

DISSOLUTION OF MARRIAGE IN PUNJAB: The Cost of Divorce for Muslim Women



Dissolution of Marriage in Punjab: The Cost of Divorce For Muslim Women

© Centre for Human Rights
Published August 2023
Lahore, Pakistan



This is an independent report prepared by the Centre for Human Rights with support from the American Bar Association - Rule of Law Initiative.

About the Centre for Human Rights

The Centre for Human Rights, housed in Universal College Lahore, is a legal research institute that actively researches issues of human rights, and works on legal policy, due process, rule of law and criminal justice reforms in Pakistan. The Centre aims to provide legal analysis which are rights-based, human-centric and aimed at enhancing the constitutional freedoms of equality and non-discrimination.

Authors

Ali Imtinan & Seher Aftab

Principal Researcher

Ashal Nadeem

Cover Page

Zain Aftab

Supported by

American Bar Association Rule of Law Initiative
1050 Connecticut Ave NW, Suite 450,
Washington, DC 20036, USA
www.americanbar.org

Disclaimer: The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of either the American Bar Association or the Rule of Law Initiative unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

Published by

Centre for Human Rights, Universal College Lahore
1.5 km from Thokar Niaz Baig, Raiwind Road,
Lahore, Pakistan
www.cfhr.com.pk

Copyrights Notice ©

This publication is available as a PDF on the website of the Centre for Human Rights under a Creative Commons license that allows distributing and copying this publication,

as long as it is attributed to the Centre for Human Rights and used for non-commercial, educational or public policy purposes. Any graphs or images contained here may not be used separately from the publication.

For more information, please contact info@cfhr.com.pk.

Acknowledgements

The Centre for Human Rights (the Centre) greatly appreciates the assistance and support of all the institutions and people who have helped make this report possible.

The Centre would like to acknowledge their international partner, the American Bar Association's Rule of Law Initiative for supporting this report. A special thanks is extended to Ms. Darine El-Hage and Ms. Millan Bederu for their input and support in the development of this publication.

Thanks are due to the Local Government & Community Development Department (Punjab) for their support and assistance in data collection. The Centre is also greatly indebted to Mr. Umar Mahmood Khan and Ms. Sevim Saadat for strategic advice and input in conceptualisation and development of this report, and to Ms. Mehak Adil for her contributions and guidance in writing the initial draft of this report.

The Centre also appreciates and thanks its staff members: Mr. Haris Khan, Ms. Maham Kashif, and Ms. Sajal Khan, as well as clinical interns for their assistance in data collection and input for this study.

Table of Contents

Executive Summary.....	6
1. Introduction	
1.1. Overview & Scope of the Report.....	7
1.2. Objectives of the Report.....	8
2. Methodology	
2.1. Sampling Strategy.....	9
2.2. Data Collection Tools.....	9
2.3. Data Triangulation.....	11
2.4. Limitations.....	11
3. The Legal Framework on Dissolution of Marriages in Pakistan	
3.1. Introduction to Marriage Rights Legal Framework.....	13
3.2. Overview of the Different Forms of Dissolution.....	13
3.2.1. Talaq.....	14
3.2.2. Delegated Right to Divorce.....	15
3.2.3. Khula.....	16
3.2.4. Mutual Divorce.....	17
3.2.5. Faskh.....	17
3.3. Current Status of Dissolution of Marriage.....	18
4. Key Findings	
4.1. Overview of Data Collection.....	21
4.1.1. Case Files from Family Courts.....	21
4.1.2. Case Files from Union Councils.....	22
4.1.3. Surveys, FGDs, and Interviews.....	23
4.2. Cost of Cases.....	25
4.2.1. Khula.....	25
4.2.2. Talaq, Delegated Right to Divorce, & Mutual Divorce.....	27
4.3. Duration of Cases.....	27
4.3.1. Khula.....	27
4.3.2. Talaq.....	30
4.3.3. Delegated Right to Divorce.....	31
4.3.4. Mutual Divorce.....	32
4.4. Chances of Reconciliation.....	32
4.5. Societal Preference & Social Biases.....	33
4.6. Impact on Psychological and Emotional Wellbeing.....	36
4.7. Ease of Access.....	37
4.8. Other Observations from Review.....	40
5. Concluding Note & Way Forward.....	42

Executive Summary

This report examines women's accessibility to justice when dissolving their marriages in Punjab. Dissolution of marriage, or divorce, pertains to a formal and legal ending of the marriage, through court or otherwise. The five prevalent forms of dissolution of marriage in Pakistan are *talaq*, delegated right to divorce, *khula*, mutual divorce, and *faskh*. The process for each form of dissolution is recognised in the Dissolution of Muslim Marriages Act 1939 and/or Muslim Family Laws Ordinance 1961. Whilst the process for *khula* has developed over time through case law.

Protection of women's divorce rights, or their ability to effectively dissolve their marriages, is closely associated with actualisation of women's rights at large, including marital rights, personal autonomy and agency, right to live free from violence and coercion, etc. However, the process for dissolution of marriage in Punjab entails certain barriers for women that prevents the realisation and enjoyment of their rights.

The process of dissolution of marriage for Muslim women and men in Punjab remains disparate, as men do not need a recourse to a court to dissolve their marriages, resulting in an expeditious, less costly, and simpler process. Women, on the other hand, are obligated to petition a court for dissolving their marriages through *khula* or *faskh*. The only form of divorce for women where no court process is involved, i.e., delegated right to divorce, remains largely elusive to women due to lack of awareness and socio-cultural challenges. Consequently, the process of dissolution of marriage for women is more arduous, carries greater financial bearing, and has a lasting, adverse psychological effect on them.

The study reveals that it takes women virtually twice as much time, on average, to dissolve their marriages as men. Costs vary from case to case, however, more than half the surveyed female litigants reported having no or less than Rs. 15,000 monthly income, whereas the overall costs of cases for more than half of the surveyed litigants ranged from Rs. 31,000 to over Rs. 100,000. In addition, a societal inclination for ensuring reconciliation between spouses also affects judges, lawyers, and Union Council officials, who at times resort to coercive methods to attempt reconciliation. Cumulatively, this results in women facing several impediments to effectively dissolve their marriages in Punjab.

For the resolution of these issues and to make dissolution of marriage accessible for women, this report advances the following recommendations: i) legislative reform in family laws to make the process of dissolution of marriage identical for women and men; ii) introduction of periodic reviews and monitoring for family court and Union Council proceedings to strengthen enforcement of the law; iii) capacity-building initiatives, including sensitivity training, for judges, lawyers, and Union Council officials to reinforce the protection of women's divorce rights; iv) implementation of legal aid and assistance mechanisms for women who are unable to afford legal representation for dissolving their marriages; v) dissemination of awareness-raising campaigns to engage with pernicious social attitudes and perceptions that impede materialisation of women's marriage rights.

1. Introduction

1.1. Overview

According to the Punjab Gender Parity Report (2021), marriage registration in Punjab increased by 7.5% to 584,868, while divorce registrations increased by 9% to 52,922 between 2020 and 2021.¹ The registration for *khula* increased significantly by 31% from 13,916 in 2020 to 18,203 in 2021.²

The concept of marriage is strongly entrenched into the religious, cultural and social norms of Pakistan. The significance attached to marriage continues to be reiterated in all parts of Pakistan, regardless of caste, religion, socio-economic status, literacy or any other factors. Marriage rights are provided for by a number of national and international laws applicable in Pakistan. However, while the legal framework for marriage rights is distinctly laid out, certain socio-cultural and religious norms can serve as a barrier to effective provision and implementation of marriage rights for different individuals, particularly women.

One of the most important rights within the marriage rights framework is the option to dissolve the marriage. Dissolution of marriage is as significant as having the right to marry, as it provides the independent option to end a marriage where the parties are not willing to remain together. Without the option for dissolution, parties would be bound by marriage indefinitely. This would prove problematic for a number of reasons including the limitation or deprivation of fundamental rights such as freedom of life and dignity. Therefore, besides ensuring equality of rights during the subsistence of a marriage, it is imperative to establish parity between the spouses' right to dissolve a marriage.³

In Pakistan, divorce has largely been understood as solely the husband's unilateral right to dissolve a marriage through *talaq* and the wife's right to seek dissolution through *khula*. This public perception is largely grounded in an ineffective understanding of other forms of divorce under the law, which are either misunderstood or lesser known. Besides *talaq* and *khula*, other forms of divorce that exist within the legal framework in Pakistan are delegated right to divorce (*talaq-e-tafweez*), mutual divorce (*talaq-e-mubarat*), and *faskh*. Other forms of dissolution either solely protect the right of the wife to dissolve the marriage under the law (such as delegated right to divorce and *faskh*) or are available to both the wife and husband (such as mutual divorce).

This report evaluates four key forms of dissolution of marriage — *talaq*, *khula*, delegated right to divorce (DRD), and mutual divorce — and its practice in two select districts of Punjab: Lahore and Pakpattan.⁴ Each of the key forms of dissolution of

¹ Punjab Commission on the Status of Women, 'Punjab Gender Parity Report' (2021) <[PGPR-2021 5.pdf \(punjab.gov.pk\)](https://punjab.gov.pk)> accessed 21 August 2023.

² Ibid.

³ Article 23 of International Covenant on Civil and Political Rights provides for '*equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.*' (emphasis added)

⁴ While *khula* (no-fault based divorce) and *faskh* (fault-based divorce) are two distinct forms of dissolution under Islamic law, as well as Pakistan's legal framework, both are sought through an application to the family court as per the law in Pakistan. A view of literature suggests that over time, courts have

marriage are assessed independently and in comparison to each other against various factors to provide complete information on the rights of women and men on the options for dissolution.

Historically, any development in law or policy pertaining to marriage rights has been a result of judicial interpretation in Pakistan. In general, research on family law and marriage rights has not been a priority. This gap in existing data and research is widespread and touches on the majority of marriage rights, including the right to dissolution of marriage. Preliminary consultations with key stakeholders pointed towards an increased reliance on seeking dissolution through *khula*, making it the most common form of dissolution availed by women. As noted above, an increase in its incidence has also been reported recently. Therefore, it is crucial to assess the process of *khula* and identify gaps and challenges that women face while seeking to determine whether this form of dissolution is able to adequately provide women with justice. A comprehensive assessment, however, cannot be made without evaluating the husband's right of *talaq* and its process, and highlighting the inequality that exists between the husband and wife in cases of dissolution. Moreover, preliminary consultations with key stakeholders also highlighted the gaps in knowledge and awareness on the different options available to women for seeking dissolution. For instance, a majority of women are not able to secure their right to DRD under Clause 18 of the *nikahnama* at the time of getting married, as a result of which, the incidence of the same is rare. Similarly, instances of seeking mutual divorce are also uncommon. Despite the low incidence of other forms of dissolution availed by women, evaluating these rights and the underlying processes are vital to form a holistic understanding of the women's right to dissolution.

This report adopts a legal and sociological lens to understand women's access to justice when it comes to seeking dissolution of marriage. In addition to this, the study also adopts a women-centric approach to fully understand the experiences of female litigants in dissolution of marriage in Pakistan.

1.2. Objectives of the Report

The objective of this report is threefold: first, to assess the different forms of dissolution in comparison to each other and identify barriers for women in accessing justice when seeking dissolution of marriages; second, to inform policy debate and legal reform at the governmental level for effective implementation of women's divorce rights through evidence-based research; and third, to generate a wider discourse to improve the understanding and awareness of women and girls on dissolution of marriage rights.

interpreted the right to *khula* expansively (such as removing the requirement to obtain the husband's consent and protecting financial rights of women, including dower) conflating the principles of the two forms to an extent. Case files also do not distinguish between the two. The procedure for both more or less remains the same, except that in *faskh* cases, women are required to prove grounds for dissolution of marriage provided in Section 2 of the Dissolution of Muslim Marriages Act 1939. As a result, *khula* has become the primary mode of dissolution sought by women from courts. During data collection, the team only found *khula* cases. For this reason, the report focuses on *khula* cases in understanding the court processes that women have to go through while seeking dissolution.

2. Methodology

2.1. Sampling Strategy

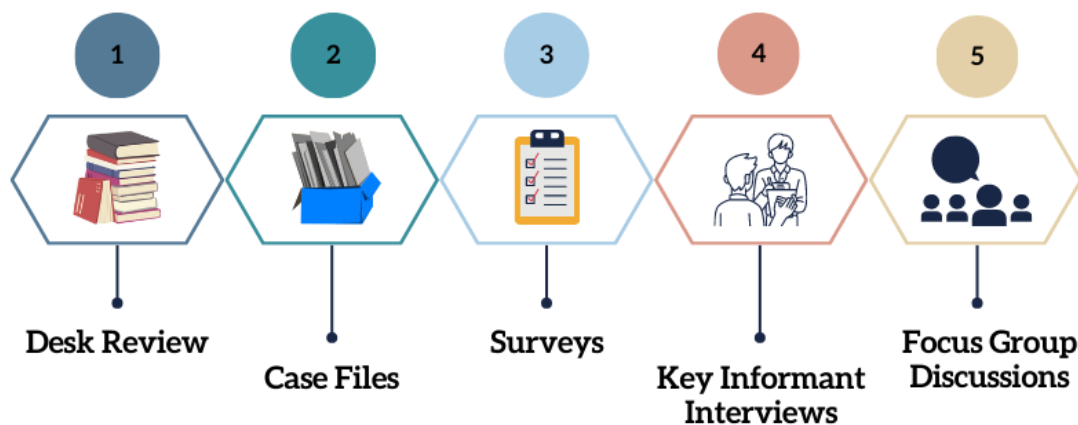
Due to resource and access limitations, a purposive sampling approach was adopted to determine the geographic scope of the report. The report is limited to Punjab, specifically two districts, Lahore and Pakpattan. The inclusion of Lahore in the report provides a representative sample of central Punjab, as Lahore is Punjab's most populous city and largest urban centre, and hence provides access to people from varying socio-economic and cultural backgrounds. Whereas, the inclusion of Pakpattan district provides some grounds for comparison to a semi-urban area in Punjab.

Moreover, according to the Punjab Gender Parity Report,⁵ Lahore was amongst the districts with the highest number of *khula* cases in 2021, while Pakpattan was amongst the districts with the lowest number of *khula* cases for the same year. Therefore, this report focuses on two districts on both ends of the spectrum in terms of understanding whether the experiences of women in the district with the highest number of *khula* cases i.e., Lahore are also prevalent in the district with lowest i.e., Pakpattan.

2.2. Data Collection Tools

The report adopted a mixed methods research approach utilizing both quantitative and qualitative tools. This included both primary and secondary data collection and analysis: literature/desk review, case file review, surveys, key informant interviews (KIIs) and focus group discussions (FGDs).

Fig. 1: Data Collection Tools



Literature/Desk Review: A detailed desk review of existing literature relevant to dissolution of marriage in Pakistan was conducted. This included a review of relevant family law related policies and laws of the federal and provincial (Punjab) governments; reports of Civil Society Organisations (CSOs) and independent studies on dissolution of marriage, related rights and access to justice for women.

⁵ Punjab Commission on the Status of Women, *supra* note 1.

Case Files Review: A total of 201 case files from family courts and union councils were acquired through select lawyers/law firms in Lahore and Pakpattan. The case file review enabled the research team to identify key data points specific to the geographic scope of the report as this information was not readily accessible via the desk review. The research team extracted and analysed data against a number of factors, including the following: duration from filing to decision of the case, costs incurred by parties, attitudes and language used by judges, etc.

Surveys: The research team developed two survey tools to collect quantitative data on trends and preferences in dissolution of marriage cases from lawyers and litigants in Lahore & Pakpattan.

Survey participants included female and male lawyers with practical experience in family law cases in Lahore and/or Pakpattan; female litigants who were either involved in an ongoing dissolution of a marriage suit, or were previously involved in a dissolution of a marriage suit; and both female and male youth, regardless of marital status.

A total of 107 surveys were conducted by the research team in Lahore and Pakpattan. This included 90 surveys with female and male lawyers and 17 surveys of female litigants who had, or were in the process of seeking *khula* from courts. The quantitative data collected from the survey forms was used to analyse the practice and preferences of litigants and lawyers towards the right to *khula* and its process in Lahore and Pakpattan.

Focus-Group Discussions with Lawyers: A total of three FGDs were conducted under this study. One FGD was conducted with 12 participants in Lahore, including 5 female and 7 male lawyers. Two FGDs were conducted in Pakpattan, consisting of 14 participants, with 7 female and 7 male lawyers. The lawyers who took part in the FGDs in Lahore and Pakpattan provided representation/counseling to clients on dissolution of marriage cases/processes. The primary focus of the FGDs was to identify preferences for different forms of dissolution of marriage, understanding attitudes and perceptions of different stakeholders on female litigants pursuing dissolution of marriage, gathering insights into challenges in such cases, etc. The FGDs helped gauge a more qualitative understanding of the lawyer's perspectives, including their experience in access to justice, perceptions of social, legal and procedural barriers and satisfaction level in securing dissolution of marriage.

Key Informant Interviews with Female Litigants: The research team conducted a total of 10 semi-structured and 1 structured interview with select female litigants in Lahore, who were either part of ongoing dissolution of marriage proceedings or had gone through the process in the past. The KIIs aimed to understand obstacles litigants face while pursuing dissolution of marriage, identify socio-cultural barriers that impact the process of dissolution of marriage and capture the satisfaction of litigants pursuing such cases or interacting with relevant actors, including judges, Union Council officials, etc.

Key Informant Interviews with Union Council Officials: The research team conducted a total of 9 one-on-one interviews with select union council officials in Lahore. These interviews were focused on understanding the process of dissolution in Union Councils for *khula* and *talaq* cases, in terms of time and frequency of cases, as well

as the social and psychological impact of khula proceedings on women. The interviews further focused on the views of Union Council officials on reconciliation and the delegated right to divorce as parts of the different dissolution processes of Muslim marriages.

2.3. Data Triangulation

The findings from the quantitative and qualitative data sources were triangulated to corroborate trends and challenges against key indicators identified under this study. The triangulation of the data provided a comprehensive understanding of the barriers for women in accessing justice, as well as the impact of different forms of dissolution of marriage in Punjab.

2.4. Limitations

The team faced various limitations related to the reliability and accessibility of information, cooperation of participants, and other external factors while collecting data in Lahore and Pakpattan.

Firstly, the study's findings are limited by the size and representativeness of the sample population. There was a hesitancy and lack of awareness among institutions regarding the data needing to be collected. Many UCs were reluctant or delayed the process of sharing case files with the team, and many of those that were shared contained files that were incomplete, illegible, or had incorrect data. Multiple UCs interviewed were also unaware entirely of the delegated right to divorce (DRD), while others visited did not have sufficient sample DRD cases to analyse. Despite diligent efforts, the team was unable to procure a sample size that may have been a better representation of the population. Moreover, as the dissolution of marriage is a sensitive topic for lawyers and litigants, the team could not rely on random sampling to conduct data collection to accumulate a sufficient sample. Particularly the sample size of the litigants for surveys was insufficient due to a lack of willingness to participate, leading the team to reach out to their various networks. Therefore, the results of the surveys may not provide an accurate representation of Punjab's population.

Another key limitation in conducting surveys at family courts in Lahore was the lack of organisation within the courts for collecting data efficiently. The team had to repeat rounds of the family court rooms which were spread across the court, which took a significant amount of time. Many female litigants who were in the middle of custody and maintenance suits did not wish to talk about the process of dissolution. Other women had not yet initiated cases of dissolution and were at family courts to file a suit for maintenance. Additionally, many of the lawyers surveyed in court were also pressed for time and answered questions regardless of clarity with respect to the questions entailed in the survey. Further, most male lawyers approached for surveying in court were uninterested and unwilling to share information, with most denying to participate. Those who participated demonstrated a general sense of apathy and indifference and were not carefully answering the survey questions, making the accuracy of the results less reliable.

The hesitation and mobility of female lawyers for interviews was also a major limitation. For the FGD in Lahore, although there were initially more female lawyers confirmed than male lawyers, a few female lawyers expressed at the last moment that they would not be able to attend the session due to various reasons, such as the need for female companions to safely return home at the end of the session, or a lack of space between themselves and the other male lawyers, while others did not attend despite confirmation and did not provide reasoning. Although the team accommodated the lawyers, there was still hesitation from female lawyers for participation. The team was still able to interview 5 female lawyers, however, to ensure a gender ratio to ensure fair representation in conversations in future interviews, the team will more proactively ask and plan in advance how to accommodate female interviewees.

In Pakpattan, the team faced different limitations. The main limitation was the language barrier. The litigant surveys conducted in Pakpattan were translated into Urdu, however, a specific dialect of Punjabi is the most commonly spoken language in the district. While members of the team conducting the surveys were proficient in Punjabi, as there is a specific dialect of Punjabi spoken in Pakpattan, the team relied on the support of male bar council members at the court to translate parts of the survey to the litigants. Due to some mistranslation, the team believes the essence of the questions may not have been addressed adequately. Beyond this, there was a disinclination from the litigants to be contacted again after being surveyed, and only one female litigant agreed to sharing the contact of her brother.

The political unrest in Pakistan at the time of data collection also created considerable hindrances. Due to the political instability and safety concerns, the team could not safely travel for data collection for major periods of time. Beyond this, lawyers at Lahore civil and family courts went on strike during the period of data collection, resulting in a significant delay in the team's timeline.

3. The Legal Framework on Dissolution of Marriages in Pakistan

3.1. Introduction to Marriage Rights Legal Framework

This section of the report presents an overview of the legal framework on dissolution of marriages in Pakistan. The legal system in Pakistan is based on a mix of English common law and Islamic law. Islamic family law, in particular, has played a significant role in developing marriage and related-rights in Pakistan pertaining to marriage, divorce, maintenance, inheritance, and guardianship.

The Constitution of Islamic Republic of Pakistan 1973 is the primary source of law in Pakistan, and all law-making authority is derived from the Constitution: federal and provincial laws; ordinances; judicial decisions; government policies and rules. Article 227 of the Constitution requires all provisions of the law to be in conformity with injunctions of Islam.⁶ Chapter I lays down Fundamental Freedoms and includes a set of rights that are relevant to marriage rights, such as the rights to life (Article 9), dignity (Article 14) and equality (Article 25). Chapter II lays down the Principles of Policy and sets out principles of policy for each organ and authority of the state to act in accordance with these principles, including the protection of marriage and family life (Article 35).

Pakistan has a federal system of government and the Constitution assigns legislative authority on a number of legal issues to the provinces and the federation. Following the 18th Amendment to the Constitution,⁷ a number of issues, such as marriage and divorce, have been devolved to the provinces. A combination of federal and provincial laws govern dissolution of marriages in Pakistan. This report limits its focus to relevant federal and provincial laws relating to dissolution of marriages in Punjab.

The primary pieces of legislation governing the dissolution of marriages in Pakistan include Muslim Family Law Ordinance 1961 (MFLO 1961) and the Dissolution of Muslim Marriages Act 1939 (DMMA 1939) and Family Courts Act 1964(FCA 1964).

3.2. Overview of the Different Forms of Dissolution

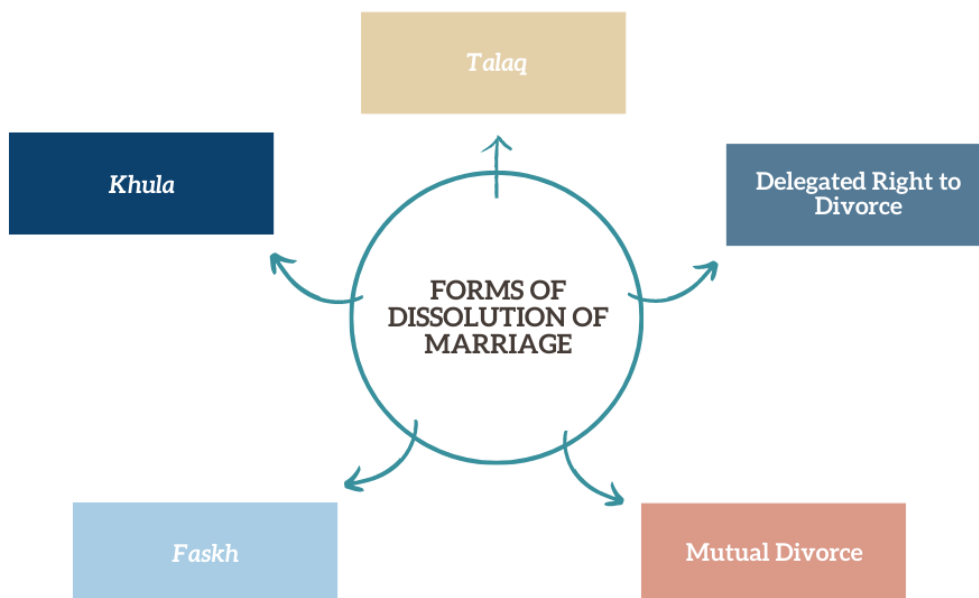
While there is no clear list of the different types of dissolution of marriage, the research team has identified five prevalent forms for dissolution of a Muslim marriage through a review of Islamic Law and the Pakistani legal framework. The five options for dissolution of a Muslim marriage detailed in this report include: (i) *Talaq*, (ii) Delegated

⁶ Article 227, Constitution of Pakistan 1973.

⁷ The Constitution (Eighteenth Amendment) Act, 2010. Prior to the 18th Amendment to the Constitution of Pakistan, the distribution of legislative matters fell within the Federal Legislative and Concurrent Legislative List in the Fourth Schedule of the Constitution of Pakistan. The matters listed in the Federal Legislative List fell within the domain of the National Parliament, while the matters referred to in the Concurrent Legislative List were to be considered by both the Parliament and the Provincial Assemblies. The 18th Amendment deleted the latter i.e., the Concurrent List. After the 18th Amendment, the legislative matters contained in the revised Federal List are to be solely legislated upon by the Parliament, while all areas not contained in the Federal List now fall within the exclusive powers of the Provincial Assemblies.

Right to Divorce, (iii) *Khula*, (iv) Mutual Divorce, and (v) *Faskh*.⁸ Each form of dissolution of marriage and their legal grounding in Pakistan is discussed below in detail.

Fig. 2: Forms of Dissolution of Marriage Prevalent in Pakistan



3.2.1. *Talaq*

Talaq is the husband’s unilateral right to divorce, whereby he can dissolve the marriage without assigning any cause and does not need to approach the courts. When a husband wishes to divorce his wife, he makes a pronouncement of *talaq* and is thereafter required to notify the chairperson of the Union Council in writing and provide a copy of the same to the wife.⁹ If a husband fails to send a notice to the Union Council, he shall be punishable with a simple imprisonment for up to one year or with a fine of Rs. 5,000, or both.¹⁰

Upon receiving the notice, the Chairperson is mandated to constitute an Arbitration Council to bring about reconciliation between the parties within 30 days.¹¹ The Arbitration Council consists of one representative from each party and is required to take all necessary steps to bring about reconciliation. Where parties do not wish to

⁸ The five options for dissolution of marriage in Pakistan have been recognised and developed through a mixture of legislative enactments and case law. The process for *talaq*, delegated right to divorce, mutual divorce, and *faskh* has been laid out in the Dissolution of Muslim Marriages Act 1939 and Muslim Family Laws Ordinance 1961. Whereas the process for *khula* has developed over time through case law. (See Table 1 below).

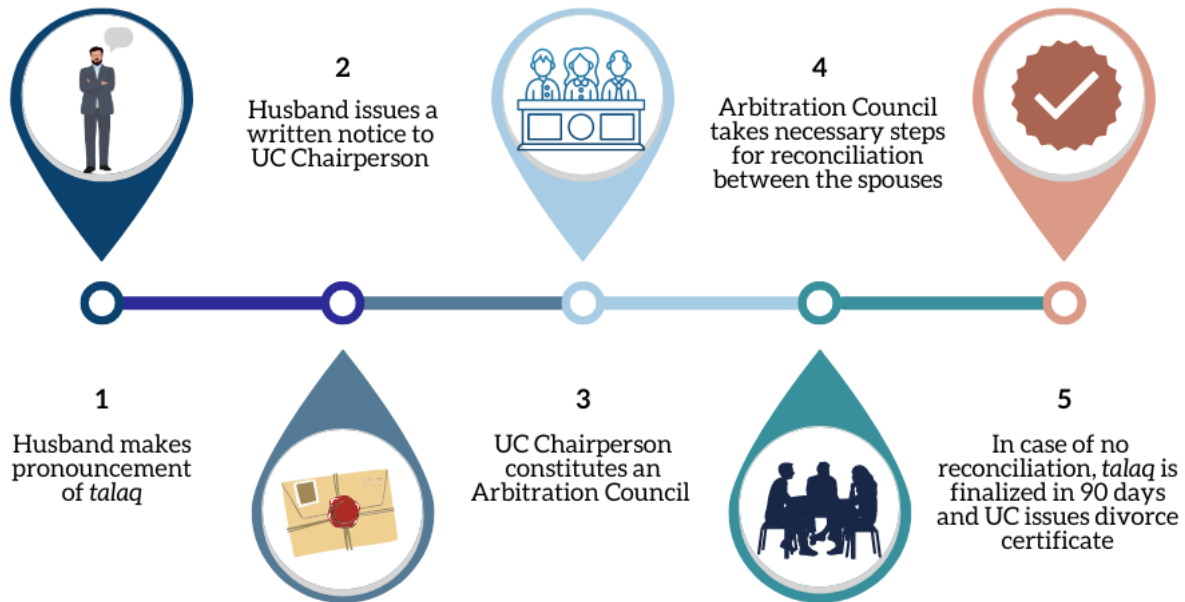
⁹ Section 7(1), MFLO 1961 reads as: “Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.”

¹⁰ Section 7(2), MFLO 1961.

¹¹ Section 7(4), MFLO 1961.

reconcile, the *talaq* will be effective within a period of 90 days from the day on which the notice is delivered to the Chairperson.¹²

Fig. 3: Process of *Talaq*



3.2.2. Delegated Right to Divorce

Delegated right to divorce, or *talaq-e-tafweez*, is where a husband delegates the right to divorce to his wife or to a third person in the *nikahnama*,¹³ either conditionally or absolutely.¹⁴ Once the right is delegated, it cannot be revoked.¹⁵ Section 8 of the MFLO 1961 provides for the procedure for the delegated right to divorce.¹⁶

In case of delegated right to divorce, the notice requirement applies in the same way as in the case of a husband exercising his right to *talaq*, i.e., a wife must send a notice in writing to the Chairperson of the Union Council about the exercise of the right to divorce.¹⁷ Following which, an Arbitration Council is formed to attempt reconciliation between spouses. Unless the wife revokes the divorce or spouses reconcile, the divorce is effective after a period of 90 days from the receipt of notice.

The delegated right to divorce is significant as it allows the wife to dissolve the marriage herself, without the need to seek divorce from her husband or the court. Moreover, the process for dissolution of marriage through delegated right to divorce is simple and

¹² Section 7(3), MFLO 1961.

¹³ *Khawar Iqbal v. Federation of Pakistan*, 2013 MLD 1711.

¹⁴ *Sajid Hussain Tanoli v. Nadia Khattak*, 2013 CLC 1625; *Aklima Khatun v. Mahibur Rehman*, PLD 1963 Dacca 602. See also DF Mulla, *Principles of Mahomedan Law* (PLD Publishers 1995) 19.

¹⁵ *Khawaja Muhammad Shoaib v. Nazim Union Council*, 2010 YLR 1; *Qambar Murtaza Bokhari v. Zainab Bashir*, 1995 PLD Lahore High Court 187; *Sajid Hussain Tanoli v. Nadia Khattak*, 2013 CLC 1625.

¹⁶ Section 8, MFLO 1961 provides: "Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq*, the provisions of section 7 shall, *mutatis mutandis* and so far, as applicable, apply."

¹⁷ *Khawar Iqbal v. Nadia Khan*, PLD 2011 Lahore 265.

expeditious. However, as noted above, the wife may only be able to exercise this right to dissolve her marriage if it is delegated to her in the *nikahnama*.¹⁸

3.2.3. *Khula*

Khula is an independent right of a Muslim woman to dissolve her marriage through an application to a court, if it becomes apparent that the spouses' aversion to each other is such that they cannot live in a harmonious relationship. A wife does not require the consent of the husband to seek a *khula*,¹⁹ and the dissolution of marriage through *khula* is neither revocable nor appealable.²⁰

In order to apply for a *khula*, the wife is required to file a suit before a family court under the Family Courts Act 1964 (FCA 1964),²¹ on grounds that she can no longer live with her husband "within the limits prescribed by Allah".²² The court issues a summon to the husband to appear before the court and present a written response. In cases where the husband does not appear, the court proceeds with the case *ex parte* and passes a *khula* decree. In cases where the husband becomes a party to the case, the court sets a date for reconciliation between the husband and the wife. If the wife does not wish to reconcile and/or reconciliation fails, the case is contested and the court hears both parties to make a decision based on the evidence presented.

The prerequisite of *khula* is the return of a portion of the dower in the majority of the cases. According to Section 10(5) of the FCA 1964, the wife may be directed to surrender up to 50% of her deferred dower or up to 25% of her prompt dower to the husband. The approach followed by different Family Court judges is not uniform and different judges have exercised their discretion in ruling varying amounts of dower to be returned to the husband in different cases.²³

¹⁸ The Punjab Muslim Family Laws (Amendment) Act, 2015 introduced a series of amendments to the MFLO 1961 in Punjab, which included the duty of *Nikah* Registrars to accurately fill all clauses of the *nikahnama* (including Clause 18 on the delegated right to divorce). Failure to do so would result in a fine of Rs. 25,000 and imprisonment of one month. If the husband has delegated the right to divorce to the wife, she can divorce her husband by approaching the Union Council.

¹⁹ *Khurshid Bibi v. Muhammad Amin*, PLD 1967 Supreme Court 97.

²⁰ *Sadia Arif v. Adnan Shahid*, 2021 YLR 1753.

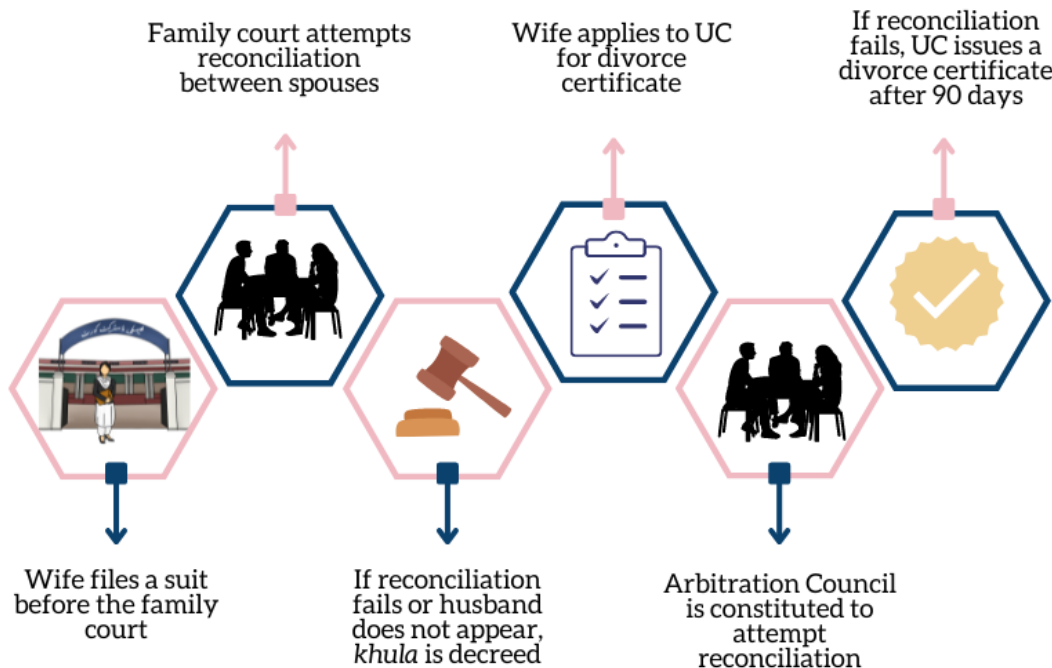
²¹ Section 5, FCA 1964 provides: "According to this section, subject to the provisions of the MFLO, the family courts have the exclusive jurisdiction to entertain, hear, and adjudicate upon matters specified in Part 1 of Schedule II and jurisdiction to try the offences specified in Part II...covers dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of children, guardianship, jactitation of marriage, dowry, the personal property and belongings of a wife and child living with her, and any other matter arising out of the *nikahnama*."

²² *Yasmeen Gul v. Muhammad Zubair*, 2020 PLD Peshawar High Court 173.

²³ The Lahore High Court in *Safeer Ahmad v. Mst. Gulshan Bibi*, 2022 CLC 634 held that the surrender of dower by the wife to seek *khula* is no longer a mandatory requirement. It is up to the discretion of the family court to determine whether or not to direct the wife to surrender her dower and how much or what part of the prompt or deferred dower is to be surrendered. The surrender of dower has to be either of the two and cannot be both. In either case, it is to be within the limit prescribed under the Punjab Amendment to Section 10(5) of the Family Courts Act, i.e., up to fifty (50) percent of her deferred dower or up to twenty-five (25) percent of her admitted prompt dower. However, the Federal Shariat Court in *Imran Anwar Khan v. the Government of Punjab through Secretary Ministry of Law, Lahore* (PLD 2022 25) held that the amended Section 10 (5) is repugnant to injunctions of Islam and is ineffective since 1 May 2022. See also, in the case of *Muhammad Mohsin Raza v Additional District Judge, Jatoi, District Muzaffargarh*, (2022 LHC 7184) where the Lahore High Court stated "there is no prescribed specific

In addition, according to Section 12A of the FCA 1964, a *khula* case must be decided within a period of six months from the date of institution. Once the court grants a *khula* decree, the wife is required to submit an application to the relevant Union Council to obtain a divorce certificate. Thereafter, akin to the process in case of *talaq* and delegated right to divorce, an Arbitration Council is constituted to attempt reconciliation between the husband and wife. If reconciliation fails, the Union Council issues a divorce certificate after 90 days of the application.

Fig. 4: Process of Khula



3.2.4. Mutual Divorce

In case of mutual divorce, or *talaq-e-mubarat*, a husband and wife mutually agree to dissolve the marriage. As per section 8 of the MFLO 1961, the procedure for mutual divorce is the same as in the case of *talaq* exercised unilaterally by the husband. The husband and wife may send a written notice to the Union Council and sign a mutual divorce deed. Based on this, a divorce certificate is issued.

3.2.5. Faskh

Faskh refers to the wife’s right to fault-based divorce, whereunder she can seek dissolution of her marriage through an application to a family court. A wife can seek the dissolution of marriage based on the various grounds set out in Section 2 of the DMMA 1939. These include desertion by the husband, failure to maintain the wife, failure to perform marital obligations, imprisonment, impotency, cruelty, etc. It is important to

ceiling in Islam regarding payment of compensation for seeking khula in terms of return or surrender of dower in cash or kind just as there is no prescribed upper ceiling for fixation of dower.”

note that in case of dissolution under the DMMA 1939, the wife does not need to surrender her dower.

Table 1: Details of the Five Forms for Dissolution of Marriage

Form	Definition	Legal Framework	Right of
Talaq	The husband's unilateral right to divorce. He can dissolve the marriage without assigning any cause and does not need to approach the courts.	Section 7, MFLO 1961	Husband
Delegated Right to Divorce	Delegated right to divorce, or <i>talaq-e-tafweez</i> , is where a husband delegates the right to divorce to his wife or to a third person in the <i>nikahnama</i> , either conditionally or absolutely. The wife does not have to approach the court to dissolve her marriage in this case.	Section 8, MFLO 1961	Wife
Khula	The right to dissolution by way of <i>khula</i> is a unilateral right granted to the wife in return of surrendering some part of her dower in most cases. The wife must approach the courts to obtain <i>khula</i> .	<i>Khurshid Bibi v. Muhammad Amin</i> ; & Section 10(5), FCA 1964 (Punjab)	Wife
Mutual Divorce	Mutual divorce, or <i>talaq-e-mubarat</i> , requires both the husband and wife to mutually consent to dissolving the marriage.	Section 8, MFLO 1961	Husband & Wife
Faskh	Faskh refers to the wife's right to a fault-based divorce. Under this, the wife can seek dissolution of marriage on various grounds set out in the law. The wife has to approach the court to seek <i>faskh</i> . Dower does not have to be surrendered.	Section 2, DMMA 1939	Wife

3.3. Current Status of Dissolution of Marriage

Patriarchy is deeply embedded within Pakistan and heavily shapes cultural norms and beliefs of the Pakistani society. Women face various legal and social barriers when

seeking dissolution of marriage, mainly because of the social stigma attached to divorced women.²⁴

Despite the existence of laws protecting the woman's right to dissolve a marriage through *khula*, there is reluctance amongst women in exercising this right as they have to surrender some part of their dower.²⁵ Moreover, women have to face society's disapproval of women ending their marriage, lengthy and costly litigation processes, character assassination in court, lack of familial support, and mental and physical burden.²⁶ These difficulties expose women to a greater vulnerability and suffering in divorce-related issues and prevent them from initiating the process of dissolution. It is also observed in certain cases that where the wife filed a suit for the dissolution of marriage, there was a practice wherein the husband would file a countersuit for the restitution of conjugal rights. Indeed, the lower courts would dismiss the suit for dissolution of marriage and grant the suit for restitution of conjugal rights, holding that dissolution would break up the home.²⁷ However, the Supreme Court, in three distinct judgements,²⁸ has disapproved of such practices, holding that a wife is entitled to a *khula*. Moreover, recently, there has been an increase in *khula* cases, which may be attributed to the implementation of Section 12A of the FCA 1964.²⁹

The lack of family, financial and social support women in Pakistan receive are major factors affecting their access to divorce. There is a general expectation within Pakistani society that women will stay at home to work while their husbands go out to earn, making it more difficult for the women to physically access legal resources or for them to have the financial ability to afford them.³⁰ There is further discourse that women also fear that their *khula* cases will be unsuccessful or that should they reconcile they will face ill-treatment from their husbands and their families for filing the case in the first place, putting them at further risk.³¹ Therefore, while they may face, at the least, a lack of emotional support, and often, physical abuse within their marriages, families and society disapprovals play a key role in pushing women in Pakistan to stay in unhappy marriages in order to preserve their reputations and respect, sustain their needs, but also because they do not see other viable options.³²

The consequences of dissolving a marriage are a major deterrent to the dissolution itself for women in Pakistan. Studies have shown that the psychological and emotional well-being of divorced women were poor, with high levels of distress due to the following cases that ensue, such as the custody of children or a decline in financial support, but also the social exclusion and shame they are made to feel.³³ Not only do

²⁴ Shagufta Omar, 'Dissolution of Marriage: Practices, Laws and Islamic Teachings' (2007) 4(1) Policy Perspectives 91.

²⁵ Ibid.

²⁶ Ibid.

²⁷ *Abdul Rahim v. Mst Shahida Khan*, PLD 1984 SC 329.

²⁸ *Khurshid Bibi*, *supra* note 19. See also *Amanullah v District Judge, Gujranwala*, 1996 SCMR 411.

²⁹ Shagufta Omar, *supra* note 24.

³⁰ Karin Carmit Yefet, "Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Garb" (2011) 34 Harvard Journal of Law & Gender 553.

³¹ Ibid.

³² Ibid.

³³ Javeria Waseem and others, "Psychosocial Determinants of Divorce and their Effects on Women in Pakistan: A National Review" (2020) 13(4) International Journal of Human Rights in Healthcare 299.

they not receive support, but they also face marginalisation, making them prone to psychological symptoms such as anxiety and other mental illnesses, as well as poorer physical health leading to lower immunity and higher risks of heart conditions.³⁴ One study showed that 37% of the divorced respondents were at a higher risk of these health issues.³⁵ This represents that even if a woman were to overcome the challenges of successfully completing a *khula* case, she will be at a disadvantage due to the economic, social, financial, and psychological vulnerability she will face as a divorced woman.

Compared to *khula*, the delegated right to divorce involves a simpler process for women to dissolve a marriage. However, there is a lack of awareness of this right. A study conducted to explore the perceptions of women and men about the delegated right of divorce for women, revealed a major lack of understanding of the right, especially amongst women. Some viewed it as “some strange idea” and “a Western concept” against cultural norms.³⁶ Moreover, even when there is awareness surrounding this right, it is a common practice within families of brides to not talk about the delegated right to divorce, considering it a “bad omen for the beginning of her marital life.”³⁷ Despite the right being expressly given in the *nikahnama*, it is mostly crossed out or left blank without even consulting with the bride. While failure to properly fill in every clause of the *nikahnama* has been illegalized by the Punjab Muslim Family Laws (Amendment) Act 2015, there are gaps in implementation of the law, resulting in the practice of crossing out still being common.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Aneela Maqsood, ‘An Exploratory Study of Perceptions about the Delegated Right of Divorce for Women (Talaq-i-Tafwid) in Pakistan (2018) 12(1) FWU Journal of Social Sciences 227.

³⁷ Shagufta Omar, *supra* note 24.

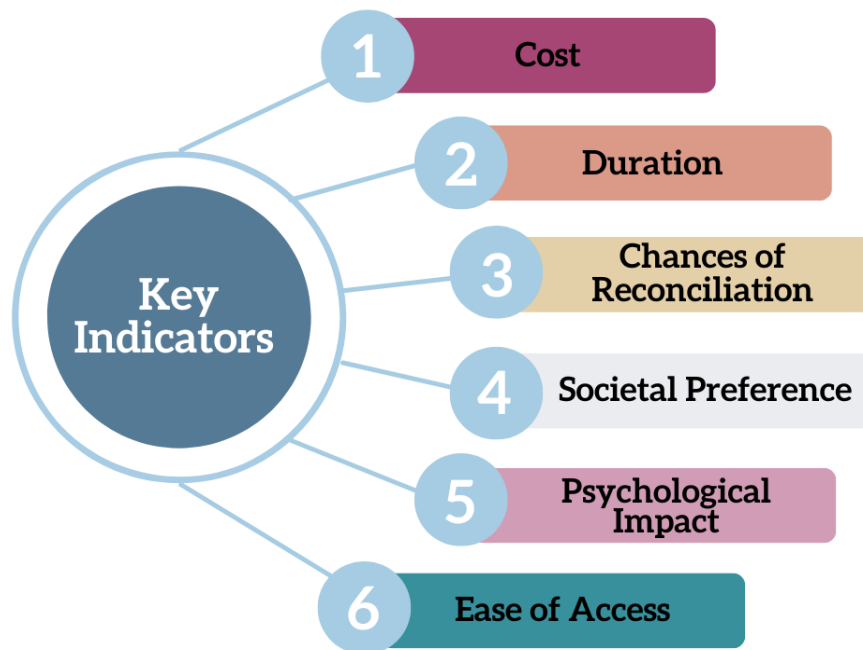
4. Key Findings

4.1. Overview of Data Collection

This section of the study relies on the data collected from multiple sources, including a review of *khula* files from family courts, review of *khula* and *talaq* files from Union Councils, surveys with relevant lawyers and litigants. In addition, KIIs with litigants and relevant Union Council officials, as well as FGDs with lawyers and litigants were also administered.

The key findings of the study are evaluated on the basis of six primary indicators detailed in Figure 5 below. These select indicators were identified to analyse the access, barriers, and impact of different forms of dissolution of marriage, and further evaluate the awareness of and preference for different methods of dissolution between men and women in Punjab.

Fig. 5: Key Indicators for Analysis of Data Sample



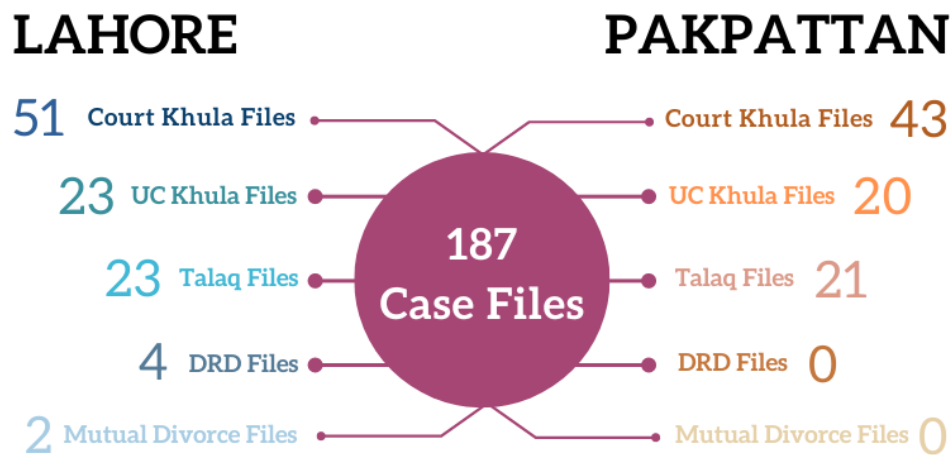
4.1.1. Case Files from Family Courts

A total of 104 case files were collected from 6 family courts in Punjab, of which 59 case files were from family courts in Lahore and 45 from Pakpattan. During the review process, 8 cases from Lahore and 2 from Pakpattan were discarded on account of being non-*khula* cases that had been erroneously included in the sample. Accordingly, the final sample for review and analysis included 51 cases from Lahore and 43 from Pakpattan.

Of the 51 *khula* cases from Lahore, 13 were contested by the husbands and 38 were *ex parte* decisions. Whilst for the cases from Pakpattan, 5 were contested and 38 were *ex parte* decisions. The finding that the vast majority of *khula* cases from Lahore and

Pakpattan were decided *ex parte*, evidentiates a preconceived belief that husbands usually choose not to become a party to or contest a suit for *khula*.

Fig. 6: Breakdown of Reviewed Case Files



4.1.2. Case Files from Union Councils

Khula

47 case files for *khula* proceedings were collected from 5 Union Councils in Punjab, with 25 files from Lahore and 22 from Pakpattan. 2 *khula* files from Lahore and 2 from Pakpattan were discarded due to issues of legibility, leaving the sample size to be of 43 *khula* cases.

Talaq

A total of 23 talaq files from Lahore were collected from 4 Union Councils, with a majority of talaq files from 2020-2022. In addition to this, 21 talaq files from Pakpattan were collected from 9 Union Councils, with a majority of the case files initiated in 2021-2022.

Delegated Right to Divorce

In spite of the research team's extensive surveying and multiple requests to obtain DRD files, a mere 4 case files of DRD were found from 2 Union Councils in Lahore, while no DRD cases were found from Pakpattan. During collection, Union Council officials in Lahore attributed the low number of cases to the scarce delegation of the right to divorce to the wife, resulting in a far lower incidence of exercise of the right. Union Council officials in Pakpattan, on the other hand, reported that they had not witnessed any case of DRD in the district.

It is of significance to note that the 4 DRD case files found from Lahore Union Councils were from relatively higher-income localities. Thereby lending credence to the perception that DRD is usually asked for in the *nikahnama* and exercised by women

from upper echelons of the society, who are correspondingly more educated and aware of their right to divorce.

Mutual Divorce

Only 2 cases files of mutual divorce (*talaq-e-mubarat*) were found from Union Councils in Lahore, while no such cases were found in Pakpattan. This is largely due to *talaq* being usually exercised unilaterally by the husband, while mutual divorce is a rarity.

4.1.3. Surveys, FGDs, and Interviews

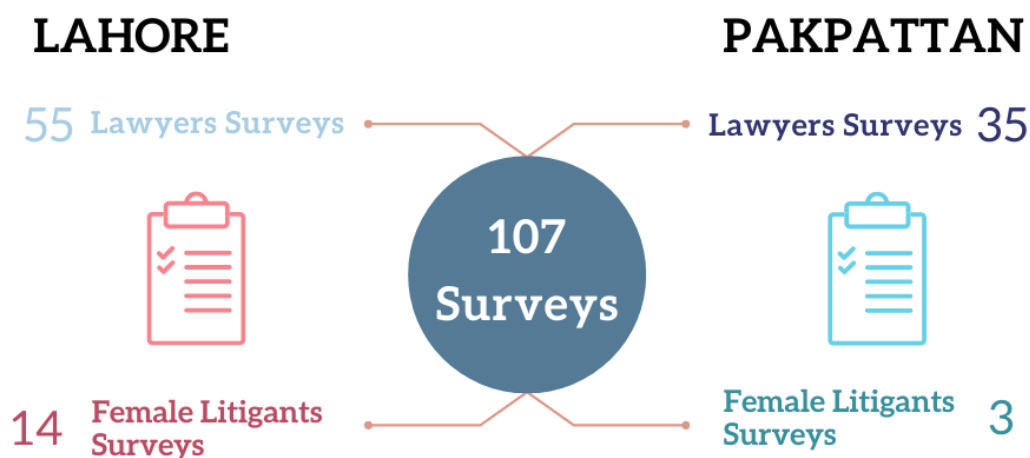
Surveys

Three survey tools were designed to collect quantitative data on trends and preferences in dissolution of marriage cases in Lahore and Pakpattan. Survey participants included female and male lawyers, and female litigants who either had a *khula* or dissolution of marriage suit decreed, or were involved in an ongoing suit.

90 surveys were administered with lawyers, 55 of which practiced in Lahore and 35 were from Pakpattan. The majority of lawyers fell between 26 to 30 years of age in Lahore and Pakpattan, and over 47% of the respondents had a postgraduate degree in law. Moreover, 53% of the respondents were female lawyers. More than 41% of lawyers reported representing between 6 to 20 litigants in dissolution of marriage cases in a year.

Furthermore, 17 surveys were administered with female litigants in Punjab, with 14 hailing from Lahore and 3 from Pakpattan. More than one-third (35%) of the respondents had not completed formal education up till grade 12/high school. Additionally, over 59% of the litigants reported having a monthly income of less than Rs. 15,000.

Fig. 7: Breakdown of Surveys

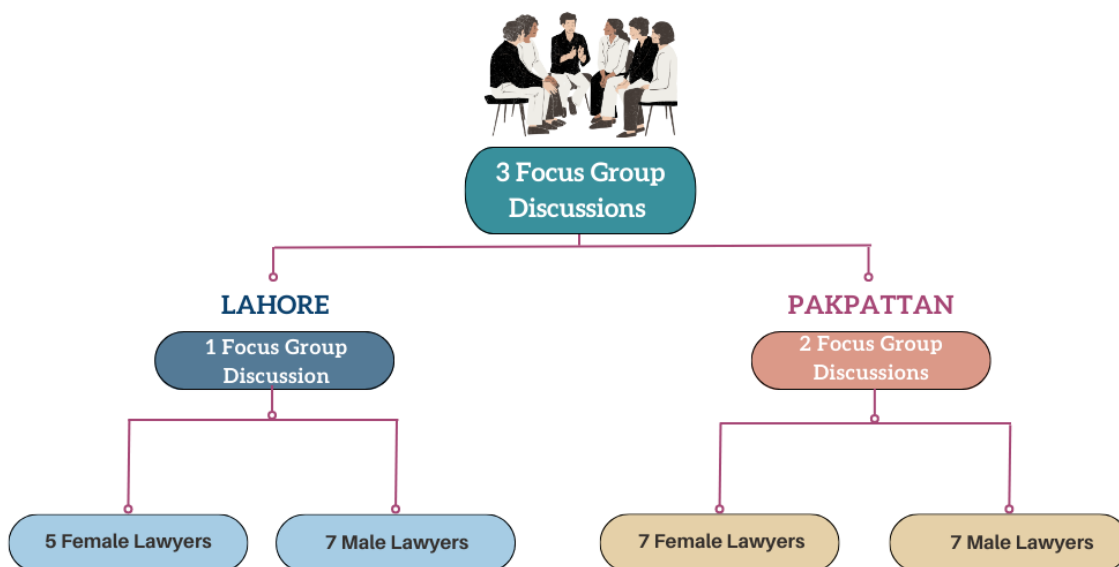


Focus-Group Discussions

A total of 3 FGDs were conducted with lawyers in Lahore and Pakpattan. One joint FGD was conducted in Lahore with 5 female and 7 male lawyers. Whereas two gender-segregated FGDs were held with lawyers in Pakpattan, featuring 7 female and 7 male lawyers in each group.

The FGDs helped gauge a more qualitative understanding of the lawyers' perspectives, including their experience in access to justice, perceptions of social, legal and procedural barriers and satisfaction level in securing dissolution of marriage. The objective of these FGDs was to capture the various perspectives and attitudes of lawyers in dissolution of marriage cases and processes. Figure 8 below gives a breakdown of the FGDs conducted in Lahore and Pakpattan.

Fig. 8: Breakdown of Focus Group Discussions

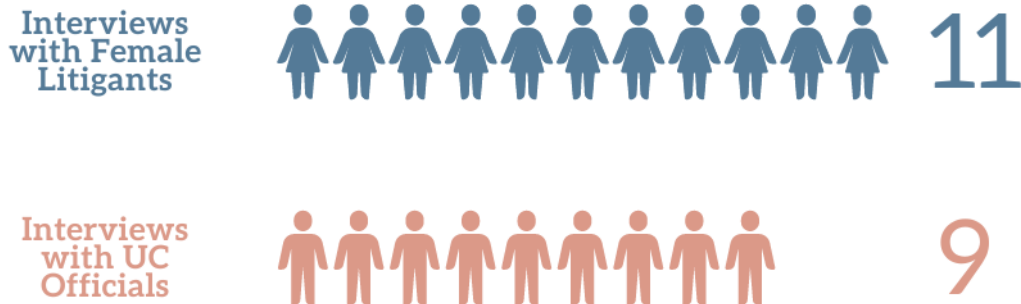


Key Informant Interviews

The survey with litigants included questions regarding their understanding of different forms of marriage dissolution, and the barriers, challenges and backlash to dissolving their marriages. 11 KIIs were administered with litigants in Lahore. Litigants in Pakpattan, however, demonstrated hesitation towards being interviewed and were often inaccessible. For instance, one litigant had shared her brother's contact details but despite repeated attempts to call for the interview, the research team was unable to reach him. In addition, 9 interviews were conducted with Union Council secretaries in Lahore to gauge their insights and perceptions that could potentially help or hinder the process of dissolution of marriage for women.

Fig. 9: Breakdown of Key Informant Interviews

LAHORE



4.2. Cost of Cases

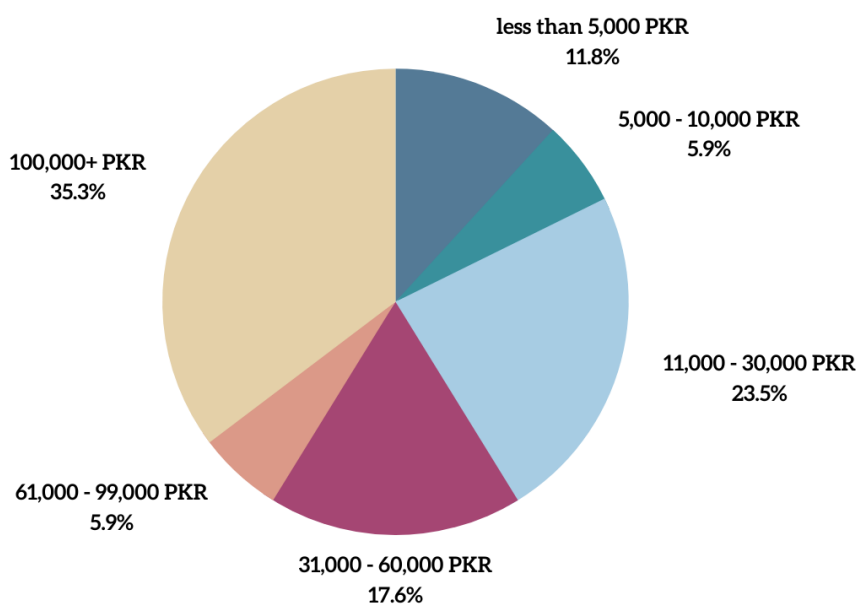
This key indicator analyses select costs or expenses that are borne by the litigants seeking dissolution of their marriage. In identifying the different variations of costs applicable, the research team relied on surveys and interviews done with relevant stakeholders.

4.2.1. *Khula*

The costs involved in initiating a case of *khula* include the legal fees of hiring an attorney, cost of travelling to the court, court fees, amongst others. The expenses also include cost of newspaper publication in case an *ex parte* order has been decreed, as procedure mandates publicising the dissolution of marriage in case the husband chooses not to contest the case. As a general rule, these costs are to be borne by the petitioner i.e., the woman initiating a case of *khula*. It is pertinent to note that in *khula* cases, a petitioner is rarely awarded legal costs — often because these cases are conducted *ex-parte* (discussed below) and hence, the enforceability of awarding costs is minimal.

The findings from surveys with lawyers illustrate that a majority of lawyers (46%) charge fees in the range of Rs. 11,000 to 30,000 for a case of *khula*. In addition, more than one-third of the litigants (35%) reported having incurred more than Rs. 100,000 during the proceedings of their dissolution of marriage. This finding reflects the concern of affordability to obtain *khula* for women, as 59% of the litigants surveyed did not earn their own monthly income or earned less than Rs. 15,000 per month.

Fig. 10: Cost Incurred by Litigants for a Case



While the survey findings provide some insights into the legal fees charged by lawyers, there is generally no benchmark for the same and it fluctuates based on socio-economic background of the parties involved. This often means women from privileged backgrounds are expected to pay more substantial amounts in lawyer fees. However, the socio-cultural make-up of Pakistan is such that even in 2023, a significant number of women (regardless of class, religion, etc) rely on some male member (from marriage or from their maternal home) to provide income and sustenance. The structural/innate financial dependence deepens the impact of costs related to dissolution of marriage.

Beyond the costs incurred during court proceedings, KIIs with the Union Council officials also identified that following the decree of *khula*, the cost of application and obtaining a divorce certificate from the Union Council is around Rs. 4,000 to 5,000. This primarily includes lawyer's fee, cost of newspaper advertisement if the husband chooses not to become a party to the proceedings, and the final divorce certificate cost., thus adding to the overall costs incurred by women while seeking *khula*.

Interviews with litigants corroborate the findings above, highlighting that the financial burden that comes with filing a case to the point of obtaining a divorce certificate from the Union Council is one of the most significant challenges faced by women seeking *khula*. Litigants shared that they had to take loans to file their cases, adding to the financial burden. One interviewed litigant shared that although she was able to afford the costs of the case, it was burdensome to visit the courts multiple times and pay for transport along with lawyer fees, as well as the security deposit of Rs. 100,000 she had to pay for her child custody case as a guarantee to the court that she will not flee the country with her children. Most litigants interviewed at the family courts did not have any income of their own and were entirely reliant on their husbands, who had refused to give them any maintenance, and had mostly not paid them their dower either. As a result, these litigants were forced to seek financial support from family and friends, or

borrow money from other sources, in order to pay for the costs of dissolving their marriage.

It is also worth noting that the lack of access to financial resources, as well as the financial burden that comes with the process of seeking *khula*, impacts women's decision-making, making women more vulnerable to remain in marriages instead of opting for *khula*.

4.2.2. *Talaq*, DRD, & Mutual Divorce

As the procedure for *talaq*, DRD, and mutual divorce is the same, i.e., filing an application before the Union Council, the cost of the three forms of divorce is the same. Interviews with the Union Council identified that the cost of *talaq*, DRD, and mutual divorce proceedings included the expenses for sending summons to parties, newspaper advertisement if the opposing party does not appear, and *talaq* certificate cost. The *talaq* certificate itself costs around Rs. 300 and the overall cost is approximately Rs. 3,000.

It is pertinent to mention that unlike in the case of *khula*, where hiring a legal representative is necessary in order to file a suit before a family court, an applicant does not need a lawyer to file a *talaq*, DRD, or mutual divorce application before the Union Council. The applicant can simply write an application to the Union Council to initiate the proceedings.

Findings from surveys and interviews with litigants have identified the recognition amongst women that the process of seeking *talaq* for men is simpler and less costly compared to the process of seeking *khula* for women. However, the review of costs confirms that DRD and mutual divorce are more preferable forms of dissolution of marriage for women in terms of cost, yet they are rarely availed by them.

4.3. Duration of Cases

This key indicator analyses the duration of cases from the point of formal initiation to the case's ultimate conclusion, i.e., dissolution of marriage.

4.3.1. *Khula*

As identified in section 3.2.3. above, *khula* involves a two-step process — first securing a *khula* decree from the family court, following which an application is filed before the relevant Union Council for obtaining a divorce certificate, whereupon the dissolution of marriage is finalised. In measuring the duration for conclusion of *khula* cases, both steps are taken into account.

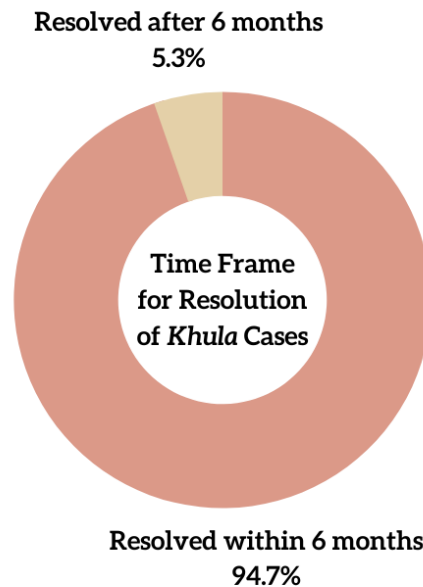
In the Family Court

As per the FCA 1964, a court must dispose of a suit for dissolution of marriage within 6 months of the date of institution.³⁸ The review and analysis of the 94 *khula* case files

³⁸ Section 12A, FCA 1964.

from family courts in Lahore and Pakpattan revealed that the majority of cases (95%) were resolved within the 6 month period.³⁹

Fig. 11: Time Frame for *Khula* Cases (Case Files)



In cases that exceeded the legally prescribed time limit, all but one case was contested. This suggests that family courts usually take longer, and are occasionally unable to resolve a *khula* case within the requisite time period, where the husband chooses to contest the case. This is further evidenced by the difference between the average number of days of the 76 *ex parte* and 18 contested cases from Lahore and Pakpattan, whereby the *ex parte* cases averaged 46 days while the contested cases averaged 133 days. This illustrates that *ex parte* cases are, on average, decided in less than half the amount of time as contested cases. Further, the review of case files disclosed that the shortest time frame for resolution of a *khula* case was 5 days, which was decided *ex parte*, whilst the longest duration was 369 days, which was contested.

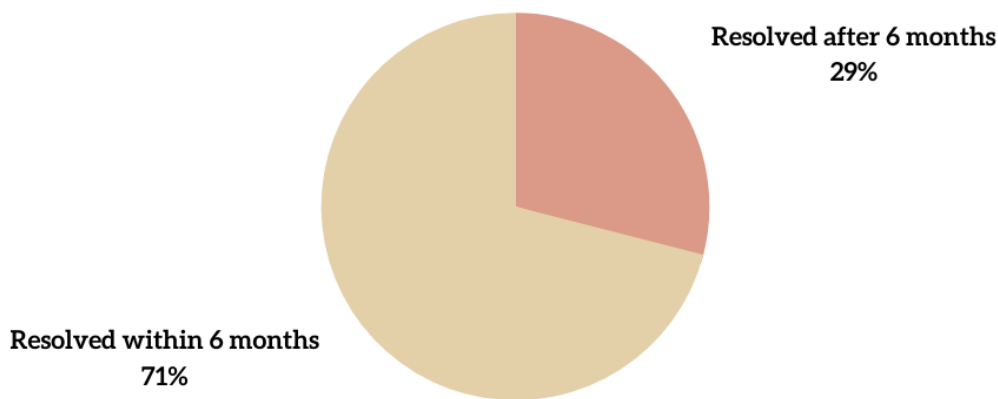
The survey with lawyers also revealed that 87% believed *khula* cases to be usually resolved within the 6 month period. However, upon further inspection, 59% of the lawyers estimated that less than half of their cases were, in fact, decided within the 6 month time frame. While only 11% of lawyers stated that all of the *khula* cases they litigated were resolved within 6 months. Nearly all lawyers in the FGD also confirmed that *khula* is usually decreed in around two weeks. However, if the husband contests, the decree can take between 2 to 6 months, or even longer. It can also take over a year or longer for the resolution of a *khula* case if other matters related to maintenance, recovery of dowry articles, etc., are filed in conjunction with it.

The response from litigants corroborates the aforementioned findings, as more than two-thirds of the litigants (71%) stated that their *khula* case was decreed within 6

³⁹ As documented in section 2 of the report, the sample size for case files is limited due to accessibility and time constraints. A review of a larger sample would be more useful to accurately assess the duration for resolution of cases in both districts.

months of initiation. Whereas the resolution of *khula* cases for the remaining 29% of litigants took a year or more. It is important to note, however, that during surveys litigants estimated and recalled the duration of their cases from memory. The possibility exists that some litigants may have inaccurately identified the duration of their *khula* cases.

Fig. 12: Time Frame for *Khula* Cases (Litigants Survey)



The findings from review of case files and surveys with lawyers and litigants exhibits that the majority of *khula* cases are decided within the 6 month time period prescribed by the FCA 1964. In some instances, however, family courts have failed to timely decree the *khula*, particularly where husbands decide to contest the case.

KIIs with litigants confirmed this finding, as one litigant identified that her case took more than one and half years to complete due to the legal system being slow. She explained that judges would often not show up to court despite the hearings being scheduled, or the judges would change during the time of the case, leading to a repetition of the process. Hearings would also be scheduled after over 6 months, delaying the process further. Another litigant mentioned that the judge in her case would often take a leave of absence on the day of the hearings, and also went on a longer leave during the case. Her court appearances were also scheduled after every 4 to 6 months, making the process unnecessarily lengthy.

In the Union Council

Under the amended section 21B of the FCA 1964 in Punjab,⁴⁰ the family court must send a certified copy of the *khula* decree to the concerned Union Council within 3 days of the decree date. Whereupon, the Chairperson is required to immediately initiate *khula* proceedings in the Union Council, which must be concluded in 90 days.⁴¹

⁴⁰ Section 21B, FCA 1964 reads as: 'If a Family Court decrees dissolution of a Muslim marriage, the Family Court shall immediately but not later than three days from the decree send by registered post or other means a certified copy of the decree to the concerned Chairman of the Arbitration Council and upon receipt of the decree, the Chairman shall proceed as if he had received intimation of Talaq under the Muslim Family Laws Ordinance, 1961 (VIII of 1961).'

⁴¹ As per section 8 of the MFLO 1961, the same procedural requirements, including effectiveness of divorce after expiry of 90 days, apply in case of *khula* as in the case of *talaq*.

The review of 43 *khula* case files from Union Councils in Lahore and Pakpattan revealed that the decree date or date of application to the Arbitration Council was missing or had typographical errors in 8 cases.⁴² For the remaining 35 cases, in only 1 case was the *khula* decree sent to the Union Council within 3 days of the decree date, demonstrating a significant shortcoming of either the family courts in timely sending the decree or of the Union Council in timely initiating the *khula* proceedings. Nevertheless, this inevitably contributed to substantial delays in the completion of the *khula* cases through the issuance of divorce certificates by the Union Council. On average, it took 66 days for the decree to be intimated to the relevant Union Council.

In addition, the review of the *khula* case files disclosed that the date of application to the Arbitration Council or the date of the Chairperson/Union Council's decision was not recorded in 4 cases. In the remaining 39 *khula* case files, merely 10% of the cases were concluded in the 90 days prescribed time period. The Union Council took, on average, 119 days to issue a final order from the date of application.

This leads to the conclusion that from the point of filing a suit for *khula* before the family court to its conclusion in the form of obtaining a divorce certificate from the Union Council, dissolution of marriage by way of *khula* on average can take between 231 to 318 days, or seven to ten months.

4.3.2. Talaq

The Chairperson of the Union Council is obligated to constitute an Arbitration Council within 30 days of receipt of *talaq* notice.⁴³ The review of 44 *talaq* case files from Union Councils in Lahore and Pakpattan, however, revealed that there was no mention of when an Arbitration Council was constituted in a case. In absence of the date of constitution, the first meeting date of the Arbitration Council was, therefore, construed as the date of constitution for the purposes of this study.

In 11 out of the 44 *talaq* cases files, there was no mention of either the date of notice or the date of Arbitration Council's meeting. For the remaining sample, in only 21% of the cases was the Arbitration Council constituted within 30 days of the *talaq* notice. The average number of days taken for the constitution of the Council from the date of notice was 118 days, indicating a substantial delay.

Furthermore, Union Councils are also directed to dispose of *talaq* cases and issue divorce certificates after expiry of 90 days from the receipt of *talaq* notice.⁴⁴ The review of *talaq* case files from Lahore and Pakpattan divulged that 6 out of the 44 case files had either the date of notice or final decision date missing. For the remaining sample, 74% of the *talaq* cases were not decided within the 90 day prescribed period under law, with only 1 case from Pakpattan being decided in the designated time frame. The average number of days taken to decide a *talaq* case was 164 days, with the longest duration in one case between the *talaq* notice and final order being 859 days, i.e., more than 2 years.

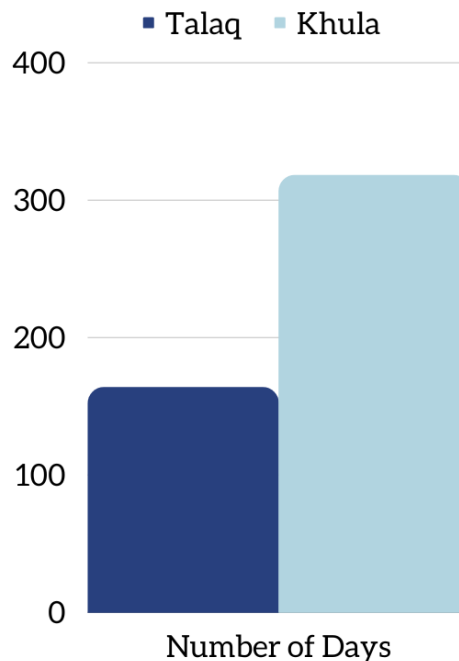
⁴² In one case, for instance, the date of application to the Arbitration Council preceded the decree date, which is procedurally impossible, suggesting a typographical error.

⁴³ Section 7(4), MFLO 1961.

⁴⁴ Section 7(3), MFLO 1961.

It is worth noting that despite the delays faced during *talaq* proceedings at Union Councils, the average number of days taken for the conclusion of *khula* cases are virtually twice as much as the average number of days taken for the conclusion of *talaq* cases.

Fig. 13: Average Number of Days Taken for Conclusion of *Khula* and *Talaq* Cases



The findings from review of *talaq* case files from Lahore and Pakpattan identify a trend of Union Councils egregiously failing to abide by the procedural time limits ordained by the MFLO 1961. Presumably, the delay in some instances can also be a result of non-pursuance of case by the parties, causing an impediment for the Chairperson and Union Council in effectively discharging their statutory obligation. Overall, a lack of care and professionalism was observed in record keeping in the Union Councils, as important dates relating to the proceedings were missing from a number of cases. This can also be attributed to the lack of a proper mechanism for record keeping in the Union Council, as all records of case files are maintained as physical copies and the details of proceedings are noted in handwriting, resulting in multiple inconsistencies and discrepancies.

4.3.3. Delegated Right to Divorce⁴⁵

For the 4 cases of DRD collected from Union Councils in Lahore, in only 1 case was the Arbitration Council constituted within 30 days of the *talaq-e-tafweez*/DRD notice. Likewise, solely 1 case was concluded within the 90 days time period, whereas the final decision date was missing in another case.

⁴⁵ As noted in section 2 of the report, despite the research team's efforts, the team was unable to obtain a significant sample of DRD files. The research team observed from conversations with Union Council officials, *Nikah* Registrars, as well as the Centre for Human Rights' report, 'Diagnostic Study of Nikahnamas in Punjab: A Review of Women's Marriage Rights' that the lack of access to DRD cases may be limited because the DRD is not usually given to women in Clause 18 of the *nikahnama* and hence, is rarely filed.

4.3.4. Mutual Divorce

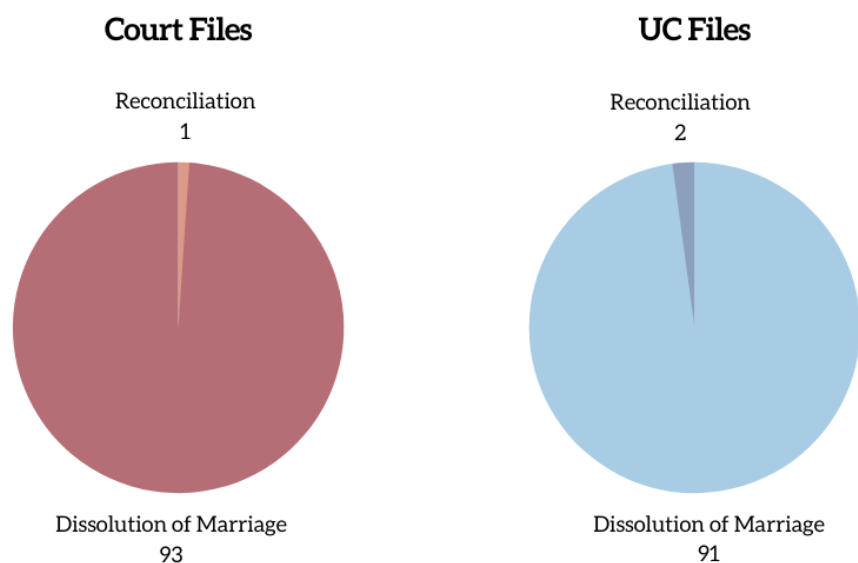
Necessary information including date of first notice and date of Arbitration Council's meeting was missing from the two cases of mutual divorce collected from Union Councils in Lahore. The only finding that could be drawn was that one mutual divorce case was concluded in 127 days, as opposed to the 90 day legally prescribed period.

While delays have been identified in the different forms of dissolution, the duration of *khula* cases is significantly longer compared to other forms. The comparison with *talaq* is noteworthy in understanding the disparity between women and men in terms of their experiences, exposing the former to a more complex and emotionally distressing procedure while seeking *khula*. As discussed in Section 4.7. of the report below, there is a lack of satisfaction amongst women seeking *khula*, with one of the major reasons being the lengthy and complicated *khula* procedure. Hence, the review suggests that compared to *khula*, DRD and mutual divorce are a faster and more preferable form of relief for women seeking dissolution of marriage.

4.4. Chances of Reconciliation

Out of the 94 *khula* case files reviewed from family courts in Lahore and Pakpattan, *khula* was granted in all but one case where the parties reconciled and the plaintiff withdrew her case. Similarly, from a total of 93 case files procured from Union Councils in Lahore and Pakpattan — including *talaq*, *khula*, DRD, and mutual divorce — reconciliation was successful in 2 cases, whereas dissolution of marriage was finalised in all remaining cases. Accordingly, at the family court and Union Council stage, the reconciliation rate comes about to 1% and 2% respectively.

Fig. 14: Number of Reconciliations in Reviewed Case Files



It can be presumed that the rate of reconciliation may vary in actuality, as some cases of reconciliation may have not been included by court and Union Council staff at the time

of data collection. However, the low rate of reconciliation in forms of dissolution of marriage are corroborated by the observations from FGDs with lawyers and KIIs with Union Council officials. All lawyers who participated in FGDs in Lahore and Pakpattan agreed that reconciliation is highly uncommon in a *khula* case as the wife often does not intend to reconcile, whilst the husband usually chooses not to join the pre-trial reconciliation proceedings before the family court or the reconciliation proceedings before the Union Council. KIIs with Union Council officials confirmed that the same is true for *talaq* cases as well. The officials observed that reconciliation is very rare and is only successful in an estimated 3 to 5% of the cases.

A female lawyer from Lahore observed that although most judges follow the procedure and encourage reconciliation, in most cases the pre-trial reconciliation proceedings are desultory. On the contrary, certain judges extensively encourage the parties to reconcile, sometimes to the point of coercion. In the same vein, a lawyer cited a *khula* case where a judge asked the wife to try living with the husband for 3 months and see if reconciliation is possible. Consequently, 29% of the surveyed litigants reported being coerced by judges or other officials to reconcile with their husbands during dissolution proceedings.

Surveys with lawyers and litigants also confirms this finding, as 14% of lawyers and 14% of litigants recognised forcible reconciliation by families/court as a challenge during the dissolution of marriage proceedings. The findings signify that whilst certain judges have a higher proclivity to encourage reconciliation, and can at times unduly stress on it, chances of reconciliation remain low as litigants have the ultimate discretion and are more inclined to dissolve their marriage.

4.5. Societal Preference & Social Biases

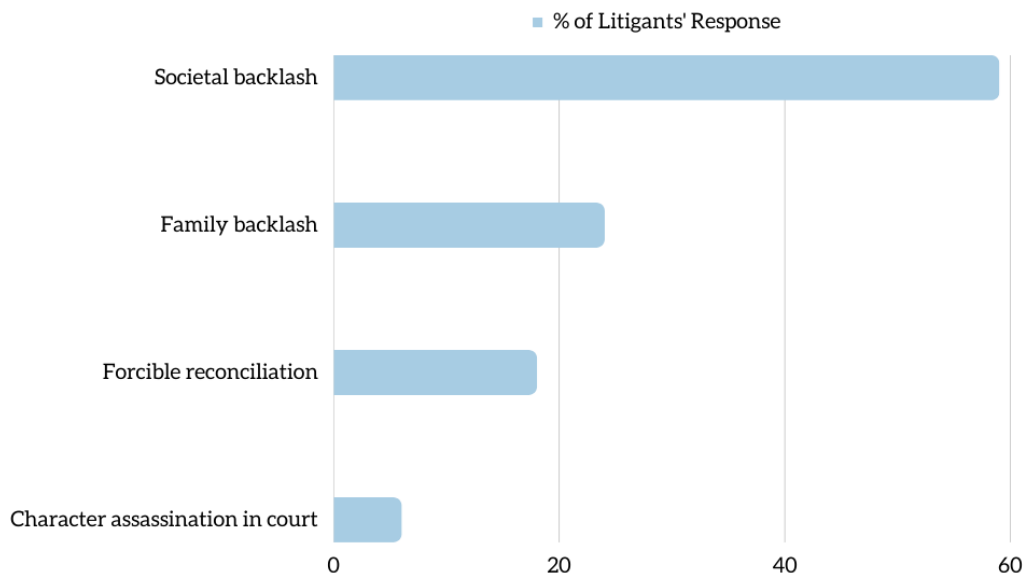
Surveys with lawyers and female litigants, and KIIs with Union Council officials identified multiple societal barriers and social biases that impede the access to justice for litigants in *khula* cases.

For instance, 82% of litigants reported facing backlash from family and society in the aftermath of their divorce. 53% of the litigants had feared that their family members would sever ties as a result of the divorce, with another 41% of litigants fearing they would receive physical harm from their families due to opting for divorce. Further, 59% of litigants reported fear of being blamed that the divorce was their fault, depicting the social biases and fears that discourage women from pursuing the dissolution of their marriages.

In addition, nearly two-thirds of the surveyed lawyers (64%) agreed that the biggest societal barrier for litigants was lack of family support and the fear of social stigma associated with being a divorced woman. Another 57% of lawyers had witnessed female clients facing discriminatory behaviour or remarks from bystanders in court, the judge, or from the opposing counsel, including comments on their emotional state or decision making ability. 69% of the lawyers further agreed that these remarks would affect a woman's willingness to come to court, hence recognising the impact that social biases have on women's access to justice in cases of dissolution of marriage.

In terms of bias in court, 29% of the litigants reported facing discriminatory behaviour such as comments on their emotional state and their decision making abilities by judges as well as by their lawyers. 24% of the litigants correspondingly stated that this discriminatory behaviour and bias manifested in the form of attempts at forcible reconciliation and character assassination being allowed in court.

Fig. 15: Notable Biases Reported by Litigants



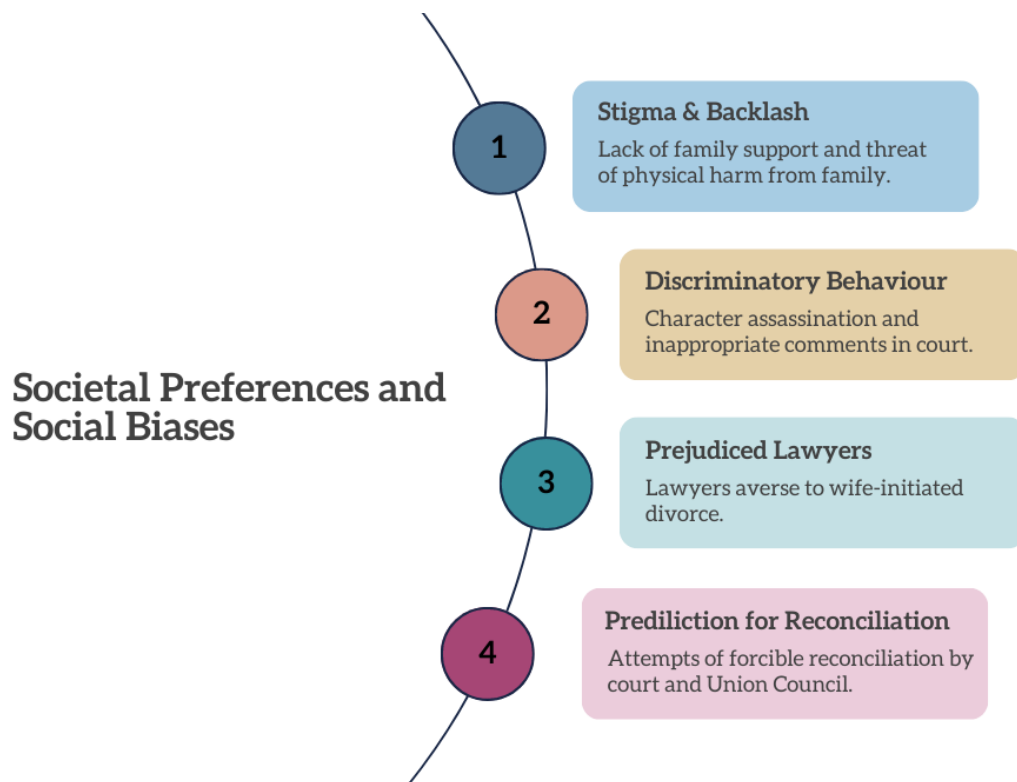
FGDs with male lawyers also disclosed some of their implicit biases, particularly their aversion to wife-initiated divorce. For example, a male lawyer from Pakpattan opined that women have been too emboldened by information about their rights, particularly through media dissemination, leading to divorce becoming a trend. Another male lawyer affirmed that the *khula* process should be made difficult, as making *khula* readily available to women has increased the number of divorces in society, which should be discouraged.

Observations from surveys with male lawyers also revealed certain biases. A male lawyer from Lahore stated that he avoids taking up cases of female clients seeking *khula*, claiming women are motivated by self-interest and are often vindictive. Another male lawyer believed that *khula* or any other wife-initiated form of divorce are all colonial era legal innovations. Under Islamic law, only men have the right to divorce. Further, a third male lawyer stated that international media has riled women against their husbands and families under the guise of women’s rights, leading them to dissolve their marriages.

The FGDs and observations with male lawyers demonstrates a recurring pattern of bias and stigma associated with even the most common form of wife-initiated divorce, i.e., *khula*. A significant number of male lawyers’ concern was fixated on the surge in the number of women seeking divorce from their husbands. Whereas only one male lawyer endeavoured to identify the factors for the rise in divorce rate — domestic violence, husband’s non-fulfilment of marital obligations, irreconcilable differences, etc.

With respect to societal preference, virtually all stakeholders in the dissolution of the marriage process demonstrated a strong predilection towards ensuring reconciliation between spouses. For example, 59% of the lawyers stated that reconciliation of the parties was their utmost priority when handling a *khula* case. The surveys also revealed that 68% of the lawyers considered judges to be more focused on reconciliation of the husband and wife than ensuring the marriage is dissolved as per the plaintiff's wishes. During the FGDs in Pakpattan, female and male lawyers expressed that reconciliation is the ideal outcome in a case for dissolution of marriage. Some lawyers also cited delaying cases as their own tactic to get their client to reconcile. A few male lawyers who were surveyed in court, complained that judges now readily award *khula* decrees and rush the process, without making efforts for reconciliation. This, according to them, has negatively impacted the social fabric and the institution of family in Pakistan as reconciliation should be prioritised over all else.

Fig. 16: Key Societal Preferences & Biases



KIIs administered with Union Council secretaries also revealed that the Chairpersons are usually inclined to use all resources at their disposal to eventualise a reconciliation between the spouses. On occasions, the Chairperson, who is often someone renowned in the local community, will influence and push for reconciliation by engaging elderly family members of the spouses. Likewise, if the husband has erred in any way causing the wife to seek dissolution of her marriage, the Chairperson tries to convince the wife to forgive and reconcile.

This societal preference for reconciliation, albeit intended to be altruistic, often manifests negatively in the form of the wife being forced to reconcile. As observed in section 4.4. above, this affects the ability of lawyers, judges, and Union Council officials

to impartially and effectively fulfil their legal and ethical obligations. This can further be witnessed in a Union Council official's remark during a KII, that in one case he deliberately delayed issuing divorce certificate in hope of reconciliation. Accordingly, forcible reconciliation was recognised by surveyed lawyers as the second strongest systemic bias faced by litigants. Hence, the societal propensity for ensuring reconciliation between spouses often acts as a hindrance for women in obtaining dissolution of their marriages, and regularly delays the resolution of their cases.

4.6. Impact on Psychological and Emotional Wellbeing

This key indicator analyzes the impact of *khula* experiences on the psychological and emotional well-being of women based on a review of surveys, interviews and FGDs with litigants and lawyers.

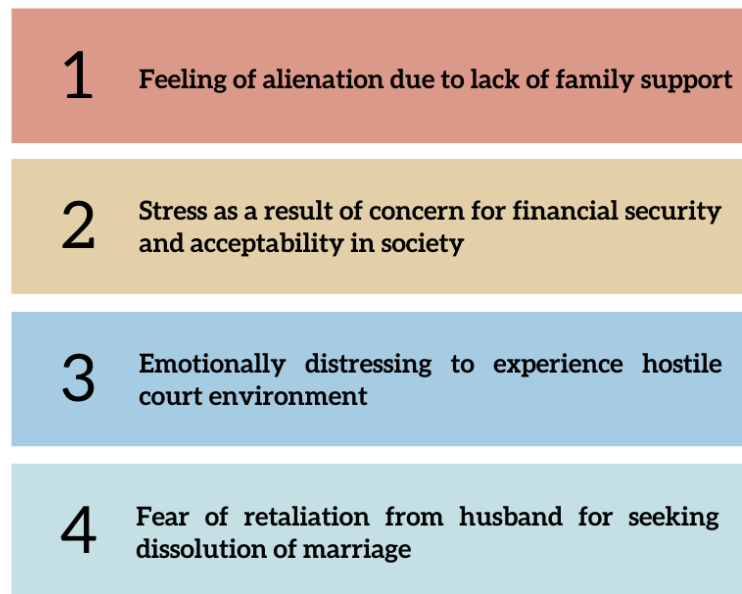
The findings reveal that a majority of female litigants (77%) believed that the decision alone to dissolve their marriage caused them psychological stress, and almost two-thirds of the female litigants (64%) shared that the courtroom experience negatively impacted their emotional wellbeing. Moreover, 72% of the lawyers were of the view that *khula* proceedings have a negative impact on female clients, the most significant of which was psychological impact (50%) and emotional impact (33%). In addition, financial burden (42%) was identified as an impact too, which can further contribute to psychological distress.

Findings from surveys were corroborated with findings from FGDs with lawyers and interviews with litigants. According to the lawyers, female clients face emotional distress due to marriage dissolution cases. Some lawyers observed that virtually all female clients experience emotional and mental stress during *khula* proceedings mainly because of the legal formalities that must be catered in addition to divorce proceedings, including custody of children, maintenance, and child support. In many cases, lawyers shared that clients face financial constraints, coupled with the lack of psychosocial support that is available for them, which compounds their distress. Moreover, some lawyers also noted emotional distress as a burden that acted as a demotivating factor for them in taking up too many *khula* cases.

Interviews with female litigants provided additional insights into the impact on psychological and emotional impact of going through the process of dissolution. Litigants shared that not only were they distressed due to the lack of family support, but they were made to feel responsible for destroying their homes by both their extended families and society, particularly in cases where children were also involved. Litigants stated that they risked physical harm from their family while opting for dissolution. Some litigants faced taunts from their families while they were making their decision of seeking dissolution due to the societal pressures and financial burden they would have to face in taking care of the respondents and their children after seeking dissolution. This caused them to fear for their financial security and acceptability in the society, adding to their emotional distress. Others revealed that the fear of violent and abusive behavior of their husbands towards them and their husbands caused them extreme psychological stress.

While some women spoke of the stress of how their children and society would handle the dissolution of their marriages, others were forced to seek *khula* cases as their husbands had orally divorced them but refused to officialise the dissolution. This was confirmed through KIIs with Union Council officials, who observed that husbands also often do not apply for divorce certificates from the Union Council, resulting in women facing distress because of having no proof that their marriage is over.

Fig. 17: Key Psychological and Emotional Impacts of Dissolution of Marriage



It is important to note that *khula* cases entail women fighting lengthy and complicated battles, including a hostile court environment, discriminatory behaviour of court staff/bystanders and character assassination by the husband, while facing financial stresses and societal pressures. Compared to other forms of dissolution, which do not require parties to go to court to seek dissolution, the *khula* process is more strenuous for women. The review suggests that the adverse impact on psychological and emotional well-being is — to a great extent — attributed to women’s experiences of going through the process of *khula* in court. As noted above, while the decision to end a marriage is not an easy one to make, particularly for women, who are emotionally and financially dependent on their husbands, simpler and more affordable processes without the need to go to court in other forms of dissolution for women can potentially minimize the negative impacts on their emotional and psychological well-being.

4.7. Ease of Access

As noted above, financial constraints and excessive delays hinder women’s access to justice in *khula* cases, to the extent that women shared during surveys and interviews that they felt like withdrawing their cases. 18% of the litigants cited high costs and 29% litigants mentioned lengthy and complicated processes as major reasons for wanting to withdraw their cases at different stages during the proceedings. In addition, according to an interviewed Union Council secretary, most women prefer reconciliation due to their difficult and fragile economic conditions. This is particularly the case for women,

who are financially dependent on their husbands, and are consequently inclined towards reconciliation.

Several interviewed litigants also observed that the legal costs acted as a barrier for them to dissolve their marriages. One litigant stated that the financial stress that comes with filing a case and engaging a lawyer is one of the biggest challenges, especially since her husband had not given her any dower or maintenance. Another litigant expressed that she had to change her lawyer because they would take bribes from the opposing counsel, causing her to spend unnecessary money on new lawyer fees.

Moreover, as noted in section 4.5. above, the biases within the system had a notable impact on women's *khula* cases. These biases were reflected in the form of discriminatory attitude and behaviour of the judge, and were also evident through the actions of the reader, which resulted in undue delays. Women constantly felt that courts did not respect their rights, and favored their husbands instead. This compounded women's hindrance to easy access to justice. A significant majority of lawyers (61%) believed that if there was a bias within the system, it would have an impact on the case in various ways. This could lead to forcible reconciliation between the parties, character assassination of the wife, and a disregard towards the wife's testimony amongst many others.

Beyond financial constraints, excessive delays and social biases against divorced women that impede women's access to justice in *khula* cases, the findings also revealed that the courtroom environment is not conducive to women being able to access courts without fear for their safety. Over half (53%) of the litigants felt that the legal process was intimidating. Around one-third (30%) litigants agreed that the courtroom environment was unsafe and inaccessible. Some litigants stated that they felt like withdrawing their *khula* cases due to vilification from the opposing party (18%) and adverse treatment by the court (12%). In addition, one woman interviewed stated that she felt extreme discomfort due to the presence of so many men in the courtroom. She also shared that she "felt like backing out at every hearing" due to the hostile courtroom environment, including character assassination by the judge and opposing party, and blackmailing by her husband.

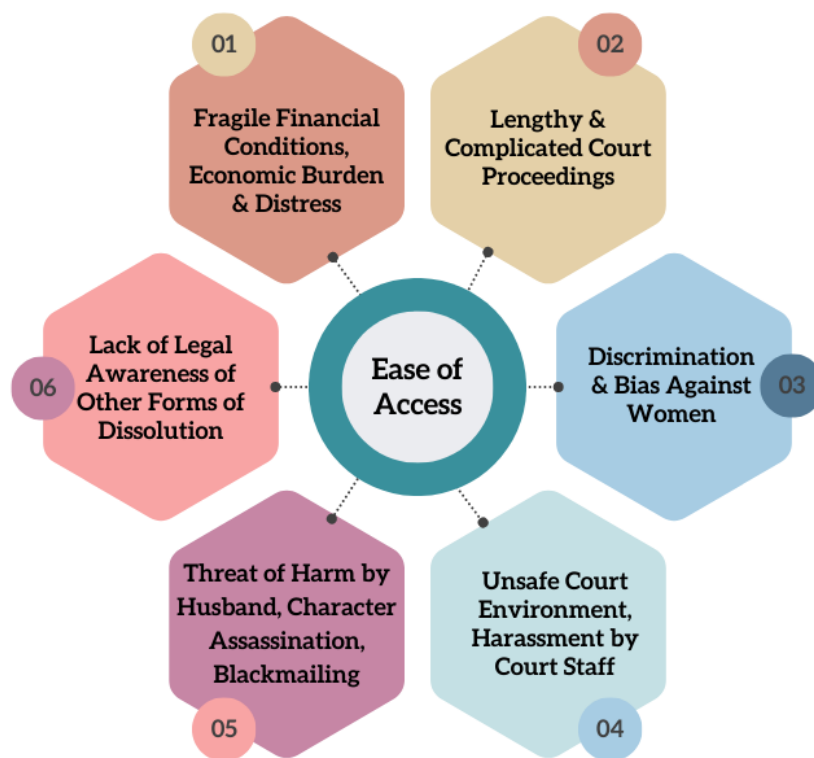
These findings were corroborated by findings from surveys and FGDs with lawyers in Lahore and Pakpattan, which referred to the court processes being daunting and unsafe, with many cases of harassment by the husband, as well as court staff, including the reader or clerks, blackmailing and threats, and a lack of safe spaces and protection mechanisms in the court for women. 51% lawyers believed that litigants face any difficulties in initiating the process of *khula*. 25% lawyers ranked ease of access to courtroom and processes as the most significant barrier faced by litigants. 57% lawyers had witnessed their clients face discriminatory comments from bystanders in the court, the judge, or from the opposing counsel during *khula* proceedings and 22% lawyers believed that courts are not a safe place for women to initiate dissolution proceedings.

During the FGD, the risks — and in some cases, the threat to life — women are exposed to in cases of *khula* were highlighted with one lawyer specifying a case of a wife being murdered by her husband outside the Lahore High Court for filing a case for *khula*. In addition, 36% lawyers strongly believed that women find it difficult to get out of the

house and come to court for the case. Many surveyed litigants mentioned that the lengthy legal process — including long hearings, repeated court visits, and delayed court dates — were the biggest discomfort they faced during the case.

It is important to note that safety concerns are not only limited to the clients but the lawyers as well. For instance, lawyers cited instances of taking different, discreet routes to court for their safety and the safety of their clients. Female lawyers in Pakpattan also mentioned that they are also threatened by male family members who accuse them of instigating female clients to seek *khula*.

Fig. 18: Barriers Impeding Ease of Access



Overall, the findings revealed a lack of satisfaction with court procedures amongst litigants, who faced significant challenges at different stages during court proceedings. For instance, 53% of the litigants agreed that if they had the option of getting *khula* without going to court, they would prefer this option. The same views were reflected in interviews and FGDs — yet, *khula* was noted as the most commonly used form of dissolution for women.

An overwhelming majority of 82% litigants agreed that the process of dissolution is easier for men than women particularly because they are only required to send a notice to the Union Council and do not have to take into consideration societal preferences, legal fees or court visits. Hence the financial, legal, social and logistical barriers that women face are hardly applicable to the men seeking dissolution through *talaq* at all.

Despite these barriers, 41% of the lawyers stated that they recommended *khula* to women as the best method for dissolution of marriage. While the litigants expressed their desire for the process of seeking dissolution to be easier, smoother and more affordable, in the same way as it is for men, none of the litigants were aware of the DRD or of mutual divorce as other forms of dissolution available to women. Further, 41% of litigants believed it was the same process as the *khula* and 23% of the litigants were of the view that women have to go to court regardless of having the DRD in their *nikahnamas*. These findings point towards a significant lack of legal awareness and misinformation regarding other forms of dissolution for women, leading women to opt for *khula* which is comparatively less accessible.

4.8. Other Observations from Review

Lawyers observed that in following a standard procedure, judges often do not account for the different procedure applicable for a dissolution of marriage case if it is filed under the DMMA 1939 as opposed to a standard *khula* case. In case the plaintiff-wife seeks dissolution on any of the grounds mentioned in DMMA 1939, the judge is required to establish the authenticity of the grounds, and shall dissolve the marriage if the ground(s) is established. In such a case, the wife is not required to return her dower. Lawyers from Lahore and Pakpattan, however, stated that judges do not understand this difference and often treat cases filed under DMMA 1939 as standard *khula* cases, thereby obligating wives to relinquish their dower. This is particularly detrimental for the wife where the dower amount is substantial.

In addition, the *khula* case files from Lahore and Pakpattan also indicate inconsistency in judgments on the matter of returning dower in lieu of *khula*. As identified in section 3.2.3. above, under section 10(5) of the FCA 1964, the family court may direct the wife to surrender up to 50% of her deferred dower or up to 25% of her prompt dower to the husband. The approach of different family court judges in this regard, however, was not uniform. Some judgments did not mention anything pertaining to the return of dower, others vaguely stated that dower should be returned '*as per prevailing law*', while only a handful of judgments specified the precise percentage.

Moreover, nearly all *khula* case files reviewed from family courts were found to be perfunctorily written, with virtually the same facts noted across all cases. Most judges made identical statements in multiple cases, illustrating a potential lack of focus on the actual details of each case, as it is unlikely that precisely the same circumstances existed across all cases. This finding is consistent with the claim made by lawyers during FGDs that judges follow a routine system for granting *khula* cases, where judgments are reproduced mechanically with little regard for actual facts. As a result, lawyers also reproduce facts from one case into mostly all their complaints, which may or may not be representative of the real circumstances of the case.

Furthermore, as observed in section 4.3.2. of this report, the case files from family courts and Union Councils were found to have missing information and inconsistency in data. For example, the date of notice, date of constitution or first meeting of the Arbitration Council, and date of marriage were missing from several *talaq* and *khula* files. In one case the complete copy of the wife's petition in family courts was missing, while in another the court judgement is missing. Other cases also had missing

documents such as the divorce certificate. Beyond missing information, much of the information was inconsistent. The most common issue observed in multiple cases was the discrepancy between the date of notice and the date of constitution of the Arbitration Council. In one case the divorce registration certificate mentions a different date of notice for divorce than the date on the actual notice sent to the Union Council. This indicates incomplete and inefficient record keeping by family courts and the Union Councils.

5. Concluding Note & Way Forward

The study reveals infirmities within the family law system that results in several obstructions for women in accessing and exercising their right to dissolution of marriage in Punjab. Whilst efforts have been made over the years to reform the process for dissolution of marriage, particularly in the form of amendments in 2002 and 2015 to the FCA 1964, these largely remain unenforced.⁴⁶

The findings disclose significant disparity in the apparatus of dissolution of marriage for women and men, with the process for the latter being relatively inexpensive, less time-consuming, and broadly more accessible. Due to lack of awareness of the DRD, the vast majority of women are restricted to seeking dissolution of their marriages through *khula*. Consequently, women are forced to spend more, wait longer, and go through an intimidating court process to seek divorce. The current predicament for women is exacerbated by the antagonistic social attitudes toward wife-initiated divorce. As a result, female litigants often face ostracisation and physical threats from their families. In addition, the costly process for dissolution of marriage coupled with lack of financial autonomy for women in Pakistan, creates economic burden for female litigants, who often become financially dependent on their families and friends. Collectively, this metastasises into a pantheon of problems for women seeking dissolution of marriage.

The identified issues are induced by a disparate dissolution of marriage process for women and men, inefficient oversight mechanisms, and inadequate governmental intervention on prevailing socio-cultural prejudices against female-initiated divorce. Potential solutions to remedy these problems are discussed below.

- **Legislative Reform**

Unlike men, female litigants seeking dissolution of marriage through *khula* are subjected to a two-step process, initially before the family court and later before the Union Council. This also entails being subjected to two rounds of reconciliation, which incurs twice as much time and cost.

The FCA 1964 needs to be amended to make the *khula* decreed by family courts as the final pronouncement of dissolution of marriage, with the Union Council thereafter issuing a divorce certificate within a prescribed time period from the date of the decree. Thereby removing the additional and redundant procedure before the Union Council. Alternatively, the process for *khula* should be decentralised to give Union Councils the jurisdiction to handle *khula* cases as the forum of first instance. In such a case, the process for *khula* before Union Councils would be the same as process for *talaq* or DRD, with proceedings to be concluded in ninety days.

⁴⁶ The Family Courts (Amendment) Ordinance 2002 added the six month time period under section 12A of the FCA 1964 for resolution of cases relating to dissolution of marriage. In addition, the Punjab Family Courts (Amendment) Act 2015 allowed for women to retain up to fifty per cent of their dower in case of dissolution of marriage through *khula*. The 2015 amendment further obligated family courts to intimate the *khula* decree to the concerned Chairperson of the Union Council within three days of the decree under section 21B of the amended FCA 1964. The amendment intended to discourage unnecessary delays in issuing of the divorce certificate and finalisation of dissolution of marriage.

- **Strengthening Enforcement of the Law**

In spite of section 12A of the FCA 1964, family courts are often unable to decide suits for dissolution of marriage within six months of institution, particularly when husbands decide to contest the case.

Furthermore, despite section 21B of the FCA 1964 in Punjab, family courts fail to intimate decree of dissolution of marriage to the Union Council within three days of the decree, and the Chairperson does not timely initiate the Arbitration Councils' proceedings either. As detailed in section 4.3. of the report, Union Councils also fail to conclude *khula*, *talaq*, DRD, and mutual divorce proceedings in the 90 day prescribed period.

Introducing periodic reviews and monitoring at the district level for both family court and Union Council proceedings could help ensure due regard to legally prescribed time limits. This could include monthly reports by court readers/clerks and Union Council officials on the cases decided, with necessary interventions where procedure regarding time period has not been followed.

In addition, the 2015 Punjab Amendment continues to be routinely violated, especially with respect to Clause 18 of the *nikahnama*, Union Council officials have reported that even in the very rare instances that they come across DRD applications, they review *nikahnamas* to see if the DRD has been granted under Clause 18, and reject DRD applications in cases where the right has not been granted. Hence, there is a need for strengthening enforcement of the 2015 Punjab Amendment to improve the protection of women's marriage rights within the dissolution framework, as well as the overall effectiveness of the provincial laws.

- **Capacity Building of Stakeholders**

The report identified the need for capacity-building of key actors, including judges, lawyers, Union Council officials, in strengthening the protection of the rights of women within the dissolution of marriages framework.

The Punjab Judicial Academy should administer periodic trainings and seminars for family law judges in Punjab, particularly explaining and delineating the different procedures for dissolution of marriage through *khula* and under DMMA 1939. In addition, the trainings should stress the importance of unequivocally stating the percentage of return of dower in view of amended section 10(5) of the FCA 1964. The training course should also include sensitivity trainings for judges as well as readers and court clerks, to edify that female litigants should not be pressured to reconcile. Likewise, sensitisation should encourage the judges to ensure provision of a safe space for female litigants in family courts, including restraining any *ad hominem* comments or use of prejudiced language targeted toward litigants.

Furthermore, Punjab Bar Council and other district level bar councils should conduct sensitivity trainings for lawyers, particularly family law practitioners to

discourage character assassination of and biases against female litigants seeking dissolution of their marriage. As with judges, the trainings should also educate lawyers about distinction between dissolution of marriage through *khula* and under DMMA 1939, and about recent amendments in Punjab, so they may plead for retention of half or quarter of the dower amount for their clients in *khula* cases.

Local Government and Community Development Department should also organise training of Union Council officials to ensure timely resolution of *khula*, *talaq*, and other forms of dissolution proceedings. Moreover, sensitivity training should discourage coercing spouses to reconcile or using non-legal means to bring about reconciliation.

- **Provision of Legal Aid**

The report highlights the lack of financial autonomy of women and the costly court procedures as major barriers in their smooth and easy access to the court system. However, legal support and assistance remains minimal.

To address this issue, there is a need to build synergies between Legal Aid and Justice Authority and local bar councils to implement and strengthen the provision of legal assistance and support to women who are unable to afford legal representation and find it difficult to access the court system in seeking dissolution of their marriages. Partnerships can also be established with law schools to engage law students as researchers who would assist family law practitioners in representing female litigants.

- **Awareness-Raising and Sensitisation Campaigns**

In addition to reforming the legal landscape, there is also a need to reform underlying social practices and beliefs that prevent women from enjoying their rights overall, and their rights within the dissolution of marriages framework in particular. CSOs and Community-Based Organisations (CBOs) working on women's marriage rights should connect with other organisations working on women's rights, to disseminate awareness-raising campaigns that engage with inimical social attitudes and perceptions toward women rights in general. Campaigns should focus on how men and institutions benefit from protecting women's rights, and should also be targeted at the youth to positively form their disposition toward women's rights. Town hall and community dialogues should be promoted to engage with detrimental attitudes toward female-initiated divorce. In particular, campaigns and dialogues should discourage blaming women for seeking divorce and engage with broader factors resulting in divorce, including domestic violence, irreconcilable differences between spouses, amongst others.

There is also a need for greater focus on awareness-raising on the DRD as a simpler, speedier and more affordable mode of dissolution of marriage for women. The general practice is to cross out/leave blank Clause 18 of the *nikahnama*, which grants women the DRD. This is not only a denial of the right of

women, but also a violation of the 2015 Punjab Amendment to MFLO 1961. Therefore, awareness-raising should be targeted towards the significance of the DRD, as well as the 2015 Punjab Amendment to MFLO 1961.