Christian Divorce Law in Pakistan: Past, Present and Future

Muhammad Zubair Abbasi[*]

Abstract

The law governing the divorce of Christians in Pakistan was enacted through the Divorce Act 1869 during the British colonial period in India. To ensure incremental changes in this law, section 7 of the Act provided that the local courts will apply English divorce law for Christians. In 1981, however, this section was repealed under the regime of Zia ul-Haq through an Ordinance. In 2017, a member of the Christian community challenged this repeal on the ground that it violated constitutionally guaranteed fundamental rights of minorities in Pakistan. The Lahore High Court accepted the petition and declared the repeal of section 7 as unconstitutional. The revival of section 7 has a significant impact on Christian divorce law in Pakistan by providing, *inter alia*, irretrievable breakdown of marriage as a ground for divorce. However, it has led to the anomaly of English divorce law applying to Christian citizens in Pakistan. To remove this anomaly, the Pakistani parliament will have to reform Christian divorce law.

I. Introduction

In Pakistan, the Christian community comprises 1.59 percent (3.29 million) of the total population of 207 million. Despite being the second largest religious community in Pakistan, Christian divorce law in Pakistan is based on the statutes which were passed during the second half of the nineteenth century. As a result, Christian couples were forced to live in dead marriages because irretrievably

[*] Assistant Professor, Lahore University of Management Sciences (LUMS); zubair.abbasi@lums.edu.pk.

broken-down Christian marriages could not be dissolved under the law. All this, however, changed in 2017 when the Chief Justice Mansoor Ali Shah of the Lahore High Court delivered a landmark judgment recognizing irretrievable breakdown as a valid ground for divorce under Christian divorce law in Pakistan.

In this article, I analyze the judgment in *Ameen Masih v Federation of Pakistan*[1] to assess its implications for Christian divorce law in Pakistan. This article is divided into three parts. Part 1 traces the historical development of Christian divorce law during colonial and post-colonial periods and illustrates how General Zia ul-Haq's amendment of the Divorce Act 1869, coupled with the promulgation of Islamic criminal law against extra-marital sex (*zina*), condemned Christian couples to live in dead, and often abusive, marriages. Part 2 examines the judgment of the Lahore High Court, in which the Court recognized irretrievable breakdown as a valid ground for divorce. Part 3 explores the implications of this judgment for the Christian community in Pakistan. This article points out that although the judgment has provided the irretrievable breakdown of marriage as a valid ground under Christian divorce law, it has left the Christian citizens of Pakistan to be governed under the provisions of foreign English divorce law. The Pakistani parliament will have to remove this anomaly by expanding the scope of divorce under Christian law through a statute.

II. Christian Divorce Law In Pakistan: Historical Context

In Christian law, marriage is a sacred covenant which must not be broken. The New Testament provides very narrow grounds for divorce. The Gospel of Matthew states: 'whoever divorces his wife, except for immorality, and marries another woman commits adultery'.[2] The divorce laws of many Christian countries, therefore, provide only limited grounds for divorce. In the United Kingdom, the Church of England, as a separate entity from the Catholic Church, emerged in part due to the Pope's refusal to grant an annulment to King Henry VIII from his marriage to Catherine of Aragon because she had been unable to give birth to a son and heir to the King.[3] The Divorce Reform Act 1969 provided the ground of irretrievable breakdown of the marriage for divorce under English law. Further development and consolidation of English divorce law was undertaken through the Matrimonial Causes Act 1973 which became the primary law governing marriage

[1] PLD 2017 Lahore 610.

[2] Matthew 19:7-9, *The Holy Bible*, containing the Old and New Testaments, King James Version (New York: American Bible Society 1999) 2062.

[3] David G Newcombe, *Henry VIII and The English Reformation* (Routledge 1995) 12.

and divorce law in England and Wales. Despite these developments, a unilateral right to no-fault divorce is not available under English law.[4]

In colonial India, the law governing Christian divorce was first enacted in the form of the Divorce Act 1869. It provided limited and unequal grounds for dissolution of marriage for both the husband and the wife. Under section 10 of the Act, a husband could petition the court to grant a divorce by accusing his wife of adultery. A woman could also petition for divorce under the same ground of adultery, but additionally, she had to prove that the husband had changed his religion from Christianity or committed bigamy, or rape or sodomy or bestiality, or cruelty or desertion, without reasonable excuse, for two years or more.[5] During the British colonial period in India, this statute was amended to update the law with the passage of time to accommodate societal changes. The most significant change occurred in 1912 when section 7 was added to the Act. Under this section, a relief of dissolution of marriage could be given in accordance with the contemporary principles of divorce law as applied in England. Section 7 provided:

> Court to act on principles of English Divorce Court: Subject to the provisions contained in this Act, the Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

In 1981, however, during the regime of General Zia ul-Haq, section 7 of the Act was repealed through the Federal Laws (Revision & Declaration) Ordinance 1981. This removal of section 7 changed the original spirit of the Act, making it restrictive and ossified its provisions. Since the UK Matrimonial Causes Act 1973 had given the irretrievable breakdown of a marriage as a ground for

[4] In a recent judgment, the UK Supreme Court denied a wife's petition to divorce her husband on the basis of irretrievable breakdown of marriage. *Owens v Owens* [2018] UKSC 41.

[5] Section 10 states: "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. Any wife may present a petition to the District Court or to the High Court Division, 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 of rape, sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce mensa et toro, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards. 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."

divorce, the repeal of section 7 foreclosed a ground for divorce which should have been available to Christians in Pakistan just as it was available in English Divorce and Matrimonial Causes Court. With many Christians unwilling to accuse their spouses of adultery, or unable to prove such a charge to get divorce decrees, the law trapped them in their marriages.

The impact of the repeal of section 7 of the Act was exacerbated because of the promulgation of the Offense of Zina (Enforcement of Hudood) Ordinance 1979 which made extra-marital sex a criminal offense. Simultaneously, the Offense of Qazf (Enforcement of Hudood) Ordinance 1979 declared false accusation of *zina* (extramarital sex) as a penal offense. These legal developments had far-reaching consequences for a divorcing Christian couple whose personal dispute about the dissolution of marriage might have led to criminal sanctions either for one or both of them. In this way, after the repeal of section 7 of the Act, a Christian marriage could not be dissolved without leading to criminal penalties under the Hudood Ordinances. This led many Christian women to convert from Christianity in order to escape from their bad marriages. In several reported cases,[6] Christian wives claimed dissolution of their marriages upon their conversion to Islam.

The requirement to prove adultery for getting a decree of dissolution of marriage poses its own challenges. In *Parveen Amanual v Additional District Judge-III*,[7] it was held that a claim for dissolution of marriage should be based on concrete facts supported by reliable and cogent evidence and not mere allegations. The court cannot dissolve a marriage or grant separation on mere assertion that the wife is not willing to live with her husband. In *Mushtaq v Fareeda*,[8] after evaluating the allegations of adultery by a Christian husband, the court refused to confirm the decree of the dissolution of marriage. This meant that a wife, who was accused by her husband of adultery, was still required to live with him. The irretrievable breakdown of their marriage was not recognized as a valid ground for dissolution of marriage. The spouse must prove the allegations of adultery through corroborative evidence either through witnesses or by relying on surrounding circumstances for the decree of dissolution of marriage. Historically, the courts have held a high standard of proof for matrimonial offenses. In *Inayat Bibi v Harbans Lal*,[9] the court observed that the standard of proof for matrimonial offenses is as stringent as in criminal cases i.e., the case must be proved beyond reasonable doubt. Similarly, in *Anges Jacintha*

6 *Salamat Ali v The State* 1989 PCrLJ 978; *Tariq Masih v The State* 2004 PCrLJ 1017; *Afzal Masih v The State* 2004 MLD 970; *Aftab Ahmad v Judge Family Court* 2009 MLD 962.

7 PLD 2009 Lahore 213.

8 CLC 1979 Karachi 457.

9 PLD 1966 Pesh 13.

Irene v Augustus Simon D'Souza, [10] the court held that an inference of adultery cannot be drawn lightly from evidence of association coupled with opportunity. In this case, the court refused to accept as evidence of adultery the fact that the petitioner's husband returned very late from the house of his alleged mistress.

Besides the fact that many petitioners seeking divorce must prove matrimonial offenses according to a standard that is prohibitively difficult, it is worth noticing that adultery is a criminal offense in Pakistan. General Zia ul-Haq introduced the process of Islamization of laws in Pakistan. In 1979, he promulgated four Ordinances to enforce Islamic criminal law. The Ordinances covered the offenses of extra-marital sex (*zina*), the false accusation of *zina* (*qazf*), the drinking of alcohol, and theft. The Offense of Zina (Enforcement of Hudood) Ordinance 1979 applies to both Muslims and non-Muslims. Section 4 of the Ordinance defines extra-marital sex (*zina*) as: "A man and a woman are said to commit '*zina*' if they willfully have sexual intercourse without being married to each other." This section does not make any distinction on the basis of religion. By alleging adultery in order to seek a divorce, the petitioner opened up the possibility of the respondent being charged with a criminal offense which was liable to a maximum of death sentence. Since the burden of proof for both matrimonial and criminal offenses is the same, taking such a ground for divorce could have severe penal consequences. Yet, the failure of a spouse to prove adultery might have made him/her liable to punishment under the Offense of Qazf (Enforcement of Hudood) Ordinance 1979 for false accusation of extra-marital sex (*zina*).[11] The impact of the Hudood Ordinances on Christian divorce law is evident from the fact that not a single case of divorce on the allegation of adultery has been reported since the promulgation of Hudood Ordinances in 1979.

III. Judicial Reform of Christian Divorce Law

In *Ameen Masih v Federation of Pakistan*,[12] a Christian man filed a petition before the Lahore High Court. He contended that since their marriage had irretrievably broken down, he wanted to divorce his wife without accusing her of adultery. He argued that under the repealed section 7 of the Divorce Act 1869, grounds for divorce under the UK Matrimonial Causes Act 1973, were available to him in the courts of Pakistan. These grounds included the ground of irretrievable

[10] PLD 1975 Kar 747. In *Francisco Xavier Pinto v Julie Pinto* PLD 1979 Karachi 716, however, the court held that an inference of the commission of adultery may be drawn from the evidence of association coupled with the opportunity to commit adultery and the evidence of an illicit affection.

[11] *Shaukat Masih v The State* 1987 SCMR 1308; *Yousuf Masih and another v The State* 1994 SCMR 2102.

[12] *Ameen Masih* (n 1).

breakdown of marriage. However, this section was omitted through the Federal Laws (Revision and Declaration) Ordinance 1981. Therefore, he petitioned the court to declare the repeal of section 7 of the Divorce Act 1869 as unconstitutional on the basis of Article 36 of the Constitution of Islamic Republic of Pakistan 1973 which provides that the State is bound to protect the legitimate rights and interests of the Christians as the citizens of Pakistan.[13]

The Lahore High Court, in its judgment, traced the history of Christian divorce law. After observing that, historically, divorce has been frowned upon by the church authorities, the Chief Justice Mansoor Ali Shah held:

> In Christian majority countries, although it is public policy to discourage divorce, and not to favour or encourage it, public policy does not discourage divorce where the relations between the husband and wife are such that the legitimate objects of the matrimony have been utterly destroyed. The State is not interested in perpetuating a marriage after all possibilities of accomplishing a desirable purpose of such relationship is gone, or out of which no good can come and from which harm may result. Accordingly, it is the public policy to terminate dead marriages.[14]

Justice Shah pointed out that it is in such situations that a 'no fault' divorce mechanism is provided in many jurisdictions. Such mechanisms or statutes allow for a no-fault divorce, or divorce by consent, in which the parties are not required to prove fault or grounds for divorce other than showing irreconcilable differences or an irretrievable breakdown of the marriage. He observed that divorce laws have been amended to provide for the irretrievable breakdown of marriage as a ground for divorce in many Christian populated countries. In India, for instance, the Indian Divorce (Amendment) Act 2001 was enacted which expanded the scope of divorce by providing for the dissolution of marriage by mutual consent.[15] This amendment was similar to the provisions for 'dissolution of marriage by mutual consent' for Hindus under Section 13-B of the Hindu Marriage Act 1956, Parsis under Section

[13] Article 36 of the Constitution of Islamic Republic of Pakistan 1973 provides: "The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services."

[14] *Ameen Masih* (n 1) 625.

[15] Section 10-A of the Act provides: "Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved."

32-B of the Parsi Marriage and Divorce Act 1936 and persons marrying under the Special Marriage Act 1954.

Before delving into the jurisprudential analysis, Justice Shah dealt with the objections of the religious clergy who opposed the grounds of divorce other than adultery. In order to ensure effective participation of the Christian community, notices were issued to lawyers, parliamentarians, and Christian religious scholars, seeking their views on the issue. Most of the replies supported the "irretrievable breakdown" of marriage as a sufficient ground for divorce under Christian law. However, a few Christian religious scholars opposed the recognition of the ground of irretrievable breakdown of marriage for divorce as an intrusion in Biblical law by the secular courts. This, according to them, would be a direct affront to the religious sensibilities of the Christian community in Pakistan. To this, Justice Shah replied that in the case at hand, the court was concerned with the constitutionality of a state law. He referred to the oath of judicial office and Article 2A of the Constitution to establish that the judges are duty-bound to uphold, apply, and preserve the Constitution to the exclusion of their personal or religious affinities. He held that under the Constitution, it is the duty of a judge to protect the legitimate rights and interests of the minorities and check all laws pertaining to them on the touchstone of minority rights as enshrined in the Constitution. Justice Shah held:

> This Court is only to judicially review the existing State law on the yardstick of constitutional values and fundamental rights guaranteed to the minorities-cum-citizens of this country under the Constitution. Nothing else. The apprehension of the clergy that this Court is deciding against the teachings of the Holy Bible, is unfounded, as this court is doing no such thing. This Court is simply examining the constitutionality of the provision of the impugned Ordinance whereby section 7 of the Act has been deleted. If the Christian clergy are unhappy with the law, they can approach the Parliament for its revision. Therefore, this case is not about examining the canonical or Biblical law but about assessing the legality and constitutionality of item 7(2) of the Second Schedule of Federal Laws (Revision and Declaration) Ordinance, 1981.[16]

Justice Shah also referred to the international obligations of Pakistan under international covenants such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR),

[16] *Ameen Masih* (n 1) 624.

which require the protection of minority rights, as well as the domestic obligations of Pakistan under the Constitution which provides for the protection of the rights and interests of minorities. Keeping these obligations in mind, Justice Shah held:

> The wisdom and experience behind the liberalization and emancipation of the Christian Divorce law around the world has been the protection of the right to a happy family life and right to dignity of a human being, who cannot be left chained to a dead marriage forever or forced to convert to another religion just to be released of the bondage of an unhappy marriage.[17]

To allow such a situation would "limit the choice of a person to divorce and force a person to lead an unhappy and an oppressive life unless he or she can prove the charge of adultery against the spouse."[18] According to Justice Shah, compared with the divorce rights of the Christians in the contemporary world, the limited grounds of divorce under the Divorce Act 1869 amounted to discrimination against the Christian minority in Pakistan.[19] Justice Shah observed that the right to family life is based on human dignity which demands that the State must establish a legal system that recognizes the right of every person to create a familial relationship according to one's desires.[20] The impugned amendment limited an individual's freedom to seek divorce, thus perpetuating dead marriages which impair the quality of life and curtail the liberty of individuals by forcing them, against their wills, to live unhappy family lives.[21]

Justice Shah held that the impugned Ordinance not only violates the fundamental rights of the Christians, but is also inconsistent with the Principles of Policy as enshrined in the Constitution. He held that even though these principles are not enforceable as positive fundamental rights, this does not mean that the government can enact laws or make policies which are in direct violation of the guidelines provided therein. He thus held that Article 30 of the Constitution does not protect a law which is inconsistent with the Principles of Policy and therefore

17 ibid 636.
18 ibid.
19 ibid 637.
20 ibid 636.
21 ibid.

any such law can be declared unconstitutional for violating constitutional values.[22] In this context, he observed:

> Principles of Policy provide the constitutional aspirations, goals and mission statement for the State of Pakistan. It is a constitutional obligation of the State and its organs and authorities to synchronize with and promote these Principles. These Principles nourish the roots of our democracy and help actualize and fertilize our constitutional values. They are our roadmap to democracy and ensure that the State remains on course to achieve social, economic and political justice. The State or any authority may take time to achieve the said constitutional aspirations due to the non-availability of resources but they cannot at any stage or at any cost go against the Principles of Policy.[23]

Based on the foregoing discussion, Justice Shah restored section 7 of the Divorce Act 1869 and declared unconstitutional and illegal item 7(2) of the Second Schedule to Federal Laws (Revision & Declaration) Ordinance 1981 because it violated minority rights and infringed constitutional values, fundamental rights, Principles of Policy, and international human rights conventions.[24]

IV. Implications of the Ameen Masih Case

By holding the repeal of section 7 of the Divorce Act 1869 as discriminatory and therefore unconstitutional, Justice Shah provided a much needed respite to many in the Christian community in Pakistan. Christian spouses no longer have to allege adultery in order to end failed marriages. With that said, the reintroduction of section 7 into the Divorce Act 1869 is not without its problems. Firstly, by holding that section 7 continues to be a part of the Divorce Act 1869, the court has explicitly tied the development of Pakistani law with the 'principles and rules of the Court for Divorce and Matrimonial Causes in England'.[25] When the statute was originally enacted, the State of Pakistan did not exist and what is currently

[22] Article 30 reads: "Responsibility with respect to Principles of Policy. (1) The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the Principles of Policy is that of the organ or authority of the State, or of the person, concerned. (2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State or any organ or authority of the State or any person on such ground."

[23] *Ameen Masih* (n 1) 638-639.

[24] ibid.

[25] Divorce Act 1869, s 7.

Pakistan was part of the British Empire. In that context, the reliance on British legal principles was not unusual. At that time, a British Viceroy ruled India and the highest Court of Appeal was the Judicial Committee of the Privy Council in London. Today, Pakistan is a sovereign country with its own laws and legal principles. To tie the development or application of a law to a foreign court is problematic because of its conflict with the sovereignty of the state and its judiciary under public international law.

The application of English divorce law for Christians in Pakistan may result in Pakistani courts having to awkwardly apply foreign law to its citizens. In 1963, when section 7 was part of the Divorce Act 1869, the Chief Justice of Lahore High Court in, Manzur Qadir, had regarded this section as anachronistic in the case of *Marie Antoinette v Oswald Robert Palmer*.[26] In this case, a Christian couple sought dissolution of marriage. The issue at hand was whether the husband could be ordered to pay the expenses of litigation of the wife while her suit for dissolution of marriage was pending. The court observed that there was no provision in the Divorce Act 1869, which authorized the court to order such payment. The court, however, asked the husband to make such payment to his wife because the English Matrimonial Causes Rules 1937 provided for the payment of such expenses.[27] On appeal, the case went to a larger bench of the High Court headed by the Chief Justice, Manzur Qadir, who after expressing reservations regarding section 7 of the Act, held:

> This provision is an anachronism in the statute book of Pakistan after Independence, I have no doubt. But that is a matter for the Legislature to consider. The plain duty of a Court is to give effect to the intent of the lawmaker irrespective of other considerations. It seems to me clear that it was the intention of the lawmaker that Courts in this country should refrain from giving relief in circumstances in which the English Divorce Court does not give relief and should give relief where that Court would give it.[28]

As a result of the judgment of the Lahore High Court in the *Ameen Masih* case, Pakistani judges will have to apply the divorce law which is 'conformable to the principles and rules' which are applied by the Court for Divorce and Matrimonial Causes in England.[29] The English law of divorce, however, has been reformed a number of times during the past one and a half century. These reforms are

[26] PLD 1963 WP Lahore 200.
[27] PLD 1957 WP Lahore 235.
[28] Marie Antoinette (n 26).
[29] Divorce Act 1869, s 7.

procedural as well as substantive in nature. Under the procedural reforms, English divorce law has been transformed into secular law. This change occurred almost a decade before the promulgation of the Divorce Act 1869 in British India. Under the Matrimonial Causes Act 1857, when the Court for Divorce and Matrimonial Causes was established, the divorce jurisdiction of Church courts was abolished.[30] The jurisdictional secularization of English divorce law did not automatically lead to its substantive reform because of resistance from the clergy and the Church of England. The change in substantive divorce law happened after "the law of divorce and Canon law of indissolubility of marriage were themselves divorce"[31] and breakdown of the marriage became a ground for divorce under the Divorce Reform Act 1969. While English divorce law was a part of Christian divorce law during the second half of the eighteenth century as a result of the introduction of the Divorce Act 1869 in British India, following the procedural and substantive changes, English law no longer remains a part of Christian divorce law.

As was the case in England, the reform of Christian divorce law in Pakistan has been vehemently opposed by some members of the Christian community in Pakistan. Unlike England, Pakistan follows a personal law system where each religious community is governed by its own personal law.[32] The then Punjab Human Rights and Minorities Affairs Minister, Khalil Tahir Sandhu, stated that he believed marriage to be a religious covenant and, therefore, he did not believe in divorce. He was quoted as stating, in a meeting organized to discuss tabling a bill to enact changes in the Divorce Act 1869, "[How] can a court touch the law ordained by our faith?"[33] During the hearing of the *Ameen Masih* case, the then Federal Minister for Human Rights, Senator Kamran Michael, himself a Christian, cited relevant verses from the Bible to support his stance that religious laws could not be altered to bring them in line with fundamental human rights as that would be a violation of religious principles.[34] He opposed the reintroduction of section 7 in the Divorce Act 1869. After the judgment in the *Ameen Masih* case, some members of the Christian community challenged it before the larger bench

[30] J H Baker, *An Introduction to English Legal History* (4th edn, Oxford University Press 2007) 496.

[31] ibid 497.

[32] About one third of the world's population lives under a system of state-enforced religious family law as opposed to a unified national legal code which governs matters such as marriage, divorce, maintenance, and inheritance. Most of these countries are post-colonial states where the colonial rulers employed a pluralistic legal system which was later inherited by these nations. Yuksel Sezgin, *Human Rights Under State-Enforced Religious Family Laws in Israel, Egypt and India* (Cambridge University Press 2013) 1–12, 205–214.

[33] Asif Aqeel, 'Why Divorce is Close to Impossible for Christians in Pakistan' (*Herald Magazine*, 25 July 2016) <http://herald.dawn.com/news/1153471> accessed 18 February 2019.

[34] 'LHC Reserves Ruling on Christian Divorce Law after Leaders Oppose Changes' (*The Dawn*, 21 January 2017). <www.dawn.com/news/1309764> accessed 18 February 2019.

of the Lahore High Court by filing an appeal which has been pending adjudication since 2017. This resistance to the reinstatement of section 7 in the Act is justifiable on the ground that English divorce law has been secularized during the nineteenth century. Therefore, it seems inappropriate to subject the Christian community in Pakistan to that law.

Despite objections to the secular nature of contemporary English divorce law, the reintroduction of section 7 into the Divorce Act 1869 is likely to protect the rights of Christian wives by replacing the redundant provisions of the Act with English divorce law. For instance, section 39 of the Divorce Act 1869 provides the court the power to order the settlement of a wife's property if a dissolution of marriage or judicial separation has occurred due to adultery on the part of the wife. This section provides that the court, "may order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both." There is, however, no corresponding provision for the settlement of a husband's property in favour of the wife in the Divorce Act 1869. In the Matrimonial Causes Act 1973, section 24 provides the court the power to order the transfer of a property from one party to another or the outright settlement of a property for the benefit of the other party.[35] This section does not discriminate in its application on the basis of gender, unlike the Divorce Act 1869. Similarly, there have been developments in case law with regards to the financial rights of spouses upon divorce in the United Kingdom that may now be applicable in Pakistan. In *White v White*,[36] a landmark judgment of the House of Lords, it was ruled that in deciding the division of assets, a fundamental criterion should be equality between the parties and not necessarily their respective needs or what assets they brought into the marriage. Lord Nicholls held:

> Equality should be departed from, only if, and to the extent that, there is good reason for doing so…. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence

[35] This section, in part, states: "(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say: (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion; (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them."

[36] [2001] 1 AC 596.

of discrimination.[37]

This approach, similar to the principle of community/matrimonial property, has not been applied in Pakistan and would be a major development in Christian divorce law which has only been marginally reformed in more than one and a half century.

After the judgment in the *Ameen Masih* case, the government proposed the Christian Marriage and Divorce Bill, 2017.[38] The Federal Minister for Human Rights, Dr. Shireen Mazari, has tabled a new Christian Divorce Bill to protect the rights of Christian minorities in Pakistan.[39] The enactment of this law is long overdue and has become necessary in the aftermath of the judgment of the Lahore High Court in the *Ameen Masih* case.

V. Conclusion

In light of the foregoing discussion, it is evident that the Lahore High Court judgment in the *Ameen Masih* case is a landmark development regarding Christian divorce law in Pakistan. As a result of this judgment, irretrievable breakdown of marriage is available as a valid ground for the dissolution of a Christian marriage. The even more revolutionary impact of this judgment has been the removal of gender discriminatory provisions of the law applicable to Christian divorce under the Divorce Act 1869. It is likely that divorced women will now be entitled to matrimonial property because of the application of English divorce law upon Christian divorce proceedings in Pakistan.

The positive implications of the judgment in the *Ameen Masih* case, however, have to be taken cautiously for a number of reasons. Firstly, the Christian community in Pakistan holds divergent views regarding divorce given the historical treatment of a Christian marriage as a sacrament dissolvable only upon death. Therefore, despite the benevolent attitude of the Lahore High Court towards the minority community of Christians in Pakistan, the majority of them may not accept the application of secularized English divorce law. Secondly, the English divorce law itself requires reform because unlike the law in a number of jurisdictions, it does not recognize a unilateral right to no-fault divorce. Thirdly, the application of a foreign divorce law to Christians in Pakistan is anomalous because it not only

[37] ibid.

[38] 'Christian Marriage, Divorce Bill to be Sent to Law Ministry for Vetting' (*The News*, 26 October 2017) <www.thenews.com.pk/print/239775-Christian-marriage-divorce-bill-to-be-sent-to-law-ministry-for-vetting> accessed 11 February 2019.

[39] Myra Imran, 'New Christian Divorce Bill to be Formulated' (*The News*, 14 September 2018) <www.thenews.com.pk/print/368174-new-christian-divorce-bill-to-be-formulated> accessed 11 February 2019.

contradicts the notion of the sovereignty of state laws, but also leaves the Christian minority to be governed by the law which is beyond the control of the legislature and judiciary in Pakistan. Therefore, as a result of the judgment in the *Ameen Masih* case, the parliament in Pakistan will have to pass the Christian Divorce Bill to expand the scope of Christian divorce under Pakistani law.