UCP Journal *of* Law & Legal Education
Vol. 1, Issue 2 (January-June 2023)

The Recommendations of The Council of Islamic Ideology on Family Laws: An Analytical Review

Mahboob Usman*, Zeeshan Ashraf Qureshi**, Mohammad Azam Hussain, Mohamad Fateh Labanieh*******

Abstract

Before and after the partition of the sub-continent, efforts were in place to provide a comprehensive mechanism for the resolution of family disputes of Muslims according to the injunctions of Islam. Islam remained the cornerstone of the new state which surfaced as Objectives Resolution. Then, under the 1956 Constitution, a commission was constituted and assigned the task of making recommendations for the Islamisation of the laws of the country. The same institution, with the change of nomenclature, The Council of Islamic Ideology (CII), was assigned the same task under the 1962 and 1973 Constitutions. Since then, the Council has examined almost every aspect of existing legislation on family matters, primarily, The Muslim Family Laws Ordinance (MFLO), 1961 and The West Pakistan Family Court Act, 1964. It has recommended amendments for the improvement of these laws. This paper is to identify whether CII has provided adequate recommendations to the legislature to address the issues pertaining to family laws in Pakistan. This paper is qualitative in nature and descriptive analysis has been made based on primary and secondary data. This paper concludes that CII has played its role as per the constitution and published its annual reports in which issues of family laws have comprehensively been addressed. The paper suggests that the advice of the council must be followed in letter and spirit to bring these laws in consonance with the injunction of Islam.

KEYWORDS: Family Law; CII; Legislation; Family Issues; MFLO 1961; Pakistan.

*****Assistant Director (Judicial), Ministry of Religious Affairs & Interfaith Harmony, Islamabad, Pakistan; PhD, International Islamic University, Islamabad. email: mehboob_usman@yahoo.com. **PhD Scholar, School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia. email: zeshan.f08@gmail.com; *******Associate Professor at School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia. email: hmazam@uum.edu.my. ********Post-doctoral fellow at the School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia.
email: m.fateh.labanieh@uum.edu.my.

Article History: Received March 06, 2023; Received in revised form April 12, 2023; Received with Second Revision June 28, 2023; Accepted July 3, 2023, Available online July 21, 2023

Introduction

Muslims of the Indian sub-continent were able to get an independent State on 14th August 1947 after a drawn-out struggle with the vision to freely follow the teachings of Islam. The main purpose was to provide a system where the principles of *Shari'ah* were followed in letter and spirit (Ghazi, 2007). Therefore, soon after independence, the first well-known and important guidelines, for running affairs of the newly emerged country, as per the teaching of Islam, were provided in the form of "Objectives Resolution" in 1949 (Mahmood, 2009), which later became the substantive part of "The Constitution of Pakistan, 1973".

Thereafter, many efforts were made for the preparation of the constitution and many committees were established and different tasks were given to them. However, it took nine years of efforts by the Constituent Assembly of Pakistan to successfully frame a constitution that was adopted on 29th February 1956 and was enforced on 23rd March 1956, proclaiming the state "Islamic Republic of Pakistan". In the 1947 Independence Act, it was provided that the existing laws shall continue until modified by the concerned assembly (Bains, 1962). Therefore, to run the affairs of the country, as a stop-gap arrangement, the existing laws were adopted for the state of Pakistan. Thus, there was a need to examine the law to bring it into conformity with the injunctions of *Shari'ah*. The 1956 Constitution constituted a Commission for Islamizing the existing laws (Sultana, 2018) under Article 198(3). Unfortunately, on 7th October 1958 martial law was imposed and the 1956 Constitution was abrogated. Thus, the said Commission could not function (A.Q, 2008).

Framers of the Constitution of 1962, while framing the Constitution, kept in mind the demands of Muslims under Article 199 of the 1962 Constitution (Sial, 2008). However, the Advisory Council of Islamic Ideology was established under Article 203 of the Constitution which continued to function regularly till the framing of the 1973 Constitution. The function of the council according to Article 204 of the 1962 Constitution, inter alia, was the Islamisation of existing laws in Pakistan.

Another Constitution was given to the country in 1973. Under Article 228 of the 1973 Constitution, the Council of Islamic Ideology (CII) was established (The Constitution of the Islamic

Republic of Pakistan, 1973). The Functions of the Council according to Article 230, inter alia, were the same as in previous constitutions (Sheikh, 2009).

Under Article 230(4) of the 1973 Constitution, the Council was bound to submit its final report within seven years of its appointment but despite the lapse of more than 25 years, the Council was unable to submit its final report till 1996 (Hamdani, 2016). The Council has, however, since its inception, submitted more than 90 reports (including annual and subject-wise). The reports after the final report of 1996 could not be placed before the Parliament and Provincial Assemblies. It is pertinent to mention here that some of the reports of the council were discussed in the Special Committee of the Senate but not in National Assembly (Ahmad, 2019). However, as per requirements of the constitution, reports compiled after its final Report of 1996, are not required to be laid before the Parliament and Provincial Assemblies (Hamdani, 2016).

After the establishment of CII, the purpose of the council was to ensure Islamisation of laws in Pakistan and the objective of the council must be achieved through its advice to the legislature. Moreover, as a constitutional institution, it is responsible for addressing all issues/debates about the Islamisation of laws (Islam & Faqir, 2020).

The Family Courts were established in Pakistan after the enactment of the Muslim Family Laws Ordinance (1961) and West Pakistan Family Courts Act (1964). The first law is considered substantive law and the second is procedural law to deal with all the family disputes (Qureshi, 2021). However, since the enactment of these laws, a controversial debate started among religious scholars on the basis of sectarian differences and it is still on the table. Against this backdrop, it is significant to find whether the CII has played its role in addressing the issues regarding family laws in Pakistan. This article aims to provide an overview of CII reports on family laws. It is consequential to find the answer to the question that how the CII is providing advice to the stakeholders in the context of this controversy and suggested improvement in the family laws.

The Council of Islamic Ideology on Family Issues: An Overview

So far, the Council has made more than 6639 recommendations, which include recommendations regarding amendments in 839 laws and general recommendations regarding the economy, education, media, social reforms, etc., (Khan & Mahmood, 2022) and enactment of new laws. In this paper, the recommendation of the council on family laws, particularly the Muslim Family Courts Act (1964) has been discussed.

Many, including lawyers, judges, and researchers raise the question that the Council's reports are no longer valid as the time specified for the final report has lapsed. Even the Sindh Provincial Assembly passed a resolution to abolish the council (Sheikh & Ismail, 2020). According to the Constitution, the reports of the Council are still valid given Article 254 of the Constitution (Khan & Mahmood, 2022), which reads as under:

> **Failure to comply with requirements as to time does not render an act invalid**. When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period.

So, it can safely be concluded that the reports of the council are still valid for implementation and incorporation by the legislature.

The Procedure of Family Courts and The Role Of CII: An Analysis

The procedure adopted by the courts for adjudication of family disputes was not speedy thus a need was felt by the legislature to provide a proper and speedy mechanism for expeditious disposal of clashes relating to marriage, family affairs, and for matters connected therewith (Carroll, 2002). Therefore, the West Pakistan Family Courts Act (1964), now named as The Family Courts Act (1964) and the amendment was made (Gazette of Pakistan, 1996).

All family matters are adjudicated under the Family Courts Act (1964). Under this Act, the West Pakistan Family Court

Rules, 1964 were framed. This Act requires at least one family court in each district and at least one female judge in each district under Section 3 of the Family Courts Act (1964). The main purpose of the Act is to make provisions for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith as mentioned in the preamble of the Act. (Zia, 2019) Under this Act, a family court has jurisdiction in the following matters:

i. Dissolution of marriage, including Khula.
ii. Dower.
iii. Maintenance.
iv. Restitution of conjugal rights.
v. Custody of children, and the visitation rights of parents to meet children (Law Vision, 2021).
vi. Guardianship.
vii. Jactitation of marriage.
viii. Dowry.
ix. The personal property and belongings of a wife and a child living with his mother.
x. Any other matter arising out of the Nakahama.

In the original Act, only dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of children, and guardianship were covered. Jactitation of marriage was added in 1969, dowry was added in 1997, the personal property and belongings of a wife and a child living with his mother, and other matters arising out of the Nakahama were added in 2002 (Punjab Laws, 2020).

Family courts in Pakistan aim to promote therapeutic justice by providing a less formal and more accessible platform for resolving disputes relating to family and domestic matters. Therefore, now the researchers have tried to study different recommendations of the CII on the subject. Firstly, the matter related to the intimation of the case to defendants, when the case has been filed in the family court, and how the defendant is summoned. Section 8 of The Family Courts Act, 1964 deals with the summoning and notice which reads as under:

> 8. Intimation to defendants. (1) When a plaint is presented to a Family Court, it shall:

(a) fix a date ordinarily of not more than thirty days for the appearance of the defendant.
(b) issue summons to the defendant to appear on a date specified therein.
(c) within three days of the presentation of the plaint, send to each defendant, by registered post, acknowledgement due, a notice of the suit, together with a copy of the plaint, a copy of the Schedule referred to in sub-section (2) of section 7 and copies of the documents and a list of documents referred to in sub-section (3) of the said section.
(2) Every summons issued under clause (b) of sub-section (1) shall be accompanied by a copy of the plaint, a copy of the Schedule referred to in sub-section (2) of section 7, and copies of the documents and list of documents referred to in sub-section (3) of the said section.
(6) Summons issued under clause (b) of sub-section (1) shall be served in the manner provided in the Code of Civil Procedure, 1908, Order V, Rules 9, 10, 11, 16, 17, 18, 19, 21, 23, 24, 26, 27, 28 and 29. The cost of such summons shall be assessed and paid as for summons issued under the Code of Civil Procedure, 1908.

سمنوں کی تعمیل بہت زیادہ احتیاط کی متقاضی ہوتی ہے تا کہ ان کی عدم تعمیل، غلط عمیل، بے جا تعمیل، انکار تعمیل سے بچا جاسکے۔ ایسی تمام صورتوں میں (آرڈر نمبر 5 قاعدہ نمبر 9 تا 18 اور 30) تعمیل کروانے والے افسر کی یہ ذمہ داری ہے کہ وہ اپنی رپورٹ میں کم از کم دو افراد کے نام، پتے مع ان کے دستخطوں یا نشان انگوٹھا کا ذکر کریں جو اس امر کی گواہی دیں کہ سمن ان کے سامنے حوالے کئے گئے (یا جیسی بھی صورت ہو) اور ان دو افراد میں سے کم از کم ایک شخص ایسا ہونا چاہئے جو اس شخص کو پہچانتا ہو جس کے نام سمن جاری ہو اور اس کے گھر کو بھی جانتا ہو۔ یہ چیز اسلامی تقاضے کو پورا کرتی ہے جس کے تحت اس واقعہ کے ثبوت کے لئے دو گواہوں کا ہونا ضروری ہے

(CII Report, 1983, pp. 74-75)

After that issuance of summons to the defendant, if no person appears on behalf of the defendant, then the family court has the power to conduct Ex-parte proceedings. However, if the defendant appears after receiving the summons, they need to submit a written statement under Section 9 of the said law. The Ex-parte proceedings in the eyes of Islamic law are questionable in family matters. It is pertinent to mention that family matters are considered

personal matters, because of this personal nature they can't be decided Ex-parte. Section 9, subsections 5 and 6 of the Act of 1964 go as follows:

> (5) If the defendant fails to appear on the date fixed by the Family Court for his appearance, then
> (a) if it is proved that the summons or notice was duly served on the defendant, the Family Court may proceed ex-parte; provided that where the Family Court has adjourned the hearing of the suit ex-parte, and the defendant at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Family Court directs, be heard in answer to the suit as if he had appeared on the day fixed for his appearance; and
> (b) if it is not proved that the defendant was duly served as provided in subsection (4) of section 8, the Family Court shall issue fresh summons and notices to the defendant and cause the same to be served in the manner provided in clauses (b) and (c) of sub-section (1) of section 8.
> (6) In any case in which a decree is passed ex-parte against a defendant under this Act, he may apply within a reasonable time of the passing thereof to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree against him, and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also.

This provision is related to ex-parte proceedings. The question arises whether the *Qaza alal Ghaib* is allowed or not. The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended and proposed the following:

کونسل کسی دعویٰ میں مدعا علیہ کے غیرموجود ہونے پر یک طرفہ کاروائی کی صورت میں حسب ذیل طریق کار اختیار کرنے کی سفارش کرتی ہے۔
(الف) مدعی کے نصاب شہادت کے مطابق گواہ پیش کرنے کی صورت میں اس شہادت کے مطابق فیصلہ کیا جائے گا۔
(ب) اگر صرف ایک گواہ ہے تو مدعی سے قسم بھی لی جائے گی۔
(ج) اگر مدعی کے پاس گواہ نہ ہو تو صرف مدعی کی قسم پر فیصلہ کیا جائے گا اور اس کی قسم سے انکار کرنے کی صورت میں عدالت دعویٰ خارج کر دے گی (CII Report, 1983, p.76)

If the written statement has been submitted by the defendants, then the family court judge has to try for reconciliation between the parties as prescribed in the Holy Quran.

Allah almighty says in the Holy Quran:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلاَحًا يُوَفِّقِ اللهُ بَيْنَهُمَا إِنَّ اللهَ كَانَ عَلِيمًا خَبِيرًا

> "If you fear a split between them (the spouses), send one arbitrator from his people and one from her people. If they desire to set things right, Allah shall bring about harmony between them. Surely, Allah is All-Knowing, All-Aware" (Holy Quran 4: 35).

Section 10 of the Act of 1964 addresses the reconciliation process as a pre-trial proceeding. It states:

> Pre-trial proceedings (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.
>
> (2) On the date so fixed, the Court shall examine the plaint, the written statement (if any), and the precis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.
>
> (3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to affect a compromise or reconciliation between the parties, if this is possible.
>
> (4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for the recording of evidence.
>
> Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass a decree for dissolution of marriage

forthwith and shall also restore to the husband the *Haq Mehr* received by the wife in consideration of marriage at the time of marriage.

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follow:

ہماری عدالتوں میں حکم مقرر کیے جانے کا طریقہ رائج نہیں ہے۔ اگر حکم قرآنی کے پیش نظر حکم مقرر کئے جائیں تو دریافت حال کے بعد عدالت کو اپنی رپورٹ پیش کریں اور عدالت اس رپورٹ کی روشنی میں مناسب فیصلہ کرے تو زوجین کے تعلقات میں اصلاح کا زیادہ امکان ہو گا۔ اگرچہ عائلی عدالتوں کے قانون مجریہ 1964 ء کے تحت حاکم عدالت کے لئے لازمی قرار دیا گیا ہے کہ وہ فریقین کو صلح و صفائی پر آمادہ کرنے کی کوشش کرے اور ان کو اس کے لئے موقع دے۔ لیکن عملی طور پر صلح کرانے کا کام نہ صرف ایک جج کے لئے چند در چند دشواریوں کا موجب ہے بلکہ مفید نتائج برآمد ہونے کی بھی زیادہ توقع نہیں کی جا سکتی۔ بنا بریں مناسب ہو گا کہ قانون ازدواج مسلمانان مجریہ 1939ء اور مغربی پاکستان مسلم عائلی عدالتوں کے قانون مجریہ 1964ء کی متعلقہ دفعات میں مندرجہ بالا معروضات کی روشنی میں ترمیم کی جائے (CII Report, 1983, pp.78-79)

اس سلسلے میں ایک تجویر یہ بھی ہے کہ قانون ھذا کے تحت حکموں کی تقرری، اختیارات اور تصفیہ کے سلسلے میں بمشورہ کونسل علیحدہ علیحدہ قواعد وضع کیے جائیں- (CII Report, 1983, p.76)

After Pre-trial proceedings, if it is successful, the matter is disposed of accordingly. If reconciliation has failed, the matter is fixed for recording of evidence under Section 11 of the Act. The family court can examine the witnesses and allow the defence for cross-examination. If the plaintiff and defendant wish for the written affidavit, the court may allow it as per proviso to Section 11.

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as:

یہ دفعہ شہادت قلمبند کرنے سے متعلق ہے۔ اس سلسلے میں کونسل کو اپنے مرتب کردہ قانون شہادت کے تحت کاروائی کرنے کی سفارش کرنی چاہئے۔ یہ امر اس لئے بھی ضروری ہے کہ عائلی عدالتوں میں مقدمات کی سماعت کے لئے قانون شہادت مجریہ 1872ء پر عملدرآمد کرنا منع ہے، جس کا ذکر دفعہ 17 قانون ھذا میں کیا گیا ہے(CII Report, 1983, pp. 79-80)

عائلی عدالتوں میں جومقدمات سماعت کئے جائیں ان کی کاروائی ان کیمرہ (جج کے چیمبر میں) کی جائے جہاں پبلک کا داخلہ ممنوع ہو۔ موجودہ قانون میں یہ صورت ہے کہ اگر فریقین راضی ہوں تو ایسا کیا جاسکتا ہے یا کسی ایک فریق کی درخواست پر جو عدالت مناسب خیال کرے تو ایسا کرسکتی ہے۔ عام طور پر ہوتا یہ ہے کہ اس قسم کی کاروائی کرنے کی درخواست بالعموم عورت کی طرف سے پیش کی جاتی ہے، جسکی مخالفت بالعموم مرد کی طرف سے ہوتی ہے، جس کا مقصد عورت کو پریشان وھراسان کرنا ہوتا ہے۔ موجودہ اخلاقی انحطاط کے سبب یہ امر اور بھی ضروری ہو جاتا ہے کہ عائلی عدالتوں کی کاروائیاں بند کمرہ عدالت میں ہوں، جہاں

اخبار نویسوں اور عام پبلک کو داخلے کی اجازت نہ ہو۔ صرف مقدمہ فریق سے متعلق فریقین موجود ہوں (CII Report, 1983. p.80)

After recording the evidence in the family disputes, the court will, once again, try for reconciliation between the parties as it is mentioned in the Holy Quran, Holy Prophet's sayings, and also evident from the acts of the companions of the Holy Prophet PBUH that in family disputes reconciliation is the best reward. In this regard, Section 12 of the Act says:

> Conclusion of trial. (1) After the close of evidence of both sides, the Family Court shall make another effort to affect a compromise or reconciliation between the parties.
>
> (2) If such compromise or reconciliation is not possible, the Family Court shall announce its judgment and give a decree

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follows:

اس دفعہ کے تحت یہ قرار دیا گیا ہے کہ فریقین کی شہادت کے اختتام کے بعد فیملی کورٹ ایک دفعہ پھر فریقین کے درمیان راضی نامہ (مصالحت) کرانے کی کوشش کرے گی۔ کونسل اپنی سفارش زیر دفعہ 11 کا اعادہ کرتی ہے اور مصالحت کے لئے وہی طریقہ تجویز کرتی ہے، جو قرآن پاک سے ثابت ہے۔ چنانچہ قرآن مجید میں ارشاد ہے:-

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلاَحًا يُوَفِّقِ اللّهُ بَيْنَهُمَا

کونسل نے--- دفعہ 10 کے تحت ۔منظور کردہ سفارش کا اعادہ کیا اور مصالحت کے لئے فریقین کی جانب سے حکم مقرر کئے جانے کی سفارش کی -

(CII Report, 1983, p.80)

When the family court has passed a decree or judgment in a case, the parties can exercise their right to appeal against the order of the court. Section 14 of the Act relates to appeals. It says that all the orders of the Family Court are appealable except in the case of dissolution of marriage with certain exceptions to Section 2 Clause viii of the Dissolution of Muslim Marriages Act (1939).

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follow:

یہ دفعہ اپیل سے متعلق ہے۔ اس دفعہ کے تحت فیملی کورٹ کی جاری کردہ اس ڈگری کے خلاف کوئی اپیل دائر نہیں کی جاسکے گی۔ جو تنسیخ نکاح کی بابت ہو ماسوائے اس صورت کے جبکہ یہ "مسلم تنسیخ ازدواج ایکٹ 1939ء، کی دفعہ 2 کی شق (د) کی مد (8) میں مذکورہ وجوہ کی بنا پر کی گئی ہو، جو ظلم اور ضرر کی بنا پر حق تنسیخ نکاح سے متعلق ہے-

حیرت کی بات یہ ہے کہ اس دفعہ میں یہ کہا گیا ہے کہ اگر مہر کا دعویٰ ایک ہزار سے زائد ہو یا یہ دعویٰ 25 روپے سے زائد ہو تو ماہانہ سے زائد نان ونفقہ دیئے جانے کا حکم صادر کرے تو ان دونوں امور کی بابت اپیل کا حق ہو گا۔ گویا واضعین قانون کی نگاہ میں ایک ہزار ایک روپے مہر کی ڈگری اور 26 روپے ماہانہ نان و نفقہ کی ڈگری تو موجب اپیل ہے لیکن طلاق کی ڈگری ماسوائے اس صورت کے جس کا ذکر سطور بالا میں کیا گیا ہے، کسی طرح قابل اپیل نہیں ہے۔ یہ صورت شریعت اسلامیہ کی اس روح کے منافی ہے جو وہ عائلی قانون کے تحت زوجین کے ازدواجی تعلق کو ملحوظ رکھتی ہے۔ جناب چیئرمین کونسل نے بحیثیت جج سندھ ہائی کورٹ مقدمہ بنام سید علی حیدر کاظمی بنام مسمات نقی بانو مندرجہ سی ایل سی 1980ء صفحہ 1782 میں حکومت کو اس امر کی طرف توجہ دلائی تھی۔ اس فیصلے کی ایک نقل رجسٹرار ہائی کورٹ کی جانب سے صوبائی محکمہ قانون حکومت سندھ کو ارسال کی گئی تھی اور یہ بات چیئرمین کونسل کے ذاتی علم میں ہے کہ اسکی ایک نقل وفاقی وزارت قانون کو بھی گئی تھی۔ تاھنوز اس پر کوئی کاروائی نہیں کی گئی۔ فیصلہ کے متعلقہ حصے کا متن سطور ذیل میں نقل کیا جاتا ہے۔

(CII Report, 1983, p.81)

Before parting with this case, CII observed that the appeal is provided under the Act against the decision of the Family Court, in matters relating to claims for dower exceeding Rs.1,000, for maintenance allowance exceeding Rs. 25 or less per month, restitution of conjugal rights, custody of children and guardianship but no appeal lies from the decree passed by a Family Court for dissolution of marriage (Mushtaq, 2017), except in the case of dissolution for reasons specified in clause (d) of the item (viii) of Section 2 of the Dissolution of Muslim Marriages Act (1939). A decree passed for the dissolution of marriage is, certainly, of more importance than a decree for a dower exceeding Rs. 1,000, particularly in the social conditions of our society. CII, may, therefore, advise the Government concerned to consider this aspect of the matter and provide for an appeal from a decree passed by the Family Court in other cases of dissolution of marriages for reasons specified in other clauses of Section 2 of the Dissolution of Muslim Marriages Act (1939). Let a copy of "this judgment be sent to the Secretary, Ministry of Law", Government of Sind, for information on taking necessary steps considering these recommendations (Ahmed & Boivin, 2018).

As mentioned above the Government of Sindh and the Government of Pakistan must take the essential steps to enforce and implement the recommendations of the CII with regard to appeals against orders for the maintenance and the dissolution of marriage. As it is also relevant to mention that all family matters are indeed

personal in nature. However, the matter of dissolution of marriage, dower, and maintenance are different in nature and context of the relationship. The recommendation of the CII is as follows;

کونسل کو فیصلے میں مذکورہ تجویز سے اتفاق کرنا چاہئے اور یہ سفارش کرنی چاہئے کہ دفعہ ھذا میں اس طرح ترمیم کی جائے کہ تنسیخ نکاح کی بابت دیگر وجوہ کے سبب دی جانے والی ڈگری کے خلاف بھی اپیل دائر کی جاسکے -
(CII Report, 1983, pp.81-82)

اس وقت صورتحال یہ ہے کہ تنسیخ نکاح کی ڈگری کے خلاف ہائی کورٹ میں بصیغہ خصوصی سماعت اجراء پروانہ کی درخواست دائر کی جاتی ہے۔ چونکہ ہائیکورٹ اجراء پروانہ کی دوخواست کی سماعت کے دوران ان نکات پر غور کرنے کی مجاز نہیں ہے جو امر واقعہ سے متعلق ہوں اور وہ کسی ایسے قانونی نکتہ پر غورکرتی ہے جس کے لئے ادعا کیا گیا ہو کہ فیملی کورٹ کو اس مقدمہ کی سماعت کا اختیار ہی نہیں تھا یا فیملی کورٹس سے کوئی ایسی فاش غلطی ہوئی ہو جو بادی النظر میں ریکارڈ سے ظاہر ہو اور جس کی وجہ سے انصاف کا خون ہوا ہو۔ یہ اختیار سماعت چونکہ محدود ہے لہذا اکثر اوقات لوگوں کو داد رسی نہیں ملتی جو انہیں شاید اپیل کی صورت میں مل سکتی ہے -
(CII Report, 1983, p.82)

کونسل نے چیئرمین صاحب کی متذکرہ بالا تجویز کو بطور سفارش متفقہ طور پر منظور کرلیا (CII Report, 1983, p.83)

It is also significant that Section 17 of the Family Courts Act (1964) relates to the applicability of the Evidence Act and Code of Civil Procedure to family court proceedings, which reads as under:

> Provisions of Evidence Act and Code of Civil Procedure not to apply. (1) Save as otherwise expressly provided by or under this Act, the provisions of the Evidence Act (1872), and the Code of Civil Procedure (1908), except Sections 10 and 11, shall not apply to proceedings before any Family Court.
>
> (2) Sections 8 to 11 of the Oaths Act (1872), shall apply to all proceedings before the Family Courts.

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follows:

اس دفعہ کے تحت قانون شہادت مجریہ 1872ء کے اطلاق سے عائلی عدالتوں کو منع کیا گیا ہے لیکن ساتھ ہی کوئی ضابطہ شہادت ان کی رہنمائی کے لئے مقرر نہیں ہے۔ لہذا کونسل کو سفارش کرنی چاہئے کہ کونسل کے مرتب کردہ اسلامی قانون شہادت کا دفعہ ھذا کے تحت اطلاق کیا جانا چاہئے-(CII Report, 1983, pp.84)

کونسل سفارش کرتی ہے کہ کونسل کے مرتب کردہ اسلامی قانون شہادت کا دفعہ ھذا کے تحت اطلاق کیا جائے- (CII Report, 1983, p.84)

Moreover, Section 17(A) of the Act of 1964 is related to the interim order for maintenance which reads as under:

> Interim Order for Maintenance. At any stage of proceedings in a suit for maintenance the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.

The CII in 2000-01 deliberated on this provision of the Act and proposed the following:

اس لئے کہ آرڈیننس ہذا --- کی رو سے مقدمات کا فیصلہ چار ماہ کے اندر کیا جانا ہے۔ ایسی صورت میں نان ونفقہ کے لئے عارضی رقوم جاری کرنے کی چنداں ضرورت نہیں۔ نیز یہ کہ نفقہ ادا کرنے کی تاریخ میں کسی ناگزیر وجہ کی بناء پر تاخیر کی صورت میں یہ دفعہ مدعا علیہ کے حق دفاع کو بالکلیہ ختم کردیتی ہے جو کہ قرین انصاف نہیں۔ (CII Report, 2000-01, p.119)

The province of Punjab has amended this section. Section 20 of the Family Courts Act is related to the investment of powers of Magistrates on Judges which says:

> Investment of powers of Magistrates on Judges. The government may invest any Judge of a Family Court with the powers of Magistrate First Class to make an order for maintenance under Section 488 of the Code of Criminal Procedure (1898).

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as if the person failed to maintain his wife and comply with court orders, it must be dealt with criminal charges and punishments.

یہ دفعہ ضابطہ فوجداری مجریہ 1898ء کی دفعہ 488 کے تحت اختیارات تفویض کرنے سے متعلق ہے۔ اس ضمن میں کونسل اپنی اس سفارش کا اعادہ کرتی ہے جو اس نے مذکورہ بالا دفعہ 488 ضابطہ فوجداری کے بارے میں کی ہے۔ جس کے تحت ناجائز اولاد کے نفقہ کی ذمہ داری شرعا باپ پر نہیں ہوتی اور عدالت اسکے خلاف نان ونفقہ کی کوئی ڈگری جاری نہیں کرسکتی ۔

(CII Report, 1983, p. 85)

Section 21 of the Act of 1964 is related to MFLO 1961 which states that no provision of law would be affected by this Act which is contrary to MFLO 1961. The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follows:

مسلم عائلی قوانین کے بارے میں کونسل اپنی سفارشات پیش کر چکی ہے۔ امید ہے کہ حکومت وقت کونسل کی سفارشات کے پیش نظر مسلم عائلی قوانین آرڈیننس

1961ء میں ترامیم کرے گی اور ان ترمیمات کا لحاظ قانون ھذا کی دفعہ 21 کے تحت کیا جائیگا (CII Report, 1983, p.86)

Family Court has no power to pass injunctions/stay any proceedings pending before the Chairman union council or pending at any other forum under Section 22 of the Act of 1964 which relates to the issuance of injunctions/stay.

The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended:

اس دفعہ کے تحت فیملی کورٹ کو حکم امتناعی جاری کرنے کی ممانعت کی گئی ہے اور وہ مسلم عائلی قوانین مجریہ 1961ء کے تحت کسی چیئرمین یا ثالثی کونسل کے روبرو کاروائی کے خلاف حکم امتناعی جاری کرنے یا روکنے کا اختیار نہیں رکھتی۔ کونسل مسلم عائلی قوانین آرڈیننس مجریہ 1961ء کے تحت اپنی سفارشات پہلے ہی پیش کرچکی ہے۔ --- کونسل نے متفقہ طور پر تجویز کیا کہ حکومت دفعہ ھذا کے بارے میں کونسل کی سابقہ سفارشات کو نافذ کرنے کا اہتمام کرے -

(CII Report, 1983, p.86)

Section 23 of the Act of 1964 talks about the validity of marriage and says that it cannot be questioned in any court of law if the marriage has been solemnized under MFLO 1961. The CII in 1983 deliberated on this provision of the Act and stated that this section should be amended as follows:

اس دفعہ میں قانون ھذا کے تحت مسلم عائلی قوانین آرڈیننس 1961ء کے تحت رجسٹرڈ شدہ نکاحوں کے جواز کو فیملی کورٹ میں زیر سماعت نہیں لایا جاسکتا۔ اخبارات میں آئے دن نکاحوں کی رجسٹریشن کے سلسلہ میں خبریں آتی رہتی ہیں اور یہ امر عام طور پر سننے میں آتا ہے کہ رجسٹرار نکاح کو رشوت دے کر پچھلی تاریخوں میں نکاح نامہ حاصل کر لیا جاتا ہے، خصوصا جب سے حدود آرڈیننس کا نفاذ ہوا یہ خبریں کچھ زیادہ ہی آنے لگی ہیں، لہذا کونسل کو یہ تجویز کرنی چاہئے کہ دفعہ ھذا کو منسوخ کیا جائے--- کونسل نے اتفاق کے بعد قانون ھذا کی دفعہ 23 کو منسوخ کرنے کی سفارش کی- (CII Report, 1983, pp.86-87)

Section 25 of the Act empowers the family court to act as a district court for the purposes of the Guardian and Wards Act (1890). The CII in 1983 made the following recommendation for the courts while exercising their functions under the Act of 1890:

دفعہ 25 کے ضمن میں کونسل یہ سفارش کرتی ہے کہ نابالغوں کے سرپرست یا ولی جائیداد کے تقرر کے وقت احکام شریعت کا پورا لحاظ کیا جائے، مثلا یہ کہ کسی مسلمان نابالغ کا ولی غیر مسلم مقرر نہیں کیا جانا چاہئے-

(CII Report, 1983, pp.86-87)

Under Section 26 of the Act of 1964, the Government may, by notification in the official Gazette, make rules to carry into effect the provisions of the Act. But these rules cannot be inconsistent with

the provisions of the Act itself. The CII in 1983 deliberated on this provision and stated that this section should be amended as follow:
کونسل اس سے پہلے قوانین حدود کے تحت سفارش کر چکی ہے کہ قوانین حدود کے تحت جو قواعد مرتب کئے جائیں، وہ کونسل ھذا کے مشورے سے کئے جائیں۔ کونسل اس ضمن میں پرزور سفارش کرتی ہے کہ وہ جملہ قوانین جن کا تعلق قوانین حدود، قصاص و دیت یا مسلمانوں کے شخصی قوانین سے ہو، ان تمام قوانین کے تحت بنائی جانے والی مرکزی اور صوبائی حکومتوں کو اس امر کا پابند کیا جائے کہ وہ رولز (Rules) کی ترتیب و تشکیل میں کونسل سے مشورہ حاصل کرنے کی پابند ہوں گی، تاکہ قانون کے شرعی مقاصد فوت نہ ہونے پائیں۔ اس امر کا التزام متعلقہ قانون کی اس دفعہ میں کیا جانا چاہئے جو دفعہ حکومت کو اس قانون کے تحت قواعد مرتب کرنے کا اختیار دیتی ہے۔ کونسل مزید سفارش کرتی ہے کہ اس سفارش کو محض اس قانون کی حد تک محدود نہ سمجھا جائے بلکہ یہ سفارش عمومی نوعیت کی حامل ہے، یعنی یہ کہ کسی بھی قانون کے تحت جب بھی کوئی وزارت یا محکمہ متعلقہ کوئی ضابطہ یا قواعد مرتب کرے تو کونسل ھذا سے مشورہ کیا جانا چاہئے تا کہ قانون اور قواعد میں باہم توافق اور مناسبت قائم رہے۔

(CII Report, 1983, p.90)

Initially, in the Schedule of the Family Courts Act of 1964, the following were included:

i. Dissolution of marriage
ii. Dower
iii. Maintenance
iv. Restitution of conjugal rights
v. Custody of children
vi. Guardianship

Later, the jactitation of marriage was also included in the schedule in the year 1969 (Holz, 2022).

The subject of dowry was not in the domain of Family Courts, and people used to file a case in civil courts, therefore, the CII in 1983 suggested that the domain of family courts should be extended to the subject of dowry (Ahmed & Boivin, 2018). Therefore, based on this recommendation, it was included in Section 17-A of the Family Courts Act in 1997 (The West Pakistan Family Courts (Sindh Amendment) Act, 1997). Since then, the case has been dealt with by the family courts.

Conclusion

Since the establishment of the Council, it has given various recommendations for the establishment of a few institutions,

amendments in various laws, and enactment of new laws for family issues. As discussed above, CII has recommended changes in the family laws as well. It has provided many recommendations for the proper guidance of the executive, legislator, and judiciary which has not been implemented so far. If suggestions of the council may be incorporated, it will play an effective role in the betterment of society and resolve the existing controversies.

The scope of the powers of the Council of Islamic Ideology is just to provide guidelines to all the stakeholders to make new laws and amend the laws as per the teachings of Islam. To that extent, CII is providing relevant, legal, and constitutionally sound recommendations and has published its annual reports on the subjects. The CII's efforts in amendments to the Family Laws of Pakistan are significantly reflected and discussed in this article. It is concluded on this note that CII has played a vital role in providing recommendations to make family laws Islamic and constitutional in light of Articles 2 and 227 of the Constitution of the Islamic Republic of Pakistan (1973).

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