



RESEARCH PAPER

Maintenance of Wives and Children in Pakistani Law: An In-Depth Legal Review

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ABSTRACT

This academic review analyses the Pakistani law of maintenance (nafaqah) for wives and children, tracing its historical evolution from colonial Section 488 of the Code of Criminal Procedure, 1898, to the current framework under the Muslim Family Laws Ordinance, 1961 (MFLO) and the West Pakistan Family Courts Act, 1964. It synthesises Islamic jurisprudential principles applied by Pakistani courts with statutory text and leading precedents on scope, duration, and parties obligated. The paper reviews key judicial themes, including interim maintenance, annual indexation, discovery of means, and strike-off of defence for default. It also examines persistent gaps, such as illegitimacy, post-iddat support, and practical hurdles in execution, and proposes reforms, including clearer statutory definitions, guidelines formulated for quantum, stronger enforcement tools, and social-policy supports. The analysis aims to provide a rigorous, practice-relevant roadmap for litigants, judges, advocates and policymakers. This research analyses the gaps between the theory and practice and the enforcement mechanism of the decree for maintenance within Pakistan and outside Pakistan.

KEYWORDS Wife Maintenance, Children Maintenance, Obligation of Husband, Iddat, Interim Maintenance

Introduction

The obligation of a husband to maintain his wife and children is foundational in Pakistani family law. At the same time, it is a religious duty in Islam and a legal duty enforced by family courts. This research is a doctrinal and policy-oriented analysis, it maps the governing statutes, extracts controlling principles from leading judgments of constitutional courts, and evaluates enforcement through the lens of contemporary Pakistani realities such as inflation, longer education cycles, migration and informal employment.

Pakistan remained a part of the Mughal Empire till 1857. During this period, the Qazi enforced the maintenance as per Islamic Injunctions as laid down in primary and secondary sources of Islamic law. After the control of the East India Company in this area, the maintenance of wife and children was recovered or enforced through civil as well as criminal laws. During the colonial period, maintenance could be ordered summarily by a Magistrate under section 488 of the Code of Criminal Procedure. This is a quasi-criminal process, but a speedy process. On the other hand, recovery of maintenance through a civil suit is also available.

After the creation of Pakistan, both above said remedies were adopted. In 1964, the West Pakistan Family Court Act was enforced. Now the family courts have exclusive jurisdiction over family disputes, including maintenance of the wife and children. Until 1981, the remedy under section 488 CrPC and family courts coexisted. In 1981, in the era of General Zia ul Haq, Pakistan repealed section 488, consolidating maintenance of wife and

children under family jurisdiction and aligning the legal framework with the Islamic personal law.

Literature Review

Current Statutory Framework in Pakistan

Muslim Family Law Ordinance, 1961

Muslim Family Law Ordinance, 1961 was introduced in the era of Field Marshal Ayub Khan with the consensus of all Islamic schools of thought on the recommendations of the commission on marriage and family laws (Zahra & Arian, 2023). In this era, union councils were established. And some administrative duties were assigned to the Union Council's Arbitration Council for the reconciliation between husband and wife in case of any dispute. The arbitration council is also empowered to determine maintenance of the wife and children on an application received from the wife. The provisions of the Arbitration Act, 1940, will not apply in arbitration proceedings (Muzaffar, et. al., 2018; Butt, 2019).

In case of a family dispute, both husband and wife have the choice either to file an application before the arbitration council or file a suit in the family court. In the case of maintenance, there are two grounds mentioned in section 9 to avail a remedy from these forums. The first is when the husband did not give adequate maintenance, and the second is when he has more than one wife and fails to maintain equitable or when the father neglects child support. A suit before the family court or an application before the arbitration council of a minor child, as the case may be, filed through his natural guardian, that is mother, and in case of the death of the mother, the grandmother or a guardian appointed through the court can file a suit or application.

If the wife seeks a remedy through the arbitration council, the council may fix the monthly maintenance of the wife and children. The husband is bound to pay the maintenance amount fixed by the arbitration council. If he fails to pay, it should be recovered as arrears of land revenue are collected. Chapter VIII, sections 74 to 112 of the Land Revenue Act, 1967, deal with the collection of land revenue arrears mechanism (Khan & Asad, 2024). The same procedure is adopted to collect the pending maintenance amount from the husband. The husband as well as the wife has the right to file a revision before the collector for the correction of the arbitration council order. The decision of the collector will be final and cannot be questioned in any court of law (Zahra & Arian, 2023).

West Pakistan Family Courts Act, 1964

The purpose of this act was the speedy settlement and disposal of disputes between husband and wife. The jurisdiction of the family court is provided under section 5 of this act. Part I of the schedule specifies the list of 9 types of disputes on which the family courts have exclusive jurisdiction.

The family court has the power to pass an order for interim maintenance at any stage of the suit under Section 17-A of the Act (Butt, 2019). And if the defendant/husband fails to pay it on or before the fourteenth of each month, the family court has the power to strike off his defence and decree the suit in favour of the wife and children. Here is a bit of a difference between practice and theory. The family courts pass an order of interim maintenance at the time of framing of issues. If the defendant fails to pay maintenance, the court compels him to pay it by utilising all possible legal resources. The concept of interim maintenance is for the welfare of the wife as well as the children. Along with the order of interim maintenance, the family court allows pre-trial reconciliation or compromise between the parties. If the reconciliation fails, the family court orders the production of evidence to the parties. Section 10 (3) of the Family Court Act, 1964, imposes a legal obligation on the family courts to make

a genuine attempt for reconciliation between the parties (Sohail Ahmad vs Samreena Rasheed Memon, 2024). No hard and fast rules are laid down for reconciliation between parties. It is the discretion of the family court to make an attempt for compromise or reconciliation of the parties by applying the judicial mind and principles of fair justice. The word "reconciliation" postulates adoption of such measures as can be proved as a factor for harmonious union between the spouses after redress of grievance, which had led them to have recourse to litigation (Syed Asif Hussain Shah vs Federation of Pakistan, 2024).

Section 12 of the act provides a second attempt at reconciliation between spouses after completion of evidence and before passing of the decree. If such reconciliation fails, then the family court passes the final decree along with maintenance. The parties to the suit can file an appeal against the decree passed by the family court. While awarding the decree for maintenance, the family court considers the financial status of the husband through his social status, his job or business, his movable and immovable property, tax returns and other modes of income.

The procedure for the enforcement of the decree is provided under section 13 of the act. The judgment debtor is bound to pay the maintenance as provided in the decree. Keeping in view the principles of fair justice, the family court may make installments of the decree amount on the application of the judgment debtor. While exercising the execution of a decree, the family court can exercise all powers which are vested in a civil court for the execution of a decree (Muhammad Yousaf Zaheer versus Additional District Judge, 2024). If the husband resides in any other district of Pakistan, the family court can transfer the execution proceedings to that district for the enforcement of the decree.

Islamic Jurisprudence and Doctrinal Baselines

A wife is entitled to maintenance throughout the marriage regardless of her own means of income. In case of divorce, post-divorce maintenance is confirmed for the period of iddat. If a wife has a sucking baby below the age of two years, she is also entitled to maintenance for breastfeeding this child. It is the primary responsibility of the father to maintain his children. Sons are generally maintained until the majority, and daughters are maintained till their marriage. The Majority Act, 1875, confirms that a citizen of Pakistan who completes the age of eighteen years is a major. Furthermore, a widowed daughter or a divorced daughter is also the responsibility of the father. But an illegitimate child has no claim against the putative father due to lack of nasab. Similarly, an adopted child has no right of maintenance. A disabled son is entitled to receive maintenance from his father till his recovery from disability, or till he starts to earn for himself, or till his life.

It is provided in Sural-ul-Tallaq, the husband should have maintained his divorced wife according to his means till the iddat period and not harm her. If she is pregnant, provide maintenance till the birth of the child. It is further explained that if the divorced wife suckles her child, the father gives her a reasonable amount as maintenance or compensation. Such maintenance or compensation amount can be decided between the spouses. And if the wife is not willing to suckle the offspring, the husband can manage any other woman for that purpose (Quran, 65:6). The Holy Quran provides two years of breastfeeding as a right of the child (Quran, 2:233). Almighty Allah does not burden any human being beyond what he means that He has bestowed upon him (Quran, 65:7). The Prophet Muhammad (peace be upon him) emphasised the maintenance of women in his last sermon. The summary of his (peace be upon him) words is that it is the duty of men to provide clothes and sustenance to their wives in a fair manner.

The word "*Mata'a*" is used fourteen times in the Holy Quran and is used in the context of gift or maintenance (Shahid, 2013). But it is different from "*Nafaqah*" (maintenance during marriage) or "*mahr*" (dower) because these three are independent concepts in Islamic law (El-Alami, 1995).

The post-divorced maintenance till the period of iddat is proved through Quranic verses 236,241 in Surah Al-Baqara and verse 49 of Surah Al-Ahzab. These verses did not fix any maximum limit of maintenance on the husband, but verse 36 of Surah Al-Baqara provides that maintenance should be reasonable and according to the financial status of the husband. According to Dr. Asrar Ahmad, verse 49 of chapter 33 only explains maintenance till the period of iddat, but not after that. According to him, "*mata'a*" is not proven from Islamic law. He explained that where the husband divorces his wife when the marriage is not consummated, there is no need for iddat, and verse 49 of Surah Al-Ahzab fixes a duty on the husband to give some financial benefit to his divorced wife according to his financial status.

In the 17th century in the subcontinent, one of the best shariah-based compilations on statecraft, military strategy, general ethics, economic policy, justice and punishment is Fatawa Alamgiiyah. It became the reference legal text to enforce Sharia in colonial South Asia in the 18th century. According to it, the maintenance of a wife is obligatory for the husband, whether the wife is Muslim or non-Muslim, whether she is rich or poor. A Muslim male may contract a valid marriage not only with a Muslim woman, but also with a Kitabia, that is, a Jewess or a Christian (Mulla,2010). There are a few stances where the wife is not entitled to receive any maintenance when she is disobedient to her husband, who prevents him from marital obligations. But if, due to medical conditions, she avoids marital obligation, then the husband is bound to pay maintenance. Furthermore, there is a difference of opinion among different scholars that if marriage is not consummated, then the wife is not entitled to maintenance, and others say she is entitled.

According to at least Shafi and Maliki schools, arrears of unpaid maintenance are a debt for which the wife can sue, and continued inability or failure to pay maintenance is a ground for dissolution of marriage. According to Hanafi law, inability to pay maintenance is not a valid ground for dissolution of marriage. Durrul Mukhtar, an authority in Hanafi law, states; maintenance is due only to a wife who has been regularly married, so that if marriage is found to be irregular or void, she is not entitled to maintenance (Zahra & Arian, 2023). In case of the death of the husband, the widow is not entitled to receive maintenance of iddat.

The Constitution of Pakistan, 1973

The Constitution of Pakistan provided legal protection for non-discrimination and equality in Pakistan. The commitments made under the constitution are to eliminate discrimination against women, protect women and children, and achieve gender equality. Article 25 provides that all citizens are equal before the law and entitled to equal protection of the law. It prohibits discrimination based on sex and further protects the rights of women and children by providing special legislation relating to women or children when and where required (Butt, 2023). Article 35 protected marriage, family, mother and the child. It is not a fundamental right, but this article is included under the principles of policy. The honourable Lahore High Court decided in a constitutional petition that, within the Islamic traditions, the first and most important right that a wife has over her husband is to be treated with kindness and respect. When a woman gets married, she has financial rights over her husband. It is the duty of the husband to provide all necessities to live a comfortable life (Muhammad Riaz versus Government of Punjab,2021). For the protection and enforcement of family rights, particularly the right of married women for her maintenance, Article 37 (d) provides inexpensive and speedy justice for all citizens of Pakistan. Keeping in view this provision, a new section 12-A was added in the year 2002 in the West Pakistan Family Court Act, 1964, which provides six months to decide a family suit (Ahmad,2024).

Material and Methods

In this research paper, policy-oriented, doctrinal and qualitative methodology grounded in both Pakistani statutory laws and Islamic jurisprudence is adopted. It primarily relies on analysing codified legislation, precedents of higher courts, religious texts and the interpretation of different schools of thought on these texts. The Pakistani legal framework is analytically compared from theoretical and practical aspects.

The paper aims to explore both the legal provisions and the judicial implementation of those rules, bridging the gap between theory and practice. Further, the research investigates the procedural limitations, practical enforcement challenges, and institutional inefficiencies faced by parties.

The data for this research paper is collected from relevant laws, legal commentary books, Quranic verses, the interpretation of Islamic scholars, research journals and leading judgements of the higher courts. The paper does not include empirical survey data due to its doctrinal nature.

Results and Discussion

Family courts in Pakistan interpret maintenance broadly to include clothing, suitable housing, food, healthcare, education, and reasonable incidentals aligned with family status and the obligor's means. During marriage, the right of maintenance is robust; during justified separation, it continues. After divorce, Pakistani courts confine spousal maintenance to iddat, while ensuring children's independent rights are unaffected. Where the father is deceased, absent, or willfully defaulting, courts have required the paternal grandfather to maintain grandchildren, coupled with a reimbursement right against the father when feasible.

The courts face problems in fixing the monthly maintenance of the wife and children due to persistent issues, including concealment of income, cross-border obligators, and informal employment.

The Pakistani law is clear on interim maintenance, maintenance during marriage and post iddat marriage till completion of iddat. The precedents of constitutional courts are also very clear about the compensation or maintenance for the period of breastfeeding of a child by a divorced mother, in light of the injunction of the Holy Quran. But the post-divorce maintenance, which is known as "*Mata'a*", is neither recognised by family laws in Pakistan nor recognised by family courts in Pakistan. Even in Bangladesh and in the Muslim personal law in India, the same situation is prevailing as in Pakistan. Muslim scholars have no difference of opinion on post-divorce maintenance until the iddat period, but they differ in cases of maintenance (*Nafaqal-al-Mata'a* or *Mata'a-al-Talaq*) to the divorced wife beyond the iddat period.

The Hanafi and Hambali scholars did not recognise post-divorce maintenance after the period of iddat as they follow the rule of strict interpretation. The Shafi scholars have another view that if the wife is not responsible for divorce, then she is entitled to receive post-divorce maintenance. The same is the view of Maliki scholars. A few Muslim countries like Iran, Qatar, Egypt and Malaysia included post-divorce maintenance after the period of iddat in their domestic family law. The Family Reform Code 2005 of Qatar provides three years of post-divorce maintenance. The purpose of this provision is a deterrence for the husband and, on the other hand, a compensation for the wife (Welchman, 2004). Pakistan, India (having a Muslim population of more than 200 million), and Bangladesh domestic legislation did not recognise post-divorce iddat maintenance.

Furthermore, all the Muslim scholars have the same opinion that if a woman gets married after divorce, she is not entitled to post-divorce maintenance. Now, the scope of post-iddat maintenance has become narrower because many women who were divorced at an early age have remarried. Only a few women's rights activists argue for post-iddat maintenance, but they have only limited grounds for it. The post-iddat maintenance is an extra burden on the husband, and it is also against the human rights of the husband. Furthermore, in all cases of separation, the husband is not responsible for the separation, and if he is not responsible, then why does he bear the extra burden of post-iddat maintenance? As Pakistan is an underdeveloped country, the social and financial conditions are also a barrier for post-iddat maintenance. There is no evidence in developed countries' legal frameworks that a divorced wife can receive any maintenance for years after divorce.

In Pakistan, there is only a single right of appeal in all types of family suits, including suits for maintenance under the W.P. Family Court Act. In all provinces, the original jurisdiction to entertain a family suit is assigned to civil judges, and the appellate court is the court of a district judge. Whenever a party to the suit is aggrieved with the decision of the appellate court, it can only avail the remedy of a writ petition before the High Court under Article 199 of the Constitution. If a party to a suit files an appeal or writ, as the case may be, the execution court normally stops the execution proceeding. However, in the case of a suit for maintenance of a wife or children, the husband is bound to pay monthly maintenance, and any excessive amount or deficiency is adjusted accordingly by the court's judgment. In cases of divorce through the family court, the family court, while announcing the divorce order, also fixes maintenance of the wife till the period of iddat. And normally, a suit for dissolution of marriage is concluded after the decision of the family court, and in very rare cases, the wife files an appeal for an increase of maintenance amount for the period of iddat. In practice, it is observed that when there is a suit for maintenance of wife and children, then normally parties to the suit avail the appellate jurisdiction or file a writ petition. Furthermore, in the pleading of a maintenance suit in Pakistan, the counsel for the plaintiff normally did not claim post-divorce maintenance after the period of iddat. And the family court is bound to provide relief according to the prayer of the suit. Actually, due to a lack of awareness or experience, the right to which the wife is entitled is not claimed. This situation clarifies that courts are not responsible for not awarding post-divorce maintenance, but it is the duty of advocates to claim such reliefs in the plaints.

Conclusion

The maintenance of a wife and children is a moral and legal duty of every husband. But he is not responsible for paying any maintenance to a disobedient wife when she is doing so without any cogent reason. The husband is bound to pay maintenance in case of the illness of her wife or if she is not performing her matrimonial duties due to any valid reason. This situation did not fall under the definition of disobedience. The legal framework of Pakistan provides a comprehensive mechanism for fixation and recovery of maintenance in the light of Islamic principles and modern requirements. It provides dual remedies to the wife; she can avail maintenance through the family court or the arbitration council. Further, appellate jurisdiction is available in both forums, which makes the justice system error-free. Then the writ jurisdiction is available in the High Court and finally in the Supreme Court of Pakistan. Theoretically, the legal framework is good enough to fix and enforce the maintenance of the wife and children, but practically, there are loopholes and ambiguities to fix and enforce maintenance rights exclusively and effectively. The Pakistani law did not provide any mechanism for fixing the quantum of maintenance. It is the duty of the family judge to determine the quantum of maintenance, so in all family courts in Pakistan, each family judge adopts a different approach to determine the quantum of maintenance. There is no proper mechanism for the enforcement of the decision of the arbitration council. Even though a woman got a decision in her favour from the arbitration council, she did not receive the amount of maintenance due to the outdated mechanism of enforcement of maintenance through the arbitration council and the lack of interest and inefficiency of the authorities.

Recommendations

After a comprehensive analysis of statutes relating to maintenance in Pakistan, different precedents of higher courts and keeping in view the enforcement mechanism following recommendations are necessary to incorporate in the legal system for a better enforcement of family laws in Pakistan and for the protection of married women in Pakistan.

Throughout Pakistan, the formula for determining the quantum of maintenance should be the same, and it provides a uniform increase as per inflation in the country. The term maintenance covers all the expenses, including healthcare, housing, food, clothing, schooling, transport and incidents. It should be codified. The interim maintenance should be fixed on the first date when suit for the maintenance is filed in the family court, and then adjusted at the final decree. The high courts of the respective provinces must develop a database showing how many suits for maintenance were filed and the status of paid and unpaid maintenance. Computer-generated show cause should be issued to the husband in case of unpaid maintenance. The maintenance should be paid through a bank account or modern online tools. Enforce the payment of not paid maintenance by blocking the SIM cards, passport or CNIC of the husband. The government must update the Muslim Family Law Ordinance rules to set timelines, digital notices, and enforceable recovery orders.

The provincial governments create a fund from which the amount decreed in the suit for maintenance is given to the wife monthly through a bank account, and the husband is bound to pay the maintenance amount into the government treasury.

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