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## Comparative Study of Egyptian and Pakistani Family Law

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**Abstract:** This study explores a comparative analysis of family law in Egypt and Pakistan, focusing on marriage, divorce, child custody, and inheritance. Both countries apply Islamic law as the foundation of their legal systems, yet they exhibit significant differences due to historical, cultural, and legal developments. Egypt emphasizes codification and centralized legal reform, while Pakistan integrates Islamic jurisprudence with colonial legal influences. By examining statutory provisions and judicial practices, this research highlights the unique approaches each country takes toward family law, aiming to provide insights into the broader dynamics of Islamic legal systems in contemporary society.

**Keywords:** Comparative, Study, Egyptian, Pakistani, Family Law

### INTRODUCTION

Family law in Muslim-majority countries is a dynamic field shaped by the interaction of classical Islamic jurisprudence (*fiqh*), colonial legal legacies, and modern socio-political reforms. Among these nations, Egypt and Pakistan present two distinctive yet comparable trajectories in the development of Islamic family law. Both countries formally adopt the Hanafi school of jurisprudence as the primary source of their legal framework, yet they have implemented different legislative reforms to accommodate contemporary social needs and state objectives.

In Egypt, the codification of family law began in the early 20th century and has been significantly influenced by administrative modernization and legal rationalization. Laws regulating marriage, divorce, polygamy, and child custody have gradually evolved, often reflecting a balance between religious doctrine and social reform. Pakistan, on the other hand, has experienced an oscillation between Islamic

revivalism and legal pluralism. While maintaining the spirit of Islamic law, the state has enacted several statutes aimed at regulating family matters such as the Muslim Family Laws Ordinance of 1961, which introduced notable restrictions on polygamy and procedural reforms in divorce.

This comparative study aims to explore key areas of family law in both jurisdictions, including marriage registration, child marriage, polygamy, divorce rights, legitimacy and paternity (*nasab*), and inheritance. By analyzing legislative texts and judicial interpretations, this paper highlights how Egypt and Pakistan have addressed similar issues through differing legal strategies. Ultimately, this study seeks to assess how each country reconciles Islamic legal principles with evolving societal values and the pursuit of gender justice in family matters. (El Alami, D. & Hinchcliffe, D, 1996)

Egypt is a democratic country that explicitly declares Islam as the state religion and Arabic as the official language (Article 2 of the Egyptian

Constitution). While identifying as a socialist state, Egypt continues to refer to Islamic religion and law as foundational. Implicitly, the Arab Republic of Egypt aspires to implement the principles of social democracy derived from Islamic teachings and legal traditions.

Although the Egyptian Constitution does not explicitly formulate an article on the principle of consultation (*shura*), this democratic characteristic can be inferred from Article 2, which states that Islam is the religion of the state and that the principles of Islamic law are the primary source of legislation. Therefore, the state is expected to adhere to the principles of Islamic nomocracy, in which *shura* or consultation is a key element of democracy. Article 107 of the Egyptian Constitution outlines, among other things, how the People's Assembly makes decisions. (Moors, A, 1996).

Much of Egypt's contemporary political character has been shaped by the 1952 revolution and the leadership of Gamal Abdel Nasser, who ruled from 1952 to 1971. Nasser redefined the essence of Egyptian nationalism, promoting both nationalism and socialism. Meanwhile, Pakistan emerged on the world map through the success of the Two-Nation Theory advocated by Muhammad Ali Jinnah, which legitimized the formation of a new state based on Islam. The idea of an independent Muslim community or state in India was initially proposed tentatively by Sir Sayyid Ahmad Khan, known only in the Indo-Pakistani region as Sir Sayyid and Maulana Muhammad Ali.

In Islamic thought, the concept of a political community (*millat*) does not accept geographical regionalism or racial equality as valid criteria for defining an ethnic group. The earth belongs to God, and all human dwellings are considered His domain; therefore, every Muslim has the right to reside anywhere on this earth. (Hussain, J. 2003).

The dominant characteristics of traditionalist groups in Pakistan are reflected in their efforts to revive the historical legacy of Islamic religion. In contrast, fundamentalist groups are marked by a literal interpretation of Islam rooted in spiritual origins and are often antagonistic toward Western values. On the other hand, modernist groups present an interpretation of Islam that remains grounded in spiritual foundations while engaging

constructively with contemporary contexts. (Quraishi, A, 2000).

## A. Methodology:

This study employs a qualitative comparative legal research method. Data were collected through a literature review of primary legal sources, including family law statutes, legal codes, and court decisions from Egypt and Pakistan, as well as secondary sources such as academic journals, books, and legal commentaries. The research uses a normative juridical approach to analyze the similarities and differences between the two legal systems. Comparative analysis is applied to identify how each country interprets and implements Islamic principles in family law. The findings are then interpreted within the context of legal traditions, socio-political influences, and historical development in both countries.

## B. Results and Discussion

### 1. Family Law in Egypt

The official name of the country is the Arab Republic of Egypt, which operates under a constitution enacted on September 11, 1971. Egyptian jurists (*fuqaha*) have long perceived an inherent injustice within the inheritance system: grandchildren through sons are entitled to inherit, whereas grandchildren through daughters who predecease the testator are excluded from receiving any share of their grandfather's estate. Likewise, a grandson through a deceased son may also be barred from inheriting if there is another living son of the testator who is not the father of the said grandson. (El Alami, D., & Hinchcliffe, D, 1996).

Therefore, the ruling authority or judge as the highest state apparatus holds the power to enforce or mandate certain rulings that are deemed simple in their execution, provided such rulings serve the public interest (*maslahah*). When such directives are issued by the authority, they must be obeyed.

This principle is codified in the Egyptian Law of Wills (Law No. 71 of 1946, Articles 76–78), which stipulates the following:

1. A testator is permitted to make a bequest (*wasiyyah*) in favor of an heir without requiring the consent of the other heirs. Similarly, a will may also be made in favor of individuals who are not legally entitled to inherit, including distant relatives (*dhawu al-arham*).

2. The law affirms the concept of *wasiatwajibah* (mandatory will), which emerged as a compromise among various opinions of Egyptian scholars, the tabi'in, jurists, and hadith experts, including Said ibn al-Musayyib, Hasan al-Basri, Tawus, Imam Ahmad, Ishaq ibn Rahwayh, and Ibn Hazm. The mandatory bequest is granted to family members otherwise excluded from inheritance, with a share equal to that of their deceased parent, but limited to a maximum of one-third of the estate. (Welchman, L, 2007).

Who spent over a quarter-century researching customary law and studying Arabic in order to interpret the Qur'an, this legal formulation aligns with his own independent legal reasoning (*ijtihad*). His theory on inheritance law closely reflects the provisions found in Egypt's 1946 Law of Wills (No. 71).

Interpretation of Surah An-Nisa, verse 33 of the Qur'an led him to conclude that grandchildren whether through sons or daughters should be recognized as substitute heirs (heirs by representation) for their deceased parents. This conclusion is considered to be more in line with the Qur'anic conception of justice and the ethical values upheld by the Muslim community.

In the 20th century, Egypt successively enacted a number of legislative reforms that applied universally, particularly in the realm of family law. These included regulations on the registration of marriage, prohibition of underage marriages, dissolution of marriage upon the wife's request, conditions attached to marriage contracts (marital agreements), limitations on the *iddah* (waiting period), restrictions on the husband's unilateral right to *talāq* (divorce), and administrative procedures governing polygamy. Additional reforms also addressed issues such as lineage (*nasab*), child custody, *wasiatwajibah* (mandatory bequest), and inheritance.

The emergence of modern administrative regulation in Egypt significantly facilitated the documentation of marriage contracts. The formal process of marriage registration began with the promulgation of the Ordinance of 1880, which provided provisions concerning marriage registrars, the criteria for their appointment, and delegated the responsibility of registration to the discretion and interest of the contracting parties. This was followed by the 1897 Ordinance, Article

31 of which stipulated that claims regarding marriage or acknowledgment of a marital relationship would not be heard by the court after the death of either party unless substantiated by a document free from suspicion of forgery. (Bano, S., 2012).

This clearly reflects the Egyptian legislative principle of inadmissibility of claims in marriage-related disputes and their legal consequences unless supported by official documentation issued by an authorized official such as a judge, registrar, or consular officer (in cases involving overseas marriages).

With regard to the minimum age of marriage in Egypt, the legal threshold is set at sixteen years for females and eighteen years for males. Article 99, paragraph 5, of the 1931 Law on the Organization of Religious Courts states: "Family law claims shall not be admissible if the wife is under sixteen years of age or the husband under eighteen."

As for polygamy, Surah An-Nisa in the Qur'an allows the practice only under the condition that justice can be upheld among wives. If such justice cannot be maintained, polygamy becomes impermissible (*harām*), as it may result in harm to the first wife. This grants her the right to request the dissolution of the marriage through the court, in accordance with the Maliki school of thought. (Rehman, J, 2007).

Following extensive legal debates on the issue of polygamy, contemporary Egyptian juristic discourse has reached the following conclusions:

1. The justice required for the permissibility of polygamy as stated in the Qur'an is a moral condition, the fulfillment of which is more appropriately left to the conscience of the husband. It should not be treated as a legal condition, given the inherent difficulty for courts to objectively measure such justice.

2. Statistical evidence has not shown that polygamy constitutes a widespread social problem, as its occurrence remains below three per thousand. In fact, some polygamous cases have functioned as remedies for health-related and other social issues.

3. A legally sanctioned solution for a woman whose husband marries another is the right to seek dissolution of the marriage if she can prove that she suffers harm—such as neglect of financial



support, cruelty, denial of conjugal relations, or similar grievances.

In accordance with the Hanafi school, which is applied in Egypt, *suspended divorces* (*ṭalāqmu‘allaq*) become effective upon the occurrence of the condition to which the divorce was attached. However, Article 6 of the 1929 Law provides a limitation by stating that conditional divorces shall not be valid if the husband's intention was merely to compel his wife to do or refrain from doing something.

## 2. Family Law in Pakistan

On August 14, 1947, Pakistan was officially established as the Islamic Republic of Pakistan. The responsibilities of the Council of Islamic Ideology and other Islamic institutions include providing recommendations to the government on how to encourage the Muslim population to adopt a lifestyle in accordance with Islamic teachings. These bodies also advise the government on whether a proposed law is in conflict with Islamic principles.

In the implementation of Islamic law, changes have been introduced in the criminal justice system, including punishments such as imprisonment or fines for crimes mentioned in the Qur'an, amputation for theft, stoning (*rajm*) for adultery, and flogging for alcohol consumption. However, the full application of such Islamic punishments has been significantly limited due to strong domestic criticism and negative media coverage.

The management of *zakāt* by governmental or semi-governmental institutions has not been fully accepted by the public. This is due to the prevailing belief that the obligation of *zakat* payment is a personal religious duty, and that its distribution should prioritize close relatives and needy neighbors rather than being handled by centralized authorities.

In matters of Muslim family law in Pakistan, Islamic Research Institute Director Fazlur Rahman offered a justification for the restriction of polygamy. He agreed with Sir Sayyid Ahmad Khan's interpretation that the concept of "justice" required for polygamy, as stipulated in the Qur'an, should be understood as referring to "equal love." (Anderson, J. N. D, 1951).

Pakistani law follows a similar position regarding polygamy. According to the Muslim

Dissolution of Marriage Act of 1939, a woman is entitled to seek divorce if she can prove that she has suffered harm due to her husband's polygamous marriage. Article 6 of the Muslim Family Laws Ordinance of 1961 further provides that a husband who contracts a second marriage without the prior permission of the relevant arbitration council may be punished with up to one year of imprisonment or a fine of up to five thousand rupees. In such cases, the first wife is also entitled to seek divorce.

The legal requirement for the registration of marriage is addressed in Article 5 of the 1961 Ordinance on Muslim Family Law. It states that the authority to appoint marriage registrars and grant them permission to document marriage contracts lies with the local *Union Council*. Each council is authorized to appoint registrars in designated regions. Importantly, however, a marriage that is not registered is not rendered invalid.

Regarding inheritance, the ordinance provides for the position of a grandchild to represent their deceased parent in inheritance matters. For example, if a grandfather dies and is survived by one son and one grandson (the child of another son who predeceased the grandfather), the law stipulates that the orphaned grandson assumes the position of his deceased father and is entitled to inherit.

Article 112 of the Law of Evidence, enacted in 1972 and derived from English law, stipulates that "a child born during a valid marriage or within 280 days of its dissolution shall be considered the legitimate child of the husband, unless it can be proven that he had no access to his wife during the time in which the child could have been conceived.

This provision does not require a minimum period of six months following the marriage contract for a child to be considered legitimate a condition traditionally upheld in Islamic jurisprudence as the shortest gestational period for the legal establishment of paternity. The law merely requires the existence of a marital relationship. In 1929, Pakistan enacted a law aimed at preventing child marriages. This law established a prohibition against marrying off girls under the age of 14 and boys under the age of 16.

It also prescribed penal sanctions for violations of its provisions. (Esposito, J. L, 2001).

### 3. Comparative Study

The primary source of family law in both Egypt and Pakistan is the Hanafi school of Islamic jurisprudence. However, other madhhabs (schools of law) are also widely accepted and referenced. In essence, the legal system in both countries has proven capable of addressing contemporary social needs. The true measure of success in these legal systems lies in their ability to harmonize social interests with classical jurisprudential thought. (Coulson, N. J, 1964)

#### a. Marriage Registration

Egypt: Since 1921, new regulations were introduced concerning the qualifications and duties of marriage registrars, along with the adoption of standardized official documentation. Pakistan: Since 1948, marriage registrars have been appointed by the *Union Council* (Family Council).

#### b. Child Marriage

Egypt: According to the 1931 law, any litigation concerning a marriage is inadmissible in court if the wife was under 16 or the husband under 18 at the time of marriage. While age limits were introduced in practice, no statutory prohibition was enacted that contradicts the spirit of the Hanafi school. Pakistan: The 1929 Child Marriage Restraint Act prohibits marriage for girls under 14 and boys under 16.

#### c. Polygamy

Egypt: Under the 1929 law, a wife may request a divorce if her husband's second marriage causes her suffering. According to the 1979 amendment, a husband may only remarry with the consent and knowledge of both the current and prospective wives. Pakistan: The 1939 Islamic Divorce Act, amended in 1961, states that a man may only contract a subsequent marriage with the permission of the *Union Council*. This permission is granted only if the proposed marriage is deemed necessary and just. Violation of this provision is punishable by imprisonment or a fine.

#### d. Dissolution of Marriage Initiated by the Wife

Egypt: The 1920 and 1929 laws allow a wife to initiate the dissolution of the marriage under specific circumstances. Pakistan: The 1939 law includes similar provisions, although it rejects apostasy (conversion from Islam) by the wife as

valid grounds for divorce a position that diverges from classical jurisprudence.

#### e. Denial of Paternity

Egypt: The 1929 law stipulates that, unless specific conditions are met, claims regarding a child's paternity will not be entertained by the court. Pakistan: The 1872 provision does not impose such requirements for the acknowledgment of paternity.

#### f. Compulsory Bequest (*Wasiyyah Wajibah*)

Egyptian law on compulsory bequests aligns more closely with Sharia principles compared to the Pakistani legal provisions, which emphasize substitution inheritance and have sometimes led to interpretative distortions.

### D. Conclusion

Egypt and Pakistan do not possess a fully codified and comprehensive family law system comparable to Syria and Iraq, which have enacted complete family law codes. Instead, their codification remains partial, covering specific areas such as marriage, divorce (*talāq*), maintenance (*naḥqah*), inheritance (*mirath*), wills (*wasiyyah*), and death-related matters. This partial codification introduces novel concepts in less critical matters where the authorities prefer not to interfere or effect significant changes. The method of codification in family law in these two countries also incorporates procedural aspects, reflected in principles such as the inadmissibility of certain claims and the allocation of the burden of proof. These codifications do not solely seek to realize social welfare according to Sharia provisions but sometimes intermingle these interests with efforts to defend Western patterns of life. Family law codification is considered successful when it genuinely reveals social interests grounded in Sharia principles or legislation. In this respect, Egyptian legislation is more meticulous and closer to Sharia foundations compared to Pakistani legislation, which at times appears rushed or less consistent such as in the case of compulsory wills (*wasiyyahwajibah*) under Egyptian legal terminology.

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