

# Adultery, the Ground for Dissolution of Christian Marriage in Pakistan: Intersectional Constraint to Christian Women in Pakistan

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## Abstract

Divorce from a distressful and unhappy marital alliance implies emancipation from perpetual pain, abuse, agony and violence but the social stigma attached to a divorced woman casts its shadow for life in the patriarchal and paternalistic socio-cultural settings in Pakistan. Seeking a judicial redress for dissolution of marriage is a legal right that needs to be available equally to both men and women. However, Christian married couples who apply for a divorce, are left with no options except to invoke the charge of adultery under Christian Divorce Act 1869. Proving adultery as a ground for dissolution of marriage stands as an impediment entailing character assassination of the accused and narrows the application of divorce on other grounds, such as domestic violence, abandonment by husbands and cruelty. The clergy representing Christian community fully supports the ground of adultery for dissolution of Christian marriage and vehemently opposes any position that calls for inclusion of no-fault divorce.

Human rights activists of Christian community along with some secular non-government organizations have been spearheading a campaign for the amendments in Christian Divorce Law, in order to expand the grounds for dissolution of marriage, for more than two decades. Realizing the enormity of the problem, Christian couples, especially women, are constrained both socially and legally to exercise their right to divorce. This study has identified the challenges Christian women are confronted with and the socio-cultural, religious constructs and the patriarchal position of the Church that obstruct the passage of amendments in the Christian Divorce Law 1869. Employing in-depth interviews of 12 participants, through purposive sampling technique, that included 8 Christian women, in the age bracket of 34 – 48 years, facing or experienced divorce litigation, 2 Christian women lawyers, and 2 representatives of Christian clergy, the present study has brought forward the difficulties Christian women are facing due to the absence of respectable grounds for dissolution of marriage

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and has highlighted the obstacles that complicate the process of building consensus within the Christian community for the change in the divorce law.

## Introduction

Christian Divorce Act 1869 governs the divorce and matrimonial matters of people professing Christian religion framed by the British in view of diverse sections of Christians in the Indian subcontinent, included white British and Anglo Indians. Prescribed by the said Act, three modes to seek a divorce are available namely dissolution of marriage,<sup>1</sup> nullity of marriage<sup>2</sup> and judicial separation,<sup>3</sup> whereas the problem arises when

<sup>1</sup> Dissolution of Marriage (Section 10 of the Divorce Act, 1869) When husband may petition for dissolution

Any husband may present a petition to the Court of Civil Judge, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution

Any female may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband:

Has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

Or has been guilty of incestuous adultery;

Or of bigamy with adultery;

Or of marriage with another woman with adultery;

Or rape, sodomy or bestiality;

Or of adultery coupled with such cruelty as without adultery would have entitled her to divorce a mensa et toro; and

Or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

<sup>2</sup> Nullity of Marriage (Section 19 of Christian Divorce Act 1869)

Such decree for nullity of marriage may be made on any of the following grounds:-

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

<sup>3</sup> Judicial Separation (Section 22 of Christian Divorce Act 1869)

No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or

adultery as a ground for dissolution of marriage needs to be substantiated by the Christian couples in order to seek divorce. In accordance with section 10 of the Christian Divorce Act, a man can apply for divorce only if he proves that his wife is guilty of adultery after their marriage was solemnized and needs to name the co-adulterer with that of his wife and if he fails to name co-adulterer, he has to claim that his wife is leading a life of a prostitute.<sup>4</sup> Massive social change has occurred spanning over one and a half century, but unfortunately the ground for divorce remained the same. This poses difficulty to succeed in a divorce petition because one has to prove adultery, and in situations, where adultery, in fact, is non-existent, nevertheless, petitions to the effect are filed for the purpose of resolving socio-cultural dispute, therefore, seeking an easy way for dissolving marriage either resort to unlawful agreement to remarry or to switch over to religious conversion.<sup>5</sup> To-date, in Pakistan this Act has met two amendments, one: procedural amendment in 1976, in which petitions under Divorce Act were given to the civil judge, which earlier came under the jurisdiction of district and high courts, two: the repealing of section 7 of the Matrimonial Clauses Act 1973, that allowed for divorce if the marriage is irretrievable breakdown and no prospect is left for reconciliation, by the then Military dictator General Zia-ul-Haw in 1981.<sup>6</sup> This deletion of section 7 left Christian wedded couples, who sought a divorce, with the option to use section 10 of the Christian Divorce Law 1869 that allowed the use of adultery as a ground for dissolution of marriage entailing more burdens of social taboos as well as undermining their right to human dignity.<sup>7</sup> For more than two decades, Christian Women Organizations along with civil society network mandated to the protection of the rights of minorities have been campaigning and lobbying for the expansion in the grounds for divorce that will provide other than adultery to end their marriages.

In 2016, a petition seeking divorce was filed by a Christian to the Lahore High Court by a Christian man Ameen Masih who wanted to

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upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.

<sup>4</sup> Asif Aqeel, The End of Affairs, *The Friday Times* (26 Dec 2016). <https://www.thefridaytimes.com/the-end-of-the-affair/>

<sup>5</sup> Shakir, N. (2008, November 13). Challenges to Christian Divorce Laws. (A. Inderyas, Interviewer).

<sup>6</sup> Federal Laws (Revision & Declaration) Ordinance, 1981 (XXVII of 1981) (“Ordinance”).

<sup>7</sup> Naumana Suleman, Right to dignity of Christian women in Pakistan. *Daily Time OP-ED* (26 January 2018). <https://dailytimes.com.pk/188412/right-dignity-christian-women-pakistan/>

divorce his wife not on the ground of adultery which she had not committed but asking for the restoration of the repealed section 7 that could have allowed irretrievable breakdown of marriage as a ground of divorce without humiliating the spouse of adultery.<sup>8</sup> This case drew public attention towards Christian Divorce Law and also generated responses from Christian politicians, clergy and Non-Government Organizations working for minority rights.

Minister for Human Rights and Minority Affairs, Punjab Tahir Khalil Sindhu submitted a written response to the Honourable Chief Justice of Lahore High Court, stating that Christian marriage is a sacrament and not a social contract; therefore, it could not be broken except in a grave situation that involved sexual immorality namely adultery. The letter cited a number of Biblical quotations and the position of Catholic Church calling divorce a grave offense against the natural law that introduces disorder in the family and the society.<sup>9</sup> Federal Minister of Human Rights Kamran Micheal also submitted a response to Lahore High Court with a concluding reference from Biblical Scripture that sanctioned adultery to be the only ground of divorce; he explicitly named the divorce law a divine law for Christianity adding that no one can change any verse or order of the Bible.<sup>10</sup> Through written communication with the Chief Justice of Pakistan, the two Anglican Bishops of the Church of Pakistan namely Bishop Azad Marshal and Bishop Irfan Jamil along with a Catholic Bishop expressed their opposition against any changes in Christian Divorce Law by citing religious injustice from the Bible that allows adultery to be the only ground for divorce.

Diametrically opposed to this stance, the Syndical, Women Division of the Church of Pakistan held a consultation on Christian Divorce Law 1869 with Christian Women and came out with the clear position that the existing law on Christian Divorce did not allow any ground other than adultery to seek dissolution of marriage that severely affected the lived realities of Christian women, whose right to seek legal

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<sup>8</sup> Asif Aqeel, Why Divorce is Close to Impossible for Christians in Pakistan, *Herald Dawn* (25 July 2016) <https://herald.dawn.com/news/1153471>

<sup>9</sup> Sandhu, Khalil Tahir. “WP NO.623/16 Amin Masih Versus Federation of Pakistan Etc.” Received by IN THE COURT OF SYED MANSOOR ALI SHAH HONOURABLE CHIEF JUSTICE OF PAKISTAN, Lahore, 20 Jan. 2017, Lahore, Pakistan.

<sup>10</sup> Micheal, Kamran, “WP, No, 4508/2014 Ameen Masih Versus Federation of Pakistan Etc,” Received by IN THE COURT OF SYED MANSOOR ALI SHAH HONOURABLE CHIEF JUSTICE OF PAKISTAN, Lahore, 1 Jan. 2017, Lahore, Pakistan.

divorce is eclipsed with discriminatory cultural mores and patriarchal norms. There was a shared opinion among the participants that both men and women be given respectable grounds to pursue dissolution of marriages in order to protect the rights of minority women.<sup>11</sup>

The year 2017 saw the restoration of this Section 7 by the honourable High Court of Pakistan that provided a relief to Christian couples to end their unhappy marriages without accusing each other of committing adultery.<sup>12</sup> The following excerpt from the verdict of the High Court of Pakistan expressed its grave concern impinging the rights of religious minority in Pakistan by restricting the ground divorce.

The impugned amendment by limiting the grounds of divorce stunts the growth and freedom of *minority rights* in Pakistan. The amendment has deprived the Christians to fashion their divorce law with the same freedom, emancipation and liberation as have the Christians around the world. The limited grounds of divorce under the State divorce law when compared with the rights enjoyed by the Christians in the world, amounts to discriminating the Christian minority in Pakistan. This gap and deprivation in State law can best be abridged by extending the same rights enjoyed by Christians in majority countries to the Christians in Pakistan. This can be easily achieved by restoring section 7 of the Act, as was the case prior to the impugned amendment.<sup>13</sup>

The judgment argued that deletion of section 7 through an ordinance 1981 was in contradiction to article 9<sup>14</sup> and article 14<sup>15</sup> of the constitution of Pakistan.

Christian women politicians along with human rights organizations hailed the decision of Lahore High Court in Christian Divorce Law 1869 that enables Christian couples to get divorce outside

<sup>11</sup> Women's Secretary Synodical Church of Pakistan Secretary. *Consultation on Christian Divorce Law 1869*, 11 November 2017.

<sup>12</sup> Section 7 of Christian Divorce Act 1869 Restored, *The News*, (20 June 2017)

<sup>13</sup> Ameen Masih Vs Federation of Pakistan, 2016 PLD Lahore 610, paragraph 42

<sup>14</sup> "Security of Person.—No person shall be deprived of life or liberty save in accordance with law"

<sup>15</sup> "Inviolability of dignity of man, etc.— The dignity of an and, subject to law, the privacy of home, shall be inviolable".

the ambit of adultery.<sup>16</sup> However, with the exception of a single Bishop in the Anglican Church Dr. Alexander John Malik, the remaining Church leadership both from the United Church of Pakistan and Catholic Church vehemently opposed the restoration of section 7 in the Christian Divorce Law 1869. The shared position of the clergy mainly comprised of church patriarchs and the Christian men parliamentarians did not welcome the decision and clearly stated their vehemence against this court decision. An intra-court appeal was filed against the restoration of section 7 and currently the appeal is at the hearing stage at Lahore High Court Division where the learned Justice Ayesha Malik elaborated that it would depend on the question of law whether a law which had been repealed could be restored by the court or not.<sup>17</sup>

This whole debate and deliberation on Christian Divorce Law among the representatives of Christian community signals a clear divide between the Christian clergy and Christian women. In addition to this, Christian women either from Churches or political parties expressed their utmost desire to amend the law in order to provide dignified grounds for divorce whereas Christian men representing clergy and politicians opposed any changes in the law insisting that adultery needs to be the only ground for divorce.

Therefore, it raises a pertinent interest to explore the perspectives of Christian community about the constraints and challenges Christian women are confronted with due to the presence of this law and investigate the causes that obstruct the consensus building within the Christian community to address these anomalies. Although, seeking a divorce is equally difficult for both men and women of Christian community, however, gender inequalities tailored by societal norms put women further in a socially disadvantageous position, therefore, the article focuses in analyzing the challenges Christian women face in their social and legal journey for divorce.

<sup>16</sup> Kamran Chaudhry, Mixed reaction to changes in Pakistan's Christian Divorce Act, *UCA News Agency* (25 May 2016) <https://www.ucanews.com/news/mixed-reaction-to-changes-in-pakistans-christian-divorce-act/76132>

<sup>17</sup> Pervaiz Jabri, Appeal Against Restoration of Section 7 of Christian Divorce Act Adjourned, *Business Recorder* (19 Jan 2017) <https://www.brecorder.com/2018/01/19/393888/appeal-against-restoration-of-section-7-of-christian-divorce-act-adjourned/>

**Research objectives**

- Exploring the challenges Christian women are confronted with while seeking judicial redress for divorce.
- Identifying socio-cultural constructs and religious constraints that obstruct the passage of amendments in the Christian Divorce Law 1869.

**Conceptual framework**

The study has drawn insights from the theory of intersectionality that argues for a multi-layered oppression inflicting upon the women of minority community who are situated in a disadvantaged position on account of their gender, religion, class and caste. By using the framework of intersectionality, it has helped to highlight the fact that not all women occupy the same space in society and state; there is no such thing as an abstract woman existing outside her unique and specific position *vis-a-vis* state and society, therefore, it is pertinent to explore the position of a minority woman and her challenges within her own community. The study has examined the applicability of this theory on the situated realities of Christian women, whose voices are hardly surfaced in the discourse on Christian Divorce Law in Pakistan.

**Research questions**

1. What are the sociocultural and religious challenges confronted by Christian Women in their legal journey seeking dissolution of marriages?
2. What are the existing practices adopted by Christian couples to dissolve their marriages?
3. How do Churches in Pakistan view Christian Divorce Law in Pakistan and its effects on women?

**Methodology**

The study is based on the responses drawn from the in-depth interviews with 12 participants that included 8 Christian women, in the age bracket of 34 – 48 years, facing or experienced divorce litigation and 2 Christian women lawyers. Participants were selected using purposive sampling technique and only those lawyers were included in the study, who were well versed with family laws of religious minorities in Pakistan. Women participants were selected from Lahore district with the support of Church networks in various Christian settlements in Lahore. 2 representatives of Christian clergy Bishop and a Priest were also interviewed in order to broadly understand the position of Church on Christian Divorce Law and its effects on Christian women. The study

also relied on the secondary data that included church reports, newspaper articles, court judgment and journals.

The study positioned itself within the qualitative approach to explore the social realities constructed by the perceptions of the subjects, who themselves internalize the meaning systems and operate within the perceived domain. The study has formulated questions from semi-structured to open-ended in order to facilitate the interviewer to focus on specific topics and to generate their views and opinions on. The open-ended questions were derived after the review of literature. Leading questions posed to women litigants were, such as: What were the legal problems you have encountered while filling your application for a divorce in the court of law? How did your family respond to your situation after you decided to file a divorce case? Questions asked to lawyers were; what is the problematic nature of Christian Divorce Law 1869 and its effects on women? What are the societal practices Christian women resort to in order to dissolve their unhappy marriages? What amendments could be incorporated to rectify Christian Divorce Law? The clergy were asked questions, like, what is the position of the Church on Christian Divorce Law in Pakistan? What steps should the women take when their marriages reach the point of irretrievable breakdown? During the interviews, probing queries were asked and informal conversations were also conducted. The time span for each interview was 30 minutes to 45 minutes conducted in Urdu language. Digital recorder was not used as many participants were reluctant to record their voices. Diary notes were taken.

Since, both the authors of the study belong to Christian community and have been working on issues pertaining to the interests and concerns of Christian women in Pakistan in various community based projects, therefore, their working experience with the grassroots communities was an added advantage that have allowed the participants to freely express themselves without any fear of being stigmatized. Therefore, the shared religious identity has facilitated rapport building with the participants. Similarities and reoccurrences of the phenomenon were drawn from the responses of the participants. Later, findings were translated into theoretical constructs and were refined in order to analytically explain the responses of the participants and better reach the answers to the broader research questions of the study. In order to ensure interpretative validity of the responses, which is to present a degree that a researcher accurately portrays, the study findings were discussed with the interviewees, who shared almost the same responses with the exception of a few, who added some more clarification, which was later incorporated in the results.

Responses were analyzed using the intersectionality of multiple social divisions based on religion, caste, class, and gender, shaping peoples' subjective realities and synergies.

### Findings

The perspectives from women participants detailed their challenges in difficult and violent marriages and sociocultural constraints they have faced to obtain a legal divorce. During the course of interviews, we make an attempt to understand how women litigants responded to their obstacles and we also sought opinion from the Church representatives on divorce in Christianity. Following were the views drawn from the participants' responses.

### Legal restrictions and implications

Under section 10 of the Divorce Act a wife may present a petition to the concerned court praying that her marriage may be dissolved on the ground that, since the solemnization, has been guilty of incestuous adultery or of bigamy with adultery, or of marriage with another woman with adultery or of rape, sodomy or bestiality; or of adultery coupled with such cruelty, or of adultery coupled with desertion a husband may petition (for dissolution of marriage) praying that his marriage may be dissolved on the ground that 'his wife has, since the solemnization thereof, been guilty of adultery that legally restrict Christian men to use of such undignified reasoning. It was well echoed in the words of a lawyer:

*There is no other ground available for a married man to seek divorce from court that leads to false accusations as in the present day world it is unthinkable that all married men and women must always live happily. This provision violates the dignity of both man and woman. Though it may be argued that in terms of social consequences it is more damaging to the dignity of woman. But in a woman's case the option to allege exchange of man's profession of Christianity to the profession of some other religion coupled with marriage with another woman can also be a ground. Section 10 violates human rights and it violates human dignity by constraining individuals to resort to raising allegations against each other. Termination of marriage or divorce, is a human reality. It should be considered as a right, a contractual right. Its denial itself is a violation of dignity.*

Further, the Section 11 of Christian Divorce Act 1869 prescribes that every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded. The kind of acrimonious litigation it can lead to is too obvious to be stated here. It implies that when a husband or wife decides to raise allegations of sexual 'wrongdoing' then it is not just affecting the two individuals who may suffer consequences; it may inflict psychological violence on a third party, and probably children and connected families. Such nature of litigation can easily lead to acrimonious relations between the separating couple, which neither sanctions good for the individuals nor entails positive effects on the society. In civilised societies, there should be no place for such allegations to be raised especially in public fora. If a man and a woman do not want to live together for whatever reason they may part ways in an amicable manner. Human relations are complex and to make them even more complex and acrimonious helps neither the individual nor the society. It generates violence which leads to violation of human dignity.

In the most famous and defining case of Shehla Zia vs. WAPDA in 1994, the Supreme Court of Pakistan established the broader meaning of the right to life under Article 9 of the constitution of Pakistan. While explaining the right to live, the judgment explained: '... it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally'. Equality before the law is an essential aspect of human dignity and any such discrimination emanating from the legal provisions for redressals negatively affects the individual's sense of self-worth, which can be one of the plausible definitions of human dignity. The article 25 para 2 of the Constitution of Pakistan calls for equal treatment of law on the grounds of sex but the Divorce Act 1869 provides different grounds to husband and wife. The adherence to the principles of human dignity encompasses the equal treatment by the law whereas the discriminatory nature grounds for divorce of Christian Divorce Act 1869 is violates the constitutional guarantee that ensures the right to dignity.

### Causes for divorce other than adultery

It is found that numerous causes such as wife battering, domestic violence, drug addictions of a spouse, desertion for indefinite period, isolation from financial sources, and restricted mobility can break marital alliance to a irretrievable stage. In the words" of a respondent, 'my husband was a drug addict and used to beat me almost every day

especially when I refused to give him the money for drugs'. A year ago, she inquired from a nearby church about the legal procedure for seeking divorce. She was informed that she had to prove adultery coupled with cruelty in order to get divorce. She said, 'On knowing this, I was left helpless as how could I prove adultery charges because it was domestic violence and his habits of drug addiction which forced me to seek divorce and not the adultery'. As a result, she decided not to seek divorce and considered her unhappy marriage as her destiny.

In the same vein, another respondent shared that:

*My husband was an alcoholic and suspected me of having extra marital affairs. He never worked and fulfilled any responsibility of a household; thus sustaining my marriage became extremely difficult for me. Upon learning that in order to obtain divorce I had to accuse my husband of adultery in the court of law, I was shocked; I could never imagine to carry the burden of a false accusation, however, my lawyers told me that it was the only way I could end my marriage.*

The two examples reveal how the unnecessary delay and the crippling complexities entangled with the unreasonable grounds for divorce leave women with no options except to stay in their abusive relationship. Amid the presence of highly unreasonable ground for divorce, it becomes quite daunting for couples to free themselves from the bonds of unhappy marriage, thereby, seeking judicial redress stands more complicated and difficult.

### **Unlawful practices of divorce**

It is found that divorces among Christian families usually occur through familial approval of either one or both the spouses through an unwritten social norm without invoking the law. In such situations, women are mostly at disadvantageous conditions because their social and financial dependence on their relatives increases. It is they who decide whether to deprive her from using her own agency or to make a decision for post-divorce maintenance for herself and children from her previous husband through any legal recourse.

Avoiding the rigor of going through legal procedures for seeking divorce, most of the women prefer to not to seek legal recourse, as in the words of a respondent,

*When I came to know that I have to prove adultery to seek a divorce from the court of law, I preferred not to apply for a divorce because my husband had left the country two years and was not in contact with me and I do not have any*

*evidence to prove to the court that he committed adultery; with this situation I was left with no option except to stay silent and wait for him.*

### **Change of religion, a way to dissolve a Christian marriage**

When seeking divorce on the grounds of adultery becomes difficult and impossible, many women seek to change their religion and embrace a majority religion Islam in order to declare their previous Christian marriage null and void. As shared by a respondent, '*it is extremely difficult to prove charges of adultery because it takes place in a hidden manner and change of religion sounded a better option to escape the violence of my husband and in-laws, which I had to endure in my previous marriage*'. But unfortunately, the ordeal of most minority women of low income background, who embraced Islam in order to contract a second marriage did not end. It was observed that the stigma of a previous religion often carried along in their new Muslim family as they were often called by derogatory names such as *Chuhri*<sup>18</sup> to associate them to their previous religious Christian identity. It was thought that changing religion was an easy way to end the unhappy marriage, however, contracting a second marriage with a Muslim identity itself invited other kinds of socio-religious challenges that women had to endure specially in a context where interfaith marriages are not socially welcomed and sustained.

### **Social stigmatization of a divorced woman**

In our patriarchal context, divorce is not considered as an emancipation from a unhappy wedding rather social stigma attached with a divorced woman casts its shadow for life long in our sociocultural settings. Fearing stigmatization of being a divorced woman or a woman without a man, many women prefer to suffer in silence enduring violence that negatively affects their psychological and physical conditions. As is evident in a respondent's statement:

*I never wanted to become a divorced woman on the grounds of adultery because it brought me a bad name among my relatives, therefore, I convinced myself to tolerate the second wife of my husband and never complained about the psychological stress, cruelty and mistreatment I was subjected to by my husband and his wife.*

<sup>18</sup> A culturally coined term used for Christian women to ridicule and derogate them due to their community's association with cleaning occupation and waste collection

The allegation of adultery causes more damage to women than men in a patriarchal family structure and social cultural context and the stigma attached with such allegations proves more devastating for the well-being of women. The divorce related legal provisions fail to keep into consideration the prevalence of social norms, therefore, allow discrimination between men and women. In a manner, it implies reverse discrimination that again stands in contradiction to the constitutional protection allowing special treatment for marginalized groups (women children and minorities), as a part of affirmative action to favour not to create further disadvantages.

Such accusations of character assassination can lead to further discomfort and distraught for the separating couples.

### Church's position on Divorce Law

The sizeable majority of the clergy strongly believes that marriage is a sacrament and it should not be broken under any circumstances. It was revealed from the survey response of 53 Priests of the Church of Pakistan Lahore Diocese. They were asked, 'what needs to be done by women victims of domestic violence in unhappy marriage?',<sup>19</sup> 83% of them opined that Christians need to pray for happy marriages and 17% preferred that Christian couples should seek family counseling to address this problem. None of them suggested a need for any kind of legal recourse for the victims. The same also echoed in the words of Bishop, the head of the Church:

*Christian couples should seek counseling before marriages that can help them not to even think of divorce and solve their marital differences peacefully, because divorce is forbidden in Christianity according to the Biblical teachings, therefore, we cannot support for divorce, and instead the church priests should counsel couples facing difficulties in marriages with the help of scriptural teachings.*

It explains the prevalence of dogmatic thinking among the Christian clergy with regard to the Christian marriage. Oblivious to the pains and perils of Christian women languishing in unhappy marriages, the clergy of the Christian community is not flexible to move from their position; instead reinforces its position that divorce can only happen on the ground of adultery. Catholic Church argues for separation of marriage but again the process to gain church separation certificate is too complex and

<sup>19</sup> These responses were drawn during a seminar on personal laws of religious minorities in Pakistan held on 23 June 2018 by Women Desk of Lahore Diocese Church of Pakistan at Bishop's Conference Hall Cathedral, Lahore

cumbersome, which calls for church male elders to get united and issue such decree of separation, but this separation does not allow women to get remarried.

### Discussion and Analysis

Pakistan's official last held 1998 census placed religious minorities in Pakistan at 3.72 per cent of the total population with Christians (1.59 percent) and Hindus (1.60 percent) being the largest minority groups while others include Ahmadis and scheduled castes (Pakistan's Bureau of Statistics Government of Pakistan, 1998). Drawing inferences from the various identical population growth rates, now it is estimated to be around five million (2.4%) but the government has not released data about minutes collected in census of 2017.<sup>20</sup> It is argued that in addition to the problems and difficulties emerged from power and powerless in Pakistan, the situation of majority Christians is worse as they face double difficulty and insecurity that arise from the minority status and religious differences (Gregory, 2012).<sup>21</sup>

Within the oppressed community, women are treated as lesser beings both in their own caste by men and suffer the same caste-based repercussions from outside. This study argues that sociocultural norms rife with patriarchy and coupled with religious discrimination due to minority status give rise to multiple social burdens that impede and eclipse the struggles of the minority women towards improving their social wellbeing. The Christian Divorce Law 1869 sanctions discrimination against women and challenge many fundamental human rights as enshrined in the Pakistani Constitution.<sup>22</sup> For Muslim women, Pakistani judges removed the requirement of a husband's consent for a wife to unilaterally divorce without assigning any reasons, therefore, maintaining Muslim woman's unilateral right to no fault divorce as enumerated in Muslim Marriage Act 1939.<sup>23</sup> Contrary to this, Christians do not have this unilateral right to divorce in Pakistan.

<sup>20</sup> <http://tribune.com.pk/story/20429061/1-census2017two-years-government-mum-official-minority-count/>, accessed 12 October 2019.

<sup>21</sup> Shaun Gregory 'Under the shadow of Islam: the plight of Christian minority in Pakistan', *Contemporary South Asia*, 20:2 (2012), 197, <https://www.tandfonline.com/doi/abs/10.1080/09584935.2012.670201>.

<sup>22</sup> Salman Yousafzai, Christian women at the mercy of Christian Divorce Laws 1869 in Pakistan. *News Lens Pakistan* (16 December 2017) <http://www.newslens.pk/christian-women-mercy-christian-divorce-laws-1869-pakistan/>

<sup>23</sup> Muhammad Zubair, 'Women's right to unilateral no-fault bases divorce in Pakistan and India', *Jindal Global Law Review* (2016), 85,

Difference in treatment regarding divorce law for Christians in Pakistan and Christians living in other parts of the world was well explained by Lahore High Court in its judgment. The Divorce Act 1869 in Pakistan compels Christian spouses to defile, defame and damage each other's reputation in the court as well as in the society hence it sanctions derogation of human dignity. It goes against the constitutional provisions of Pakistan that guarantees dignity and protection of citizens as espoused in Article 14 of the constitution of Pakistan. In view of Pakistan's adherence to international human rights procedures to which Pakistan is signatory, such as United Nations Convention on the Elimination of all forms of Discrimination Against Women, it is expected from Pakistan to eliminate the legal, social, political and economic obstacles.

Gender hierarchy is staunchly practiced in the Churches in Pakistan, where women are not allowed to be in church leadership positions. Churches in Pakistan have been upholding a clear distinction of gender roles that refrain women to reaching leadership positions in the church structures and institutions, therefore, perks and privileges of these positions are only accorded to men. Traditionally, the church structures in Pakistan are highly patriarchal and there is always a man in the position of Bishop or Church representatives, therefore, the court also seeks the opinion of church patriarchs on Christian Divorce Act 1869 considering that they represent the whole Christian community in Pakistan, which indirectly discriminates on the grounds of sex as opinions of Christian women are hardly considered a voice of Christian community by state officials and judges.

While contextualizing the Christian faith in South Asia, the Churches have uncritically accepted the local cultural mores and molded the faith accordingly especially in terms of unchallenged ethnic and gender divisions.<sup>24</sup> The position of the mainstream Church leadership in Pakistan is influenced by patriarchal sociocultural norms and literalistic theological construct having little space to uphold gender equality and human rights. Instead of focusing of clergy to change their position on Christian Divorce Law, more efforts need to be done to make state accountable to the discriminatory provisions in Christian Divorce law that impinges upon the fundamental human rights. The personal laws are governed by religions of minority communities that do not qualify state

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[https://www.academia.edu/35913485/Womens\\_Right\\_to\\_Unilateral\\_No-Fault\\_Based\\_Divorce\\_in\\_Pakistan\\_and\\_India](https://www.academia.edu/35913485/Womens_Right_to_Unilateral_No-Fault_Based_Divorce_in_Pakistan_and_India).

<sup>24</sup> Elizabeth Koeppling, 'Christianities in India, Pakistan, Bangladesh and Burma/Myanmar', In Peter C. Phan (ed.), *Christianities in Asia*, 9, 32, DOI: 10.1002/9781444392616.ch2

to become hostage to the interpretation of the clergy in order to uphold the constitutional guarantees of gender equality for minorities in Pakistan.

Using adultery as a ground for the dissolution of marriage runs in contraction to the constitutional protection prescribed under the Article 14 that guarantees the inviolability of the dignity of citizen. Reluctant to invoke the derogatory grounds for dissolution of marriage, many Christian women resort to silence and subject themselves to the woes of violent marital relations. Such discriminatory and derogatory provisions of divorce law also contradict the Article 35 of the Constitution of Pakistan that calls the state to protect the marriage, the family, the mother and the child and also Article 3 of the Constitution of Pakistan<sup>25</sup> ensuring the protection of minorities.

Realizing the discriminatory nature of Christian Divorce Act 1869 in India, amendments were incorporated in the Indian Divorce Act in 2001<sup>26</sup> by expanding the grounds for dissolution of marriage adding divorce by mutual consent, cruelty and desertion. In Pakistan, this issue has become strained reasoned to differing opinion of Christian community, dearth of consensus building among them, interpretation of the Biblical texts by religious scholars and lack of legislative development in Christian Personal Laws in Pakistan.<sup>27</sup>

### Conclusion

The present study described the intersectional challenges Christian women are subjected to, while appealing for judicial redress to get divorce. It highlighted the position Christian clergy, who are indifferent to understanding the social and legal difficulties of Christian Divorce Law and its implications for Christian families specially the women. For ensuring the constitutional guarantees to protect the dignity and equal rights of Christians in Pakistan, it is mandatory for the State to initiate a legislating process to introduce amendments in the century's old Christian Divorce Law 1869, to provide respectable grounds for dissolution of marriage. In this process, the State needs to engage with the Christian women, civil society and churches.

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<sup>25</sup> Article 36 of the Constitution of Pakistan; Protection of Minorities.—The State shall safeguard the legitimate rights and interests of minorities, including their due representation in federal and provincial services

<sup>26</sup> Central Government Act, The Indian Divorce (Amendment) Bill, 2001.

<sup>27</sup> A. Afzal, & A. Rafiq, Divorce a mensa et toro and Christian Minorities in Pakistan. *Maarif e Islami*, (2017), 25.