The term “Family Law” encompass all such laws, which relate to marriage, divorce, maintenance, custody of children. Currently the following Family Laws are in existence in Pakistan:

a. The Divorce Act, 1869 (IV of 1869)
b. Parsi Marriage and Divorce Act, 1936
c. Guardians and Wards Act (VIII of 1890)
d. The Child Marriage Restraint Act, 1929
e. Dissolution of Muslim Marriages Act, 1939
f. Muslim Family Laws Ordinance, 1961
g. Family Courts Act, 1964
h. Dowry and Bridal Gifts (Restriction) Act, 1976
i. West Pakistan Muslim Personal Law (Shariat) Application Act, 1962

While the Divorce Act, 1869 and the Parsi Marriage and Divorce Act, 1936 pertain to Christian and Parsis respectively, the other laws cater to Muslims exclusively except the Guardians and Wards Act, 1890 which applies to all persons. Today, I shall confine my self to Muslim Family laws as very frankly speaking I do not have much experience of Family Law applicable to Christians and Parsis and I daresay that there is not much occasion to comment on these laws as there is hardly any litigation vis-à-vis the same.

Marriage as recognized in the Muslim faith is a civil contract that legalizes the relationship between a man and a woman and creates rights and obligations amongst themselves. Essentially, a marriage is solemnized when a man offers to marry a woman and she accepts, the consideration being the dower amount. This is regulated by the Muslim Family Laws, 1961, which prescribes the form of the marriage contract (nikahnama) which contains the details of the bride and bridegroom, the fact that both of them have agreed to marry each other and the amount of dower payable to the wife as consideration. A very important column in the nikahnama is column 18, which pertains to whether rights of divorce have been given by the husband to the wife, also known as ‘Talaq-e-Tafveez’. I shall advert to this very important aspect later on. The marriage is to be registered with the Nikah Registrar who has been licensed to perform such function by the Union Council. As provided under Islamic Law, the marriage is to be witnessed by two male witnesses. A very important provision is Section 6 of the Act, which provides that no man shall during the subsistence of an existing marriage contract another marriage except with the previous permission, in writing, of the Arbitration Council. However, in practical terms this provision is hardly adhered to by the male population of this Country, who are desirous of contracting a second marriage during the subsistence of an earlier marriage.
As regards divorce, Section 7 of the Muslim Family Law Ordinance, 1961 recognizes that a man may divorce his wife in any of the modes recognized by Islam. Normally, this is done by the husband thrice uttering the words “I divorce you”, in the presence of the wife and witnesses, whereafter notice has to be given to the Chairman of the Union Council in writing and a copy supplied to the wife. Thereafter, the Chairman constitutes an arbitration council for the purposes of bringing about reconciliation between the parties. Where no reconciliation is forthcoming between the parties, divorce becomes effective upon expiry of a period of 90 days of receipt of the notice by the Chairman. Section 8 of the Ordinance provides that where the right of divorce has been delegated to the wife by the husband or where the parties wish to dissolve the marriage otherwise than through divorce i.e. by mutual consent (also known as ‘Mubaarat’), in such circumstances again the provisions of Section 7 would apply, mutatis mutandis. In this regard, it would be seen that normally the Nikah Registrar’s oppose the right of divorce being given by the husband to the wife as being un-Islamic even though the husband is willing to do so. The result is that in most Nikahnamas column 18 is displayed in the negative as the groom in convinced of the un-Islamic nature of such right. Such practice is to be discouraged as not only is this right in consonance with the principles of Islamic Law but otherwise desirable as it enables a wife to divorce her husband without resorting to the Family Court which is a time consuming and expensive procedure.

Where the wife seeks to obtain a divorce from her husband, but such a right has not being delegated to her, she has no option but to launch proceedings before the Family Court, through a suit. She may either seek divorce by means of ‘Khula’ whereby she has to remit the dower amount if it has not been paid by the husband or return the same if received. In the alternative, she may elect to proceed under the Dissolution of Muslims Marriage Act, 1939 which specifies the grounds on which divorce can be sought by the wife, such as adultery, non-maintenance, cruelty, abandonment etc., to be proved by her. As this is a cumbersome and protracted exercise, most women in the country normally seek divorce through ‘Khula’ which is simpler and more practical whereby the wife offers to remit the dower amount if not received or to pay it back if so received by her from the husband.

In this regard, under Section 10 of the West Pakistan Family Courts Act, the Court is mandated to reconcile the parties once they enter appearance. However, the proviso to the section stipulates that where this is not forthcoming in a case seeking divorce through ‘Khula’, a decree dissolving the marriage is to be passed forthwith and at the same time the dower amount is to be restored to the husband. The proviso to section 10 of the East Pakistan Family Courts Act was added vide Ordinance LV of 2002, on 01.10.2002, in order to expedite the process as previously the matter was to be fixed for evidence once the husband had filed the written statement and pretrial proceedings filed. However, as the proviso stands today, it is assumed that the husband had paid the dower amount to the wife, and where this is disputed by her the court
would have no option but to record evidence in order to resolve such dispute, which in
turn would entail full-fledged proceedings and the delays which come with the same. It
is suggested that in order to avoid this, where the receipt of dower by the wife is
disputed, she should be directed by the Court to deposit the same in court or give
security upon which a decree for dissolution of marriage be passed. Thereafter, another
suit can be filed by the wife for recovery of such amount. It is, therefore, suggested that
necessary amendments be made in section 10 of the West Pakistan Family Courts Act
in line with the foregoing. In this regard, it is to be noted that as per section 5 of the
Dowry and Bridal Gifts (Restriction) Act, 1976, all gifts given to the wife either before or
after the marriage by the husband vest permanently in her and hence do not form part
of the dower amount and consequently are not to be returned to him when the wife
seeks ‘Khula’.

Insofar as maintenance, the return of dowry articles and custody of children is
concerned, the second proviso to Section 7 (2) of the Act allows the wife to incorporate
all foregoing claims in one suit along with the one for dissolution of marriage. This
proviso has again been introduced in 2002 vide the Ordinance aforementioned in order
to consolidate family matters and expedite them. Indeed Section 12-A of the Act
mandates the Family Court to dispose of all family cases within a period of six months
from the date of institution. Finally, it may be noted that the Guardian and Wards Act,
1890 contains procedural as well as substantive provisions relating to the custody of
minors, the cardinal principle being the welfare of the minors.

Generally speaking although the Family Court Act provides for the expeditious
disposal of family matters and the substantive law gives protection to family, women and
children in terms of maintenance etc., the Act is not exhaustive and the substantive law
is not sufficient to meet all situations. We still need to legislate regarding domestic
violence and issues relating thereto, such as provisions for rehabilitation and shelter.