forced her to sign and place her thumbprint on a marriage contract. Seeking to annul the marriage, the victim filed a petition in the Bahawalpur family courts and had to seek refuge in Bahawalpur amid threats to their lives. NCHR's timely intervention resulted in protection being provided to the victim and her family by the police and with warnings given to the accused to stop future threats to the victim and family.

Annual Report 2021 - 2022, National Commission on Human Rights, Pakistan

This has been further attested through our interviews with multiple minority rights activists, lawyers, and political actors who all quoted examples of confirmed FCM cases in which they were personally involved. As noted by one minority rights activist interviewed in Karachi, *"...the law allows you to marry a Christian. Why would you convert that girl to Islam? That itself substantiates that this is a case of FC. When they come back, they haven't converted."*<sup>63</sup>

Cases<sup>64</sup> such as Charlotte Javed and Bhambo Mai in Punjab, and Arzoo Raja and Mehak Kumari in Sindh, illustrate that not only are FCM cases occurring regularly, but also indicate that such cases follow certain patterns: the majority of victims are young girls from Punjab and Sindh, belonging to lower economic class families facing poverty and deprivation. These girls are often approached by the perpetrator and groomed for a period of time, and then coerced, manipulated, or compelled under duress to leave their homes, after which they are abducted, forcefully married, and purportedly converted. It is also common for powerful religious clerics and Islamic institutions to be involved in these cases.<sup>65</sup>

As reported by several organisations and groups, *"typically, the modus operandi, especially in Sindh, often follows largely consistent patterns. Conversion of a girl from a minority faith often begins with her abduction. This is subsequently followed by a claim that the girl has converted to Islam, married a Muslim and does not wish to return to her family. Protests or cases lodged by the girl's family might lead to a court summoning the girl to ascertain whether she has converted"*

<sup>63</sup> The LAS conducted the said interviews on 01 June 2024, 06 June 2024, 08 June 2024, 11 June 2024, 12 June 2024

<sup>64</sup> Ibid (n 22) Page 6

<sup>65</sup> Javid, Maham. (2016, 18 August). State of Fear, The Herald (Pakistan), Available at: < <https://herald.dawn.com/news/1153061> >

*of her own volition. Members of RMCs have stated that in such cases, the courts seldom decide matters of custody of the abducted girl in the family's favour, even if the girl in question is a minor. They have also stated that the courts that are asked to adjudicate on such matters often come under immense pressure, in the form of courtrooms packed with zealots.*"<sup>66</sup>

In virtually all of the cases examined, the alleged conversion of faith of a girl from a RMC precedes her being wed off to a Muslim man. The time difference between the alleged conversion of faith and the marriage may only be a moment - and the actions undertaken constituting the transaction may also only be limited to attaining thumb impressions of the abductee on blank sheets of paper - but the conversion necessarily comes before the marriage. On close inspection to understand why this is so, it emanates that the primary reason is to evade legal provisions, and their consequence, such as Section 4 of the Christian Marriages Act, 1872, which recognizes an inter-faith marital union provided that the marriage shall be solemnized in accordance with the Act, 1872, ruling out marriage ceremony by a Muslim cleric - any marriage, where either of the spouses is a Christian, if conducted in contravention of this provision shall be void. Thus, the modus operandi and key players in FCM are more or less the same.

Particularly where the victim is a minor, the purpose of conversion of faith certificate is not just to give a declaration of faith but also serve as a document certifying age as the issuing authority often mentions the age of such victim girls to be 18 or above on mere oral testimony of the abductor. This Certificate mentions the age of the victim girl child to be 18 or above and the same is then quoted in the Affidavit of Free Will prepared next and the eventual Nikkahnama, in an attempt to evade child marriage restraint laws.

The presence of FCM is undeniable. However, the challenge lies in systematically tabulating data on such cases due to the absence of specific legislation to guide data collection and the reliance on potentially unreliable case reports. It is crucial for the government and criminal justice system to establish effective methods and mechanisms for documenting these cases. This will necessitate modifications to data recording and analysis practices within each department. Despite the difficulties, it is imperative to address this issue as the need for accurate data is

---

<sup>66</sup> Najam u Din. (2019, December). Challenges in Exercising Religious Freedom in Pakistan, Centre for Social Justice, Pages 1-37, Available at: <  
[https://www.csjpak.org/pdf/Study%20Challenges%20in%20Exercising%20Religious%20Freedom%20in%20Pakistan%20\(CSJ\).pdf](https://www.csjpak.org/pdf/Study%20Challenges%20in%20Exercising%20Religious%20Freedom%20in%20Pakistan%20(CSJ).pdf)>

paramount. While the high incidence of cases is not required to highlight the severity of this crime—where even a few cases can instill fear—the collection of authentic data is essential for comprehending the scope of the problem and pursuing a solution-oriented approach and programming from the Government and CJS.

### **Components of Forced Conversion through Marriage**

To commit an FCM, two specific violative acts must be carried out and proven: (1) coercion to convert religion and (2) coercion to marry. Both must occur together to constitute FCM.

It is crucial to break down the key concepts of “force” and “consent” in relation to conversion and marriage to truly understand how this violation is perpetrated. This is necessary not only for improved general comprehension but also for effective legal responses and informed policy interventions. We can better understand the complexities of FCM and develop appropriate measures to address and prevent it through dissection of such concepts.

#### **a) Understanding “Force” in Forced Marriages and Forced Conversion**

The common narrative and discourse surrounding FCM typically centres on the traditional and narrower, and often restricted to the physical, understanding of “force,” which includes abduction, physical violence, threats of harm to the victim or their family members, or wrongful confinement. For example, in one of the cases we studied, the survivor, a minor girl from the Christian community, was deceitfully taken to the perpetrators’ house by her aunt, wrongfully confined, and forcefully married under the threat of harm to her younger brother.<sup>67</sup>

In legal contexts, proving such physical coercion beyond reasonable doubt is crucial. Consequently, cases where the alleged consent of the victim is presented can often result in acquittal, as it is perceived that no such force was employed.<sup>68</sup> This narrow focus on overt physical coercion overlooks more subtle forms of psychological pressure, societal expectations, and economic vulnerabilities that can also undermine genuine consent in cases of FC.<sup>69</sup>

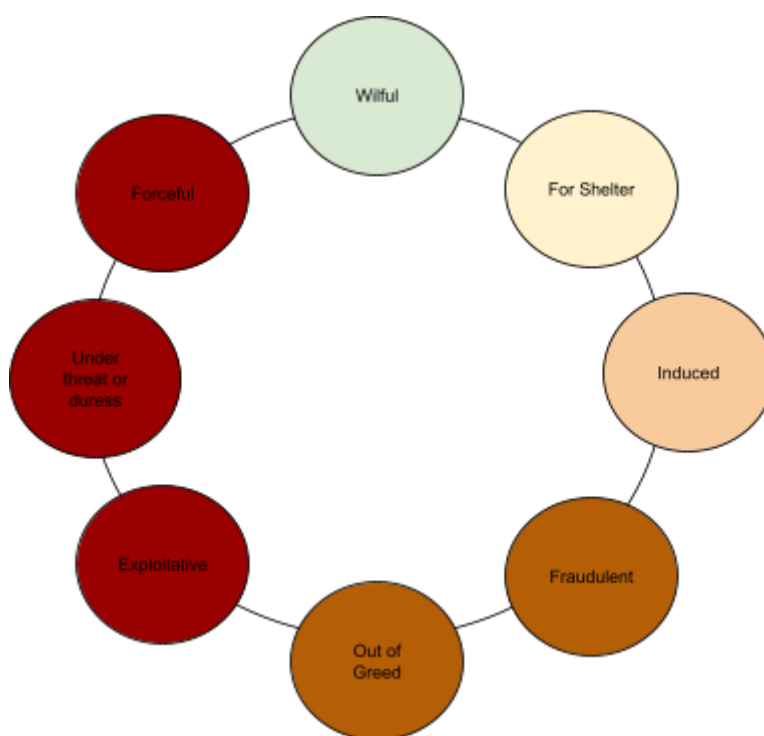
---

<sup>67</sup> The LAS conducted the said interview on 03 June 2024

<sup>68</sup> Ibid (n 4) Page 10

<sup>69</sup> Human Rights Commission of Pakistan (HRCP). (2023). A Breach of Faith: Freedom of Religion or Belief in 2021-22, Pages 1-24, Available at: <  
<https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2023-A-breach-of-faith-freedom-of-religion-or-belief-in-2021-22.pdf>>

Based on an analysis of FCM cases, the Centre for Legal Aid, Assistance and Settlement (CLAAS) identified 8 categories or reasonings for conversions,<sup>70</sup> reflecting the more complex dynamics and different scenarios falling within the scope of FCM. Each category highlights the different motivations behind religious conversions and it is crucial to understand the nuances of each for the identification of FC and FCM, and development of effective interventions and policies for their prevention and elimination.



**Figure 2: CLAAS’ 8 categories, or drivers, of religious conversion**

i. **Wilful**

In a “wilful” conversion, an individual freely chooses to convert to another religion, usually motivated by personal belief or a genuine relationship. This is based on informed consent and reflects an individual's autonomy and freedom of choice. This is not a case of FCM.

---

<sup>70</sup> Anthony, Nadeem. (2011). Centre for Legal Aid Assistance and Settlement (CLAAS): Annual Report 2011, CLAAS - Pakistan

ii. **For Shelter**

Conversions “for shelter” happen when vulnerable individuals, particularly women or girls, seek protection from poverty, violence, or other dire circumstances. In such cases, the conversion is more about survival than genuine religious conviction, as individuals feel they have no other option for safety or stability.

iii. **Induced**

In “induced” conversions, individuals are persuaded through promises of a better life, financial stability, or other incentives. While not overtly forceful, these promises create a situation where the individual feels compelled to convert, often without fully understanding the implications.

iv. **Fraudulent**

“Fraudulent” conversions occur when deceit is involved. Individuals may be misled about the nature of the marriage or the conversion, with promises that are never intended to be fulfilled. This deceit undermines the autonomy of the individual and can lead to exploitation.

v. **Out of Greed**

Conversions “for greed” involve the desire for material gain by the perpetrator. This could include access to the victim’s property, inheritance, or dowry. Marriage and conversion are used as tools to exploit the victim’s resources for financial benefit.

vi. **Exploitative**

“Exploitative” conversions involve taking advantage of the individual's vulnerabilities, such as poverty, lack of education, or social marginalisation. The victim is manipulated into conversion and marriage, often with the intent of benefiting the perpetrator, whether through labour, sexual exploitation, or social status.

vii. **Under Threat or Duress**

Conversions “under threat or duress” occur when individuals are subjected to physical or emotional threats, such as harm to themselves or their families. The victim may feel they have no choice but to convert to avoid the threatened consequences, stripping away genuine consent. These can also include cases of blackmail.

### viii. **Forceful**

“Forceful” conversions involve overt physical or psychological coercion. The victim is compelled to convert against their will, often through violence or severe intimidation. This is the most extreme form of coercion, leaving the victim with no autonomy in their religious or marital decisions.

A broader interpretation of the concept of “force” and coercion and their application reveals the inadequacies of the current simplified discourse on FCM. Legal proceedings often focus narrowly on physical force, ignoring psychological manipulation, societal expectations, and economic vulnerabilities, which can severely undermine genuine consent.

Further, it is crucial to identify non-violent tactics that are used to perpetuate FCM. For victims, the ordeal is not just a violation of their rights but a profound upheaval that fractures their sense of safety and identity. Deceived by false promises of security or economic stability, these vulnerable individuals often find themselves trapped in situations where coercion and manipulation dictate their every move. Isolated from their support systems and stripped of their autonomy, they endure not only the immediate trauma of forced unions but also the long-term consequences of severed educational opportunities and economic prospects.

For example, one Key Informant, practising as an advocate in Sindh and specialising in cases of FC and FCM, observed that videos of girls are used to blackmail them into converting and marrying.<sup>71</sup> The shame and threat associated with these videos is greater for the victims than the marriage and conversion itself. The same was highlighted by another survivor of FCM interviewed for this research who stated that her concern about her father's reaction and societal reintegration overshadowed the trauma of the event.<sup>72</sup> One informant noted that the concern for social reintegration is valid since despite being abducted, many girls cannot return to their families due to societal unacceptance, and thus end up living in private shelter homes.<sup>73</sup>

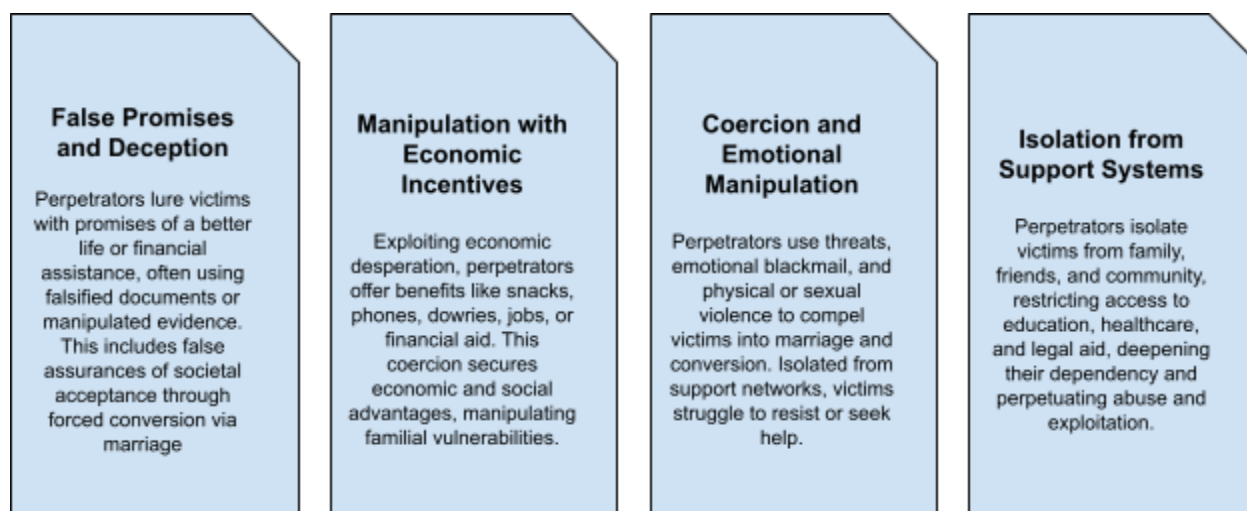
Some of these non-violent tactics used for perpetuation of FCM are identified below:

---

<sup>71</sup> The LAS conducted the said interview on 11 June 2024

<sup>72</sup> The LAS conducted the said interview on 03 June 2024

<sup>73</sup> The LAS conducted the said interview on 08 June 2024



**Figure 3: Non-Violent tactics used to Perpetuate FCM**

The incorporation of these nuances into mainstream discourse is essential for recognizing the multifaceted nature of coercion and to gather more comprehensive legal and social responses, ensuring that consent is informed and voluntary.

Addressing these challenges requires not only legal protections and robust support structures but also a societal commitment to challenging harmful practices and advocating for the rights and dignity of those affected.

### **b) Understanding Consent**

*“Consent turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party.”<sup>74</sup>*

Consent and use of force represent two opposing concepts that are crucial in determining the legality and ethical implications of FCM in Pakistan. Consent is defined as a voluntary and informed agreement, given without coercion, deception, or undue influence, to enter into a marriage and, if applicable, to convert to another religion. Within the legal framework, genuine consent implies that the person understands the nature and consequences of their decision and

<sup>74</sup> Hurd, Heidi M. (2005, January). Blaming the Victim: A Response to the Proposal that Criminal Law Recognize a General Defense of Contributory Responsibility, Buffalo Criminal Law Review, Volume No. 8, Issue No. 2, Pages 503-522

makes a free choice without any form of force, coercion, threat, manipulation, or undue influence including psychological manipulation or socio-economic pressures.<sup>75</sup>

In the case of FCM, consent must be established for two actions:

- Conversion of Religion
- Marriage

To ascertain consent, the following key elements need to be established:<sup>76</sup>

- i. **Voluntariness:** The individual's agreement to marry and/or convert must be given freely, without any form of force, coercion, threat, or pressure.
- ii. **Informed:** The individual must have full knowledge and understanding of the implications and consequences of both the marriage and the religious conversion.
- iii. **Capacity:** The individual must possess the mental and legal capacity to make such decisions, which includes being of a certain age as defined by law and having the cognitive ability to comprehend the situation.

### **Consent to Marriage**

In Pakistani jurisprudence, while consent to marriage is distinct from other forms of consent, such as common or mutual consent, it holds significant legal weight. The Federal Shariat Court has articulated that marriage consent is declaratory, specific, and carries profound implications across various legal domains, including inheritance.<sup>77</sup> It necessitates the ability to exercise free choice, legal capacity, extent of free availability of possible options to choose from, environment of freedom and the availability of counsel or support from guardians. Notably, legal precedents underscore the importance of establishing that consent was freely given, particularly in cases where external factors may have influenced the decision-making process, as seen in landmark

---

<sup>75</sup> Bergelson, Vera. (2014). The Meaning of Consent, *Ohio State Journal of Criminal Law*, Volume No. 12, Issue No. 1, Pages 171-180

<sup>76</sup> Joamets, Kristi. (2012). Marriage Capacity, Social Values and Law-Making Process, *International and Comparative Law Review*, Volume No. 12, Issue No. 1, Pages 103–121; Hussain, Bilal., Abbas, Hafiz Ghulam., and Hussain, Khalid. (2022, March 24). Legal Competency for Marriage: In an Islamic and Pakistan Law Perspective, *Al-Aijaz Research Journal of Islamic Studies & Humanities*, Volume No. 6, Issue No. 1, Pages 12-24

<sup>77</sup> *Muhammad Aslam vs. The State*, PCrLJ 11 (2012)



Supreme Court judgement where the voluntary nature of marriages was questioned due to circumstances such as the absence of familial or community presence during the ceremony.<sup>78</sup>

### **Legal Capacity: The Question of Age of Marriage & Consent to Marriage**

Despite legal age limitations, courts continue to give contradictory judgments on a girl's/women's capacity to enter into marriage under Muslim Personal Law (MPL). Several judgments assert the conservative Islamic interpretation of the concept of age of puberty i.e. a girl's attainment of physical puberty is sufficient for her to be deemed an adult for marriage under MPL. In direct conflict to this, other judgements<sup>79</sup> assert puberty is a physical milestone and does not equate to the mental and psychological maturity required to understand the responsibilities of marriage. Legal competence for marriage should be based on chronological age, not physical development. Allowing a child under 18 to marry would undermine child protection laws.

Another aspect to be considered is that the law (S. 361 PPC, 1860) recognizes any act, including but not limited to employing physical force, by which a minor girl under the age of sixteen (16) years may be taken away from her parents, to be the crime of "kidnapping" entailing penal consequences. This means that no amount of assent of a minor girl under the set age, to accompany her kidnapper can be considered valid 'consent'. This also means that the traditional concept of force need not be available to invalidate consent, but rather the very limitations of age of the minor girl invalidate any alleged act of her consent in the course of the transaction of marriage. However, despite these legal provisions, conflicting judicial precedents often see the alleged 'consent' of a victim being deemed valid during trial.

This was highlighted in the interviews conducted with both survivors of FCM as well as the Key Informants. One survivor of FCM noted her complete ignorance as to what she was signing at the time of her marriage. She had agreed to go with her perpetrator because he had offered to buy her ice snacks – something he had done before. Instead, he took her to court and was asked to put her finger print on a few documents. She noted that due to lack of knowledge and fear, she did what they asked. However, she did not give her consent. In fact, she was not even aware that she

---

<sup>78</sup> Matloob Hussain vs. Shahida, PLD Supreme Court (SC) 489 (2006)

<sup>79</sup> Mumtaz Bibi vs. Qasim, PLD Islamabad High Court (IHC) 228 (2022)

was purportedly getting married or converting.<sup>80</sup> In another case revealed by a minority rights activist interviewed for this research, a minor girl agreed to marriage because she thought it would mean “*nice clothes and vacations, just like what is shown in movies and dramas*”<sup>81</sup> without any real understanding of the implications. Neither of them knew and understood the physical aspects of marriage and the impact of sexual intercourse. In fact, as one of them noted, they did not even know what sexual intercourse was until they were raped as a result of their ‘marriage’.<sup>82</sup>

In a recent case, the Islamabad High Court (IHC) deliberated that a minor, i.e., a child below the age of 18, lacks the legal capacity to provide informed consent for contracts, including marriage. This extends to female children, for whom physical signs of puberty do not equate to legal competence to consent to marriage. The country’s legal framework, including the Muslim Family Laws Ordinance, 1961, and the Islamabad Capital Territory Child Protection Act, 2018, expressly declares any marriage involving a child under 18 as void. Furthermore, children under 18 are considered dependents, and the state holds a paramount obligation to safeguard their rights, particularly from exploitation or harm, including premature marriages. Sections 375 and 377A of the PPC, 1860, unequivocally prohibit all forms of sexual conduct with children, including within the context of marriage. This legal stance emphasises that children cannot legally consent to engage in any sexual activity, and parents or guardians cannot contract them out for such purposes. Pakistan's legal provisions under Sections 375 and 377A of the PPC, 1860, ensure that there are no exceptions for conduct amounting to rape or sexual abuse, even if purportedly justified by a marriage contract involving a child under 18.<sup>83</sup>

Unfortunately, the inconsistency in the legal age of marriage across provinces, combined with the continued reliance on puberty as a threshold, partially stemming from the archaic and contradictory provision in Section 2 of the Majority Act, 1875 which recognizes capacity of a minor to contract marriage, creates loopholes that enable perpetrators of FCM to evade accountability under the law.

---

<sup>80</sup> The LAS conducted the said interview on 03 June 2024

<sup>81</sup> The LAS conducted the said interview on 08 June 2024

<sup>82</sup> The LAS conducted the said interview on 06 June 2024

<sup>83</sup> The Sindh Child Marriage Restraint Act, 2013, Section 2; Azka Wahid vs. Province of Punjab, Lahore High Court (LHC) 1392 (2024)

## Consent to Religious Conversion

Consenting to religious conversions is a complex process involving significant changes in beliefs, behaviour, and social relationships. Lewis R. Rambo and Charles E. Farhadian outlined seven key issues in studying religious conversion: personal narrative continuity, convert agency, motivation complexity, material aspects, post-conversion life, and historical context.<sup>84</sup>

In cases of conversion of faith, ascertaining consent is essential to ensure that the conversion process respects the individual's autonomy and religious freedom, aligning with principles of human rights and personal choice.<sup>85</sup> Thus, true and informed consent requires a voluntary decision made by an individual after being fully informed about the beliefs, practices, and implications of adopting a new religious identity. Informed consent requires that individuals are provided with adequate information about the religious doctrines, rituals, and community expectations associated with the new faith, including understanding the potential personal, familial, social, and cultural impacts of conversion. There is no official “conversion process” in Pakistan, leading to ad hoc practices. *“Many religious institutions, local mosques and seminaries routinely issue certificates of conversion beyond the scope of any law. Religious zeal of the aforementioned institutions fails them to assess the element of coercion in the conversion, confirm the age of the so-called bride and presence of a crime.”*<sup>86</sup>

Further, multiple activists and religious figures interviewed for this research also noted that often the person doing the conversion is not aware of Islam themselves and is not a cleric. They opined that establishing official conversion centres and certificates could counter the ad hoc practices.

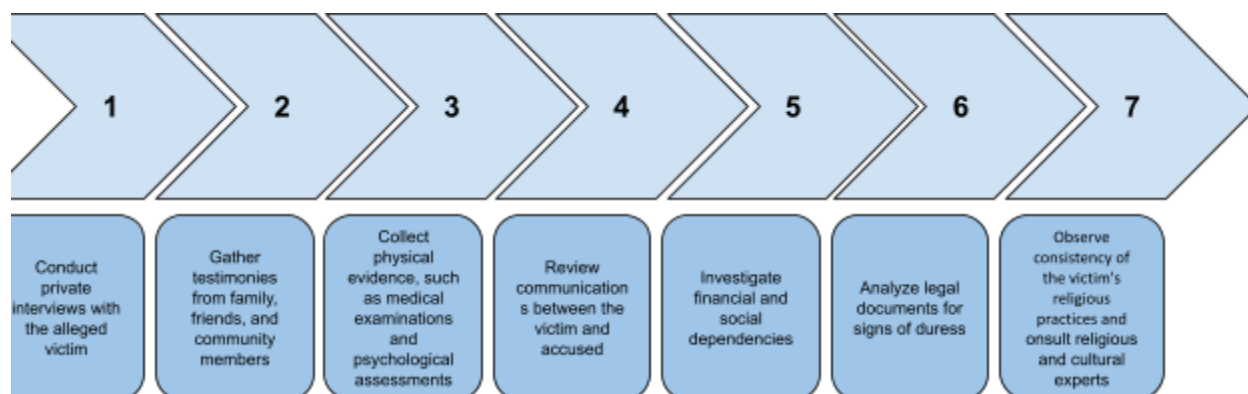
Ascertaining consent in criminal cases of alleged FC involves a meticulous approach.

---

<sup>84</sup> Rambo, Lewis R., and Farhadian, Charles E. (2014, April 3). *The Oxford Handbook of Religious Conversion*, Oxford University Press

<sup>85</sup> Thomson, Diana V. and Toney, Kayla A. (2023, May 14). Sacred Spheres: Religious Autonomy as an International Human Right, *Catholic University Law Review*, Volume No. 72, Issue No. 2, Pages 151-192

<sup>86</sup> *Ibid* (n 22) Page 8



**Figure 4: Investigation techniques to ascertain consent in FC and FCM cases**

Investigators should conduct private interviews with the alleged victim to understand their experiences, looking for consistency and signs of coercion. Further, testimonies should be gathered from family, friends, and community members to provide additional context. Physical evidence, such as medical examinations for abuse, and psychological assessments for trauma, are crucial. Reviewing communications between the victim and accused may reveal threats or manipulation. Investigating financial and social dependencies can indicate undue influence, while understanding community dynamics can uncover societal pressures. Analysing legal documents for signs of duress and previous legal actions for coercive behaviour is essential. Observing the consistency of the victim's religious practices and consulting religious and cultural experts can provide deeper insights, ensuring a thorough assessment of whether the conversion was truly voluntary.

These considerations highlight the complexities involved in determining the validity of consent in FCM cases, underscoring the need for robust legal frameworks and interventions to protect vulnerable individuals from exploitation and uphold their fundamental rights in matters of marriage and religious affiliation.

### **c) Recognising Differences: Consensual vs. Non-Consensual/Forced Marriage and Conversion**

In Pakistan it is common practice that upon reporting of a case of alleged FCM, the counter-argument is that it is in fact a consensual marriage and not a case of FC/FCM.

It is thus important at the onset to distinguish between marriages between two consenting adults where one partner takes the informed decision to convert to the other's religion and FCM, where the individual, often a minor girl, is coerced or pressured into changing their religion, typically as a prerequisite for marriage. In the former, both parties enter the marriage freely, and the decision to convert is made without coercion, pressure, or manipulation. The individual has the autonomy to explore and embrace a new faith as part of their personal beliefs or relationship dynamics. In the latter, this process is not based on genuine consent, and the individual may be under duress, facing threats, experiencing manipulation or simply lack the maturity and capacity to understand the implications and consequences of the act. The conversion is often used to legitimise an otherwise exploitative situation, and the victim's autonomy is disregarded.

<b>Key Differences between Marriage between Consenting Adults &amp; Faith Conversion by Informed Choice and Forced Conversion through Marriage</b>	
<b>Marriage between Consenting Adults &amp; Faith Conversion by Informed Choice</b>	<b>Forced Conversion through Marriage</b>
<b>Consent</b>	
Based on informed, voluntary decision-making	Lack of genuine consent; involves coercion
<b>Autonomy</b>	
Individual maintains control over their choices	Victim's autonomy is compromised
<b>Motivation</b>	
Motivated by personal beliefs or relationship dynamics	Often driven by external pressures or societal norms
<b>Legal and Ethical Implications</b>	
Recognized as a legitimate personal choice	Raises significant human rights concerns; often illegal

## **Judgements on the Forced Conversions and child marriage:**

In the following, the jurisprudence of the superior courts, regarding the issue of forced conversions, has been analyzed. This includes the relevancy of age, consent, custody of the victim and child and forced marriage.

### **a) Relevancy of the age of minor:**

In *Nasira v. Judicial Magistrate and 5 others*,<sup>87</sup> the Lahore High Court observed that, according to the Muslim jurists, the mental capacity of the child is of crucial importance while considering the question of his or her conversion. The Court further observed that one's mental capacity is dependent on the attainment of puberty. The Court, while relying on the Islamic jurisprudence and *Muhammad Sadiq v. Mrs Sadiq Safoora* (PLD 1963 (WP) Lahore 534) observed that, in Islam, whenever a child shows the signs of puberty, he ought to be considered 'baligh,' 'major' and 'sui juris' for all the purposes. In the instant case, the Court observed that there is a consensus among the Islamic scholars that such an age, in Islam, is fifteen years.

Besides this, the Court also observed that in Malaysia, different states have enacted different laws to regulate the conversion of a religion. All in all, these laws provide two conditions to convert a religion which include (a) soundness of mind and (b) age qualification. The age qualification is further bifurcated into two categories (a) attaining the age of majority (baligh) and (b) attainment of eighteen years. Where an intending convert fails to meet the age requirement, the consent of his or her guardian/parent is considered necessary.

Lastly, the Court observed that since UDHR and other international instruments do not provide any minimum age for conversion and the Majority Act, 1875 excludes religious rites from its operation, the relevant law to determine the age of majority for a person intending to convert to Islam shall be Islamic law. In the instant case, the alleged detenu, a minor Christian girl, age 14, had allegedly converted to Islam. The Court observed that, in this age, the minor lacked the legal capacity to convert her religion. Besides, the Court also did not accept the consent of a mother to change her religion since the same was made under the anxiety and misguided belief. However,

---

<sup>87</sup>*Nasira v. Judicial Magistrate and 5 others* (PLD 2020 Lahore 489)

as for declaring the conversion void and of no legal effect, the court reasoned that this cannot be done since the concepts of valid, void and voidable are not applicable to the religious conversions.

The aforementioned judgment warrants two comments. Firstly, it is unclear as to why the Court considered that a minor of 14 years lacks the capacity to convert? For the most part, it seems that the reasoning was based on the Islamic principles. In that scenario, it can be concluded that the High Court may not have reasoned the same if the minor were of 15, 16 or 17 years, since in Islam, puberty is reached at the age of fifteen. Secondly, the Court did not expressly mention whether a minor, not having the capacity to convert on his or her own, may do so with the consent of parents.

Besides, in another judgment titled *Mst Alishba Bibi v. The State and others*,<sup>88</sup> the Islamabad High Court observed that conversion of one's faith and the statement acknowledging the same under section 164 CRPC is dependent on the determination of the age of a minor. Simply put, the age of a minor cannot be ignored at the time of considering the question of her conversion to another religion. However, in the instant case, the age of the minor was disputed, therefore, the Court did not proceed with the examination of jurisprudence on this question. This further indicates the reluctance of the Court in laying down a fixed age criteria for conversion. Had the Court done so, this may have been helpful in understanding the overall jurisprudence on the subject. Lastly, in another judgment titled *Ajeet Kumar v. Province of Sindh and others*,<sup>89</sup> the Court declared that a minor, aged seven years, lacked the capacity to convert to Islam. On the contrary, the Court did not show any reservation with the conversion of her mother since she was treated as *sui juris* under the law.

#### **b) What is 'forced' in conversion?**

To begin with, the Lahore High Court observed that 'a person who has read Kalma even once, believes in the unity of Allah and that Prophet Muhammad (PBUH) is the last prophet and

---

<sup>88</sup>Mst Alishba Bibi v. The State and others (PLD 2020 Islamabad 28)

<sup>89</sup>Ajeet Kumar v. Province of Sindh and others (Constitutional Petition No. 156 of 2021)

professes to be a Muslim , must be accepted as such.<sup>90</sup> Reliance in this regard was placed on *Moula Bux v. Charuk and others* (PLD 1952 Sind 54). However, the Court noted that, in many cases, such a ‘conversion’ may be motivated by any worldly gain or a ‘forced’ one.<sup>91</sup> Therefore, in order to see whether the conversion is not tainted and done voluntarily, the Courts may inquire into facts of the case. However, at present, since there is no ‘statutory prescription for the nature of proof required,’ it is necessary to look at whether the convert has made the new faith the part of his or her life. In this regard, it is necessary that the convert must disassociate himself from the previous religion. Reliance was further placed on *Abdul Razack v. Aga Mahomed Jaffer Bindanim* [(1894) L.R. 21 I.A. 56] wherein the Court had observed that “...the question of conversion must be decided not by an enquiry into the mind of the convert but by an enquiry into the conformity of his acts to the conduct that may reasonably be expected from a person of his alleged religion.”

Furthermore, in another case, the Karachi High Court<sup>92</sup> considered a conversion ‘involuntary’ where it found that the same had been done out of a motivation to marry. The aforementioned jurisprudence is instrumental in shaping a view that not every conversion must be accepted outrightly, and Courts, relying on the facts of the case may investigate whether the conversion is voluntary or not. In turn, this may serve as a check against forced conversions. However, the aforementioned jurisprudence stands in stark contrast to what the Lahore High Court had laid down in the *Aya Sasaki v. Zarina Akhtar* . In this case,<sup>93</sup> the Court observed that conversion to Islam is purely a subjective matter of behavior and attitude. Besides, to say that a non-Muslim had come within the fold of Islam with a mala-fide intention or for some ulterior motive would be unjust. Therefore, the Court concluded that the statement of a convert, before the Court, that she had embraced Islam of her own will could not be disbelieved and ought not to be doubted.

### **c) Custody of a minor after the conversion:**

---

<sup>90</sup>*Nasira v. Judicial Magistrate and 5 others* (PLD 2020 Lahore 489)

<sup>91</sup>*Ibid.*,

<sup>92</sup>*Muhammad Anwar Shehzad v. Muhammad Ismail* (PCRLJ 1982 Karachi 133)

<sup>93</sup>*Aya Sasaki vs. Zarina Akhtar* (1999 CLC 1202)



In the cases involving the allegation of forced conversions, the parents or guardians, as the case may be, of the minors have consistently approached the courts to seek the custody of the child. Irrespective of whether the conversion is forced or not, the courts in Pakistan have been forced to answer to whom does the right to custody lie. A similar question had come up before the Lahore High Court in *Nasira v. Judicial Magistrate and others*<sup>94</sup> wherein the Court observed that ‘change of religion/conversion does not *ipso facto* deprive a parent of his right to custody of child.’ Similarly, in another case titled *Mst. Ghulam Fatima alias Shammi Bai v. Chanoomal and another*,<sup>95</sup> the Court observed that mere change in religion cannot become a reason for removing the minor from the custody of the mother. Similarly, in another case titled *Mehik Kumari v. Province of Sindh and others*,<sup>96</sup> the Sindh High Court observed that Islamic law doesn’t prohibit a Muslim minor to stay in the custody of her Hindu parents. Furthermore, the Court observed that, under the Constitution of Pakistan, 1973, no person can be forced to live his life against his wishes. Thus, everyone is allowed to choose wherever they want to reside. Lastly, in the landmark *Arzoo*<sup>97</sup> case, the High Court of Sindh adopted the same reasoning and handed over the custody of the minor to her parents.

**d) forced marriage:**

In *Humair Mehmood v the State*,<sup>98</sup> the Lahore High Court observed that, In Islam, a woman is to be treated as *Sui Juris* and instances are not lacking where her consent for the valid marriage is considered sine qua non. In the absence of such a consent, the marriage ought to be considered void. Similarly, in *Matloob Hussain v. Shahida and 2 others*,<sup>99</sup> the Court observed that any marriage contracted without the consent of the parties is void. Furthermore, such a consent must not be obtained through coercion, undue influence, fraud and any misrepresentation. In light of the aforementioned jurisprudence, it is clear that any marriage resulting out of fraud, deceit and force must be considered void by the courts and should have no standing in the eyes of law.

---

<sup>94</sup>*Nasira v. Judicial Magistrate and 5 others* (PLD 2020 Lahore 489)

<sup>95</sup>*Mst. Ghulam Fatima alias Shammi Bai v. Chanoomal and another*, (PLD 1967 Kar. 569)

<sup>96</sup>*Mehik Kumari v. Province of Sindh and others* (Constitutional Petition No. 3104 of 2020)

<sup>97</sup>*Arzoo Fatima v. Province of Sindh & Others* (SBLR 2022 Sindh 641)

<sup>98</sup>*Humair Mehmood vs. The State* (PLD 1999 Lahore 494)

<sup>99</sup>*Matloob Hussain vs. Shahida and 2 others* (PLD 2006 Supreme Court 489)

### e) **Child Marriage;**

As for the child marriage, the Federal Shariat Court, in *Farooq Umar Bhoja v. The State*<sup>100</sup> observed that if any Mobah act appears to be harmful to the society collectively or to a particular segment of society, the State has the power to make that act prohibited so that the society can be protected from larger damage. Besides, the Islamabad High Court, in *Mumtaz Bibi v. Qasim and 4 others*<sup>101</sup> observed that Protection of Women (Criminal Laws Amendment) Act, 2006, read together with provisions of sections 375 and 376 of P.P.C. now provide unequivocally that no child up till the age of 16 is to engage in sexual intercourse under any circumstances. Even if a child were to consent to engaging in sexual intercourse, the action would still constitute rape for purposes of section 375 of P.P.C. punishable with death or life imprisonment notwithstanding such consent. Further, it stated that a child means a human being below the age of 18 years in the light of various statutes.

The Honorable Justice Babar Sattar stated that puberty alone is not the test in Islamic jurisprudence to determine a female's competence to contract marriage. The question of reaching puberty has to do with physical aspects of the growth of a female child. Merely because a child has grown physically and biologically to an extent that she can endure sexual activity or intercourse does not automatically mean that she has the legal capacity to marry or the agency to contemplate the consequences that marriage entails i.e., that she has the mental and psychological maturity to reach such decision in her own best interest. Furthermore, in *Tahira Bibi v. Station House Officer*,<sup>102</sup> the child marriage infringes the fundamental rights of the children enshrined under the Constitution of Pakistan. Besides, the Court further observed that the child marriages affects the reproductive health status of the women such as forced sexual relations, early and complicated pregnancies, higher fertility rate, and large family size formation.

---

<sup>100</sup>Farooq Omer Bhoja vs. The State (PLD 2022 Federal Shariat Court 1)

<sup>101</sup>Mumtaz Bibi vs. Qasim and 4 others (PLD 2022 Islamabad 228)

<sup>102</sup>Tahira Bibi vs. Station House Officer (PLD 2020 Lahore 811)

## Section # 4 Personal Laws of the Religious Minorities in Pakistan

### Key Takeaways

- Judiciary is made aware of the personal laws of the religious minorities in Pakistan.
- Judiciary will be able to apply the personal laws of the Christians and Hindus on the disputes related to them, respectively.

As mentioned earlier, Hindus constitute 2.14% whereas Christians constitute 1.27% of the total population.<sup>103</sup> However, there exists a lack of knowledge among the members of the judiciary regarding the knowledge of the personal laws of both the religious communities. Therefore, there is a dire need to understand the laws related to marriage, inheritance, custody and divorce of the Hindus and Christians living in Pakistan.

To begin with, the personal laws of the Christians, prior to Independence, had been regulated by the Christian Marriage Act, 1872 and the Divorce Act, 1869. Furthermore, after the partition, the state of Pakistan adopted these laws with minor changes. However, there existed no such law that could cater the needs of the Hindu Community living in Pakistan<sup>104</sup>. There had been no codified legislation providing the conditions and registration of marriage. Similarly, there existed no law providing for the mechanism of dissolution of marriage. With this in mind, the Sindh Assembly passed the Sindh Hindu Marriage Act, 2016<sup>105</sup>.

The Act, for the first time, codified the conditions as well as the manner in which the marriage may be registered. Since the Act fell short on providing any mechanism for the termination of marriage, an amendment was brought in 2018 in Sindh to remove this anomaly. Furthermore, the Federal Legislature enacted Hindu Marriage Act, 2017<sup>106</sup>, which is applicable to the remaining provinces of Pakistan and the Islamabad Capital Territory. Similar to the Sindh Hindu Marriage

<sup>103</sup> Pakistan Bureau of Statistics, Salient Features of Final Results Census-2017.  
[https://www.pbs.gov.pk/sites/default/files/population/2017/salient\\_feature\\_census\\_2017.pdf](https://www.pbs.gov.pk/sites/default/files/population/2017/salient_feature_census_2017.pdf)

<sup>104</sup> Constitution of Pakistan, (1973), 18<sup>th</sup> Amendment

<sup>105</sup>The Sindh Hindus Marriage Act, 2016 (Sindh Act IX of 2016)

<sup>106</sup>The Hindu Marriage Act, 2017 (Act No VII of 2017), s 6

Act, this Act is a comprehensive legislation and provides for the mechanism of both registration and termination of marriage. In the following, some of the provisions of these laws have been discussed alongside the recent jurisprudence of the superior courts.

### Outline of Session

1. Participants are made aware of the relevant instruments of the personal laws related to Religious Minority Communities in Pakistan.
2. Participants are sensitized on the procedure of marriage in Hindu and Christian law
3. Participants are equipped with the jurisprudence on the divorce in Christian and Hindu law
4. Through a mock exercise, understanding of the participants is gauged on the personal laws related to Christianity and Hinduism.

### Christian Marriage Act, 1872

<p>Section 4 Marriages to be solemnized according to Act.</p>	<p>Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.</p>
<p>Section 5 Persons by whom marriages may be solemnized</p>	<p>Marriage may be solemnized in Pakistan.</p> <p>(1) by any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a minister;</p> <p>(2) by any Clergyman of the church of Scotland, provided that such</p>

	<p>marriage be solemnized according to the rules rites, ceremonies customs of the Church of Scotland;</p> <p>(3) by any Minister of Religion licensed under this Act ot solemnize marriage;</p> <p>(4) by, or in the presence of a Marriage Registrar appointed under this Act;</p> <p>(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.</p>
<p>Section 12 Notice of intended marriage</p>	<p>Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriage under this Act, one of the persons intending marriage shall give notice in writing according to the form contained in the First Schedule hereto annexed, or the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein:—</p> <p>(a) the name and surname, and the profession or condition, of each of the persons intending marriage.</p> <p>(b)The dwelling-place of each of them.</p> <p>(c)The time during which each has dwelt there, and</p> <p>(d)The Church or private dwelling in which the marriage is to be solemnized: Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.</p>
<p>Section 19 Consent of father or guardian or mother</p>	<p>The father, if living, of any minor, or if, the father be dead, the guardian of such minor, and in case there be no such guardian then the mother of such minor, may give consent to the minor’s marriage, and such consent is hereby required for the same marriage unless no person authorized to give such consent be resident in Pakistan.</p>
<p>Section 25 Solemnization of</p>	<p>After the issue of the certificate by Minister, marriage may be solemnized between the persons therein described according to such form or</p>

marriage	<p>ceremony as the Minister thinks fit to adopt:</p> <p>Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.</p>
Section 50 Form of certificate	<p>The certificate to be issued by the Marriage Registrar under the provisions of provisions of section 41 shall be in the form contained in the Second Schedule to this Act annexed or to the like effect, and the Provincial Government shall furnish to every Marriage Registrar a sufficient number of certificates.</p>
Section 60 On what conditions marriages of Native Christian may be certificated.	<p>Every marriage between Native Christians applying for a certificate shall without the preliminary notice required under Part III be certified under this Part, if the following conditions to be fulfilled, and not otherwise:—</p> <p>(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years.</p> <p>(2) Neither of the persons intending to be married shall have a wife or husband still living;</p> <p>(3) In the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other.</p> <p>“I call upon these persons here present to witness that I, A.B. in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife [or husband]” or words to the like effect:</p> <p>Provided that no marriage shall be certified under this Part when either of parties intending to be married has not completed his or her eighteenth years, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.</p>

**Divorce Act, 1869:**

<p>Section 10</p> <p>Petition to Dissolve Marriage</p>	<p>When husband may petition for dissolution: Any husband may present a petition to the [Court of Civil Judge] praying that his marriage may be dissolved on the ground that this wife has, since the solemnization thereof, been guilty of adultery.</p> <p>When wife may petition for dissolution: Any wife may present a petition to the [Court of Civil Judge] praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ; or has been guilty of incestuous adultery.</p> <p>or of bigamy with adultery. or of marriage with another woman with adultery.</p> <p>or of rape, sodomy or bestiality.</p> <p>or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensa et toro.</p> <p>or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.</p> <p>Contents of petition: Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.</p>
<p>Section 18</p> <p>Petition for decree of nullity</p>	<p>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.</p>
<p>Section 32</p> <p>Petition for the restitution of conjugal rights</p>	<p>When either the husband or the wife has, without reasonable excuse withdrawn from the society of the other, either wife or husband may apply, by petition to the [Court of Civil Judge], for restitution of conjugal rights, and the Court, on being satisfied of the truth of the</p>

	statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.
Section 27 Deserted wife may apply to Court for protection	Any wife to whom section 4 of the Indian Succession Act, 1865(X of 1865), does not apply, may, when deserted by her husband, present a petition to the 2[Court of Civil Judge] at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

### **Sindh Hindu Marriage Act, 2016**

Section 4 Conditions for a Hindu Marriage	(1) A marriage may be solemnized under this Act, if the following conditions are fulfilled, namely: a) parties to the marriage are of 18 years of age or above; b) parties to the marriage are able to give consent; c) parties to the marriage give free consent; d) parties are not within the prohibited degree of relationship; e) neither of the parties to the marriage has a spouse living at the time of marriage; and f) 5. At least two witnesses are present at the time of the solemnization and registration of marriage.
Section 5 REGISTRATION OF MARRIAGES:	Every marriage solemnized under this Act shall be registered with the Union Council/Ward or any other Municipal Authority, where the marriage ceremony took place, within 45 days of the solemnization.
Section 7	(1) There shall be 4 copies of the certificate of marriage, as provided in Schedule A, all of which after being filled out shall be provided to the



<b>MANNER OF REGISTRATION:</b>	<p>Concerned Officer.</p> <p>(2) The Concerned Officer after satisfying himself that all conditions of marriage set out in Section 4 have been met shall certify/endorse the certificate of marriage and keep one copy of the certificate for its record and return the remaining copies to the parties.</p> <p>(3) The Concerned Officer shall maintain a Marriage Register for the purposes of this Act as per Rules and directions issued by the Government. (4) All the entries in the Marriage Register shall bear the official stamp of the Concerned Officer and shall be signed by: (i) the person solemnizing the marriage;</p> <p>(ii) both parties to the marriage;</p> <p>(iii) two credible witnesses; and</p> <p>(iv) Concerned Officer.</p>
--------------------------------	--

In the following, the jurisprudence of the superior courts on the topics related to marriage, divorce and Inheritance within Hindu and Christian laws have been laid down:

### **1. Marriage and divorce under the Hindu laws:**

#### **Ascertaining the relevant personal law for marriage:**

In *Miss Younica v. Joseph David*,<sup>107</sup> the Karachi High Court observed that where the parties fall within ‘the prohibited degrees of consanguinity,’ they cannot marry each other. However, whether the parties fall within the scope of prohibited degrees is to be decided according to personal law of the adherents. Therefore, in the instant case, where the parties had converted to Christianity, the Court observed that they cannot be governed by Hindu law anymore.

#### **Family Courts may entertain a suit for the dissolution of marriage:**

---

<sup>107</sup>*Miss Younica v. Joseph David, PLD 1974 Karachi 185*

In *Jagsi v. Shr Marwan*,<sup>108</sup> the Karachi High Court observed that family courts constituted under the Family Courts Act, 1964 are competent to adjudicate upon the matter related to the divorce under the customs of Hindu law.

**A non-Muslim wife, after embracing Islam, is free to marry if the husband does not convert to Islam:**

In *Laloo v. Senior Superintendent of Police, Mirpur Khas, Sindh*, the Karachi High Court observed that if a married non-Muslim wife embraces Islam, she may file a suit for dissolution of marriage. In response, the family court shall summon her husband, inform him of her conversion and would offer him to convert to Islam. If the husband, during the period of Iddat, converts to Islam, the marriage will continue. However, if the husband fails to convert during the iddah, the marriage shall be terminated and the wife is free to marry again.

**2. Inheritance under the Hindu Laws in Pakistan:**

**Schools of thought in Hindu Inheritance law**

In matters related to succession, two schools of thought, Dayabagha and Mitakshara have been followed by the Hindus over the centuries in the Indian Subcontinent. The former being practiced in Bengal and Assam whereas the latter is followed across the rest of Indian Sub-continent, including Pakistan.<sup>109</sup> Under the Mitakshara school, two modes of devolution of property exist i.e: property held by the Joint Hindu Family (HUF) and sole ownership. The Hindu Undivided Family holds a key status in the eyes of law and follows the concept of coparcenary property. Under Hindu Undivided Family, a coparcener is anyone who has the legal right to inherit his share from the property held jointly by Hindu Undivided Family. Furthermore, this right can be exercised anytime by seeking his rightful share through partitioning of joint property. As per Mitakshara, a person becomes a coparcener by virtue of his birth to the Hindu Undivided Family and ceases to be at the time of his death.’ In this regard, resort may be made to the

---

<sup>108</sup> *Jagsi v. Shr Marwan*, 2005 PLD 334

<sup>109</sup> SMA No. 73 of 2015, PLD 2016 Sindh 197

jurisprudence of Supreme Court of India in *State Bank of India v. Ghamandi Ram*<sup>110</sup> wherein the Court observed that:

**‘According to the Mitakshara School of Hindu Law all the property of a Hindu Joint Family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born. The incidents of the Mitakshara law are: first, the lineal male descendants of a person up to third generation, acquire on birth ownership in the ancestral properties in common.’**

On the contrary, a rule of succession applies where the property is held exclusively by an owner to be regarded as the ‘last full owner.’ In such a scenario, the ‘last full owner’ is the one who held the property absolutely, to the exclusion of others, at the time of death. According to Mulla’s Principles on Hindu Inheritance law, just like the daughter cannot inherit the share from the Hindu Joint Family, the daughters of the ‘last full owner’ are not eligible to inherit from their deceased father’s property in the life of their mother. In this regard, resort may be made to the following section from Mulla’s Principles of Hindu Law:

**‘Daughters do not inherit until all the widows are dead. As between daughters, the inheritance goes first, to the unmarried daughters, next, to daughters who are married and unprovided for, and lastly, to daughters, who are married and well to do.’<sup>111</sup>**

Unlike Mitakshara, the Dayabagha school does not recognize the concept of Hindu Undivided Family and coparcenary property. Therefore, under Dayabhaga, the right to inheritance only exists upon the death of an individual owner. Therefore, it can be

---

<sup>110</sup>State Bank of India v. Ghamandi Ram, 1969 AIR 1330 & 1969 SCR (3) 51

<sup>111</sup>Section 42, Mulla’s Principles on Hindu Inheritance Law

concluded that where the Mitakshara allows for the ‘unity of ownership’ in property, Dayabagha believes in ‘unity of possession.’

### **Laws related to the Hindu Inheritance in Pakistan:**

In Pakistan, the laws governing the Hindu Inheritance are the Hindu Inheritance (Removal of Disabilities) Act, 1928, Hindu Law of Inheritance (Amendment) Act, 1929 and the Hindu Women’s Right to Property Act, 1937. To begin with, Hindu Women's Right to Property Act, 1937 was brought in to ensure that the widow of the male gets an equal share to that of a son in the deceased’s property. Under Section 3(1) of the Act, when a Hindu male, following the Dayabagha law or any other customary law dies intestate, having a separate property, his widow shall receive an equal share to that of his son.<sup>112</sup> In such a scenario where he leaves behind more than one widow, the share among the widows shall be distributed equally. Similarly, section 3(2) of the Act provides that the widow of a deceased having a share in the Hindu Joint property, following any Hindu school other than Dayabagha shall be entitled to share equal to that of a deceased.<sup>113</sup>

Secondly, Hindu Law of Inheritance (Amendment) Act, 1929, applicable in the case of a death of Hindu males following Mitakshara law, having property not held in coparcenary and not disposed of by will, provides that there property shall be distributed to his ‘son’s daughter, daughter’s daughter, sister and sister’s son shall, in the order so specified, be entitled to rank in the order of succession next after a father’s father and before a father’s brother.’<sup>114</sup> Furthermore, the aforementioned provision does not ‘affect any special family or local custom having the force of law.’<sup>115</sup> Lastly, the Hindu Inheritance (Removal of Disabilities) Act, 1928 provides that a person following Dayabhaga school shall not be excluded from the right to inheritance on the ground of deformity, disease or any mental or physical defect.<sup>116</sup> In this regard, the Lahore High Court in *Mst Razia Begum v.*

---

<sup>112</sup>The Hindu Women’s Right to Property Act, 1937 (Act XVIII of 1937), Section 3(1)

<sup>113</sup>The Hindu Women’s Right to Property Act, 1937 (Act XVIII of 1937), Section 3(2)

<sup>114</sup>The Hindu Law of Inheritance (Amendment) Act, 1929 (Act II of 1929) Section 2

<sup>115</sup>The Hindu Law of Inheritance (Amendment) Act, 1929 (Act II of 1929) Section 3(a)

<sup>116</sup>THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT, 1928 (XII of 1928) Section 2

*Pakistan*<sup>117</sup> observed that where a person is lunatic or idiots by birth, they may be deprived of the right to inheritance but not otherwise.

The combined reading of the aforementioned Acts suggest that these laws fail to provide the Hindu daughter with the right to inherit her father's deceased property. Besides this, the High Court of Sindh in the landmark *Rana Bhagwan Das*<sup>118</sup> case held that under the Mitakshara school of Hindu succession laws, daughters of the father dying intestate do not have a right to inherit deceased father's property. In this regard, resort may be made to the following paragraph of the Court's order:

**'Under the rules of succession, the daughters, during the lifetime of their mother, are not entitled to inherit from the estate of their father, and such right accrues to them only after the death of their mother. In other words, the daughters succeed if their mother dies during the lifetime of their mother.'**<sup>119</sup>

### **3. Marriage and Divorce under the Christian laws in Pakistan:**

In *Mst Shumaila Sharif v. The Secretary, Union Council*,<sup>120</sup> the Lahore High Court observed that, in Pakistan, the primary law applicable for the Christians is Christian Marriage Act, 1872 and the Divorce Act, 1869. In this regard, the Court further observed that Section 10 of the Divorce Act specifies the grounds on which the husband and wife may file a petition for dissolution of marriage. Similarly, section 22 of the Divorce Act prohibits the court from passing a decree for divorce a mensa et thoro but allows the husband or wife to obtain a decree of judicial separation on the ground of adultery, cruelty, or desertion without reasonable cause for two or more years.

**Mere assertion of wife that she doesn't want to live with her husband is not enough:**

---

<sup>117</sup>*Mst Shumaila Sharif v. The Secretary, Union Council* (2003 CLC 587)

<sup>118</sup>SMA. No. 73 of 2015, PLD 2016 Sindh 197

<sup>119</sup>SMA. No. 73 of 2015, PLD 2016 Sindh 197

<sup>120</sup>*Mst Shumaila Sharif v. The Secretary, Union Council*, 2024 PLD 443

In *Asif Raza Masih v. Mst Sofia alias Pinky*,<sup>121</sup> the Peshawar High Court observed that the bond of marriage between the Christian husband and wife was of permanent nature. In such a scenario, the wife had to prove her case on concrete facts after leading reliable and cogent evidence to facts on which the claim of dissolution of marriage was based, only then the Court could grant decree for a dissolution of marriage under S.10 of Divorce Act, 1869. In this regard, the Court further observed that the mere assertion of the wife that she was not ready to live with husband was not sufficient for dissolving marriage under the Christian law. Similarly, in *Pervaiz Afzal v. Mehwish*,<sup>122</sup> it was held that unless and until the grounds mentioned in section 10 of the Divorce Act, 1869 were not met, the dissolution of marriage could not take place. This is so because the concept of Khula is alien to Christian law. However, it is to be observed that this was not the case prior to the passing of Federal laws (Revision and Declaration) Ordinance 1981.<sup>123</sup>

Prior to that, the wife had the opportunity to seek no fault divorce under section 7 of the Divorce Act, 1869. After its repeal, no such right is available to a wife. In this regard, One such aggrieved member of Christian community, approached the Lahore High Court to challenge the repeal of section 7 of the Divorce Act and after taking into consideration the facts of the case, Lahore High Court declared the repeal of section 7 of the Act as unconstitutional.<sup>124</sup>

After this judgment of the Lahore High Court, Christian couples are entitled to no-default divorce. Therefore, couples who are in unhappy marriages may seek divorce without accusing their spouse of criminal offenses. Similarly, women who are in abusive marriages, whose husbands have deserted them or who want to end the marriage for any other reason are empowered to do so. However, the judgment of the Lahore High Court is applicable within the province of Punjab only, and Christian couples particularly, Christian women in other provinces of the country are deprived of the right of no-default divorce.

---

<sup>121</sup>*Asif Raza Masih v. Mst Sofia alias Pinky* (2021 pld 41 Peshawar High Court)

<sup>122</sup>*Pervaiz Afzal v. Mehwish* ( 2020 pld 160 Lahore High Court)

<sup>123</sup> Federal Laws (Revision and Declaration) Ordinance 1981 (Ordinance XXVIII of 1981)

<sup>124</sup>*Ameen Masih v. Federation of Pakistan*, PLD 2017 Lah 610