



THE NIKAHNAMA & PROTECTION OF
WOMEN'S RIGHTS
AND PRIVILEGES IN A
MUSLIM MARRIAGE

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Message from Ms. Nuzhat Shirin, Chairperson Sindh Commission on the Status of Women

In our commitment to championing women’s rights and fostering equality, the Sindh Commission on the Status of Women (SCSW) was established under the SCSW Act 2015. Rooted in our mission to review and recommend legislative measures, policy frameworks, and initiatives for women’s empowerment and welfare, we are dedicated to ensuring that the rights of women are protected and upheld across the province of Sindh. At the heart of our efforts lies a deep understanding of the complexities that often shape women’s lives, particularly within the context of marriage.

The family is one of the most important social units in Pakistan. Women’s position within the family, her agency, decision-making power, and ability to negotiate her own life and choices are critical factors that contribute to her empowerment or disenfranchisement, whichever may be the case. In Pakistan, it is, unfortunately, the latter. The family in the patriarchal culture of Pakistan has been one of the institutions perpetuating Pakistani women and girls’ discrimination and marginalization. Pakistani and Islamic law both allow for women and girls to have a great number of rights and freedoms within a marriage. This has not translated into the reality of the lives of Pakistani women and girls.

In light of these circumstances, the study before you holds paramount importance. By shedding light on the interplay of Islamic principles, the Pakistani legal framework, and on-ground realities in relation to the rights of Muslim women within marriages, this study offers a sincere perspective on the challenges and opportunities in our pursuit of gender equality.

As you navigate through the findings of this study, you will discover insights that resonate with our mission at the SCSW. The study unveils deliberate patterns of systematic disempowerment that demand our collective attention and action. These findings highlight the importance of our ongoing work to reform and enhance existing systems, ensuring that women’s rights are fully realized, regardless of societal norms or misconceptions.

The recommendations outlined in this study align with the objectives of SCSW. It emphasizes the need for targeted training, increased awareness, and systemic changes - all of which are crucial components of our strategy to uplift women. Through the widespread dissemination of knowledge on women's rights within marriage - especially the Nikahnama - and advocating for practical measures, we can create an equitable and just society.

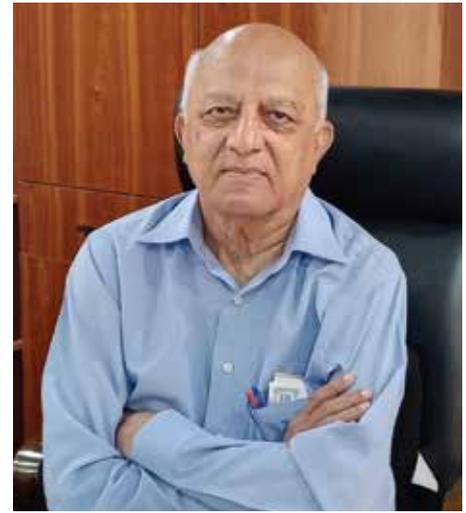
I extend my gratitude to the researchers and contributors whose dedication has illuminated the complexities of this critical issue. This study marks a milestone in our collective journey towards a more inclusive society where women's rights are not just acknowledged but celebrated.



Ms. Nuzhat Shirin
Chairperson Sindh Commission
on the Status of Women

Message from Justice Nasir Aslam Zahid Chairperson Legal Aid Society

The Legal Aid Society is committed to working toward women's and girls' equality within the public and private spheres. The family remains one of Pakistan's most important social units, which protects and supports but can also disempower women and girls. While the Constitution of the Islamic Republic of Pakistan 1973 and Islamic law both recognize and protect the rights and equality of women within marriage, the on-ground realities are, unfortunately, very different.



Justice Nasir Aslam Zahid
Chairperson Legal Aid Society

This study stands as a vital initiative undertaken by the Legal Aid Society to address a pressing need within Pakistani society. The goal is to unravel the complex obstacles hindering Muslim women's ability to take control and protect their rights in the context of marriage, a domain heavily influenced by patriarchal norms and conservative interpretations of Muslim Family Laws (MFL). By shedding light on the prevailing barriers and inequalities, it seeks to illuminate the legal and social intricacies that hinder women's negotiating capacity, rendering them vulnerable and disempowered.

Through this research, LAS seeks to bridge the gap between legal knowledge and women's lived realities, offering a comprehensive understanding of the current landscape of Muslim marriages in Pakistan. Using a detailed research methodology, the study delves into the heart of the issue, revealing the systematic disempowerment that women face due to the non-filling of the Muslim marriage contract, the 'Nikahnama'. The study intends to equip policymakers, legal practitioners, and communities with the insights needed to effect meaningful change by pinpointing the gaps, challenges, and potential solutions.

In essence, this study's purpose is to bring to the forefront the disparities that exist between theoretical legal rights and their practical application within the context of Muslim marriages. By doing so, it contributes to informed discourse and paves the way for tangible measures that can dismantle the structures of disempowerment and advocate for a more equitable and just system for Muslim women within marriage.

Acronyms and Abbreviations

CERP	Centre for Economic Research
CMRA	Child Marriage Restraint Act
FGD	Focus Group Discussion
IDI	In-Depth Interview
KII	Key Informant Interview
LAS	Legal Aid Society
MFL	Muslim Family Laws
MFLO	Muslim Family Law Ordinance
PBUH	Peace Be Upon Him
PCSW	Punjab Commission on the Status of Women
PDHS	Pakistan Demographic and Health Survey
SBA	Shaheed Benazirabad
SCMRA	Sindh Child Marriage Restraint Act
SCSW	Sindh Commission on the Status of Women
UC	Union Council

Executive Summary

Marriage is a complex intersection of tradition, religion, and law in Pakistan, particularly for Muslim women. Patriarchal norms and cultural practices can often limit women's autonomy and rights. This research strives to provide a comprehensive understanding of the current landscape of Muslim marriages in Sindh, with a specific focus on the “Nikahnama”, or the Muslim marriage contract.

This study uses a theory-based sequential mixed method approach for research inquiry. This includes an empirical study of 185 Nikahnamas from 3 target regions of Sindh. It further encompasses Focus Group Discussions (FGDs) with key stakeholders, Nikah registrars, and male and female community members. Further, it is also informed by Key Informant Interviews (KIIs) conducted with critical state and civil society members. The meticulous analysis from the above-mentioned methods unveils a deeply concerning and recurrent pattern of systematic disempowerment of women within the framework of Muslim marriage laws and the Nikahnama. Our empirical analysis of Nikahnamas shows that in 90% of the Nikahnamas, clauses 16 to 22 are either left completely blank, struck out, or fail to extend the stipulated rights to the bride. These clauses are related to the bride’s dower as property, any special conditions in marriage, the delegated right of divorce, special terms pertaining to maintenance, and information about the groom’s potential previous marriages.

The deliberate or inadvertent omission of vital safeguards and rights for women raises fundamental questions about gender equality, autonomy, and the overarching principles of justice and fairness within the context of the Muslim marriage contract. Through a thorough examination encompassing legal statutes, cultural norms, and practical implications, this study seeks to not only illuminate the contours of this issue but also to identify actionable strategies for fostering a more equitable and empowering environment for soon-to-be-married women in Sindh.

The study identifies key challenges that contribute to this disempowerment and poses actionable policy regulations to address these challenges. These include the necessity to regulate and capacitate Nikah Registrars comprehensively, ensuring mandatory qualifications and ongoing training. A Punjab-inspired model is recommended to enhance the role and responsibilities of Nikah Registrars, coupled with penalties for non-compliance. To engender a more thorough and accurate completion of Nikahnamas, the study highlights the significance of heightened community awareness initiatives and educational campaigns.

The study suggests that there should be an updated judicial approach to Islamic law regarding marriage, gender equality, and women's rights. It also highlights the significance of including discussions on women's financial rights and safeguards before and after marriage.

To summarize, the study suggests that comprehensive training programs, increased community awareness, and effective implementation of existing legal frameworks are needed to establish a fair and efficient mechanism for registering Muslim marriages in Sindh and Pakistan. By addressing these challenges, women's rights and well-being can be safeguarded.

The Nikahnama & Protection of Women's Rights and Privileges in a Muslim Marriage

The moulvi just [verbally] asks the girl whether she consents to the marriage. Her rights in the marriage are not explained to her, nor are her wishes for any special clauses included. She is not even given a chance to see her Nikahnama. [She is] just asked to sign it and continue with the marriage celebrations.

(Community Member, Female, Karachi)

Introduction

In Pakistani society, the family plays one of the most critical roles in creating or maintaining social structures, norms, and behaviors. Family and marriage are dealt with under personal laws in Pakistan i.e., as per the rules of religious beliefs of the individuals or groups, and governed accordingly. However, Pakistani society has been entrenched with patriarchal perspectives, cultures, beliefs, and behavior cutting across all religions, classes, castes, etc. Consequently, the interpretation and application of religious rules in Pakistan have been historically developed within a patriarchal framework where men are dominant and women subservient. This systematic bias is perpetuated by the institutions of family and marriage, contributing to the continued perpetuation of gender discrimination and inequality for women and girls in Pakistani society.

In Islamic law, marriage, while considered sacred, is fundamentally recognized as a contractual arrangement- the “Nikah”. This entails certain legal contractual provisions and specifications for the protection of both parties entering said contract. In Pakistan, the “Nikahnama”, or the legal contractual document for the Nikah, has been designed under the Muslim Family Ordinance 1961 and determines particularities of the marriage, with specific clauses and allowances which actively give space to include provisions that may empower and protect women's rights within the marriage.

Despite the provision of a legal framework and processes, in the majority of instances in Pakistan, entries of a Nikahnama are interpolated, left blank, or rendered vague by the parties involved. This pattern may be a result of carelessness, lack of awareness, or intentional malice to circumvent providing women with the protections and advantages that would enhance their financial well-being and position them in a more empowered and influential stance.

These clauses include significant provisions such as the delegation of the right of divorce, amount of maintenance, etc. This is further exacerbated by the reality that girls and women possess limited agency to negotiate their own choices and terms in life, especially marriage. Their constrained ability to influence decisions diminishes their ability to leverage the Nikahnama and its terms and conditions for their own protection.

This study seeks to provide evidence of this pattern of disempowerment of women in marriage through the deliberate exclusion of their rights and protections in the Nikahnama, and delve into the reasons behind it. Through analysis of Nikahnamas and discussions with male and female community members, Nikah Registrars, and social sector stakeholders across 3 regions of Sindh, the study intends to contribute to the discourse on strengthening women's rights, protections and agency within marriage with a focus on enforcing and advocating for the correct and strategic use of the Nikahnama.

The first section of this study discusses the family and marriage within Islam and the Pakistani legal framework. It seeks to create a deeper recognition of the fact that the current Muslim Family Laws (MFL) and interpretations in law and precedent are based on old juristic frameworks that do not bear relevance for current day realities and actual needs of individuals and families today. It advances the arguments for reform and more modern interpretations using Islamic concepts and tools such as '*Maslahah*' (deriving rulings based on the interest of the individual or the community)³ and '*ijtihad*' (human efforts to understand and interpret shariah and derive rules that offer solutions to existing and emerging problems)⁴ to ensure gender equality within the marriage and family. The second section identifies the methodologies used for this research and the limitations and challenges encountered. The third section provides an overview of the findings emerging from the research revealing patterns in behaviors around Nikahnamas whilst delving deeper into reasons behind them and thoughts on how better to protect women's rights in marriage. The last section concludes the research and provides key policy and community-level interventions, seeking to create positive and meaningful change.

³“Knowledge Building Brief #2: Muslim Family Laws: What Makes Reform Possible? (English).” Musawah, 8 Oct. 2021, www.musawah.org/resources/knowledge-building-brief-2-muslim-family-laws-what-makes-reform-possible-en/.

⁴Ibid

1. De-Coding Marriage & Family within Islam & the Pakistani Legal System

1.1. Muslim Family Law, Islam & Gender

The family, and thus marriage, is the fundamental social institution that plays a crucial role in shaping social norms, values, relationships, and behaviors in Pakistan. Familial structures, traditions, and customs govern the lives of girls and women⁵ within a patriarchal framework, assigning specific gender roles to men and women: a man being the head of the family, primary breadwinner, decision-maker and having control over resources, and women playing the role of caretakers and home-makers. Such *“gender roles are constructed of a combination of traditional roots and social values, primarily based on the concepts of production and reproduction, taken to mirror masculine and feminine traits of an individual”*⁶.

In Muslim countries such as Pakistan, law and practice are primarily based on interpretations of religion. Historically, the majority of *“family laws and practices in today’s Muslim countries and communities are based on theories and concepts that were developed by classical jurists (fuqaha) in vastly different historical, social, and economic contexts. In interpreting the Qur’an and the Sunnah, classical jurists were guided by the social and political realities of their age and a set of assumptions about law, society, and gender that reflected the state of knowledge, normative values, and patriarchal institutions of their time. The idea of gender equality had no place in, and little relevance to, their conceptions of justice. It was not part of their social experience”*.⁷

⁵Rizvi, Narjis, et al. “Gender: Shaping Personality, Lives and Health of Women in Pakistan - BMC Women’s Health.” BioMed Central, 1 Apr. 2014, www.biomedcentral.com/1472-6874/14/53.

⁶Ali TS, Krantz G, Gul R, Asad N, Johansson E, Mogren I. “Gender roles and their influence on life prospects for women in urban Karachi, Pakistan: a qualitative study.” Glob Health Action. 2011;4:7448. doi: 10.3402/gha.v4i0.7448. Epub 2011 Nov 2. PMID: 22065609; PMCID: PMC3208374.

⁷“Musawah Framework for Action (English).” Musawah, 2009, www.musawah.org/resources/musawah-framework-for-action/.

Historically, the monopoly over *ijtihad* (legal reasoning) has been with men to the complete exclusion of women's thoughts, experiences, and narratives being considered significantly important. This is not surprising when one recognizes that not only from the fact that historically all Islamic leaders have been men, but also that all major schools of thought that form the framework within which jurists interpret Islam today were men. This narrow, conservative interpretation of Islam of the "family" is now being critiqued by many "*because many aspects of our current Muslim family laws and practices are unjust and do not respond to the lives and experiences of Muslim families and individuals*".⁸

Pakistan is no exception to this pattern, with the legislature, judiciary, and society basing law and practice based on classical *fiqh* (Islamic jurisprudence) rulings, which are interpretations of Muslim jurists' decades after the time of the prophet Muhammed (PBUH).⁹ While the concepts of equality and justice started to evolve over centuries within the context of the rule of law and governance, "*...the unequal construction of gender rights formulated in their texts lingered—reproduced, in a modified way, in colonial and post-colonial family laws that merged classical juristic concepts with colonial influences and negative aspects of local customs. Most of the current Muslim family laws were created through this process and are therefore based on assumptions and concepts that have become irrelevant to the needs, experiences, and values of Muslims today. The administration of these hybrid statutes shifted from classical scholars, who became increasingly out of touch with changing political and social realities, to executive and legislative bodies that had neither the legitimacy nor the inclination to challenge premodern interpretations of the Shari'ah*".¹⁰

While recognizing that "*gender inequality manifests itself differently according to culture, politics, religion, and economic situation*",¹¹ in Pakistan, it is, in actuality, a mix of religion and culture that influences women's positionality within society. Religion, particularly as it is interpreted in Pakistan, is used to legitimize the denial of women's rights, particularly within the family and marriage.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

¹¹Ali TS, Krantz G, Gul R, Asad N, Johansson E, Mogren I. "Gender roles and their influence on life prospects for women in urban Karachi, Pakistan: a qualitative study." *Glob Health Action*. 2011;4:7448. doi: 10.3402/gha.v4i0.7448. Epub 2011 Nov 2. PMID: 22065609; PMCID: PMC3208374.

For example, in classical Islamic thought, “[t]he concept of marriage itself was one of domination by the husband and submission by the wife. Men were deemed to be protectors of women and the sole providers for the household, such that their wives were not obliged to do housework or even suckle their babies. Women, in turn, were required to obey their husbands completely”.¹² Here, much like in other Muslim countries, the concepts of ‘male authority (*qiwamah*)’ and ‘male guardianship (*wilaya*)’ form the cornerstone of family relations. These two concepts have emerged through discourse as an umbrella social and cultural contract of ‘protecting’ women and girls, and yet, failing to consider the resulting discrimination they cause. Many governments, especially Muslim governments, and courts, argue that this classical legal

These legal concepts, which treat men as protectors and providers of their families, also enjoin on Muslim men rights and privileges that Muslim women do not enjoy. Even in Muslim communities where classical juristic concepts have not been codified into law, the centuries-old *fiqh* rules and colonial and local norms have, in many cases, been invoked to sustain inequality between women and men within the family and wider society. Muslim women remain governed by laws and practices that discriminate against them in the name of traditional Islam, especially in the family. Religion and religious interpretations in Pakistan have been merged with a deep-rooted patriarchal culture, trends, and mindsets, making it difficult to differentiate where religion ends and culture begins. With the ‘stamp’ of Islam, it becomes exceedingly difficult to challenge ‘religious laws’ without the backlash of the religious right lobby.

¹²“Musawah Framework for Action (English).” Musawah, 2009,
www.musawah.org/resources/musawah-framework-for-action/.

framework is acceptable because it provides what they see as “complementary rights” rather than “inequality”.

Thus, laws related to families in Pakistan have highly patriarchal overtones and a discriminatory effect on women and children. Varied verdicts in judgments result in confusion and leave space for manipulation and violation of rights. Contentious and discriminatory clauses in the laws include: - Polygamy remains legal- the sole condition is that the husband must inform and receive consent from the first wife, but failure to do this does not invalidate the marriage and carries only a nominal punishment; ambiguities exist in the divorce processes, leading to conflicting interpretations- conflict between requirements to apply to the Arbitration Council for divorce certificates and the 90 days period has resulted in two streams of case law with no final and clear indication as to which should prevail; , maintenance for the wife lasts only for three months, which is not adequate in a country in which many women cannot attain an education or work outside the home, often leaving women financially insecure; unpaid labor within households goes unrecognized; inheritance rights, especially regarding agricultural land, are subject to prevailing traditions of the families, often depriving women of their rightful share; guardianship is often awarded to the father based on perceived financial capability and capacity for child maintenance- if guardianship is awarded to the mother, it is often challenged and given to the father if the mother remarries.

The inequality and discrimination that women and girls face in the family as a result of de facto, and in some instances de jure, discriminatory Muslim family laws impact women and girls in multiple ways throughout their lives. Most notably, they have contributed to restricting women's full autonomy and decision-making, limiting access to resources, education, livelihood, and employment opportunities, and curtailing access to sexual and reproductive health. Discrimination in the family also has wider implications for Muslim women's societal and political participation. Additionally, this leaves little room for women to possess the autonomy and agency to negotiate their own terms and conditions in marriage, make choices about whether to marry or not, or even leave a marriage.

However, there have been examples where the courts, in their interpretations, have moved away from the traditional approach. For example, in divorce cases, the apex courts, instead of relying on interpretations laid down by the contemporary schools of thought, have resorted to the primary text themselves and given women the right to divorce regardless of whether the husbands allowed it. Here, the judges saw themselves as being able to interpret primary text, whether it is the Constitution or the Holy Quran, and create space for new *ijtihad*, which can allow for dynamic changes within the law. Such progressive changes are only possible when judges are aided with liberal interpretations by lawyers.

1.2. Muslim Family Law within the Pakistani Legal Framework

In Pakistan, Muslim Family Law (MFL) is a blend of codified and customary law based on religious norms, also termed ‘Personal Law’.¹³ Dual systems such as this are not uncommon, particularly in Muslim countries. On the one hand, they consist of civil law, which is indebted to Western legal systems, and on the other hand, of family or personal status law, which is mainly built upon Sharia, Islamic religious law.

Similar to other dual legal systems in Pakistan, “[w]hen applying Islamic family law, judges not only use customary codes but also other ‘Islamically informed legal concepts’. Goals such as the public interest (*maslaha*), equity (*istihsān*), protecting vulnerable members of society, and similar matters serve to ensure that the litigants receive what they identify as ‘justice’. Unlike the codified law, these are unwritten codes and require the discretion of the *qādī* to be realized. Sometimes, in its application, codified law may come into conflict with the judges’ objective of providing ‘justice’. When such a paradox arises, the judge works it out by employing the ‘legal concepts’. Unlike law, which is supposed to be clear, particular, and decisive, ‘legal concepts’ are flexible, permeable, unspecific, unwritten, and used by the judges to manipulate the code and surmount situations in which paradoxes between the written code and social reality are inevitable (see Gluckman 1955). Hence, the judges’ flexibility is generated from this multiplicity of references, or combinations of rule-binding law and imprecise principles, which in fact provide the grounds for the application to be flexible.”¹⁴

MFL in Pakistan consists of a series of codified laws from the colonial and post-colonial eras and interpretations based on jurisprudence through the courts, interpreted through non-codified Islamic jurisprudence and Muhammadan law. The courts often rely on Dinshaw Fardunji Mulla’s interpretation of Islamic law as the primary guide to their interpretation and understanding of Islamic law. Ironically, despite the heavy usage of Mulla’s interpretations, it must be noted that Mulla was, in fact, not a Muslim scholar who can be accredited with religious expertise to interpret precepts of Islam. Mulla, of Zoroastrian faith by descent, was a legal scholar who authored a treatise on various subjects of law, including contract law and Muslim Personal Law.

¹³Naz R. & Zia. M. “Muslim Family Laws in Pakistan”, *Musawah*, 2009

¹⁴Nahda S. 2009, “Negotiating Custody Rights in Islamic Family Law.” *Permutations of Order* edited by Thomas Kirsch and Bertram Turner, Aldershot/Burlington: Ashgate.

The codified laws that touch upon key MFL issues such as marriage, divorce, custody, maintenance and related issues in Pakistan include the following:

- ▶ **The Muslim Family Laws Ordinance, 1961**
- ▶ **Dissolution of Muslim Marriage Act, 1939**
- ▶ **Guardian and Wards Act, 1890**
- ▶ **High Court Rules [Volume II]**
- ▶ **Maintenance Order Enforcement Act, 1921**
- ▶ **Family Courts Act, 1964**
- ▶ **Family Court Rules, 1965**
- ▶ **Child Marriage Restraint Act 1929**
- ▶ **Sindh Child Marriage Restraint Act 2013**
- ▶ **Enforcement of Sharia Act 1991**
- ▶ **Dowry and Bridal Gifts (Restriction) Act 1976**
- ▶ **Dowry and Bridal Gifts (Restriction) Rules, 1976**
- ▶ **Criminal Law (Second Amendment) Act 2011**
- ▶ **Contract Act 1872 (limited relevance)**
- ▶ **Law of Evidence (Qanun-e-Shahadat) Order 1984 (limited relevance)**

The flexibility in the interpretation of the law in the courts, however, has allowed for a more modernized and relevant judicial and legal response to the current lived realities of Muslim men and women. Albeit this is at the discretion of individual judges, through these instances, progress can be evidenced, particularly with an increased focus on gender equality, especially under the umbrella of the equality clause in the Constitution i.e., Article 25.¹⁵ This has led to a clash between *“the judicial power of interpretation versus traditional Islamic law as already interpreted by centuries of jurists”*¹⁶ and begs the question, *“[Is] family law immutable, unchangeable from that which God, the Qur'an, Muhammed, and Islamic jurisprudential scholars had written, or was it malleable to modern needs? In other words, which was to prevail: the codified Islamic law or the common law function of judges to interpret and modify that law through their decisions?”*¹⁷

¹⁵Article 25, Constitution of the Islamic Republic of Pakistan 1973

¹⁶Haider, N. 2000. “Islamic Legal Reform: The Case of Pakistan and Family Law”, Yale Journal of Law and Feminism, Vol. 12: 287.

¹⁷Ibid

1.3. Marriage & Key Components Under Pakistani Law

An Islamic marriage – the cornerstone of a family - is considered a contract (*'aqd*) that establishes a set of default rights and duties for spouses. It includes the offer and acceptance of marriage and consideration (*haq mehr*), and can also include conditions/stipulations that are mutually agreed upon by the parties and outlined in the marriage contract.¹⁸

The Qur'an and Prophetic practice outline the ethical and spiritual elements of marriage. In verses about marriage and relationships, the Qur'an names several values: *ma'ruf* (that which is commonly known to be good), *mawadda wa rahma* (love and compassion), *sakina* (serenity), *tashawur wa taradi* (consultation and mutual consent), *qist* (fairness), *ihsan* (kindness), and *karama* (dignity). However these values and ethical elements of marriage differ from its contractual nature and obligations.¹⁹

“And of His Signs is that He had created mates for you from your own kind that you may find peace in them and He has set between you love and mercy. Surely there are Signs in this for those who reflect.”

(Verse 30:21)

Furthermore, the Qur'an emphasizes that the bond between a husband and a wife must be honored, pointing out that marriage is a deeply faithful act of worship towards Allah; thus, the relationship must be treated with that much respect. The same is emphasized in numerous hadiths as well.

¹⁸“Marriage in Islamic Law - A Brief Introduction.” - 3 Dr Johnsons Chambers, 1 Mar. 1999, www.3djb.co.uk/articles/6/marriage-in-islamic-law-e28094-a-brief-introduction.

¹⁹“Policy Brief 7: Marriage as a Partnership of Equals.” Campaign for Justice in Muslim Family Laws, 23 June 2023, campaignforjustice.musawah.org/resources/policy-brief-7-marriage-as-a-partnership-of-equals/.

“The best of you is he who is best to his family, and I am the best among you to my family.”

(Sunan Ibn Majah)

However, legally, Muslim tradition considers marriage to be a contract (*‘aqd*) between two parties who, as with any contract, enter it freely. Islamic law dictates that the marriage process comprises several essential elements. It commences with a khutbah, which involves the solicitation of marriage. The Nikah is then ratified through the *ijab* and *qubul*, which refer to the offer and acceptance of marriage. Additionally, the presence of two witnesses, known as *shahidayn*, is a stipulation for the validity of the contract. Furthermore, according to the Shadi’ school of thought, the involvement of the *wali* – who is often the bride’s closest relative – is mandatory to validate the Nikah.²⁰

In Pakistan, a Muslim marriage is considered a civil contract, where two individuals voluntarily enter into a union, acknowledging it as legitimate in the eyes of the State and society. The Nikah ceremony in Pakistan includes the khutbah, the expression of *ijab* and *qabool* in the same setting, the presence of adult, sane Muslim witnesses, and the presence of a *wali*. Finally, the marriage necessitates the fixation of the dower (*mehr*), which serves as a consideration for the bride. Other than the Nikah, the marriage contract establishes rights and duties for each spouse. These rights and duties are gender-differentiated and interdependent, meaning that a failure to fulfill a specific duty by one spouse may impact their entitlement to certain rights.

For a marriage in Pakistan to be valid (*sahih*), it must adhere to all the legal requirements with no prohibitions affecting the parties involved. Prohibitions can be either permanent or temporary; if permanent, the marriage is considered void, whereas if temporary, it is considered irregular. Void (*batil*) marriages, on the other hand, have no legal consequences and are deemed invalid. Examples of void marriages include those forbidden by rules of blood relationship, affinity, fosterage, or marriages with the spouse of another without observing the necessary rules.²¹

Apart from the Nikah ceremony itself, it is crucial to consider several rights granted to both the bride and groom under the legal framework in Pakistan:

²⁰Khan, Nihal Ahmad. “Female Agency in Marriage in the Hanafi School of Law: Between Damascus and Transoxiana.” Maydan, 9 Dec. 2019, themaydan.com/2019/12/female-agency-in-marriage-in-the-%E1%B8%A5anafi-school-of-law-between-damascus-and-transoxiana/.

²¹Gombe, K. M. I. “Void and Voidable Nikah (Marriage).” Apr. 2021, nji.gov.ng/wp-content/uploads/2021/12/VOID-AND-VOIDABLE-MARRIAGE-by-Hon.-Kadi-M.-I.-Gombe.pdf.

Age of Marriage: According to the laws in Pakistan, for a marriage to be valid, both parties must have reached the age of consent. In Sindh,²² the legal age of marriage is 18 for both men and women, while in the rest of the country; it is 18 for men and 16 for women.²³

Despite the legal age specified by Pakistani laws, determining the age at which a marriage becomes legally valid remains a topic of debate among the Muslim Ummah. The Qur'an does not explicitly prescribe a specific age for marriage; instead, it emphasizes the need for maturity and sound judgment in managing one's affairs. In traditional schools of thought, a baligh girl, who has attained puberty, is considered to have reached sexual maturity and, consequently, is eligible for marriage.²⁴ However, this interpretation has been subject to varying opinions, leading to discussions on the appropriate age for marriage within Islamic jurisprudence.²⁵

Polygamy: The MFLO 1961 has also placed provisions to regulate polygamy and ensure the rights and protections of all parties involved. As per Section 6 of MFLO 1961:

As per the law, during the subsistence of an existing marriage, no man can contract another marriage without

- i. The permission in writing of the Arbitration Council²⁶
- ii. The Consent of existing wife or wives²⁷

Additionally, it is the Nikah Registrar or Nikahkhan's responsibility to fill all the columns of the Nikahnama regarding polygamy accurately.²⁸ The law has also categorized penalties in case of violation of these provisions. In case a Nikahkhan does not fill out the rights of polygamy in a Nikahnama accurately, he would be punished with simple imprisonment of one month with a fine of Rs. 25,000.²⁹ Furthermore, a man who contracts another marriage without the permission of the Arbitration Council is to pay the entire amount of dower, whether prompt or deferred, to his existing wife or wives, with additional penalties upon nonpayment.³⁰ Any complaint filed against such a man would lead to his imprisonment extending to one year, with a fine of Rs. 500,000.³¹

²²Sindh Child Marriage Restraint Act 2013

²³Child Marriage Restraint Act 1929

²⁴Hudda, A. "The Age of Marriage | The Religion of Al-Islam and Marriage." Al-Islam.Org, www.al-islam.org/religion-al-islam-and-marriage/age-marriage.

²⁵"Policy Brief 7: Marriage as a Partnership of Equals." Campaign for Justice in Muslim Family Laws, 23 June 2023, campaignforjustice.musawah.org/resources/policy-brief-7-marriage-as-a-partnership-of-equals/.

²⁶Section 6(1) MFLO 1961

²⁷Section 6(2) MFLO 1961

²⁸Section 6(2A) MFLO 1961

²⁹Section 6(4) MFLO 1961

³⁰Section 6(5a) MFLO 1961

³¹Section 6(5b) MFLO 1961

Divorce: In Pakistani law, two primary types of divorce exist for women, namely talaq-i-tafwid and khula, each having distinct requirements and implications.³²

Talaq-i-tafwid is a provision in Islamic law that grants the right of divorce to the wife, delegating the husband's authority in initiating divorce proceedings. This mechanism allows the wife to seek divorce under specific conditions agreed upon in the Nikahnama, thereby empowering her and providing a degree of protection within Islamic principles.³³

In cases where the right of divorce has not been delegated to the wife, she can pursue divorce through khula.³⁴ Khula is a process wherein the wife initiates the divorce from her husband by returning the dower (haq mehr) or an agreed-upon settlement.³⁵ However, it is essential to recognize that khula is not the most favorable divorce method for women due to its drawbacks. The process can be protracted, and women may be compelled to relinquish their financial claims, further complicating their situation.³⁶ Additionally, women might face discrimination within a male-dominated court system, making the process challenging and potentially unfair for them.

³²Sheikh, A. "Complete Procedure Law of Divorce & Khula in Pakistan", 18 May 2017, lawsocietypakistan.com/complete-procedure-law-of-divorce-khula-in-pakistan/.

³³Kapoor, H. "Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce: An Information Kit". Edited by Lucy Carroll, 1996, www.wluml.org/wp-content/uploads/2020/01/talaq-i-tawfid-eng.pdf.

³⁴Ibid.

³⁵Islamic Shari'a Council. "Khula | the Islamic Shari'a Council." The Islamic Shari'a Council |, 9 May 2023, www.islamic-sharia.org/downloads/khula.

³⁶"Policy Brief 4: Equal Divorce Rights in Muslim Family Laws - Campaign for Justice in Muslim Family Laws." Campaign for Justice in Muslim Family Laws, campaignforjustice.musawah.org/resources/policy-brief-4-equal-divorce-rights-in-muslim-family-laws.

What is the Nikahnama?

The Muslim Family Laws Ordinance 1961 in Pakistan mandates the use of a standardized Nikahnama for the registration of Muslim marriages.³⁷ This marriage contract enables couples to specify special conditions and stipulations they may want to incorporate into their marriage. It records essential details of the marriage, such as the names of the spouses, the amount of *haq mehr*, and other additional terms and conditions agreed upon by both parties.

Despite the fact that a verbal agreement (*'aqd*) can legally validate a marriage under Islamic law, the state emphasizes the importance of a written *Nikahnama*. The *Nikahnama* serves as a crucial legal document that outlines the terms and conditions of the marriage, providing clarity and protection for both the bride and groom. This emphasis on a written contract is evident in Pakistani case laws, where courts have consistently upheld the significance of the *Nikahnama* in resolving marital disputes and safeguarding the rights and responsibilities of spouses within a marriage.

Nikah

- ★ Verbal declaration of consent by both the bride and groom in the presence of witnesses and an officiant (Nikahkhwan)

Nikahnama

- ★ Written marriage contract that is often prepared and signed during the nikah ceremony
- ★ It serves as a legal document which outlines the terms and conditions of the marriage agreed upon by the couple

³⁷Section 5 MFLO 1961

The Standardized Nikahnama Used in Sindh

1.	Name of the Ward _____ Town/Union _____ Tehsil _____ Police Station _____ and District _____ where the marriage took place	
2.	Name of the groom & his father, with their respective residence	<i>Name and residence of the groom and his father as mentioned in their CNICs</i>
3.	Date of Birth of the Groom Age of the Groom	<i>Date of Birth and age of marriage of groom to be written out as per his CNIC. The legal age of marriage in Sindh is 18</i>
4.	Name of the Bride & her father, with their respective residence	<i>Name and residence of the bride and her father as mentioned in their CNICs</i>
5.	Whether the Bride is a Virgin, Widow or Divorced	<i>The bride must declare whether she has been married before, and details to be filled out</i>
6.	Date of Birth of the Bride Age of the Bride	<i>Date of Birth and age of marriage of bride to be written out as per her CNIC. The legal age of marriage in Sindh is 18</i>
7.	Name of the Attorney, if any, appointed by the Bride, his father's name, and his residence	<i>If the bride appoints an attorney/representative (vakil/wali) on her behalf then his details must be filled out</i>
8.	Name of the Witnesses to the appointment of Bride's Attorney, with their fathers' names, and their residences and the relationship with the bride	<i>The witnesses to the appointment of attorney/representative in column 7</i>
9.	Name of the Attorney, if any, appointed by the Groom, his father's name, and his residence	<i>If the groom appoints an attorney/representative (vakil/wali) on his behalf then his details must be filled out</i>
10.	Name of the witnesses to the appointment of the Groom's Attorney with their fathers' names and their residences	<i>The witnesses to the appointment of attorney/representative in column 9</i>
11.	Name of the Witnesses to the Marriage, their fathers' names and their residences	<i>Name of witnesses to the marriage (must be 2 male, sane Muslim adults, or 1 male and 2 female) These witnesses are different from those appointed in Columns 8 and 10</i>
12.	Date on which the marriage was solemnized	<i>Date of the Nikah is to be entered in the Nikahnama</i>

13.	Amount of Dower for marriage paid	<i>Name and residence of the groom and his father as mentioned in their CNICs</i>
14.	The amount of Dower which is prompt and the amount which is deferred	<i>Timing of mehr: To be specified whether the mehr is to be paid promptly (mu'ajjal) or deferred until the wife desires (mu'wajjal or ghair mu'ajjal)</i>
15.	Whether any portion of the Dower was paid at the time of marriage, and if so, how much	<i>If a portion of the mehr has been paid at the time of the Nikah, with the remaining left for later, the amount or value has to be stated here</i>
16.	Whether any property was given in lieu of the whole or any part of the Dower amount with specification of the same and its valuation agreed to between the parties	Property as mehr: <i>If the girl is given her mehr, or a part of it, in the form of property, its value as agreed between the two parties is to be stated</i>
17.	Special Conditions, if any	<i>Any special conditions or additional terms decided before or at the time of Nikah by the bride and groom to be added here</i>
18.	Whether the Husband has delegated the power of divorce to the wife, if so, under what conditions	<i>Right to divorce (talaq-i-tafwid): If the husband has not delegated this right to his wife or if this column is struck out, the wife will not be able to seek talaq from the husband. In that case, she is entitled to khula from court, giving up her haq mehr</i>
19.	Whether the husband's right of divorce has been curtailed in any way	<i>The bride to specify any reasonable restrictions that she may want applied to the husband's right to divorce</i>
20.	Whether any document was drawn up at the time of marriage relating to the Dower amount and maintenance, etc, if so contents their of:	Maintenance: <i>The girl may specify her maintenance allowance or the dowry she brought in a document attached to the Nikahnama</i>
21.	Whether the bridegroom has any existing, wife, and if so, whether he has secured the permission of Arbitration council under the Muslim Family Ordinance, 1961 to contact another	Polygamy: <i>If the groom has an existing wife (or wives), this clause is to be filled in the affirmative under Pakistan's constitution, and he has to obtain official permission from his existing wife</i>

22.	Number and Date of the Communication conveying to the Groom the permission of the Arbitration Council to contract another marriage	<i>If the groom is already married, he must first obtain permission from the Arbitration Council to be contracting the current marriage and mention the details of the permission</i>		
23.	Name, Father's name, and address of the person who solemnized the marriage	<i>Name and details of the Nikahkhwan to be mentioned here</i>		
24.	Date of Registration of Marriage	<i>Date of when the Nikah has been registered to be mentioned here</i>		
25.	Registration fee paid	<i>Registration fee paid by the Nikah Registrar to the Union Council to be mentioned here</i>		
Signature of the Groom or his Attorney		Signature of the Bride or her Attorney	Signature of the Witnesses of the Marriage	Signature of the Official who certified the marriage
Signature and seal of the Registrar of Marriage				

Registration of Nikahnamas and the Role of Nikah Registrars

The roles of a *Nikahkhwan* and a *Nikah Registrar* in Muslim marriages are distinct but interconnected. While the *Nikahkhwan* conducts the religious ceremony of a Nikah, the *Nikah Registrar* is entrusted with the legal responsibility of registering the marriage. By fulfilling their respective roles, these individuals contribute to the formalization, recognition, and legal validity of Muslim marriages. Where the *Nikahkhwan's* primary focus is to facilitate the union of two individuals in a manner that aligns with Islamic teachings, the *Nikah registrar* holds the legal responsibility for officially recording the marriage. A *Nikahkhwan* can also be any man who may or may not have any formal religious education and who solemnizes Nikah while not necessarily having a license to register a Nikahnama.

As per **Section 5 of the Muslim Family Law Ordinance, 1961**, every Muslim marriage is to be registered in line with the provisions of the MFLO 1961.³⁸ **A license is granted to one or more individuals by each Union Council (UC)** for the purpose of registration of marriages, which are then known as Nikah Registrars.³⁹ As per sub-section 3 of the MFLO, *“Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance, be reported to him by the person who has solemnized such marriage.”*⁴⁰

Although a Nikah Registrar, who is generally an Imam of a local mosque, is also the one who solemnizes a Nikah; in some cases, the Nikah is officiated by someone who may not be a Nikah Registrar. Therefore, each Nikahkhwān must report to the Nikah registrar to register the Nikah in the UC. As per the law, registration is necessary for a marriage to be legally valid and to ensure the rights and protections of both parties. It also enables the tracking of divorces and helps in administrative processes and legal matters. For this purpose, one can access their Nikahnama from the relevant UC, where it has been registered upon payment of a prescribed fee.⁴¹

While the legal framework of Pakistan acknowledges the importance of Nikah registrars as public officers,⁴² there are concerns regarding their training and understanding of their responsibilities. The appointment of Nikah registrars, who play a crucial role in upholding women’s rights within the Nikahnama, is a matter of concern due to the lack of specific qualifications required by law. Khan and Khan (2019) underscore that the law does not specify any educational or knowledge requirements regarding Muslim Family Laws for individuals applying for the position of Nikah Registrar. Instead, any adult Muslim male deemed competent to solemnize a marriage under Muslim law can apply to the relevant Union Council for a license.

³⁸Sub-Section 5(1) of MFLO 1961

³⁹Sub-Section 5(2) of MFLO 1961

⁴⁰Sub-Section 5(3) MFLO 1961

⁴¹Section 5(6) MFLO 1961

⁴²See Mst. Zubaida Bibi and others v. Mst. Majidan and another 1994 SCMR 1978

2. Research Methodology

This study has used a theory-based sequential mixed methods approach, encompassing three interrelated components: an empirical study of Nikahnamas from 3 target regions of Sindh; Key Informant Interviews (KIIs); and Focus Group Discussions (FGDs) and In-Depth Interviews (IDIs) with relevant Nikah Registrars, stakeholders, and male and female community members.

The three data collection components are closely linked and integrated with each other to inform, enhance, and triangulate findings. For instance, Nikahnamas studied under the empirical component have informed the Nikah Registrars recruited for the FGDs.

2.1. Population Under the Study

The population under this study is all Nikahnamas from 3 target regions of the program: Karachi, Larkana, and Shaheed Benazirabad.

Since the number of registered Nikahnamas is not a publicly available figure and attempts at accessing this figure from formal government bodies like the Union Councils did not yield desired results, the research team referred to population data from Pakistan Census to proxy the population of married women as a base for sampling of Nikahnamas across the three target regions.

Married women were used as a proxy for three primary reasons:

- 1) Addressing duplication:** Using data on married women population eliminates the risk of duplication in Nikahnamas, as would be the case if entire married population were to be used (i.e., one Nikahnama per two married individuals)
- 2) Polygamous Marriages:** Albeit low, there are a small proportion of men in Pakistan (around 2%)⁴³ with multiple polygamous marriages, as provided under the Shariah law. Using women as a proxy allows for all marriages that have been contractually executed to be considered
- 3) Underage Marriages:** According to some sources, there is a variation in underage marriages of boys and girls, with prevalence reported to be as high as 30% amongst women.⁴⁴ In comparison, less than 5% of boys under 18 years of age are reported to be married.⁴⁵ Using data on women's marriages allows us to account for most marriages in Pakistan.

⁴³National Institute of Population Studies. "Pakistan Demographic and Health Survey 2017-18." PAKISTAN DEMOGRAPHIC AND HEALTH SURVEY 2017-18, Jan. 2019, dhsprogram.com/pubs/pdf/FR354/FR354.pdf.

⁴⁴"Child Marriage." UNFPA Pakistan, 15 Dec. 2017, pakistan.unfpa.org/en/topics/child-marriage-4.

⁴⁵Khan, S. "Pakistan: How Poverty and Exploitation Drive Child Marriages." *dw.com*, 11 Mar. 2021, www.dw.com/en/pakistan-how-poverty-and-exploitation-drive-child-marriages/a-56841723.

Data from the 2017 census and Pakistan Demographic and Health Survey (PDHS) 2017-18 was used as a proxy for sampling Nikahnamas across the three target regions. Data on region-wise population was retrieved from the 2017 census, and PDHS 2017-18 findings were used to estimate married female population figures for each of the three divisions. Since this level of disaggregation is not available for districts, proportionate disaggregation was used to identify the married female population in our regions of interest. This has been further elucidated below.

2.2. Sampling Methodology

The research team at LAS used proportional sampling to draw division-level samples for Nikahnamas at a Confidence Level of 90% and a Margin of Error of +/- 5%, revealing a total sample size of 273 Nikahnamas, using the following formula:

Total population size as per the 2017 census	=	207,680,000
Total female population is 48.9% of total	=	101,300,000
Female population under 18 years of age (45%)⁴⁶	=	45,585,000
Female population above 18 years of age (55%)	=	55,715,000

The base population for married females is proxied using the following information:

- 95% of women above 35 years have been married as per the PDHS 2017-18
- 18% of women under 18 years of age have been married as per the PDHS 2017-18

Since population data for age categories at a regional level is unavailable, we use the above information to draw our base population for sample calculations as all women above 18 years of age + 0.18* all women under 18 years of age.

We assume that this proxy gives us a close estimate of the married female population in Pakistan. This reveals the base population of married Pakistani women as follows:

55,715,000 + 0.18*45,585,000	=	63,920,300
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⁴⁶“UNICEF Pakistan Annual Report 2020 - Pakistan.” ReliefWeb, 28 Apr. 2021, reliefweb.int/report/pakistan/unicef-pakistan-annual-report-2020.

At this base population of married females, the sample size at the national level is calculated as per the formula below:

$$\text{Sample size} = \frac{\frac{z^2 \times p(1-p)}{e^2}}{1 + \left(\frac{z^2 \times p(1-p)}{e^2 N}\right)}$$

273 is the sample size for the Nikahnamas required to be studied if calculating representation at a national level.

We further use the same proxies to calculate the base population for all 3 target regions.

This has been summarized in the table below:

Division ⁴⁷	Female Population as per the 2017 Census	Above 18 female population (55%)	Below 18 female population (45%)	Married female population under 18 years (0.18* below 18 population)	Base Population (All above 18 + 0.18*below 18)
Karachi Division	7,611,019	4,186,060	3,424,959	616,493	4,802,553
Larkana Division	3,018,569	1,660,213	1,358,356	244,504	1,904,717
SBA Division	2,551,113	1,403,112	631,400	113,652	1,516,764

⁴⁷“Household Size and Annual Growth Rate 2017-18.”

www.pbs.gov.pk/sites/default/files/population/2017/tables/sindh/Table01p.pdf.

Using proportionate sampling, a region-wise breakdown of the total sample and corresponding Margin of Error at a 90% Confidence Interval is reported in the table below. Sample size at the regional level with an MoE of greater than +/-10% at 90% CI is boosted with an additional sample.

Division ⁴⁸	Base Population (All above 18 + 0.18*below 18)	Proportion of total	Proportionate Sampling at N = 273	MoE at 90% CI	Sample after boosting to 8% MoE at 90% CI
Karachi Division	4,802,553	0.58	158	7%	158
Larkana Division	1,904,717	0.23	63	10%	107
SBA Division	3,018,569	0.19	52	11%	107
Total	8,224,034		273		372

Since the demographic representation of Karachi is much wider and distinctive compared to the other two regions, proportionate sampling allows for variations in behaviors, perceptions, and awareness levels to be captured accordingly.

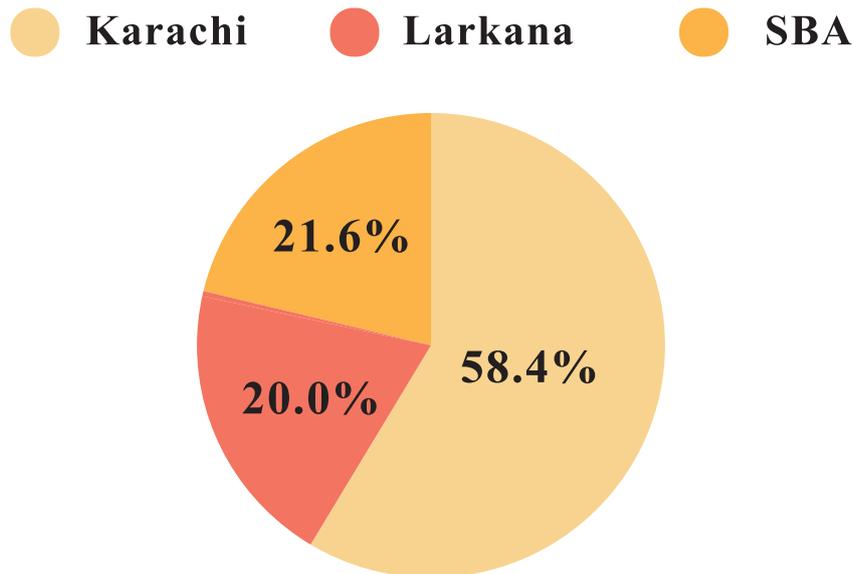
The table below summarizes the final status of data collection:

Division	Target	Achieved (n)	Achieved (%)
Karachi	158	108	63%
Larkana	107	37	34.6%
SBA	107	40	37%
Total	372	185	50%

⁴⁸Ibid.

A review of the 185 Nikahnamas received has revealed that 169 out of 185 Nikahnamas (91%) have omitted the second page of the Nikahnama by cutting it out. Similarly, clauses pertaining to the right of divorce were struck out in 99.5% of the Nikahnamas, while those pertaining to the groom’s potential second marriage were struck out in 100% of the Nikahnamas. We, therefore, argue that saturation has been reached and that continued efforts in collecting Nikahnamas will be misdirected.

Number of Nikahnamas Analyzed



The collection of registered Nikahnamas was limited to the ones registered between 2021 and 2023, as it was assumed that this duration of years would accurately represent the current trends and patterns of filling of clauses. Furthermore, the data collection exercise accounts for the representation of multiple Nikahkhwans (Nikah registrars) in the sample of Nikahnamas collected for the study. This is done to ensure the elimination of inter-reliability bias.

Upon completing the quantitative data collection, the research proceeded to gather qualitative insights through a focused methodology. For this purpose, a comprehensive Focus Group Discussion (FGD) tool was crafted to cater to four distinct groups, as described below:

3 FGDs with each of the following 4 groups were held in Larkana, SBA, and Karachi each

1. Nikahkhwans (8-10 participants)	2. Stakeholders (8-10 participants)	3. Male Community Members (8-10 participants)	4. Female Community Members (8-10 participants)
Belonging to different communities	Belonging to different communities	Belonging to different communities	Belonging to different communities
Belonging to different age ranges	Belonging to different age ranges Advocates, Union Council Secretaries and Chairpersons, Community Leaders, Teachers, Civil Society Members	Belonging to different age ranges (18 to 60+)	Belonging to different age ranges (18 to 60+)
From both Shia and Sunni schools of thought	Both male and female stakeholders	Varying marital status: Married, divorced, and widowed men	Varying marital status: Married, divorced, and widowed women
Ranging from lower education levels to higher ones		Varying education levels: uneducated to higher education	Varying education levels: uneducated to higher education
		Different occupational backgrounds	Different occupational backgrounds (including)
		Both Shia and Sunni community members	Both Shia and Sunni community members (housewives)

A review of the 185 Nikahnamas received has revealed that 169 out of 185 Nikahnamas (91%) have omitted the second page of the Nikahnama by cutting it out. Similarly, clauses pertaining to the right of divorce were struck out in 99.5% of the Nikahnamas, while those pertaining to the groom's potential second marriage were struck out in 100% of the Nikahnamas. We, therefore, argue that saturation has been reached and that continued efforts in collecting Nikahnamas will be misdirected.

3. Exclusion of Women's Rights and Protections in the Nikahnama: Emerging Patterns & Reasoning

3.1. Recognizing the Importance of a Written Nikahnama for Women

A written and registered Nikahnama is an important component for purposes of governance, record keeping, statistics, and monitoring and ensuring the rights of both men and women are protected in marriage. For Pakistani women these rights are of particular importance given their marginalized socio-economic status and vulnerability.

While our analysis of the 185 Nikahnamas received from Karachi, Larkana, and SBA has revealed that more than 90% have omitted the page that pertains to security of rights in the marriage; our qualitative inquiry has revealed a unanimous agreement amongst community members on the importance and significance of the written Nikahnama itself.

Community members displayed clear understanding on the difference between the verbal Nikah and the written Nikah, identifying the latter as a crucial legal requirement in Pakistan. A significant support for written Nikahnamas was also evidenced, with several participants recognizing that while this was not the norm or an Islamic requirement earlier, it is increasingly becoming a necessity.

Before the Nikah was not in its written form, people used to have verbal agreements and witnesses to the marriage, and there were no special additions in terms of conditions for the marriage. The modern Nikahnama is better in this regard than the traditional version.

(Community Member, Male, Larkana)

[T]he younger generation prefers getting a written Nikahnama and having enough awareness, so they make sure to read the whole thing too. But those who are uneducated are dependent on the Nikah Khwan to do the process correctly and ask him to include two or three of their special requests.

(Community Member, Female, Karachi)

The support for written Nikahnamas can be divided broadly into 2 categories.

In the first category, participants identify that a written and registered Nikahnama is essential for accessing core civil documents. Some of the primary reasons why a written Nikahnama is an important document, as discussed by community members, are listed below:

- It is a legal obligation
- It is required when applying for government employment
- It is necessary to update CNIC details once the marriage has been solemnized
- It is required in civil registration documents, including CNIC, children's B-Forms, domiciles, etc.
- For purposes of inheritance
- Accessing Government benefits and programs such as Benazir Income Support Programme
- In order to cast a vote in updated electoral

Nikah Registrars are also now reporting that individuals who married earlier without written Nikahnamas are facing a series of issues when they attempt to get their CNICs and children's birth registrations or birth certificates. As noted by a Nikah Registrar in Karachi, people who may have been married many years earlier are now attempting to get their Nikah written and registered in order to avoid such problems.

Ever since the NADRA system was implemented, older people have been going to moulvis to get Nikahnamas from the 80s and 90s made in written form. We sit in the community center, and people come to ask us about the process for getting a Nikahnama made through NADRA.

(Stakeholder, Karachi)

The second category of support is the importance of Nikahnamas in the protection of women's rights and property within the marriage. These reasons, as discussed by community members, are listed below:

- Nikahnama is useful as a form of evidence in court
- It is a written document and evidence of the terms and conditions agreed upon at the time of marriage in case there are any problems in the future
- It ensures that the bride can claim for fulfillment of pre-decided conditions
- If the husband leaves for any reason, stipulations in the Nikahnama may provide he has to pay a certain amount of money to the wife as spousal support. This serves as proof and puts husbands in fear of divorcing a woman due to the high amount of compensation while ensuring women are not left destitute
- It is written proof for the bride of the haq mehr given to her, things that are settled at the time of the Nikah, and rights that are owed to her during the marriage

A friend's husband, who was already previously married, had promised her prior to her marriage that he would take her for Umrah and buy her a separate house if he wanted to live with his first wife; because she had all these conditions written down/documented, she was able to hold him accountable and could secure her rights in the marriage

(Community Member, Female, Larkana)

Some participants did note that written Nikahnamas can, however, be a problem for women who are not aware of what is in the Nikahnama and may actually be giving up rights that they do not want to give up.

We have seen many women around us who have had their lives destroyed because of having a written Nikahnama without having any knowledge about its significance and use. If they had the requisite knowledge, their lives would have been much better and easier.

(Community Member, Female, Larkana)

Despite the Nikahnama having specific columns that should include within it all conditions and rights of marriage, there have been several reports by FGD participants whereby the bride and the family attached a separate affidavit enunciating their conditions in that instead. However, researchers found no such affidavits attached to the Nikahnamas analyzed for this study.

[T]here are only a handful of cases where this happens; where a bride is provided some kind of affidavit where the husband confirms/agrees that he will give her a certain amount of money/jewelry/property on a certain date after the marriage.

(Nikah Registrar, SBA)

Given the societal pressures to leave columns in the Nikahnama blank pertaining to divorce and other protections (especially financial rights) of the bride, it may be stipulated that this practice of affidavits emerged to cater to societal expectations, whilst protecting the bride. This would mean that the Nikahnama remains empty as per societal expectations, whereas all the protections are placed in the attached affidavit, which is not publicly shared. Many participants also highlighted that it does not matter whether the agreement is verbal or written, as promises or commitments are broken regardless.

In rural areas, it is often a verbal agreement or confirmation that the husband's family has given, or will give, the bride cattle, etc., as a gift – but often they do not make good on this promise, and it is the root cause for many disputes.

(Nikah Registrar, SBA)

We have also seen that even if the girl's rights in the marriage are written down, they are not actually granted to her; she is not allowed to act on them.

(Community Member, Male, Karachi)

Recognizing the importance of written Nikahnamas, majority of the participants in the FGDs not only fully supported them, but also had clear recommendations on what could or should be included as special conditions or protections within Nikahnamas to provide concrete and long-lasting protection for women:

Female community members, especially those in Karachi, emphasized upon including specific clauses in the Nikahnama to address issues related to property division, financial protection for wives, and fulfilling promises made by the groom's family. They highlighted the need for equal distribution of property after divorce and the inclusion of conditions to protect the wife's education and career aspirations. They expressed support for clauses that allow women to include additional conditions as they can provide accountability on hands of the groom and groom's family.

One of the major reasons for this was women's personal experiences with verbal agreements not being fulfilled, leading them to advocate for the inclusion of specific rights in the written Nikahnama.

There are also many men who change after marriage, or those who do not have the means to support a wife but get married anyways, and the wife only finds out later that she will not have any financial protections. There are also many men who say that they will let their wives, for example, continue their education after marriage. This happened to me as well when I was married in 2014 while I was still in school. My parents said I was still young and studying but his family insisted and told me that they would allow me to continue studying and that my education would be their responsibility. But after the marriage happened, they said that I could not study because someone needed to take care of the home. This is a special condition that must be included in the Nikahnama that if the boy's family has made a promise to the bride, they must fulfill it and if they do not, there will be consequences.

(Community Member, Female, Karachi)

The husband brings money home, but the wife is the one who manages the rest, so she should also get half of the share of their property if the couple gets divorced. This condition should be included because she is also working to manage her home and the couple's children.

(Community Member, Female, Karachi)

Similarly, male community members also highlighted several conditions that could or should be included in the Nikahnamas for women's protection which include right to education and for her to work after marriage, to ensure that the husband not divorce a wife if she produces no children or allowance of taking a second wife in such cases, payment of maintenance if she returns to her parents' home due to arguments, or decisions on where she/they should live, compensation for breastfeeding, separate portions in a house or a separate house, the tradition of "Jantro Paro", where the groom lives in the brides house, and rights to inheritance.

Some male participants, however, also raised concerns relating to potential exploitation of men, or unreasonable demands on the hands of the women:

Many times, people include very unreasonable or difficult conditions that make life difficult and trap couples in unhappy marriages. If one writes a large amount for the haq mehr or the fine then the husband is left helpless and cannot divorce his wife even if they cannot live with each other.

(Nikah Registrar, Karachi)

Special Conditions are necessary to provide protection for the woman and her family and to ensure her rights. But this goes both ways, sometimes the groom is treated unfairly/unjustly and so there are protections needed for him as well. It is necessary for both of them to protect their rights so that they can live their lives together in peace and happiness.

(Community Member, Male, Larkana)

3.2. Curtailing Women's Rights & Protections

Despite the fact that there was unanimous agreement on the importance of a written Nikahnama and enunciation of women's rights and protections, an empirical analysis of the 185 Nikahnamas assessed for this study indicates that such protections are in fact not a commonality despite societal support for their inclusion, especially by women.

Four key areas were identified in this study which highlight the systematic disenfranchisement of women at the time of marriage and in the Nikahnama: the omission of women specific protections and rights that are provided as options in the Nikahnama; the challenges surrounding the haq mehr (dower) including amount, its purpose and its provision to women; the actual consent of the women to the marriage and to the rights enunciated in the Nikahnama; and the challenges of ascertaining age of the bride and groom and the possibility of child marriages.

3.2.1. Deliberate Omission of Women’s Rights and Protections in the Nikahnama

[T]he clauses of the Nikahnama should not be left blank, if it was not needed it would not be included there in the first place.

(Community Member, Female, Larkana)

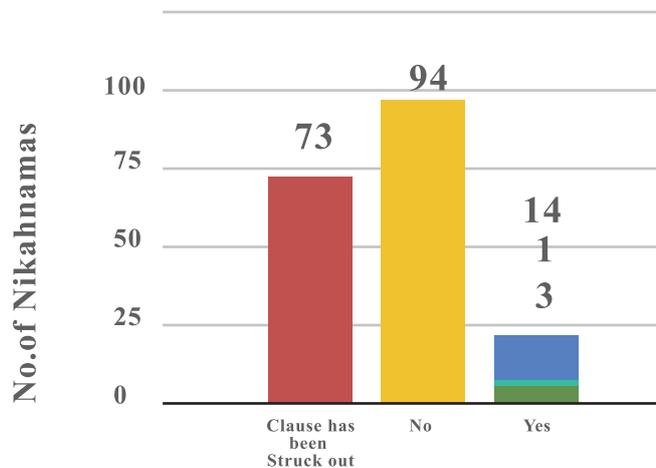
A clear pattern has emerged whereby all clauses in the Nikahnama which allow for the protection, enunciation and enhancement of women’s rights and protections in a marriage were struck out in at least 91% of the Nikahnamas examined:

● **Column 17: Special Conditions (if any):** This allows for insertion of any condition agreed upon by the parties to the marriage e.g., number of children, place of residence, continuing education of the bride, division of marital property etc.

Struck out in 91% of the Nikahnamas.

Whether any Special Conditions have been added to the Nikanama

- Rights of wife
- Rights of husband
- Neither husband nor wife
- Clause has been struck out
- Both the husband and wife

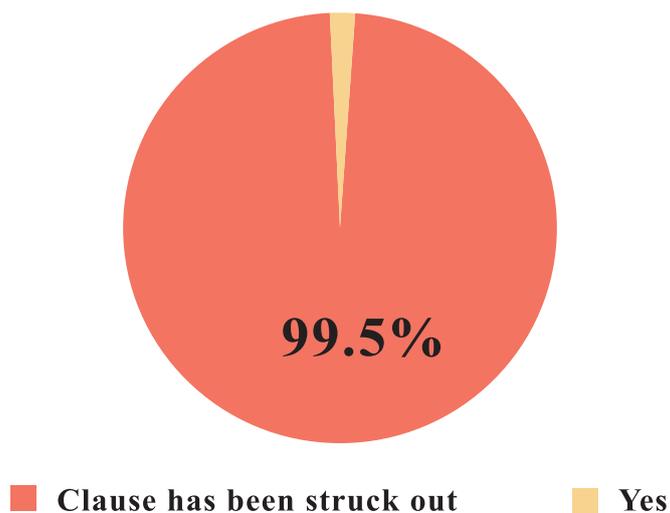


Special Conditions in the Nikahnama

- Columns 18: Right of divorce: This identifies whether the bride has been given the delegated right of divorce from the groom. This allows her to pronounce ‘talaq’ on herself and not be mandated to apply for divorce through khula, requiring her to go to court and give up her haq mehr.

Struck out or left blank in 99.5% of the Nikahnamas.

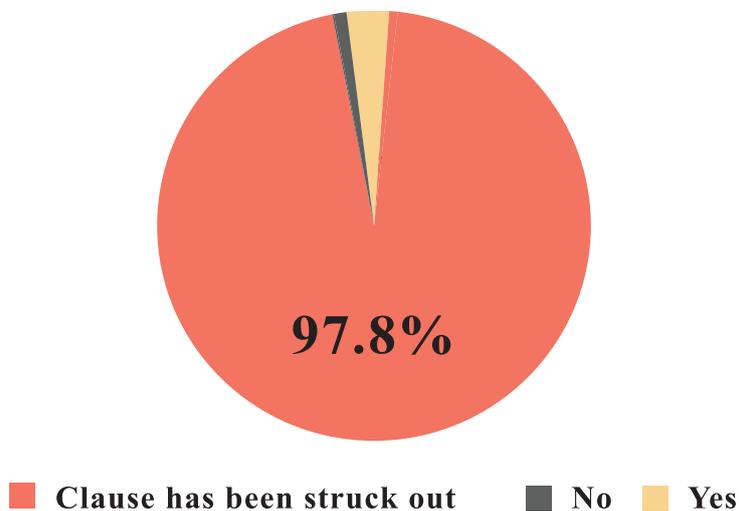
Has the wife been granted right to divorce?



- Column 19: Curtailment of the right of divorce of the husband: Identification of any conditions placed on the bridegrooms right of divorce.

Struck out or left blank in 98% of the Nikahnamas.

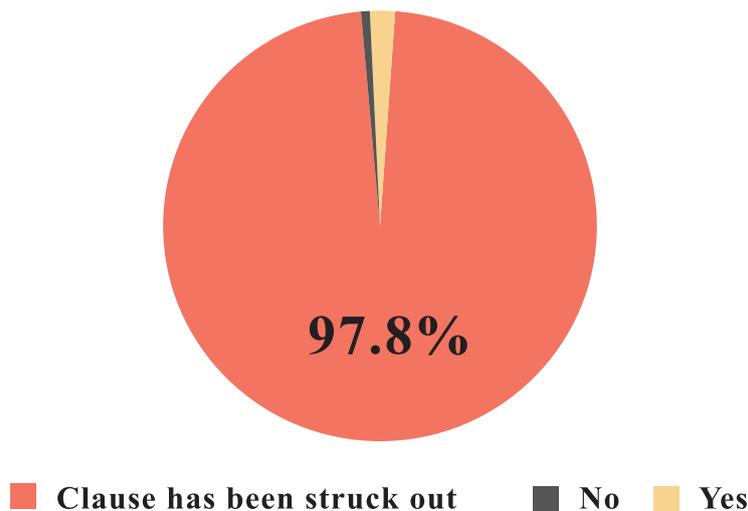
Are there any restrictions on husband's right to divorce



- Column 20: Guarantees & Allowances: This identifies any agreements among the couples e.g. monthly allowance and guarantees while they are together as a married couple, division of responsibilities etc.

Struck out of left blank in 98% of the Nikahnamas

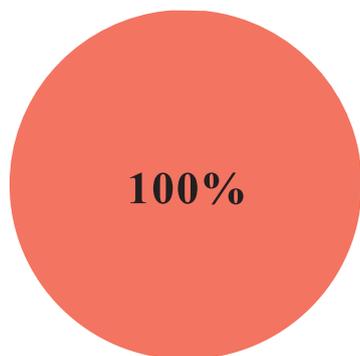
Are there any special terms included pertaining to groom’s financial obligations towards the wife?



- Column 21 & 22: whether the groom is currently married, whether he has obtained consent from a previous wife for a subsequent marriage, and whether a documentation number of the consent form for the second marriage has been claimed from the relevant UC.

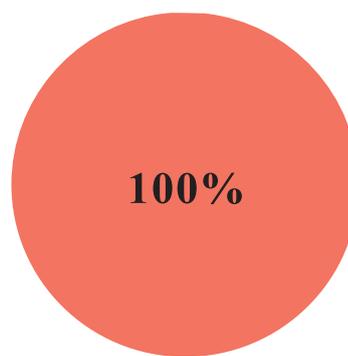
Documentation number of consent from acquired from UC for second marriage

■ NA



Has prior Wife’s consent been sought for this marriage?

■ Clause has been struck out



100% of the Nikahnamas, clauses 21 and 22 have been struck out

The stark realization of the extent of deliberate and systematic barring of women's rights and protections is alarming. This evidences that despite existing rights under Pakistani law, Islamic law and jurisprudence; patriarchal cultures, norms and perspectives have taken precedence in practical application on-ground resulting in depriving women of critical and essential rights within marriage. The omission of these clauses has a specific negative impact on women and protections within the most important social unit of Pakistan, the family.

Under Pakistani law and Islamic principles, the importance of these clauses cannot be undermined. According to Islamic principles, marriage contracts should be flexible and allow for customization based on the unique circumstances and preferences of the couple.⁴⁹ The inclusion of special conditions in Nikahnamas aligns with this principle and serves as a means to address the specific rights and responsibilities of both spouses.

The fact that 91% of the Nikahnamas strike out clauses related to special conditions completely raises concerns about awareness and understanding of customization in accordance with Shariah and Pakistani laws. Out of the 9% Nikahnamas that include special conditions (18 Nikahnamas), 14 relate to the rights of the wife, reflecting acknowledgment of proactive action for fairness and equality. The presence of special conditions for both spouses, and to a lesser extent, husbands alone, highlights recognition of balanced rights and responsibilities.

While a woman's right to divorce is not fully negated if not included in the Nikahnama, the type and manner of divorce is severely affected. As discussed in Section 1.3, in Islamic law, talaq-i-tafwid, the delegation of the right of divorce from the husband to the wife under specific conditions agreed upon in the Nikahnama, aims to provide a measure of agency and protection to the wife, allowing her to seek divorce within the framework of Islamic principles. If a woman does not have a delegated right of divorce, she must apply for the Khula, a complicated and tedious process of divorce, which places the responsibility on the wife to initiate the divorce proceedings and provide compensation to dissolve the marriage.

⁴⁹“Rights, Privileges and Capacity to Negotiate Marriage Conditions under Muslim Family Laws.” Musawah, 2023.

By striking out or leaving these clauses blank, it suggests that the delegation of the right of divorce is not being actively considered or implemented in the Nikahnamas. This omission limits the wife's ability to exercise the right to divorce and puts her in a position where she can only seek divorce through khula, which is costly and disadvantageous. Not only will she have to give up her haq mehr – which may have been accrued as savings or security during the marriage, she also will have to engage legal representation and navigate court proceedings, posing financial, emotional and psychological constraints. The male-dominated court system can further perpetuate discrimination against women during this process.⁵⁰

The absence of delegated divorce rights through Clause 18 and the lack of conditions on the husband's right to divorce in Clause 19 constrains the wife's options and disadvantages her during divorce proceedings. Emphasizing these clauses in Nikahnamas is crucial to ensure that the rights and agency of both spouses are protected in accordance with Shariah principles.

Clause 20 recognizes the basic Islamic principles, reinforced by the Muslim Family Law Ordinance 1961 in Pakistan, that the husband is responsible for providing financial support and maintenance to his wife. This includes fulfilling her basic needs, such as food, clothing, and shelter, as well as ensuring her general well-being. By striking out Clause 20, the Nikahnamas can have detrimental effects on the financial security and well-being of wives and potentially undermine the wife's entitlement to maintenance, which is an essential right granted to her by Islam. It places an additional burden on them to seek legal recourse or engage in negotiations outside the framework of their marriage contract to secure their rightful entitlement to maintenance.

As discussed in Section 1.3, under the Muslim Family Law Ordinance 1961, in Pakistan, provisions are in place to regulate polygamy and ensure the rights and protections of all parties involved. As per the law, during the subsistence of an existing marriage, no man can contract another marriage without

- (i) The permission in writing of the Arbitration council⁵¹
- (ii) the Consent of existing wife or wives⁵²

⁵⁰"Policy Brief 4: Equal Divorce Rights In Muslim Family Laws - Musawah". Musawah, 2023, <https://www.musawah.org/resources/policy-brief-4-equal-divorce-rights-in-muslim-family-laws/>

⁵¹Section 6(1) MFLO 1961

⁵²Section 6(2) MFLO 1961

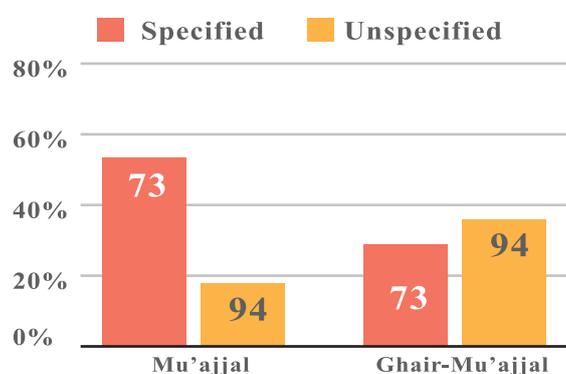
Additionally, it is the Nikah Registrar or Nikahkhwan's responsibility to fill all the columns of the Nikahnama regarding polygamy accurately.⁵³ The law has also categorized penalties in case of violation of these provisions for both the Nikahkhwan that does not fill out the rights of polygamy in a Nikahnama accurately, as well as a man who contracts another marriage without the permission of the Arbitration Council.

Although there are laws present in Pakistan that ensure that the rights of the wife are safeguarded, the absence of information regarding the groom's current marital status and consent from previous wives in the sample of Nikahnamas assessed for this study highlights a potential lack of adherence to these legal provisions. This can have serious implications for the rights and well-being of women who may unknowingly enter into polygamous marriages without proper consent or awareness of the existing marital ties of their prospective spouse. This was, in fact, noted by several participants in the FGDs. They highlighted the importance of the provision of this information to protect the women entering into marriage. A key recommendation was to provide Nikah Registrars with smart devices with a direct link with the NADRA system so that one could instantly find out if the man has or is already married while entering his details in the Nikahnama.

3.2.2. Consideration in a Contract: The Haq Mehr i.e., the Dower

As per Islamic teachings, the dower, known as the haq mehr, holds immense importance. It is considered a fundamental right of the bride and serves as a form of financial security and protection for her.⁵⁴ The haq mehr is a mandatory obligation upon the groom to provide to the bride as an expression of his commitment, care, and responsibility toward her. The mehr may be paid to the bride promptly, at the time of the Nikah (*mu'ajjal*), or may be paid at a later time, such as whenever the wife desires or upon specific conditions such as divorce or the death of the husband (*mu'ajjal or ghair mu'ajjal*).

3.2.2.1. Distinction Between Mu'ajjal and Ghair Mu'ajjal Haq Mehr



⁵³Section 6(2A) MFLO 1961

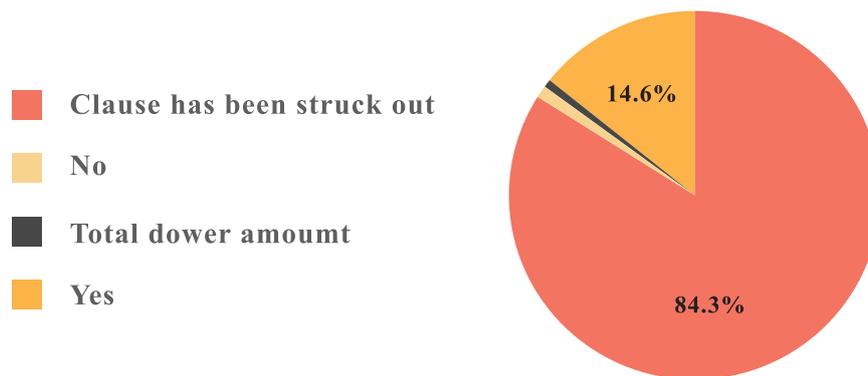
⁵⁴"Islamic Marriage and The Legal System: Mahr/Dowr". Familylaw.Co.Uk, 2023,

https://www.familylaw.co.uk/news_and_comment/islamic-marriage-the-legal-system-mahr-dowr.

20% of Nikahnamas not specifying whether the haq mehr amount is prompt (mu'ajjal) or deferred (muwajjal or ghair mu'ajjal) indicates a lack of clarity, precision, or deliberate omission in the documentation of haq mehr provisions. The distinction between mu'ajjal and ghair mu'ajjal dower holds pivotal importance as it determines the timing of haq mehr disbursement and in cases where the bride remains unaware of the nature of the haq mehr payment, uncertainties and potential vulnerabilities can emerge within the marriage.

3.2.2.2. Dower Given at the Time of Nikah

Has any dower amount been paid at time of nikah?

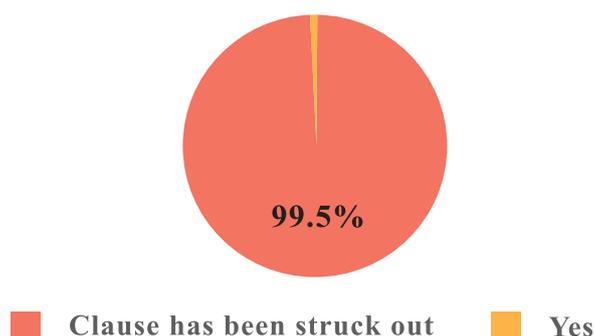


The finding that clause 15, concerning acknowledgement of mehr payment at the time of Nikah, has been struck out or left blank in 84% of the Nikahnamas raises concerns about potential issues related to the documentation and understanding of dower practices. It could suggest a potential gap in knowledge or understanding among the parties involved, including the bride, groom, and the Nikah registrar, regarding the significance and legal obligations tied to recording the dower payment.

This could also carry implications for legal and financial matters during disputes or divorces. Without proper documentation of the dower payment, establishing agreed-upon terms and resolving conflicts becomes challenging. This can leave the bride vulnerable and lead to disputes and legal complexities.

3.2.2.3. Haq Mehr as Property

Has any dower amount been granted in the form of property?



An evaluation of the 185 Nikahnamas reveals that only 1 Nikahnama, constituting a mere 0.5% of the total, contains details of a part of the dower being granted as property. Strikingly, in 99.5% of the Nikahnamas, Clause 16, which identifies the allocation of property to the bride, has been omitted. This suggests a significant trend concerning the treatment of dower as property. Granting a portion of the dower as property holds significance in terms of providing financial security and stability to the bride. This practice ensures her ownership of tangible assets, fostering empowerment and economic independence.

It is crucial to recognize that in Islamic teachings, the concept of dower includes both property and monetary rights. The striking of Clause 16 may stem from various factors, including cultural practices, lack of awareness, or prevailing patriarchal norms. The omission of Clause 16 can lead to invalidating women's autonomy, agency, and dignity in marriage and family and within the state.⁵⁵

The discussion with the participants from the FGDs brought forth interesting patterns of practice. Haq Mehr is considered one of the most important aspects of marriage, according to some participants, at the cost of discussion on other conditions of marriage etc.

More attention is paid to the amount of haq mehr, what should be given and what should not, and other points within the Nikahnama are neglected. Three things are focused on mainly the haq mehr, the signatures of the bride and groom; and the witnesses' signatures.

(Community Member, Male SBA)

However, many see it not as a consideration to the marriage, but an amount of money to be given the woman to support herself in times of divorce – thus incorrectly seeing it as a divorce settlement and not a condition or right in marriage.

[T]he conditions for it are given in Islamic law and the haq mehr is given after the divorce I think so that the wife can support herself after the marriage ends. So this is what we have always heard about the haq mehr.

(Male Community Member, Karachi)

It is further noted by participants that the woman entering the marriage contract often has little to no understanding of what is meant by mu'ajjal and ghair mu'ajjal and, therefore, has little to no say on how haq mehr is supposed to be given and whether or not she may demand it. Not only does the bride have no or little say in the amount of haq mehr agreed upon, but she also can not exercise much agency in how the modalities of payment are agreed.

⁵⁵Legal Aid Society. "Matrimonial Property Rights in Muslim Family Laws." www.las.org.pk/wp-content/uploads/2022/04/Policy-Paper-Matrimonial-Property.pdf.

[U]sually the types of dower are not explained to the girl because it is not considered appropriate to discuss delicate matters with her when “mu’ajjal” and “ghair mu’ajjal” refers to haq mehr given before or after the consummation of the marriage, so it is usually just written or discussed briefly.

(Stakeholder, Karachi)

Due to the discretionary nature of the sum of haq mehr, there are many expectations or thoughts on the amount itself. Several participants (usually male) emphasize that the amount should be minimal or according to the grooms means.

The haq mehr should be according to the groom’s means/according to what he can afford to give.

(Stakeholder, Karachi)

However, the practice – encouraged by many of the female participants – is to make high demands, even if it is well beyond what the groom can afford at the time. As revealed by the female participants and Nikah Registrars is that this discourages the possibility of divorce.

Sometimes there are families who understand the purpose of these clauses in the Nikahnama and want a safety net for the bride in case, in the future, despite getting documentation and affidavits, the groom’s family does not fulfill their promises to the bride.

(Nikah Registrar, SBA)

People usually write large amounts for the haq mehr, like 10-12 lacs, and don’t demand it at the time of marriage instead ask for it in the case of divorce, which is wrong. It is a farz and is supposed to be given at the time of the Nikah, and people should write a smaller amount for the haq mehr and a larger amount for the fine to be paid by the husband in case of a divorce.

(Nikah Registrar, Karachi)

The girl should ask for a greater amount than the boy can afford because, for example, if he can give 20k, she should ask for more because then this deters men from easily divorcing their wives simply because they can afford to do so.

(Community Member, Female, Karachi)

Naturally, while many criticize this practice, it emphasizes the financial dependency of women on men and puts a spotlight on the need for discussion on post-divorce settlements for women in Muslim marriages.

It is evident from the analysis of the Nikahnamas in this study that while emphasis is placed on ensuring the amount of haq mehr is agreed upon at the time of Nikah, women do not get a say in its amount, timing of payment or method. There is a further indication from the discussion in the FGDs that haq mehr is seen not as a consideration of marriage and a farz but instead as a means to provide a woman financial support upon divorce. This perception is supported by the observed trend of demanding higher Haq Mehr as a means to avoid divorce or to be protected upon divorce. This perspective disregards the Islamic concepts of Mata (gift upon divorce) and the potential inclusion of such conditions in the Nikahnama. Nevertheless, as repeatedly observed, it remains challenging for women to access their haq mehr at any time, particularly at the time of divorce.

3.2.3. Ascertaining Consent of the Bride to the Marriage

“What has been observed is that when the vaqeel goes to ask the bride any questions about the Nikah, it is usually her older female relative (like her mother or grandmother) who answers for her instead. If the girl is there willingly or has given her consent for the marriage, then she should be allowed to answer herself.”

(Community Member, Male, Karachi)

Consent to marriage is a foundational element of a Muslim marriage, yet somehow remains one of the most overlooked aspects of the union. Ascertaining consent to marriage involves various considerations, such as ensuring that both parties are of legal age, have the cognitive capability to grasp the implications of marriage, and are not subject to force, coercion, or pressure from others. The question of consent and capacity to consent is, in fact, one of the major points of contention and discussion in cases of child and underage marriages, which is discussed in more detail in a subsequent section.

The major and most important thing present in the Nikahnama is the stipulation that both the bride and groom must consent to the marriage. If either does not wish to be married to the other, and the marriage is done forcefully, it is then considered as Zina. The presence of consent/willingness/wishes of both parties is a requirement of any contract.

(Stakeholder, Larkana)

The discussion in the FGDs identified 2 distinct instances relating to consent: **Consenting to the marriage**; and **consenting at the time of the Nikah ceremony/marriage**.

As per Pakistani customs, a marriage is considered as a union of families rather than just two individuals. As noted by participants in the FGDs, the decision and agreement to marry is made well before the wedding and not at the time of marriage itself.

A prevalent sentiment expressed is that family elders, particularly male members, are the primary decision-makers about marriage-related decisions. This opinion aligns with literature on Pakistan's patriarchal society, whose "normative and existential order is hierarchical in nature and exhibits unequal power relations between men and women, whereby women are placed under men",⁵⁶ and are "less authorized to make decisions about their own lives".⁵⁷ Despite Islamic and Pakistani legal provisions permitting adult women to choose whom to marry without the consent of a wali (guardian), women continue to have restricted roles (if any) in choosing their spouse.⁵⁸

This viewpoint finds resonance among many participants, especially women. They underline lack of women's agency or involvement in negotiating their rights prior to getting married and the decision-making within a marriage.

[T]he girl is not usually asked for her input; some people do ask her, but this is not the norm here in our district. We have a tradition of "Jabr," and usually, neither the girl nor the boy is asked regarding their wishes/opinions when setting up a marriage.

(Community Member, Male, Larkana)

"In our society, girls are told to be quiet, to stay in a corner and not take up too much space, to bow their heads, not to protest or provide their opinions. They are told that they have no rights and that when the molvi (Nikahkhan) comes, all they have to do is sign the paper silently. Usually, the molvi comes and asks whether the girl accepts the Nikah or not (kya tumhe qabool hai). But during my own Nikah, I felt like I didn't even know that I was getting married. No one asked me anything about the acceptance, I was told to stay silent. And two days later, I got a paper and was told to sign it. To this day, even after my divorce, I have not properly seen my Nikahnama."

(Community Member, Female, Karachi)

⁵⁶ Abbas, S., Isaac, N., Zia, M. et al. "Determinants of women's empowerment in Pakistan: evidence from Demographic and Health Surveys", 2012–13 and 2017–18. BMC Public Health 21, 1328 (2021).

<https://doi.org/10.1186/s12889-021-11376-6>

⁵⁷Ibid

⁵⁸Sahu, Biswamitra et al. "Contextualizing Women's Agency In Marital Negotiations". SAGE Open, vol 6, no. 3, 2016, p. 215824401666745. SAGE Publications, doi:10.1177/2158244016667450.

Thus, based on literature and supported by the FGDs, the limited involvement of the women in the decision of whom to marry becomes evident. This is concerning as the parent or walis (guardian) consent is not mandatory under law, rather the specific consent of both parties to the marriage is of utmost importance.

An equally vital aspect is probing whether the bride or groom felt that they could have rejected the marriage or if their consent was influenced by pressure or perception of having no alternative – conditions that would impede the notion of free and full voluntary consent.

The Nikah ceremony includes a crucial ritual wherein the officiator questions the bride and groom concerning their consent thrice, allowing them the opportunity to reject the marriage. As per Shari'ah, the *aijab* (question) and *qabool* (consent) of both bride and groom must be expressed in one sitting and not at different times.⁵⁹ However, as generally noted across all FGDs in all districts, the Nikah event itself is not accorded much importance, particularly in terms of its documentation or seeking the consent of the bride and groom. A major determinant at the time of Nikah is the rush to complete the ceremony and accommodate other wedding activities, which often leads to the neglect of discussing and understanding the clauses of the *Nikahnama*. This undermines the purpose of the *Nikahnama* as a legal contract and hampers the bride's ability to assert her rights and protections in marriage.

The matchmaking/engagement process goes on for a very long time, but people pay very little attention to the actual Nikahnama. They call the qazi a day before and ask him to fill out the names and data in advance so that it does not take too much time during the actual ceremony, and they can get on with the celebrations.

(Nikah Registrar, Karachi)

During the Nikah ceremony, there is not enough time to go through all the clauses and go in-depth to explain each of them/understand each of them with the registered Nikah Khwan because the elders of the house are in a hurry to start the other celebrations and rituals of the marriage.

(Community member, Male, SBA)

Once when I was performing a Nikah, I started reading out the clauses to the couple, and the parents stopped me, saying you are going to create chaos/problems during the ceremony.

(Nikah Registrar, Karachi)

⁵⁹“Marriage in Islamic Law - A Brief Introduction.” - 3 Dr Johnsons Chambers, 1 Mar. 1999, www.3djb.co.uk/articles/6/marriage-in-islamic-law-e28094-a-brief-introduction.

Informed consent, a fundamental principle in any legal agreement, including marriage, requires individuals to understand the terms and conditions they are consenting to clearly. However, the lack of knowledge and understanding of the Nikahnama among brides and even grooms indicate a significant gap in informed consent. When the bride is not actively involved in the process and is unaware of the contents of the Nikahnama, her ability to make informed decisions about her rights, obligations, and protections within the marriage is severely compromised. At the time of the Nikah, it is rare for the Nikah Registrar or the person solemnizing the marriage to allow her to read or to read out the entire Nikahnama. Normally, they ask whether she consents to marriage and mention haq mehr.

What we have usually seen is that the girl is only asked whether she will accept the groom based on the amount of haq mehr

(Stakeholder, SBA)

While the Nikahnama document does have all the rules written out, often those rules are not explained properly. The people getting married do not understand fully what is in the contract, nor do they know exactly what is written out in it, but they are signing it, so it should be explained to them. People do not read it, nor is it explained to them, but they need to know what it says and what it's based on.

(Stakeholder, Karachi)

They do not mention all the terms and conditions contained in the Nikahnama. Thus, she gives her consent without reading or knowing all the contents of the Nikahnama and what all and conditions she is, in fact, consenting to.

While the couple may be in agreement to get married, the stipulations present in the Nikahnama document are not made clear to them. The bride is simply told to sign the paper with a colorful pen and then the groom is told it is his turn to sign. The haq mehr is discussed orally and decided upon before the marriage contract is sealed but the details of the conditions in the Nikahnama are not told to either the bride or the groom.

(Stakeholder Larkana)

In actuality, it is infrequent for the bride to directly provide consent to the officiator of the marriage ceremony. More often than not, it is in fact a family member or a female relative who responds on her behalf. The practice arises due to traditional practices and the concept of purdah, wherein, often, the person solemnizing the marriage does not, in fact, even meet the bride to be able to judge her consent. In this scenario, the bride's appointed vaqeel assumes the role of expressing consent on her behalf. As discussed earlier, a vaqeel was appointed for the bride in 99.5% of the Nikahnamas examined for this research.

Similarly, it is not common for the bride and groom to sit previously or at the time of the Nikah to discuss how they wish to proceed with their married life.

If we gave the couple even half an hour to sit down and fill out the Nikahnama together and discuss the clauses with each other, then this will ensure the girl is protected and does not face disturbances in the future. It is not just for the girl, the boy should also be aware that if he makes a mistake, what the consequences are for him according to the Nikahnama, he should know what rules he has to abide by as well. So, he should read the Nikahnama carefully as well.

(Community Member, Female, Karachi)

In the Key Informant Interview with Katherine Vyborny, the discussion centered around the challenges faced by Nikahkhwan in verifying the consent of the bride and whether an effort is made to actually address this issue. This is difficult, especially in most situations where due to gender segregation, the Nikahkhwan never necessarily talks to the bride or sees someone talk to her.

Kate Vyborny further emphasized that in an ideal scenario, the Imam of the local mosque should play a more holistic role in engaging with their communities. This could involve discussing the importance of consent, rights, and responsibilities in marriages, possibly during sermons (khutbahs) to raise awareness and prevent issues from arising in the first place.

This interview underscored the significance of proactive community outreach and awareness to address challenges related to consent and rights in marriage. It highlights the potential role of religious leaders in promoting a more informed and responsible approach to marriages within their communities and also a change of perception for the religious leaders themselves.

3.2.4. Lack of Identification of Age of the Bride and Groom: Practical Considerations for Elimination of Child Marriages

Recording the age of both spouses in a Nikahnama is a crucial piece of information from a legal, social, and ethical perspective. This practice ensures compliance with the legal minimum age requirement across Pakistan i.e., 18 in Sindh and 16 in the rest of Pakistan,⁶⁰ to protect individuals from entering into marriages at too young an age when they may lack the maturity and capacity to make informed decisions. By noting the age of both parties in the marriage contract, it ensures that the marriage is in compliance with the legal requirements of the jurisdiction. Further, this inclusion serves as a formal record of the marriage's legality, facilitating official document procurement, accessing legal rights, and dispute resolution.

Incorporating ages into the marriage contract further fosters transparency among all parties involved, averting disputes and misrepresentation. In Muslim marriages specifically, the age of the parties can have implications on various legal and financial matters, such as the mehr (dowry), inheritance rights, and responsibilities towards each other and their children. This practice safeguards parties' rights in line with Islamic principles and contributes to government data collection and social research. This data helps policymakers and researchers understand marriage trends and make informed decisions related to family and marriage laws.

The Nikahnama, which must be filled as per the MFLO, mandates age disclosure. The Sindh Child Marriage Rules 2016 additionally require Nikah Registrars to attach an affidavit to the Nikahnama stating he believed both parties to be above the age of 18. Surprisingly, none of the Nikahnamas collected for this research had affidavits from the Nikah Registrars attached to them. The Nikah Registrars are generally unaware of this legal and have had minimal compliance.

No affidavits are not made, but I have often told my friends that we should get them made for our own security. Usually, it is only the women who have love marriages that we get to see/confirm the age of. It is mostly the witnesses to the marriage that see the bride, we are not allowed to look at her. Having an affidavit is a good thing, we should have one. We try to probe and get the cards of their siblings, cousins, etc. because I have faced this issue before, so I try to confirm the age.

(Nikah Registrar, Larkana)

⁶⁰As per the Sindh Child Marriage Restraint Act 2013

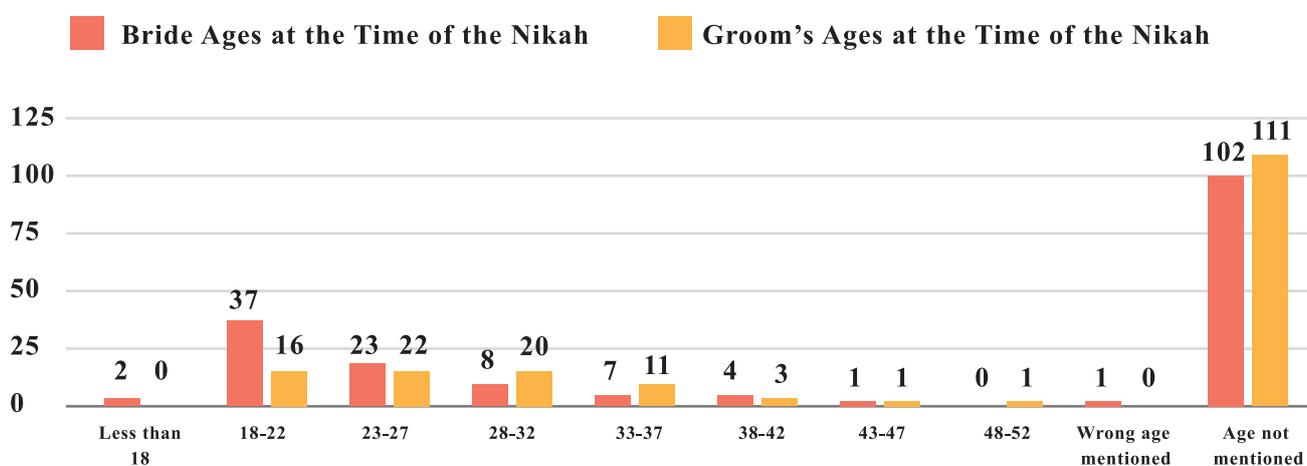
While there was a general acceptance that child marriages do happen, there is a growing awareness of the illegality of child marriage and the reasoning behind it.

If it is a child marriage, then it should not be considered a valid marriage, and such marriages should not happen. If one or both parties are not willing, then it is not considered a valid marriage. It is considered a forced marriage.

(Community member, Male, Larkana)

However, despite – or perhaps because of – the stringent laws in Sindh, it was astonishing to discover that **a staggering 51% of the analyzed Nikahnamas do not even mention the ages of either party to the marriage.** This naturally raises concern as to why this critical information is missing and the possibility of child marriages taking place. In fact, the analysis identified two cases where the bride's age was below 18, indicating a violation of the law. Additionally, in one instance, although the Nikahnama mentioned the bride's age as 18, further examination based on her date of birth and the year of marriage indicated that she was actually 17 at the time of marriage.

Bride and Groom's Ages at the Time of the Nikah



During FGDs with the Nikah Registrars, a conflicting practice became evident. There were several Nikah Registrars who stringently followed the law:

Under Islamic law, you can get someone married once they reach puberty, but under the state's law, the age of maturity is 18, and we have to follow the government's directive.

(Nikah Registrar, Karachi)

Whether or not it is wrong is their problem, but we have to follow it, I get many cases where they are under 18, and they asked me to perform the marriage and say that they will get the documents made once the child is 18 years old, but I don't perform the Nikah for underage children no matter if they offer me more money. Even though I am aware of Islamic law, I still have to follow the state's law, and if the CNICs are made, I use them to verify their age. And if they don't have a CNIC made, I check the birth certificate.

(Nikah Registrar, Karachi)

Others try to find a workable solution between community demands and the law, but without strictly adhering to the law:

When I perform Nikahs, and I find out the girl is underage, because I am from Karachi, I was aware that the minimum age is 18. I ask for the girl's birth certificate, and if they have it, that is the date I enter in the Nikahnama. But then I also add a clause that her rukhsati from her natal home will not happen till she is 18 years old.

(Nikah Registrar, Karachi)

Discussion within the FGDs, particularly with the Nikah Registrars across all three regions, elaborated on rationale behind the practice of omitting the age of the parties to the marriage:

- Nikah Registrars deliberately do not mention the ages of the parties when one of the spouses is a child, thereby deliberately circumventing the law. This may happen due to their own bias, pressure from the family, or simply apathy. This was noted by the Nikah Registrars themselves. The community and stakeholder FGDs all noted that some Nikah Registrars do not oppose child marriages and see it as Islamically permissible and thus find ways to sidestep the laws.
- It is common for families to bring the filled-out, signed Nikahnama to them for registration only, after a Nikah has already been conducted. The Nikah Registrars have the choice to register or not register. The law, courts, and practice in Sindh recognize incomplete Nikahnamas as valid as long as signed by the parties to the marriage, witnesses & the person who solemnizes the marriage. Thus, they go ahead and register it regardless of the missing information. It is not a practice to send a Nikahnama back for completion of all sections.
- Several Nikah Registrars shared that families themselves are unwilling to share their age or proof of age, despite being asked for the required proof. It then becomes discretionary on individual Nikah Registrars on how they proceed and choose to read and register the Nikahnama.

- Many of the Nikah Registrars highlighted that families, especially in rural areas, themselves are unaware of the exact age of the child as there was never any documentation prepared for the child, including birth certificate, B-form or school certificate, etc. This was confirmed by male, female, and stakeholder participants of the FGDs.
- Some of the Nikah Registrars shared that they were threatened by landlords or pressured by the families to either not report the age or to proceed with solemnizing marriages of underage children.

The Nikah Registrars discussed the challenges they faced in solemnizing marriages whilst ensuring the bride was above 18 years of age. Notably, as discussed before, they highlighted the common scenario where they seldom interact with the bride directly due to cultural adherence to “purdah”. Instead, their interaction primarily involves the “vakeel” who, as per our findings, were **designated for brides in the majority of Nikahnamas (99.5%), and were absent for grooms in majority of the cases (81.6%),** unveiling an interesting pattern in the marriage process.

Nomination of Vaqueel



Nomination of Vaqueel

As noted above, it is not uncommon for girls, in particular, to not have any official documentation providing identification of age. In cases of child marriage, even if there is, it will not be provided. This leaves the Nikah Registrars in a stalemate. One Nikah Registrar from SBA shared an incident where he asked to speak to the bride to confirm her age himself, but the family refused because they were Syed and did not show their women to ‘na mehrams’ (men that you are allowed to marry and within the concept of purdah, therefore cannot meet) or any men outside the family. He countered by stating that when she would go to get her CNIC or driver’s license made, men not related to her would have to see her, so when such an important contract is being signed, one must be able to verify that she is of age. After much discussion, he discovered that the girl was only 11-12 years old, and the groom was twice her age, in his twenties. As a result, he did not perform the Nikah and left.

The respondents said that in such cases, many times, the family simply claims the girl is of legal age, i.e., 18. The officiants are often not close enough to the family to ask more questions, nor do they have permission to see the bride themselves and ask her what her age is. So, they have to simply write down the age the father or mother of the bride provides. Sometimes they ask for some kind of proof of her age so that they do not face issues when they go to register the marriage.

(Nikah Registrar, SBA)

This situation highlights several challenges for the state and justice system in ensuring completion of this section in the Nikahnama to prevent child marriages:

- It falls upon the discretion of individual Nikah Registrars and the particular circumstances of each situation to decide how much they can pursue identifying the age of the bride where documents do not (or are not admitted) to exist; purdah; and where the family asserts her age.
- There are limitations of the burden placed on Nikah Registrars to ascertain the age of the bride where there are no documents, or where they cannot meet the bride.
- Child marriages persist due to the connivance of Nikah Registrars who either solemnize but do not register them due to fear or penalties, or where Nikahs are brought to them involving a child marriage, they stamp them but do not forward Nikahnamas involving a child marriage to the Union Council. This demonstrates awareness of the issue, yet their actions perpetuate the harmful practice. While their avoidance of registration of child marriages shows some concern, it is vital for them to categorically decline to officiate these marriages.

- There are no penalties associated with not filling out all the columns in the Nikahnama for Nikah Registrars in Sindh, unlike in Punjab.
- There are no penalties or legal processes for where a Nikah of an underage child has been conducted, and the Nikahnama has been brought to the Nikah Registrars for registration only.
- There is no process identified for situations where a Nikah has been conducted, and the Nikahnama has been brought to the Nikah Registrars for registration only, but the form is incomplete.
- There is no way to cross-verify data provided by the families at the time of the Nikah, whether to check if a man has previously been married, the age of the bride, etc. It is important to create a connection between NADRA and the Union Council.
- The majority of data checking is done manually and not electronically, making it even more difficult to cross-check and verify information about individuals in a marriage.

Since most officiants have a smartphone, there should be some kind of application that allows them to scan the father's CNIC and access information about who is in his household and their respective names and ages. And if the girl is underage, he can show the family that he is legally bound not to perform the marriage.

(Nikah Registrar, SBA)

3.3. Reasons for Omissions & Limitations of Women's Rights in the Nikahnama

The omission of women's rights in the Nikahnama can be attributed to a variety of historical, cultural, and societal factors, which were enunciated by the participants of the FGDs.

The first identified cause is adherence to patriarchal traditions and practices. These deeply ingrained traditions of men's dominance and women's subordination can influence the way marriage contracts are structured, often favoring men's interests over women's. Over time, these beliefs have become ingrained as practices, which form a normative behavior and expectation of roles in a marriage.

Limited education and awareness amongst people further result in not recognizing the importance of these terms and conditions. Community members emphasized that while elders take the responsibility of negotiating conditions, they are ignorant about their meaning and intention, thus simply striking these clauses out.

A further reason is women's lack of agency and ability to negotiate. As noted earlier, women are unable to enter into the discussion of negotiation and demand certain rights from the bridegroom's family due to societal norms not allowing her to do so in case of being considered too forthcoming.

There is also pressure to ensure no ill feelings or disagreements happen at the time of the wedding, thus, the families avoid putting anything confrontational into the Nikahnama. As noted by participants: Discussion on these matters can cause arguments or disagreements, so the person solemnizing the marriage or the Nikah Registrar cut it out in advance. The officiants/person solemnizing the marriage want to speed the marriage as their time is valuable due to multiple weddings. Due to their concern about starting a conflict or making changes in the Nikahnama, they cancel them out in advance and advise families to follow this practice.

Marriage is a time of happiness and celebration so there is an effort to remove anything that may cause arguments or disagreements so that things can proceed smoothly.

(Stakeholder Larkana)

The fear is that bringing this up during the Nikah will create disagreements that will lead to the marriage not happening at all.

(Community Member, Male, Karachi)

Families ask for clauses not to be read out or filled, saying that these are decisions we have made amongst ourselves, among family, and so we have nothing to do with these clauses/we do not need them. Or they respond by saying that they are being made aware of the clauses right before the marriage is about to happen, and so they do not want anything to do with them at this late stage.

(Nikah Registrar, SBA)

In some situations, it is simply about time and due importance given by people to the marriage ceremony and festivities than the actual Nikah itself.

If the Nikah takes longer than 30 minutes, guests start getting worried and agitated...it creates a sort of emergency at the time, so to keep the peace, these clauses are not discussed

(Stakeholder, Larkana)

In some cases, it is simply a matter of lack of interest on the end of the marrying parties.

If the family does not provide any special conditions, then the Qazi/Nikah Registrar has to cross out these clauses so that no one else can go in and fill them later after the document has been filled and signed.

(Nikah Registrar, Karachi)

When asked whose responsibility the group thinks it is to fill out the clauses of the Nikahnama, each group had conflicting responses. Both male and female community members believe that filling out the clauses is, first and foremost, a Nikah Registrars' responsibility, as they provide the family with the Nikahnama. Once the Nikahkhwan explains the significance of the Nikahnama and its clauses to the families, the onus then falls on the families or the representatives of the bride and groom to consult with each other and negotiate the bride and groom's rights in the Nikahnama. It is important to note that few of the participants suggested that the bride and groom sit together to negotiate their own rights. Stakeholders also pointed out that a Nikah Registrar is only a facilitator, thus, he has no responsibility for filling out the Nikahnama. While having a discussion with Nikah Registrars, it was pointed out that Nikah Registrars are rarely, if ever, consulted on time, so there is never sufficient time to sit and discuss the importance of the Nikahnama and what each clause pertains to.

[I]t is the families' responsibility to confirm with the Qazi that the Nikahnama has been filled completely and correctly, it is not the Qazi's responsibility to run after them to get this job done. Usually, when I ask families about the clauses, they brush it off and say no, we are all related/know each other, and there is no need to discuss such things.

(Nikah Registrar, Karachi)

Ideally, both families should carefully fill out all the details and conditions a week or more in advance and should discuss and mutually decide all the conditions in advance.

(Nikah Registrar, Karachi)

It is the responsibility of the families involved in the marriage from both sides to make sure that these clauses are written in the Nikahnama. Striking them out means canceling these conditions of the marriage, and it is the family's responsibility to make sure this doesn't happen, the moulvi is only there to get his payment. It is also the registrar's responsibility to make sure that when the documents come before him for registration, they are complete and correct. And if these cars are struck out, it should not be registered.

(Community Member, Male Larkana)

We have nothing to do with anything that is struck out, our job is just to make the marriage certificate. None of the Nikahnamas that come to us are complete, they all have some missing information.

(Nikah Registrar, Karachi)

The Nikah Khwan is simply there as the facilitator and there to write the contract between two people, he does not have the right to add anything from his side. It is the family's right to get conditions they want added to the Nikahnama

(Stakeholder, Karachi)

As someone was saying before, arrangements should be made before the Nikahnama, us Baloch, we tell our Nikah Khwan the date a week in advance, and he gives us the form to fill out with names, CNIC numbers, the name of the vaqeel and witnesses from both sides. Then on the day of the Nikah, he gives us the form back, and the vaqeel and witnesses take it to the girl to get her signature.

(Stakeholder, Karachi)

The inclusion of guarantees and allowances, including the right of divorce, special conditions, etc., are critical components at the time of marriage. While these may be optional, including them is considered good practice in creating a balanced, equitable, and good marriage. Their presence fosters clarity regarding the rights and responsibilities of both parties, mitigating potential misunderstandings and future conflicts.

These are particularly important for providing women – who are traditionally more vulnerable than men – specific protections to ensure that they are treated fairly and have a safety net in case the marriage has problems. Furthermore, they establish a formal and legal record of agreed-upon terms, proving invaluable in cases of disputes or legal matters that may arise down the line. Unfortunately, the evidence presented demonstrates a lack of importance given to these clauses within Pakistani society.

What happens these days is when the barat goes to the bride's home, the discussion on the terms of the marriage contract is concluded within 15 to 30 minutes. What should happen is that this form should be given separately to both the bride and groom's families at least a few days or weeks before the marriage so that they should read it and understand it in detail before signing.

(Stakeholder, Karachi)

The girl is left dependent on her male relatives to advocate for her rights during the Nikah and to get special clauses added for her. In some cases the husband changes his nature later on, this is what happened with me as well. My father asked for haq mehr but my paternal uncle did not get anything written down at the time of the Nikah. My husband said he would not give me the haq mehr and I have got you for free, so I can make you leave any time I want.

(Community Member, Female, Karachi)

3.4. The Nikah Registrar: Expectations of Roles, Capacity & Challenges

Nikah Registrars are granted licenses from the Union Council as under Section 5 MFLO & Rule 7. As per the law and rules, the primary duty of the Nikah Registrar is the registration of all Nikahs. While they do have the power to solemnize marriages, these may also be solemnized by others and then brought to them for registration by the person who actually solemnized the marriage.

The Nikah Khwans register the marriage, but the actual Nikah can happen without them or a Qazi. Some of them are educated and some of them are not, and depending on what background they are from, they might be habitual of crossing out clauses due to traditional practices.

(Male Community Member, Karachi)

One of the biggest challenges and concerns is the fact that there is no readily available or easily accessible list of Nikah Registrars anywhere. No such data is available in the public domain. The research team also made repeated efforts to access such information from the Local Sindh Government Department and the local Union Councils, but to no avail. Accessing this information for the common person will be extremely challenging, making it near to impossible to easily verify whether a certain individual is, in fact, a licensed Nikah Registrar or not. In the KII with Fauzia Viqar, she emphasized the importance of understanding the number of Nikah registrars and regulating their activities. Although the MFLO currently states that there must be one or more Nikah Registrar for each Ward, our mapping presented that many UCs provide licenses to as many Nikahkhwans as they want, showing little compliance with the MFLO. This led to the discovery that there are, in fact, an unidentified number of non-registered Nikah Registrars who are solemnizing and registering marriages without any sanctions or penalties.

A lot of the times people have fake/unofficial stamps which they use to go around the official process and register a marriage without a registrar. This happens in love marriages often, a moulvi might not even be alive but his stamp is used to make a marriage official.

(Nikah Registrar, Larkana)

There are serious concerns as to how these non-registered Nikah Registrars have access to official registrars and seals provided to those registered under Rule 7. Discussion within the FGDs gave an example of one manner in which this happens i.e., where a single Nikah Registrar has his own juniors working under him, who use his seal to solemnize or register Nikahnamas.

The UC secretaries who register the qazi/Nikah Khwan should also know whether the person they are registering is even competent/qualified to do this job. Firstly, the form should not be so widely available, an unofficial person should not be able just to print out the form and perform a marriage. The qazi's stamp that is needed for a Nikahnama as well should not be so widely available and should only be given to government officials for use.

What usually happens is that there is one Qazi that is actually registered, but he has 20 others working with him using that one stamp.

(Stakeholder, Karachi)

Other times the imams of small masjids take the forms from us to perform the Nikah as well, and whenever they run out, we give them more. They perform the Nikah and bring it back to the registrar, who stamps it and submits it to the UC.

(Nikah Registrar, Karachi)

This example indicates some level of connivance of actual registered Nikah Registrars while also evidencing negligence in oversight and monitoring by the Union Council. Most common people will not even think to question a person who purports to be a Nikah Registrar unless aware of this ongoing deception where their marriages are being solemnized and registered by unregistered Nikah Khwans, and they are unable to verify this information for themselves.

Yes, this still happens. Often it is older men who do this to trap young/underage girls in marriage. They call unregistered moulvis and make unregistered/fake Nikahnamas, or the Nikah happens verbally, and the families are informed later. This happens to girls who are young or uneducated or who come from very backward environments at home.

(Nikah Registrar SBA)

The importance of registration of a Nikah Khwan is not only to ensure compliance with the law but also to provide credibility and ensure that the officiants are accountable and maintain a record of the marriages they perform. It also guarantees that becoming a registered officiant requires fulfilling certain requirements and submitting the necessary documentation.

Neither the law nor the rules identify a criterion for a person to qualify to become a Nikah Registrar. As per Rule 7(2), the Union Council may make “such inquiries as it may consider necessary” to be “satisfied that the applicant is a fit and proper person for the grant of a license”. This is then left to the discretion of the Union Council, without placing any minimum standards in place, including levels of literacy, education, and experience. This absence of specific qualifications and reliance on subjective evaluations raises questions about the understanding and capacity of Nikah registrars in fulfilling their responsibilities and safeguarding women’s rights within the Nikahnama.

Only those people should be allowed to become registered qazis who have received proper education in Islamic law and matters of Nikah and divorce. There should be restrictions so that every other person who is uneducated but wants to do this work should not be allowed to do so. To do any job, you need to be properly qualified, and the same should apply here that only properly certified scholars should be allowed to become qazis.

(Nikah Registrar, Karachi)

The wide discretion relating to whom to employ leads to situations where Nikah Registrars may be completely illiterate and unable to read or write, a reality discovered by the research team in their mapping and scoping for the purposes of the research. This means they cannot understand or confirm what has been written in a Nikahnama or ensure that it is correctly filled in as per requirements in the law.

It is necessary to note that, throughout all the FGDs conducted with Nikah Registrars in the three regions, it was pointed out that none of the Nikah Registrars have much knowledge about the law as they have not received any formal training regarding MFLO 1961 or any other family laws. In fact, there is a complete lack of training and information provided to the Nikah Registrars upon their notification or at any time thereafter. This echoes the Punjab situation, as shared by Kate Vyborny. The Punjab Commission on the Status of Women conducted training of Nikah Registrars, and the pretest before the training sessions with Nikah Registrars revealed that they do not know much about the law, with 92% of the participants revealing that this was the first time they were receiving any formal training. This gap in knowledge and training may lead to vague and incomplete entries in the Nikahnama, which can be manipulated or crossed out.⁶²

⁶²Butt, A. J. “Reforming the Procedure of Nikah Proceedings in Pakistan”SAHSOL. sahsol.lums.edu.pk/node/12901.

During the community FGDs, male and female participants from all three regions highlighted the importance of the role of Nikah Registrars in the marriage, which ranged a whole variety of expectations:

- To explain what is contained in the Nikahnama in detail.

Our society and religion tell us that if someone is of age, they should get married, but it is the Nikah Khwan's legal duty to explain the Nikahnama to them and to explain the purpose of marriage to them.

(Community Member, Male, Karachi)

It is the bride and groom's responsibility to read the Nikahnama, but not everyone is educated, so it is the Nikah Khwan's duty to read it out to both parties and make sure they understand it.

(Community Member, Male, Karachi)

- To explain what all can and cannot be included in the Nikahnama; explain the legal rights and obligations of the husband and wife and how the Nikahnama plays a critical role in marriage;
- To ensure consent of all parties to all details filled out in the Nikahnama
- To ensure the age of the husband and wife are above 18;
- To ensure that both parties, particularly women, are able to include protections and demands with mutual consent and understanding

The FGDs revealed that Nikah Registrars are mostly imams of the local mosques and thus have relevant Islamic knowledge but no legal knowledge as far as the MFLO or SCMRA are concerned. While updated Nikahnamas and Registrars are provided to them, there is no mechanism or process whereby they are actually given training on Islamic laws and principles relating to marriage and their potential roles or the law. There is no set curriculum or understanding of standards of what information the Nikah Registrar should provide. Updated information is provided on an ad hoc basis through notifications, but not in a consistent, consolidated manner. Thus, there are several Nikah Registrars basing their decisions on their own bias, notions, and perspectives e.g., age of marriage, right of divorce, or what conditions may or may not be placed in the Nikahnama.

It is because no one has ever told them, they just know that they have to cross out these clauses on the Nikahnama. In my personal opinion, many officiants themselves don't understand what the clauses mean, they just know they have to cross them out.

(Stakeholder, Larkana)

Further, the license given to a Nikah Registrar is a lifetime license. It is good practice for situations or positions which grant licenses that the licenses must be mandatorily renewed every set number of years. This was highlighted by Fauzia Viqar, who advocated for fixed-term registrations of Nikah Registrars with renewals every few years to maintain accountability. The FGDs reiterated this, highlighting the need to verify the qualifications and capabilities of the officiant, particularly the local mosque's imam, who is often given prominence in the community. This emphasizes the significance of ensuring that the person performing the marriage ceremony is equipped to handle the documentation and legal aspects associated with it.

The requirement of regular renewal gives an opportunity to regularly engage with the Nikah Registrars and keep them up to date with changing laws, policies, regulations, and procedures, and an opportunity to undergo periodic training to enhance their knowledge and skills to ensure they provide an accurate and reliable service to families. These processes can also be a form of quality control, ensuring that only competent and dedicated individuals continue to service, maintaining the integrity of the registration processes. This also allows for the opportunity to conduct a performance review of the registrars. There are no monitoring and evaluation processes currently in place, including a complete lack of complaint or grievance registration or redressal mechanisms. This could provide an opportunity to incorporate one facet of monitoring easily into the framework. Through more regularized monitoring and required renewal, it will also push for the registrars to adhere to ethical standards and conduct, promoting fairness and professionalism in their work as opposed to providing services at standards of their own discretion. Renewal processes and training will also help ensure the Nikah registrars are able to discuss and are better equipped to handle evolving marriage practices e.g., the inclusion of more conditions in the Nikahnama, divorce rights etc. Renewals could be an opportunity to verify that marriage registries are being maintained accurately and securely, reducing the risk of errors or data breaches. This requires that the Local Government, particularly the Union Council, play an active role in monitoring Nikah registrations with streamlined monitoring processes to ensure compliance

Nikah Khwans should be trained properly. That is a great point because the way our society is, we do not follow what our faith says, nor do we try to understand it. When the person responsible for filling out the Nikahnama says that these clauses/blanks need to be filled out or that he will not perform the Nikah unless certain conditions on the Nikahnama document are not met properly, then the families getting their children married will automatically fall in line and follow the law.

(Stakeholder, Karachi)

4. Conclusion

This study provides evidence of a pattern of systematic disempowerment of women through the deliberate or negligent exclusion of protections and rights of women in the Nikahnama. Social norms, fear of conflict, focus on other aspects of the wedding ceremony, lack of knowledge and awareness of importance of these clauses, and the reluctance to provide women with increased agency and power are all reasons which have emerged as an explanation for this pattern.

It is important to focus on some key challenges that have been identified in this research:

1. Registration and training of Nikah Registrars. It is essential that a scoping must be done by the Government of Sindh to identify the current operating registered and non-registered Nikah Registrars. Penalties must be given to those who are operating without a license and to those who have allowed others to use their registers and stamps without a license. Understanding the on-ground realities, a workable model must be developed for the registration of Nikahs at the community level with regular and mandatorily renewable licenses to ensure effective monitoring and evaluation of the quantity and quality of Nikah Registrars. A minimum qualification and standard must be developed for Nikah Registrars, including mandatory and regular training on laws relating to marriages, their roles and obligations.

Law reform similar to that in Punjab must be passed which enhances the roles and responsibilities of the Nikah Registrar, including minimum days of registration from the time of Nikahnama and penalties on Nikah Registrars for non-completion of the Nikahnama. Obligations to explain the Nikahnama through law reform may be explored to be able to provide the community with greater awareness of the Nikahnama itself, which must include solo conversations and guidance with the bride and groom individually.

2. The registration process of Nikahnamas: While some recognize the importance of registration for legal recognition and access to services, there are challenges in implementing the registration process effectively. Loopholes, bribery, and limited access to documentation hinder the proper registration of marriages. Stricter implementation, improved age verification protocols, and better dissemination of information are necessary to ensure compliance with the legal requirements and protect vulnerable individuals, particularly girls.

3. Community awareness on the importance of Nikahnama. A greater community understanding and demand must be built for the accurate and total completion of the Nikahnama must be built. Behavior and social norms disempowering women can only be challenged and changed systematically over time through community interventions. These may include the insertion of discussion on marriage and marriage rights and the Nikahnama at secondary schools and colleges for both boys and girls, additional side courses and seminars in secondary schools and colleges for both boys and girls, community education through awareness sessions and communication campaigns; integration of lessons through other programs including economic awareness, health, agricultural projects, etc.; communication campaign on entertainment, news, and social media by the Government.

4. Targeted awareness and sensitization sessions with religious leaders at the community levels. The identified reasons and patterns for the exclusion of women's rights and obligations in the Nikahnama stem from cultural and social norms, NOT Islamic principles. It is important for religious leaders to communicate this further to the people seeking knowledge of Islam and rights in marriage from them. This differentiation is key for communities that are unable to differentiate between the two. The support of religious leaders in ensuring the inclusion of such rights is critical.

5. Increased community discussion about the significance of marriage and marriage rights. The exclusion of discussion between the bride and groom and allowing others in the family to lead these discussions results in weakening a family unit. It is important to work towards normalizing these through community interventions and discussions. These can be led through schools, religious centers, or community centers, as may be decided based on individual districts, communities, and their needs and comforts.

6. Training of judiciary on lived realities of women in marriages, more modern Islamic interpretations and discourse on marriage, and women's rights and equality within marriage. The judiciary tends to rely on only a few interpretations of Islam and Islamic jurisprudence. Alternative or modern interpretations are not always easily accessible. It is important to provide the judiciary with training and literature on key concepts of MFL in order to pursue a wider and less conservative approach taken in the court of law on these matters.

7. Normalization of discussion on financial rights and protections of women during and upon ending of a marriage. Women's financial dependence on men is known but not always openly acknowledged. It is essential to normalize such discussions so that strategies for their protection may be put in place beyond just a demand for a high haq mehr. Thus, the concepts of ensuring an amount of maintenance, conditions of marriage, Mut'ah, and women's share in the matrimonial property must be discussed and put into the Nikahnama if found to be necessary.

The research findings underscore the need for comprehensive training programs, increased awareness, and improved implementation of existing laws and regulations. By addressing the gaps in knowledge and practices, it is possible to create a more equitable and efficient system for registering and documenting Muslim marriages, ultimately safeguarding the rights and well-being of individuals involved in these unions.

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