

## **Composition, Jurisdiction and Powers of Family Courts in Pakistan:**

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*Family Courts Act 1964* was enacted with the object to create a special court for the decisions of matters relating to disputes relating to marriage and family affairs and other matters connected therewith. This Act gives a special procedure through which Family court regulates its own proceedings in accordance with the provisions of this Act. The provisions of CPC 1908 are generally not applicable<sup>1</sup> to the trials before family courts, however usually proceedings are more or less the same, yet, family court has special powers to discover the possibilities of amicable settlement of family disputes. The procedure of family courts is more flexible so that the family matters can be settled by way of administration of justice in its true sense un-hindered by technicalities<sup>2</sup>.

'*Family Court*' means a court constituted under West Pakistan Family Courts Act 1964<sup>3</sup>. These courts have exclusive jurisdiction to entertain, hear and adjudicate upon the matters mentioned in schedule and it is a civil court, despite the exclusion of CPC 1908<sup>4</sup>. The word '*party*' has been defined under the Act, not only to include spouses but also any person whose presence is considered necessary for a proper decision of the dispute and the family court adds him as a party<sup>5</sup>. In this short article the composition, jurisdiction and all ancillary matters to the family courts shall be discussed in a precise and understandable manner, so that the reader can have an idea about the procedure and powers of such courts.

### **Establishment<sup>6</sup>:**

Provincial government is empowered to establish one or more family courts in each District and appoint a judge for each court. It is also pertinent to mention that at least one female judge is to be appointed in each district upon the request of provincial government and in consultation with High Court. The government can appoint more female judges if necessary. In order to be appointed as a judge of family court a person has to be qualified to be appointed as a district judge, additional district judge or a civil judge<sup>7</sup>. There is a doubt whether judge need to be Muslim or not, however authorities emphasize on functions and not that the judge should be Muslim<sup>8</sup>.

### **Jurisdiction<sup>9</sup>:**

The family court's jurisdiction over different matters is prescribed under Part I of the Schedule and is subject to provisions of MFLO 1961 and Conciliation Courts Ordinance 1961. The High Court can amend the Schedule with approval of the government. In short, family courts have exclusive jurisdiction in following matters:-

- (a) Dissolution of marriage including *Khula*
- (b) Dower
- (c) Maintenance
- (d) Restitution of conjugal rights
- (e) Custody of children and the visitation rights of parents to meet them
- (f) Jactitation of marriage<sup>10</sup>
- (g) Dowry
- (h) Personal property and belongings of wife
- (i) Guardianship
- (j) Offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other<sup>11</sup>

The place of sitting of family court can be any place within the district or within the area for which it is established and it is not necessary for the court to sit at the district headquarter only<sup>12</sup>. When a plaint is presented to a court having no jurisdiction, it is to be returned to be presented to competent court and the court returning the plaint shall endorse upon it the date of its presentation and its return along-with the name of the party presenting it and a brief statement of the reasons for returning<sup>13</sup>. The court in whose local limits cause of action arose either wholly or in part or where the parties reside or last resided together has the jurisdiction to hear the suit<sup>14</sup>. However, in cases of dissolution of marriage and dower the court within the local limits of which the wife ordinarily resides has the jurisdiction.

### **Procedure:**

Following procedure if followed from instituting a suit in a family court till decree by a family court i.e.:

#### Presentation of Plaint<sup>15</sup>:

This plaint is to contain all material facts, give number of witnesses intended to be produced in support, the names and addresses of witnesses and brief summary of the facts, which such witnesses will depose<sup>16</sup>. Such plaint for dissolution of marriage can also contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children. As per latest amendment<sup>17</sup> consolidated suit can be filed.

#### Documents Relied Upon:

In case plaintiff relies upon a document which is in his possession, he shall produce it in the court when the plaint is presented and at the same time, deliver the document or a copy thereof, to be filed with the plaint. In case he relies on a document, not in his possession or power, he can enter such document in a list to be appended to the plaint by giving reasons of relevancy of that document to the claim in the plaint<sup>18</sup>.

#### Copies to Defendant:

It is mandatory for the plaintiff to accompany as many duplicate copies of plaint and documents as there are defendants in the suit for service upon the defendants<sup>19</sup>.

#### Fixation of Date:

After presentation of plaint, court has to fix a date of not more than 30 days for the appearance of the defendant<sup>20</sup>.

#### Summons:

The court issues summons to defendant and within 3 days of the presentation of plaint, send a notice to each defendant through registered post, acknowledgement due or any other mode i.e. courier etc, together with a copy of plaint and documents attached<sup>21</sup>. Another copy of notice shall be sent to the Chairman of the union council within whose jurisdiction the defendant/s reside. The expenses of such service are to be borne by the plaintiff<sup>22</sup>. The manner of service of summons is the same as provided under CPC 1908<sup>23</sup>.

#### Appearance of Defendant and Written Statement<sup>24</sup>:

On the fixed date, both parties are to appear and defendant has to file written statement along-with list of witnesses with precise evidence of each witness. The copies of all such documents with written statement shall be handed over to plaintiff or his agent or advocate. In case defendant does not appear on the date fixed, the court will see, whether summons were duly served or not?. In the first case, court may proceed ex parte and in the later case, it shall issue fresh summons and notices. However, where court adjourns the hearing of the suit ex parte, and on next hearing if defendant appears at such new date with good and reasonable cause for non-appearance, the court has power to allow him to answer, upon such terms as the court deems fit.

#### In Camera Proceedings<sup>25</sup>:

The court has the power to direct whole or any part of the proceedings under it to be held in camera. This may also be done upon request of both parties.

#### Ex Parte Decree<sup>26</sup>:

In case, family court proceeds ex parte, it is bound to take some evidence before it decrees a claim against ex parte defendant<sup>27</sup> and in case a decree is passed ex parte, the defendant may apply through application<sup>28</sup> in writing within 30 days of the notice of decree, to family court to set aside the order, with sufficient and reasonable cause for non-appearing and in such a case, upon satisfaction, the family court may set aside the decree and fix a new date of hearing on such terms as to costs as it deems fit.

#### Pre-Trial Proceedings<sup>29</sup>:

After filing of written statement, court fixes as early date for a pretrial hearing of the case, on such date, it examines the plaint and written statement and evidences filed by both parties. Also on such date it ascertains the points at issue and attempt to affect a compromise or reconciliation between the parties. In case no reconciliation is possible, court frames the issues and fixes a date for hearing and recording of evidence.

#### Evidence<sup>30</sup>:

On date fixed for evidence, court examines the witnesses and these witnesses give their evidences in their own words. However, further examination, cross examination and reexamination is allowed. Family court also has power to forbid any indecent, scandalous or frivolous question and may also ask any question from the witness to further elaborate his point. Court also has power to take evidence in shape of affidavit. Family court may issue summons to witnesses<sup>31</sup>. The evidence [it is now taken in shape of affidavit] shall be taken down in writing, in the language of the court by the Presiding Officer of the court either by himself or in his presence; this shall also be signed by such officer<sup>32</sup>, in case it is written in his presence he shall make a note to that effect and state the reasons for doing so. In case the evidence is taken in English the court will note down in that language unless the parties request it to be written in other language, and in that case an authenticated translation of such evidence in the language of the court shall form the part of the court record. The presiding officer also has the power to make a memorandum of the substance of the evidence given by the witness in case evidence is not taken down verbatim, but in such case the presiding officer is bound to write the memorandum in his own hand and sign the same<sup>33</sup>. After recording of evidence it is mandatory to read over the same to the witness and if necessary corrections can be made accordingly<sup>34</sup>. In case of corrections, the presiding officer has to make a memorandum in this regard and write down the objections along-with his remarks<sup>35</sup>.

#### Hearing and Conclusion of Trial<sup>36</sup>:

After closure of evidence, court will hear the counsels and make another effort to affect a compromise between the parties, in case no such conciliation is possible, it shall announce its judgment and give a decree accordingly.

#### Judgment/ Decree<sup>37</sup>:

Every judgment or order by family court is to be written by the presiding officer or from the dictation of such officer either in English or in language of the court. It is to be dated and signed by the judge and delivered in open court. This order contains the reasons for the decision and the points which court had to decide. On passing the judgment a decree is to be drawn up in Form I and is to be signed by the judge. It shall also bear the seal<sup>38</sup> of the court<sup>39</sup>. It is also the duty of the court to maintain a register of decrees and orders<sup>40</sup>.

#### **Time for Disposal**<sup>41</sup>:

Court is bound to dispose of the case within 6 months from the date of institution. In case, case is not concluded within this period, any party can make an application to the High Court for necessary direction in this regard. After decree a copy of the decree is also to be sent to the Chairman concerned.

### **Enforcement<sup>42</sup>:**

After passing decree, family court enters its particulars in prescribed register. It can also record any money or property paid<sup>43</sup> or handed over in its presence and in case nothing is paid within the time specified by it, the same can be recovered as arrears of land revenue<sup>44</sup>. Court also has power to direct the payment of money into installments. Also, each decree is to be executed by the same court which passed it or any civil court as the district judge may direct. It should be noted that in case of execution of any decree by the family court, it would act a civil court, having all the powers or execution of a civil court<sup>45</sup>.

### **Appeal<sup>46</sup>:**

Appeal lies to High Court where family court is presided over by a district judge or additional district judge and to district judge in other cases. In following cases no right of appeal is given:-

- (a) Dissolution of marriage
- (b) Dower or dowry not exceeding Rs. 50,000/-
- (c) Maintenance not exceeding Rs. 1000/- per month

The appellate court is bound to dispose of the appeal within 4 months. The time period for filing the appeal is 30 days from the passing of decree or decision excluding the time required for obtaining copies<sup>47</sup>. This appeal is to be in writing and state the grounds on which decree or order is challenged and it contains the name of parties, their description and addresses along-with signatures of appellant and his counsel<sup>48</sup>. It is also necessary to attach certified copies of decree of order as the case may be. There is no right of appeal or revision against an interim order passed by a family court. It must be noted that no 2<sup>nd</sup> appeal is allowed and only in extraordinary circumstances writ petition can be filed.

### **Revision and Review:**

There is no scope for review or revision against the order of family court.

### **Contempt<sup>49</sup>:**

Any person who insults, causes an interruption in the work of the court, misbehaves with any person in court premises or uses abusive language, threats or uses physical force or refuses to answer any question put by family court, refuses to take oath is liable for contempt and in such a case family court can forthwith try such person and sentence him to fine upto Rs. 2000/-.

### **Issuance of Commission<sup>50</sup>:**

Family court can also issue commission to;

- (a) examine any person
- (b) make a local investigation
- (c) inspect any person or
- (d) inspect any document

### **Special Provision as to Pardanashin Lady<sup>51</sup>:**

Court also has power to permit her to be represented by a duly authorized agent.

### **Court Fee<sup>52</sup>:**

Rs. 15/- is the amount of court fee prescribed for any kind of suit or appeal.

### **Other Powers:**

- Family court also has powers of a Judicial Magistrate of 1<sup>st</sup> Class<sup>53</sup>
- Family court may pass an interim order to preserve and protect any property in dispute<sup>54</sup>
- Family court is deemed to be a District court for the purposes of Guardian and Wards Act 1890<sup>55</sup>
- In case the plaintiff or his pleader makes default in appearing before the court, the suit may be dismissed in default<sup>56</sup>, which may be restored upon application with sufficient grounds within 30 days of the dismissal in default<sup>57</sup>
- Family court can also allow the inspection of records upon application of any party, on payment of prescribed fee<sup>58</sup>

### **Limitations:**

- Family court has no power to issue an injunction to stay any proceeding pending before a chairman or an arbitration council<sup>59</sup>
- Family court can not question the validity of marriages registered under MFLO 1961<sup>60</sup>

### **Transfer of Cases<sup>61</sup>:**

The High Court or the District Court as the case may be can transfer the cases either suo moto or upon application. It is not necessary to commence the proceedings before the succeeding judge do novo unless the judge for reasons to be recorded in writing directs otherwise<sup>62</sup>.

Nevertheless, as it is stated earlier that family courts have been created as special courts for deciding the matters mentioned in West Pakistan Family Courts Act 1964. The provisions of CPC 1908 and QSO 1984 are generally not applicable to the trials before such courts in order to avoid technicalities and these courts are flexible and free to adopt their own procedure for the administration of justice. These courts are given a real inquisitional jurisdiction by introducing a special procedure including an obligation to discover the possibilities of amicable settlement. In short one can say that FCA 1964 has changed the forum, altered the method of trial and has empowered the family court to grant better remedy to the litigants.

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<sup>1</sup> See Section 17 Family Courts Act 1964 (FCA)

<sup>2</sup> 1996 MLD 2017(b)

<sup>3</sup> Sec 2 (b) FCA

<sup>4</sup> 2003 YLR 82

<sup>5</sup> Sec 2 (d) FCA

<sup>6</sup> Sec 3 ibid

<sup>7</sup> Sec 4 ibid

<sup>8</sup> PLD 1974 Kar 20 (DB)

<sup>9</sup> Sec 5 FCA

<sup>10</sup> Jactitation is a false pretence of being married to another.

<sup>11</sup> Sec 5 (2) ibid

<sup>12</sup> PLD 1974 BJ 4

<sup>13</sup> Rule 5 West Pakistan Family Courts Rules 1965 (FCR)

<sup>14</sup> Rule 6 ibid

<sup>15</sup> Sec 7 (1) FCA

<sup>16</sup> Sec 7 (2) ibid

<sup>17</sup> 2002 amendment

<sup>18</sup> Sec 7 (3) ibid

<sup>19</sup> Sec 7 (4) ibid

<sup>20</sup> Sec 8 (a) ibid

<sup>21</sup> Sec 8 (b) & (c) ibid

<sup>22</sup> Sec 8 (4) ibid

<sup>23</sup> Sec 8 (6) ibid and also see Order 5 Rules 9 to 29 CPC 1908 for details regarding service

<sup>24</sup> Sec 9 ibid

<sup>25</sup> Rule 10 FCR

<sup>26</sup> Sec 9 (6) ibid

<sup>27</sup> PLD 1989 Lah 69

<sup>28</sup> Rule 13 FCR

<sup>29</sup> Sec 10 FCA

<sup>30</sup> Sec 11 ibid

<sup>31</sup> See Sec 15 FCA for details

<sup>32</sup> Rule 10-A FCR

<sup>33</sup> Rule 10-A (4) FCR

<sup>34</sup> Rule 10-A (5) ibid

<sup>35</sup> Rule 10-A (6) ibid

<sup>36</sup> Sec 12 ibid

<sup>37</sup> Rule 14 FCR

<sup>38</sup> The description of the seal is also provided under Rule 24 (1) & (2) FCR that it is to be circular in shape and must have thereon inscription 'Family Court' and the name of the District and this seal is to be used on all summonses, orders, decree, copies and other documents issued by the Court.

<sup>39</sup> Rule 16 ibid

<sup>40</sup> Rule 17 ibid

<sup>41</sup> Sec 12-A ibid

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<sup>42</sup> Sec 13 ibid

<sup>43</sup> A receipt is to be given in Form II in case any money etc is received and these monies or properties deposited shall be entered in a register in Form III (See Rule 18, 19 FCR)

<sup>44</sup> See Land Revenue Act for details regarding modes of recovery

<sup>45</sup> See CPC 1908 for powers of executing court

<sup>46</sup> Sec 14 FCA

<sup>47</sup> Rule 22 FCR

<sup>48</sup> ibid

<sup>49</sup> Sec 16 ibid

<sup>50</sup> Sec 17-B ibid

<sup>51</sup> Sec 18 ibid

<sup>52</sup> Sec 19 ibid

<sup>53</sup> Sec 20 ibid

<sup>54</sup> Sec 21-A ibid

<sup>55</sup> Sec 25 ibid

<sup>56</sup> Rule 12 (1) FCR

<sup>57</sup> Rule 12 (2) ibid

<sup>58</sup> Rule 23 ibid

<sup>59</sup> Sec 22 ibid

<sup>60</sup> Sec 23 ibid

<sup>61</sup> Sec 25-A ibid

<sup>62</sup> Rule 9 FCR