

A
BILL
*further to amend the Muslim Family
Laws Ordinance, 1961.*

WHEREAS it is expedient further to amend the Muslim Family Law Ordinance, 1961 (VIII of 1961), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title, extent, application and commencement.---(1) This Act may be called the Muslim Family Laws (Amendment) Act, 2019.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall exclusively be applicable to all the Muslims belonging to the Shia school of thought (Fiqah-e-Jafria).

(4) It shall come into force on such date as the Government may by notification in the official Gazette, appoint.

2. Amendment of section 4 of Ord. No. VIII of 1961.---In the Muslim Family Laws Ordinance, 1961 (VIII of 1961), the existing provision of section 4 shall be renumbered as sub-section (1) and thereafter, the following new sub-sections shall be inserted namely:

“(2) If a Muslim male from Ahl-e-Tashih dies issueless, his widow shall receive one-fourth share from the estate of the deceased and if the deceased has left more than one widows, the widows shall receive equal share from the one-fourth share of the estate.

(3) In case of dispute, with reference to sub-section (2), arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the Mujtahid-e-Alam:

Provided that the decision of Mujtahid-e-Alam shall have a status of an Award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation.-The expression Mujtahid-e-Alam (Faqih-e-Azam) means a juris-consult, religious scholar or doctor of Shia school of thought well versed with Shariah having international repute and such recognition.”.

3. Amendment of section 7 of Ord. No. VIII of 1961.---In the said Ordinance, in section 7,-

- (i) in sub-section (1), for the full-stop, occurring at the end, shall be replaced by colon and thereafter the following proviso shall be inserted, namely:

“Provided that where the parties belong to Fiqah-e-Jafria,-

- (a) the man may voluntarily and with his free will pronounce himself or through duly authorized attorney (Vakil) Talaq uttering in literal Arabic words (seegha) in physical presence of at least two witnesses qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat Order, 1984 (P.O. No. 1 of 1984);
- (b) the pronouncement of Talaq shall be ineffective if it is done jokingly or under anger, intoxication, insanity, duress or coercion of any kind and from any corner whatsoever; and
- (c) in case of dispute, with reference to paragraph (a) or (b) arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the Mujtahid-e-Alam and the decision of Mujtahid-e-Alam shall have a status of any Award and the same shall be dealt in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Asstt. Legal Drafter
Govt. of Khyber Pakhtunkhwa
Law Department

Explanation.---The expression "Mujtahid-e-Alam" (Faqih-e-Azam) means a juris-consult, religious scholar or doctor of Shia school of thought well versed with Shariah having international repute and such recognition."

STATEMENT OF OBJECTS AND REASONS

The Hon'able Lahore High Court, Rawalpindi Bench, Rawalpindi in CR.No. 795 of 2010 while hearing the matter of competence of an issueless widow from fiq-e-Jafriya to claim her share from the inheritance of his deceased husband held as under:

"It is expected that, the Government of Pakistan in Minister of Law would take legislative measures to promulgate a codified law in this regard in order to protect the right of a childless widows from Ahl-e-Tashih in getting their due shares from the inheritance of their deceased husbands."

Constitution of Pakistan, under Article 227 (1), provides the foundation for legislation regarding personal law of any Muslim sect by interpreting the Quraan and Sunnah, according to their teachings. Currently, The Muslim Family Laws Ordinance 1961 deals with the family matters including the talaq for the followers of all fiqh in the country. There has been demand from the followers of Shia Fiqah for the legislation on talaq as per their interpretation of Quraan and Sunnah. Hence, this Bill. The Bill was shared with the Council of Islamic Ideology. The Council has also endorsed it. This legislation will allow the followers of Shia Fiqh to settle their matters of talaq according to their interpretation.

The Bill is designed to achieve the aforesaid object.

Peshawar,
dated the
, 2019.


MINISTER-IN-CHARGE.

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