

ANALYSING WELFARE OF CHILD THROUGH LAW: IMPACT OF KEY RULINGS OF THE SUPREME COURT OF PAKISTAN IN SHAPING THE LEGAL LANDSCAPE OF CHILD MAINTENANCE

Syeda Saima Shabbir^{*1}, Juned Ahmed²

^{*1}Senior Research Officer, Supreme Court of Pakistan

²Research Officer, Supreme Court of Pakistan

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Corresponding Author: *
Syeda Saima Shabbir

Abstract

With the rising rate of divorces among couples and the increasing number of custody litigations, the issue of child maintenance has gained vital importance, ensuring the welfare and proper coverage of a child's essential expenses. This research paper examines the legal framework and jurisprudence of child maintenance in Pakistan through the lens of key Supreme Court rulings. It explores the obligations of parents in providing financial support to children; highlighting the father's primary responsibility and the evolving recognition of the mother's contributory role in exceptional circumstances. The analysis emphasizes the guiding principle of the child's best interests in determining and adjusting maintenance amounts to meet children's holistic needs. Issues of enforcing maintenance orders are addressed, along with the relationship between custody arrangements and financial support obligations. Through an in-depth review of landmark cases, the study illustrates the Supreme Court's approach to securing adequate support for children, reflecting socio-economic realities and aiming for a balanced distribution of parental responsibilities. The findings underscore the necessity of ongoing legal reforms and improved implementation mechanisms to uphold children's rights in Pakistan, especially focusing on child maintenance.

INTRODUCTION

Child maintenance, the financial support provided for a child's upbringing, is recognized as a fundamental right of the child in Pakistan. Under Pakistani law (as in Islamic law), the father bears the primary obligation to maintain his children, commensurate with his financial capacity. This duty traditionally continues until a son attains the age of majority and until a daughter is married. The rationale is rooted in both religious and legal principles: a father is expected to provide for the food, clothing, shelter,

education, and general welfare of his minor children. If a son, upon reaching adulthood, is still unable to support himself (for instance, because he is pursuing education or has a disability), the father's obligation may extend until the son becomes self-sufficient. In the case of an unmarried adult daughter who cannot yet earn a livelihood, Pakistani courts have also acknowledged a continuing paternal responsibility in appropriate circumstances.

Despite the critical importance of child maintenance, Pakistan's statutory law on the subject is relatively sparse. The enforcement of a child's right to maintenance has primarily fallen within the domain of the family justice system. The West Pakistan Family Courts Act 1964 (and its subsequent amendments) is now the principal statute governing maintenance disputes, and it vests jurisdiction in specialized Family Courts to decide such matters. However, the statute itself provides only a basic framework, leaving many specifics, such as the criteria for determining the amount of maintenance or mechanisms for enforcement to be fleshed out by judicial interpretation. In practice, courts apply Muslim personal law principles and rely heavily on precedents set by the superior judiciary when adjudicating maintenance cases. Over the past decade, the Supreme Court of Pakistan has delivered a series of important judgments that have progressively defined the contours of child maintenance law, addressing issues like the scope of parental duty, the inclusion of educational expenses, adjustments for inflation, and the procedural aspects of enforcement.

Pakistan is also a signatory to the U.N. Convention on the Rights of the Child (CRC), which underscores the country's commitment to ensure every child an adequate standard of living and to secure parental support through legal means. Article 27 of the CRC stipulates that both parents have the primary responsibility to provide for the child's material needs within their abilities, and that the state shall take appropriate measures to assist and "secure the recovery of maintenance for the child from the parents or other persons having financial responsibility". This international backdrop reinforces the emphasis on child maintenance as not merely a private family matter but a legal obligation backed by public policy aimed at child welfare.

The significance of an effective child maintenance system cannot be overstated. Ensuring regular financial support for children of separated or divorced parents is crucial to safeguarding those children's welfare and development. Studies have shown that lone-parent families (usually mother-headed) are at high risk of economic hardship, and

that child support payments can play a vital role in alleviating child poverty. In Pakistan's socio-economic context, where extended family networks exist but may not always suffice to meet a child's needs, the enforcement of maintenance is often the difference between a child continuing education or dropping out, between adequate nutrition and malnourishment. Thus, the topic of child maintenance carries profound implications for social justice and child rights.

This paper aims to provide a comprehensive analysis of child maintenance law in Pakistan, focusing on how legislative provisions and judicial decisions interact. By reviewing the current legal framework and its historical evolution, analyzing the principles emanating from leading case law (especially Supreme Court rulings), and considering the influence of Islamic law and international norms, the concept of child maintenance can best be understood. Key issues examined include: the extent of parents' legal obligations, the principle of the child's best interests in maintenance decisions, methods for calculating and adjusting the amount of maintenance, the enforcement of maintenance orders, and the interplay between custody of children and their financial support. By critically evaluating landmark Supreme Court judgments, it is highlighted that how the judiciary has shaped the legal landscape to better protect children's welfare. The discussion also draws on Pakistani and comparative scholarship to identify gaps and ambiguities that persist. Finally, the paper offers recommendations for reform, such as clearer legislative guidelines and stronger enforcement mechanisms, in line with both Islamic principles and international commitments.

Statement of Research Problem

The research problem centers on the absence of a clear and comprehensive legal framework on child maintenance in Pakistan, which has resulted in reliance on judicial discretion and case law for guidance. This gap has created uncertainty, inconsistency, and practical challenges in determining the scope, duration, and enforcement of maintenance obligations. While the Supreme Court has progressively shaped principles through

its rulings, this case-by-case development remains fragmented and sometimes inconclusive, leaving litigants uncertain and children vulnerable. The study therefore examines how the Court's jurisprudence has defined child maintenance norms, its effectiveness in ensuring children's welfare and consistency in outcomes, and highlights the pressing need for robust legislation and systemic reforms to provide clarity and better protection of children's rights.

Significance of the Study

This study is significant because it addresses the rights and welfare of children, one of the most vulnerable segments of society, by examining how child maintenance impacts their standard of living, education, health, and overall development. It highlights Pakistan's constitutional and international obligations to protect children and ensure their adequate support, while also emphasizing the economic importance of effective maintenance enforcement in reducing poverty among single-parent families. By systematically analyzing the Supreme Court's jurisprudence on child maintenance, the study fills a critical academic gap and situates Pakistan's experience within a broader comparative context. Its findings offer practical value for lawyers, judges, policymakers, and civil society advocates, providing clearer guidance on legal principles, enforcement mechanisms, and potential reforms. Ultimately, the research contributes to ensuring that no child in Pakistan is deprived of their fundamental right to financial support and a decent upbringing.

Literature Review

There is a steadily expanding body of legal scholarship in Pakistan addressing family maintenance, though much of the earlier discussion centered on spousal support. More recent works have shifted focus toward children's right to maintenance and the deficiencies in the current legal framework. Dr. Mudasra Sabreen's *Maintenance of the Child in Pakistan: A Much-Needed Legislation* (2020) provides one of the most comprehensive treatments, stressing that while the father's duty to maintain children is recognized,

statutory provisions remain sparse, forcing courts to rely on Muslim personal law and precedent. She traces the repeal of sections 488-490 of the Criminal Procedure Code (1898), which once provided a statutory mechanism for child and spousal maintenance, and notes that the limited reforms introduced through the Family Courts Act (1964) have not removed uncertainty. Sabreen concluded that codification is urgently needed to reduce inconsistency and ensure predictable outcomes.

Muhammad Munir's *Maintenance of the Wife and Children in Islamic Law and Pakistani Legal System* (2023) builds on this discussion by highlighting both procedural and substantive challenges in maintenance disputes. He examines how Family Courts ascertain a father's income, the frequent use of writ petitions to challenge interim orders, and judicial efforts to discourage such circumvention. Munir also explores contentious questions, including the father's obligation to support an unmarried adult daughter and the responsibility of grandparents when the father defaults. His doctrinal analysis mirrors issues simultaneously addressed in Supreme Court rulings and ultimately strengthens the case for clearer legislation to complement judicial discretion.

Older studies remain important to understanding the persistence of these challenges. Lucy Carroll's "Maintenance Claims and the Family Courts: The Pakistan Experience" (1991) analyzed the performance of family courts in their early decades and identified problems such as enforcement difficulties, delays, and challenges in proving paternal income. Many of the shortcomings she identified, such as reluctance to award arrears and the burden on mothers in litigation, continue to resonate in present-day disputes. Alongside these contributions, classical Islamic jurisprudence remains foundational. Works such as Mulla's *Principles of Muhammadan Law* and Asaf A. A. Fyze's writings establish doctrinal principles frequently cited by Pakistani courts. They affirm the father's primary duty to maintain minor children while also clarifying secondary obligations of mothers and grandfathers. At the same time, they highlight areas of divergence from

modern child rights standards, especially regarding children born outside wedlock, who remain excluded from legal maintenance in both Islamic law and Pakistani statutes since the 1981 repeal of Cr.P.C. 488.

International and comparative perspectives add valuable context. Research by Cuesta et al. (2023) shows that child support payments significantly reduce poverty risks in lone-parent families across low- and middle-income countries, though enforcement often remains inadequate. Comparative models from countries with child support agencies, such as the United Kingdom and the United States, demonstrate institutional approaches to calculating and enforcing support, in contrast to Pakistan's reliance on custodial parents to pursue enforcement through courts. Additionally, the U.N. Committee on the Rights of the Child has repeatedly emphasized the importance of effective child maintenance in line with Article 27 of the Convention on the Rights of the Child. These global examples underscore the structural weaknesses in Pakistan's system and provide guidance for reforms that could strengthen enforcement and improve children's welfare.

Taken together, the literature indicates a broad consensus that Pakistan's child maintenance regime requires strengthening through clearer statutory rules, consistent judicial practice, and more effective enforcement mechanisms. Scholars agree that the law should ensure maintenance amounts are adequate, obligations extend until children can reasonably sustain themselves, and court orders are implemented in practice. This body of scholarship, enriched by international perspectives, thus lays a strong foundation for further analysis. The present study builds upon these insights by examining how the Supreme Court of Pakistan has shaped maintenance law through its jurisprudence, assessing both the progress made and the gaps that remain, with the ultimate aim of advancing legal reforms that safeguard the welfare of children.

Research Methodology

This study primarily employs a qualitative doctrinal legal research methodology,

supplemented by comparative and analytical approaches. It relies on primary sources such as statutes, constitutional provisions, and case law, particularly Supreme Court judgments, alongside secondary sources including scholarly articles and reports. The research involved a systematic review of Pakistan's legal framework on child maintenance, followed by detailed case law analysis to extract and trace the evolution of judicial principles. Scholarly literature and international standards, such as the U.N. Convention on the Rights of the Child, were examined to contextualize Pakistan's approach within broader legal and human rights frameworks. The study focuses on interpreting legal texts, synthesizing statutory provisions, judicial reasoning, and academic critique to assess both the strengths and shortcomings of the current regime.

Legal Framework in Pakistan

The legal framework for child maintenance in Pakistan is a mix of statutory law, Islamic personal law principles, and judicial precedents. It operates within the broader context of the country's family justice system. Following key laws and institutions govern the administration of child maintenance in Pakistan:

- i. **West Pakistan Family Courts Act 1964:** As noted, this is the cornerstone legislation that creates Family Courts and empowers them to adjudicate maintenance cases. Section 5 of the Act read with the Schedule places matters of "maintenance of children" under the exclusive jurisdiction of Family Courts. Family Courts have a simplified procedure and are meant to facilitate quicker and more accessible justice in family matters.
- ii. **Guardians and Wards Act 1890:** This law primarily deals with custody and guardianship of children rather than maintenance. However, it is relevant to the extent that custody decisions under the Guardians and Wards Act can indirectly affect maintenance arrangements (for example, if custody is given to the father, he will directly maintain the child; if to the mother, the

father may be directed to pay maintenance). It is important to clarify that custody and maintenance are legally distinct issues, custody is decided on the basis of the child's welfare (Guardians & Wards Act principles), while maintenance is a child's financial right. The two are handled in separate (though sometimes parallel) proceedings. Since 2002, in many jurisdictions in Pakistan, Family Courts themselves can hear guardianship (custody) cases as well, which helps streamline issues, but the substantive law for custody remains the 1890 Act.

iii. **Muslim Family Laws Ordinance 1961:**

Section 9 of the MFLO provides an alternative forum (Arbitration Council via Union Councils) for maintenance claims, as discussed above. In practice, mothers sometimes approach the Union Council for enforcement of maintenance where the amount or responsibility is not in dispute, as the Union Council's certificate can be quicker; but for contested matters, the Family Court is the proper forum. Notably, the MFLO's scope is limited to Muslims and it doesn't explicitly mention children in Section 9's text (focusing on wife, though some interpret "if any husband fails to maintain... [his dependents]" to include children).

iv. **Law of Evidence and Procedure:** Family Courts operate under the Family Courts Act's own rules which relax certain evidentiary and procedural requirements. For instance, technical rules of evidence are not strictly applied, and the judge has more latitude to inquire and gather evidence (for example, calling for documents of salary, etc.). Appeals from Family Court decisions in maintenance cases can typically be made to the High Court (in some regions, to a District Judge) depending on local amendments. If no appeal is available, the remedy be a constitutional petition on issues of law.

v. **Courts Administration:** Family Courts are presided over by judges (civil judges who are given the power of a Family Court). These courts are distributed across districts, often hearing a large volume of cases. Above the Family Court,

the District Judge or High Courts supervise through appeals or revisions. The Supreme Court, at the apex, occasionally takes cognizance via appeals (with leave) to resolve conflicting interpretations or to lay down guiding principles.

vi. **Enforcement agencies:** Unlike some countries, Pakistan does not have a separate child support enforcement agency. Enforcement is judicial; once a maintenance order is made, it is up to the beneficiary (often the mother on behalf of the child) to file execution proceedings. The court's bailiffs or process servers can be used to attach property or obtain payments. There isn't a system of automatically deducting from payroll unless the court specifically orders the employer to deduct the salary (which it can do). The absence of an administrative enforcement body means the burden remains on individuals to pursue enforcement, which can be onerous. In cases where the father is employed by the government or a large organization, courts have had some success ordering salary deductions at source. But if the father's assets are unknown or if he is self-employed or works abroad, enforcement becomes problematic.

vii. **Legal Aid and Support:** In terms of administration, it's relevant to note that many mothers and children seeking maintenance may lack resources to litigate effectively. There are some legal aid organizations and public interest law firms in Pakistan that assist women in family cases. Additionally, the government has at times announced stipends or support programs for children of widows or poor families, but those are social welfare measures, not legal maintenance per se. Thus, the formal system for maintenance largely depends on the individual initiative and the courts' willingness to enforce.

Legal Obligations of Parents

Under Pakistani law, the legal obligation to maintain a child falls first and foremost on the parents, with the father bearing the primary responsibility. This principle is derived from Islamic law and is consistently upheld in legislation and case law. The general rule is that a father must provide for the financial support of his

children, while a marriage subsists and even after divorce, in accordance with his means. The mother's obligation is more limited and conditional, coming into play only in exceptional situations.

It is a firmly established rule that the father is obliged to maintain his sons until they attain puberty (which in practice is treated as the age of majority, 18 years) and his daughters until they are married. This includes providing food, clothing, lodging, medical expenses, and education, essentially all necessities for the child's upbringing. The duty exists regardless of whether the father is in custody of the child or not. Notably, classical Islamic law (and Pakistani jurisprudence following it) states that if the mother has custody of the child (for example, a young child traditionally stays with the mother), such custody "does not exempt the father from the obligation to maintain them." In other words, a father cannot use the excuse that the mother is caring for the child to avoid paying; his financial duty is independent of physical custody arrangements. This has been reiterated by courts: even if the mother is well-off or even if she remarries, the biological father remains duty-bound to support his children, as long as they are not able to maintain themselves.

If a father deliberately remains under-employed or hides his income to appear incapable, the courts can draw an adverse inference and assume he has sufficient means (this principle was explicitly affirmed in *Muhammad Asim v. Mst. Samro Begum* (PLD 2018 SC 819), where the Supreme Court held that a father who fails to disclose his earnings will be presumed to have enough income to support his family).

Duration of Father's Obligation:

As stated, for a son, the obligation generally continues until he reaches adulthood (18 years or earlier if he achieves puberty and is capable of self-support). For a daughter, the obligation continues until her marriage, because under traditional norms, an unmarried adult daughter is not expected to be self-reliant; she is under the care of her father until she enters marriage, at which point the duty to maintain her traditionally shifts to her husband. Pakistani courts have followed this, with the caveat that if a daughter, after majority, is

engaged in higher studies or otherwise not yet able to earn, the father's duty may continue past 18. In one of the leading cases, *Humayun Hassan v. Arsalan Humayun* (PLD 2013 SC 557), the Supreme Court reaffirmed that *ordinarily* the father's legal obligation ends when the son reaches majority, but it carved out an exception: if the son is pursuing education and not yet on his feet, the father "might be considered" liable to maintain him as an adult for educational purposes, *provided a specific case is brought for that purpose*. In that case, since the maintenance claim had been initiated while the son was a minor and no separate suit was filed after he turned 18, the Court did not extend the maintenance beyond majority – reinforcing the general rule – but it left open the possibility in principle, thereby recognizing an evolving interpretation of the father's duty to potentially include higher education (see discussion in Key Rulings section). Similarly, in the case of *Qudrat Ullah Versus Additional District Judge, Renala Khurd District Okara* PLD 2024 SC 581, the Court emphatically held that a father is duty-bound to support an unmarried daughter through the completion of her education (in that instance, a university degree) until she can attain employment, even if she crosses the age of majority in that time. These cases illustrate that while the timeline of the father's obligation is anchored to majority/marriage, it is not an absolute cut-off in contemporary jurisprudence if circumstances justify an extension in the child's best interests.

Prioritizing the Child's Best Interests

In all matters concerning children, courts proclaim that the "welfare of the child" or the "best interests of the child" is the paramount consideration. While this principle is most explicitly discussed in child custody cases, it equally undergirds decisions about child maintenance. The best interests of the child principle means that the child's well-being, overall development, and future prospects are central criteria guiding the court's decision on what maintenance should be provided and how the law should be applied.

At the international level, Article 3(1) of the UN Convention on the Rights of the Child states that

“in all actions concerning children, whether undertaken by courts of law or legislative bodies, the best interests of the child shall be a primary consideration.” Pakistan, as a signatory, is committed to this standard. The Supreme Court of Pakistan has referenced this concept in its jurisprudence. For instance, in *Qudrat Ullah v. ADJ Okara (PLD 2024 SC 581)*, the Court explicitly linked Pakistani law with international obligations by citing the CRC and observing that maintenance must be understood broadly to ensure the child’s *physical and mental well-being*. In doing so, the Court effectively applied a best-interests lens, reasoning that a child’s interest in pursuing higher education and living a healthy life should guide the interpretation of parental duties.

Holistic Well-Being: Prioritizing the child’s best interests in maintenance cases translates into a holistic view of the child’s needs. Maintenance is not confined to keeping a child at subsistence level; rather, it is aimed at allowing the child to live and grow in a manner appropriate to his or her family background and to become a productive, healthy member of society. The Supreme Court in *PLD 2013 SC 557 (Humayun Hassan case)* made a landmark observation on this point. It held that the term “maintenance” has a “*wider connotation*” and “*should be given an extended meaning*” to encompass expenses necessary for the present-day social, physical, and mental growth and upbringing of the minor, “*keeping in mind the status of the family, the norms of the society and his educational requirement,*” alongside the father’s capacity to pay. This statement is essentially a best-interests manifesto: it acknowledges that a child’s welfare includes education, healthcare, and an upbringing consistent with societal norms for dignity and development.

Procedural Applications:

The best interest’s principle also influences procedural aspects. In the case of *Arif Fareed v. Bibi Sara (2023 SCMR 413)*, the Supreme Court refused to let a technical pleading defect undermine the child’s right to maintenance. The minor daughter’s name was not formally listed as

a plaintiff in the suit, but since her maintenance was pleaded in the body of the plaint, the Court treated the oversight as a mere technicality that should not defeat substantive justice. The Court observed that family litigation should not be approached with the same rigidity as other civil litigation; wherever possible, procedural conveniences must be used to favor the rights of women and children. This is a direct emanation of the child’s best interests – ensuring that children are not denied relief due to adult litigants’ errors or procedural formalism.

Similarly, when courts handle interim maintenance applications, they often mention that prompt interim relief is granted in the *interest of the child* so that the child’s welfare is not compromised while the case is pending. Delays in maintenance can seriously harm a child (lost schooling, inadequate nutrition etc.), so courts, motivated by the child’s best interests, may even grant interim maintenance to avoid any gap in support.

Educational Expenses:

Educational needs have been explicitly recognized as part of maintenance. This is a significant aspect because education can be one of the largest expenses for a child, especially as they grow older (tuition for schools, then possibly college or vocational training). The Supreme Court in *PLD 2024 SC 581 (Qudrat Ullah)* made it unambiguous that *educational expenses are included within the concept of maintenance of a child*. In that case, the Court upheld an amount that specifically factored in university fees for the daughter, stating that enabling her to continue studies was central to her well-being.

Islamic Perspective

The Islamic perspective on child maintenance is foundational to Pakistan’s family law, given that Islamic jurisprudence (Shariah) is recognized as the governing personal law for Muslims (who form the majority of the population). Pakistani statutes and case law repeatedly defer to principles derived from the Quran, Sunnah and classical Fiqh (jurisprudence) regarding the obligations of family members. Understanding the Islamic perspective

is thus crucial, as it not only explains the rationale behind existing laws but also sets the boundaries for legal reform (since any law contrary to Islamic injunctions could be struck down by the courts under the Constitution's Islamization provisions).

Obligation (Nafaqah) in Shariah:

In Islam, maintaining one's minor children is considered a *fard* (obligatory duty) primarily on the father. The term for maintenance, "nafaqah," in Islamic law encompasses sustenance, which includes food, clothing, shelter, and other necessary expenses for those under one's care. This duty arises from the principles of *nasab* (lineage) and *wilayah* (guardianship): the father is seen as the head and protector of the family, responsible for providing for those he brought into the world. The Holy Quran in several verses enjoins care for one's family. One of the most directly relevant verses is Surah Al-Baqarah (2:233), which states:

"Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is their provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the heir is a duty like that [of the father]. But if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do".

This verse is often cited to illustrate that even during the nursing period (when the mother is actively caring for an infant), the father must provide financially for both the child and the mother. It establishes a few key points aligning with Islamic law: the father's obligation is "on a reasonable basis" (i.e., according to his ability), and neither parent should be harmed – implying that while the father must support, it should not be beyond his means, and the mother's contribution (nursing) should be recognized and not exploited to her detriment.

Philosophical Underpinnings: The Islamic perspective is underlined by the concept of *Maslahah* (welfare/public interest) and family solidarity. Children are considered a trust from God to the parents, and providing for them is not only a legal duty but a form of worship and moral responsibility. Numerous Hadiths extol the virtues of treating children kindly and providing for family. One famous Hadith says:

Narrated Sa'd ibn Abi Waqqas (RA):

The Prophet (ﷺ) said: "It is better for you to leave your heirs wealthy than to leave them poor, begging from people." (Sahih al-Bukhari, Kitab al-Wasaya, Hadith no. 2742).

This encourages fathers to ensure their children's needs are met and even to leave them with resources for the future.

Key Rulings of the Supreme Court

Over the years, the Supreme Court of Pakistan has delivered several landmark judgments that have significantly shaped the law of child maintenance. Each of the following key rulings addressed specific legal questions and established principles that lower courts and litigants must follow:

PLD 2013 SC 557 – Humayun Hassan v. Arsalan Humayun and another:

This case addressed whether a father's obligation to pay maintenance to his son extended beyond the age of majority when the son had not yet become self-sufficient. The son had obtained a maintenance decree as a minor, but during execution of the decree, he turned 18. The father argued that his liability ceased once the son became an adult. The Family Court and High Court had continued the maintenance, but the Supreme Court allowed the father's appeal, holding that *the father's legal obligation to maintain a son ordinarily ends at the age of majority*. This, judgment introduced an important caveat: if an adult son is pursuing education or is unable to support himself despite majority, he may claim

maintenance as an exception – but “for such purposes a specific case had to be initiated” by the son in a court of competent jurisdiction. In other words, the earlier decree (from when the son was a minor) could not automatically cover post-majority maintenance; the son would need to file a fresh suit pleading his continued need (such as ongoing education) and the court would decide the issue based on evidence. The Supreme Court reaffirmed the Islamic law rule that a father is generally not bound to maintain an adult son except in cases of infirmity or similar disability. It also expansively defined “maintenance” to include not just food and shelter but also expenses related to social upbringing and education, commensurate with the father’s means. The key principle from this ruling is that while the father’s obligation typically ends at majority, Pakistan’s law recognizes the possibility of extension for educational needs – but this extension is not automatic and must be claimed through proper legal proceedings. This case clarified procedural and substantive law on the termination of maintenance and has been cited in later cases (and commentary as the authority on considering higher education in maintenance decisions).

2016 SCMR 2069 – Shahzad Yousaf v. Farzana Shahzad:

This case dealt with the issue of automatic annual increases in maintenance amounts. A Family Court had awarded maintenance to a wife (till her *iddat* period) and a minor son, setting the amount and including an annual 10% increase for the child. The husband (a business owner of good financial standing) challenged the annual increase. The Lahore High Court, on appeal, reduced the annual increment from 10% to 5%. Upon further appeal, the Supreme Court reinstated the 10% yearly increase for the minor’s maintenance. The Supreme Court noted that by virtue of a statutory change (Section 17-A of the Family Courts Act, as amended by Act XI of 2015 in Punjab), the law itself envisioned a 10% annual increase in maintenance awards for minors to account for inflation. It held that the Family Court’s decision

to award a 10% increment was justified given that the husband had a substantial income and the costs of living tend to rise each year. The High Court’s reduction to 5% was set aside as it was not in line with the statutory mandate and the facts of the husband’s financial capacity. This ruling is significant because it affirmed that maintenance orders for children should include a mechanism for periodic increase, usually 10% annually, to preserve the real value of the maintenance over time. It underscored the legislative intent to automatically adjust maintenance rather than requiring repeated fresh litigation for enhancements. Post-*Shahzad Yousaf*, it has become standard for family courts (at least in jurisdictions with similar laws) to include annual escalators in maintenance decrees. The case highlights the Supreme Court’s stance that maintenance must keep pace with inflation and the growing needs of the child, and that statutory provisions to this effect are to be strictly implemented in favor of the child’s welfare.

2017 SCMR 1843 – Famia Ijaz v. Ijaz Hameed:

This case revolved around the procedural issue of a father attempting to use the constitutional writ jurisdiction to avoid or delay compliance with an *ex parte* maintenance decree. In this case, a Family Court had passed an *ex parte* judgment ordering a father (Ijaz Hameed) to pay maintenance for his children after he failed to appear in the proceedings. The father then moved an application in the Family Court to set aside the *ex parte* decree (a remedy available under the Family Courts Act). While that application was pending, he simultaneously filed a constitutional petition under Article 199 of the Constitution in the High Court, seeking to stay and quash the execution of the maintenance decree. The question was whether the High Court should entertain such a petition. The Supreme Court held that the High Court should not have exercised its writ jurisdiction in this scenario. It noted that *no order had yet been passed on the father’s application to set aside the ex parte decree*, and therefore the proper course was for the father to pursue that remedy in the Family Court. Invoking the constitutional jurisdiction was premature and inappropriate, as it

could not be used to preempt or circumvent the normal process provided by law. The Supreme Court declared the father's writ petition incompetent and restored the primacy of the Family Court process (i.e., the father should first get the ex parte decree set aside, and absent that, he must comply with it). This ruling is important as it prevents maintenance defaulters from misusing higher court writs as a stalling tactic. It affirmed that *interim or ex parte maintenance orders should be complied with unless and until a competent court varies or vacates them*, and High Courts should be cautious in interfering, especially when an adequate remedy exists under the family law regime. The case thus reinforces the enforcement of maintenance orders and limits extraordinary relief in order to protect the continuity of support to minors.

PLD 2018 SC 819 – Muhammad Asim v. Mst. Samro Begum:

In this case, the Supreme Court examined the situation of a father who was reluctant to disclose his actual income in a maintenance dispute and the consequence of such non-disclosure. Muhammad Asim had been ordered to pay maintenance to his minor child but provided insufficient information about his earnings (he was alleged to have a substantial salary or income, which he did not fully reveal). This case emphasized that in maintenance cases, *the father's financial status must be honestly disclosed*, because it directly determines the appropriate amount of maintenance. The Court held that if a husband/father fails to disclose his salary or financial earnings when he is required to pay maintenance, the court is entitled to draw an adverse inference against him. In practical terms, this means the court can assume that the father is earning at least as much as claimed by the mother or as indicated by circumstantial evidence, and can fix maintenance accordingly. The Court further observed that Family Courts should actively seek evidence of the father's earnings – for example, by summoning employment records or bank statements – to ensure that the maintenance awarded reflects the reality of his capacity. The principle emerging from this case is one of

transparency and good faith: a father cannot hide behind lack of evidence of income to minimize his child support obligation. By laying down that non-disclosure will work against the father's interest, the Supreme Court provided a strong disincentive for evasion and empowered Family Courts to award maintenance on the higher end of estimated means if the father does not cooperate. This ruling has been frequently cited in subsequent cases to counter attempts by fathers to under-report income, and it bolsters the evidentiary framework for deciding maintenance by prioritizing the child's right to adequate support over the father's attempt to obscure his means.

2023 SCMR 413 – Arif Fareed v. Bibi Sara:

This recent Supreme Court decision dealt with a technical issue in a maintenance suit and underscored the child-friendly approach of the judiciary. In this case, the mother (Bibi Sara) had filed a suit for maintenance for herself and her children. Due to a pleading oversight, her minor daughter was not explicitly named as a plaintiff in the suit (though the daughter's maintenance was discussed in the body of the plaint and included in the prayer). The trial court granted maintenance for the children including that daughter. The father, Arif Fareed, challenged the decree on the ground that the daughter was not formally a party to the suit, and therefore a maintenance decree in her favor was not legally valid. The case reached the Supreme Court, which dismissed the father's petition and refused to deny the child's right on such a technical basis. The Supreme Court held that *even though the minor girl was not named in the title of the case as a plaintiff, it was evident from the plaint that maintenance for her was being claimed, and she was effectively present before the court through her mother*. The Court noted that in family litigation, procedural technicalities should not obstruct substantive justice and that "wherever there is a procedural convenience... it must be resolved in favour of the women and children". It pointed out that the Family Court could have, on its own, added the child as a co-plaintiff formally, but even in the absence of that formality, there was no miscarriage of justice – the

father was aware that the child's maintenance was at issue. Therefore, the Supreme Court upheld the maintenance order for the daughter, emphasizing that the child's welfare and rights cannot be defeated by technical pleadings. This ruling is a significant affirmation of the principle that family courts should be flexible and proactive in protecting the interests of minors. It sets a precedent that minor omissions or procedural irregularities will not invalidate an otherwise just claim for maintenance. In effect, it tells trial courts to focus on the substance (the child needs support, the father has the duty) rather than form, and even to rectify procedural issues by amendment or by interpreting pleadings broadly to give effect to child rights.

PLD 2024 SC 67 – Bashir Ahmad v. Additional District Judge, Hafizabad and others:

This case is a landmark decision on the question of enforcing a maintenance decree against someone who was not originally a party to the maintenance suit – specifically, enforcing against a grandfather when the father (the actual judgment-debtor) is absent or insolvent. The facts were that a minor (through his mother) had obtained a maintenance decree against his father. When they attempted to execute this decree, the father could not be found and had no known property. The executing court then targeted the child's paternal grandfather (Bashir Ahmad) and ordered attachment of the grandfather's property to satisfy the decree. The grandfather objected, arguing that he was never a defendant in the maintenance case and no order was ever passed against him personally. The case went up to the Supreme Court. The Supreme Court ruled unequivocally in favor of the grandfather, holding that a decree for a child's maintenance passed against the father cannot be executed against the grandfather unless the grandfather was himself a party to the suit and a decree had been specifically made against him. This judgment highlighted the requirements of due process and fair trial under Article 10A of the Constitution – one cannot be condemned or have his property taken without having had an opportunity to be heard in a court proceeding. The Court acknowledged that under Islamic law,

a grandfather can have an obligation to maintain grandchildren, but it clarified two *preconditions* for that obligation: (i) the father must be truly unable to maintain the child (e.g., due to death, disappearance, or extreme poverty), and (ii) the grandfather must have the financial means to do so. These are factual determinations that require evidence and a judicial finding, which can only occur in a properly instituted maintenance suit against the grandfather. Since no such suit had been filed (the original suit was only against the father), enforcing that decree against the grandfather was illegal. The Supreme Court set aside the orders of the lower courts that had attached the grandfather's property. However, importantly, the Court also guided that the minor child is not without remedy: the child (through guardian) is at liberty to institute a fresh suit for maintenance against the grandfather, and in that new suit, if the conditions are *prima facie* fulfilled, the Family Court may even award *interim maintenance* to the child during the pendency of the case. This decision is pivotal as it delineates the proper procedure to extend maintenance liability to grandparents and prevents summary action against third parties. It protects individuals' property rights under due process while still leaving room for children to seek support from grandparents if justified. *Bashir Ahmad* has since become the authority on the point that execution cannot overreach its bounds, and the correct approach is a separate legal action to establish the grandfather's liability. It balances child welfare with legal fairness by suggesting interim relief in the new suit so that the child is provided for while the suit is decided.

PLD 2024 SC 581 – Qudrat Ullah v. ADJ, Renala Khurd & others:

In this very recent case, the Supreme Court confronted the issue of to what extent a father must provide for the higher educational expenses of his child. The petitioner, Qudrat Ullah, was the father of an adult unmarried daughter who was pursuing a graduate degree (BS) at COMSATS University. The Family Court had originally decreed a certain maintenance amount for her, but on appeal, the District Court enhanced it to

Rs. 25,000 per month to cover her university fees and related expenses. The father contended that this amount was beyond his means (he was a retired employee receiving a pension) and that he wasn't obliged to fund higher education indefinitely. The mother, however, had provided evidence that the father had additional income sources besides his pension (such as agricultural or rental income), indicating he could afford the higher amount. The Supreme Court, upheld the increased maintenance. The Court made several significant affirmations: (1) It defined "maintenance" in Islamic, Pakistani, and international law context as including "*necessary expenses for the mental and physical well-being of a minor*," explicitly stating that *educational expenses fall within the concept of maintenance*. (2) It referenced Pakistan's commitment under the UN Convention on the Rights of the Child, Article 27(4), to support the idea that providing education is part of ensuring an adequate living standard for the child. (3) It recognized that while a father might not be bound to support education at "higher levels ad infinitum," he is "duty bound to provide maintenance to his daughter till she completed her graduation studies and gained employment to support herself". This is a crucial development – the Supreme Court essentially set a benchmark that a father's obligation for an unmarried daughter extends at least until she completes her first professional degree and can become self-supporting. (4) The Court satisfied itself that the father had the ability to pay: evidence showed he had income beyond his pension, so his plea of insufficient means was not accepted. Concluding that Rs. 25,000/month was neither excessive nor unjustified in the circumstances, the Supreme Court refused to grant leave to appeal (meaning the High Court's decision to raise the maintenance stood). The *Qudrat Ullah* case thus cements the principle that a child's pursuit of higher education is within her right to maintenance. It aligns legal interpretation with contemporary needs – a graduate education is often essential for self-reliance in today's society – and it signals to fathers that their responsibilities may well include college/university support if they can afford it. This case also stands for thorough

judicial scrutiny of the father's claimed financial constraints against factual evidence – the courts will not take assertions at face value if the lifestyle or assets suggest otherwise. In sum, *PLD 2024 SC 581* significantly broadens the scope of maintenance and reinforces the child's best interests in achieving educational potential, which the Court tied to both Islamic ethos and Pakistan's international obligations.

These key rulings of the Supreme Court collectively have advanced the law on child maintenance, making it more responsive to children's welfare. They clarify the duration and extent of parental obligations, ensure procedural fairness while safeguarding substantive rights, and provide guidance on enforcement. By analyzing and citing these cases, Family Courts and High Courts are better equipped to decide maintenance cases in line with the latest jurisprudence and the overarching objective of securing the welfare of the child within the framework of law.

Recommendations

In light of the analysis of Pakistan's legal framework, jurisprudence, and comparative insights, several recommendations can be made to strengthen the child maintenance regime and better serve the best interests of children. The following recommendations address legislative reforms, judicial practices, and administrative measures:

1. Codify Comprehensive Maintenance

Guidelines: There is a clear need for more detailed legislation on child maintenance, as noted by legal scholars. Parliament (or provincial assemblies, given family law's provincial domain) should enact or amend laws to codify the principles established by case law. This could take the form of a dedicated chapter in the Family Courts Act or a separate Child Support Act. The legislation should define "*maintenance*" to explicitly include education (school and higher education), healthcare, clothing, housing, and recreation in line with the child's social environment. It should spell out the duration of maintenance responsibilities: e.g., until age 18 for

sons (extendable if pursuing education or disabled) and until marriage or self-support for daughters.

2. Implement Standardized Child Support Guidelines:

Taking inspiration from many jurisdictions worldwide, Pakistan can develop child support guideline tables or calculators that give a presumptive maintenance amount based on the father's income and number of children. This introduces objectivity and predictability. Such guidelines should of course account for special needs and allow deviations where justified, but it would provide a starting point. It also discourages extreme bargaining or underestimation. The guideline should reflect that maintenance is a first charge on income – i.e., the father should arrange his life such that child support is paid before discretionary spending. The formulas can be worked out with input from economists and informed by average costs of raising children in Pakistan's context.

3. Strengthen Enforcement Mechanisms and Create a Child Support Enforcement Authority:

Enforcement is the Achilles' heel of maintenance law. To address this, Pakistan could establish a specialized *Child Support Enforcement Authority* or units within the existing social welfare departments dedicated to maintenance recovery. These bodies could take over the task of monitoring payments, issuing alerts for defaults, and assisting mothers in enforcement. Drawing from CRC Article 27(4), which urges effective maintenance recovery, the state could empower these units to use tools like wage garnishment orders directly sent to employers, liens on property, and, in coordination with NADRA, flag defaulters' national IDs or passports (preventing them from obtaining loans, or traveling abroad until dues are cleared). A central authority could also maintain a database of maintenance orders, track arrears, and ensure uniform application of penalties for default.

4. Facilitate Interim Relief and Reduce Delays:

Courts should continue the practice of

granting interim maintenance at the first hearing as mandated by law. To reinforce this, the legislation could be amended to say that if interim maintenance isn't paid, the court *shall* strike off the defense. Moreover, maintenance cases should be given priority on court dockets – perhaps through a case management rule that they be decided within a fixed timeframe (e.g., six months), given the impact on children. Special training and sensitization for judges handling family matters is recommended so that they are adept at fact-finding on income and are child-rights oriented.

5. Promote Alternative Dispute Resolution (ADR) for Maintenance:

While the adversarial court process is available, in many cases, mediation or conciliation can lead to quicker, mutually agreeable outcomes, especially when coupled with enforcement assurance. Family Courts Act could be amended to mandate a mediation session specifically focused on maintenance (separate from any divorce mediation) where parties can agree on an amount, mode of payment, and adjustments. Mediators can use a baseline from guidelines to anchor discussions. If an agreement is reached, it can be made a rule of court, simplifying enforcement. ADR can reduce acrimony and encourage fathers to see maintenance as fulfilling their responsibility rather than as a punitive imposition.

6. Expand the Social Safety Net for Children with No Financial Support:

In situations where a child's father is deceased, missing, or utterly insolvent and no other relatives can be held liable, the state should ensure the child does not fall through the cracks. One recommendation is the establishment of a *Child Maintenance Fund* under Pakistan Bait-ul-Mal or the provincial welfare departments. This fund could provide interim financial assistance to single mothers or guardians for children's upkeep when court-ordered maintenance is uncollectable (for example, the father absconds overseas and is untraceable). The fund could later recover from the father if he surfaces.

7. Enhance Awareness and Accessibility:

Many mothers, especially in rural areas, are not fully aware of their children's right to maintenance or the procedures to claim it. Government and civil society should run awareness campaigns about child maintenance rights, perhaps as part of broader women's rights or child rights initiatives. Simplified pamphlets in local languages, legal aid clinics, and help desks at family courts can guide women through the process. Legal aid should be provided in maintenance cases where the mother cannot afford a lawyer – this could be through government legal aid funds or bar association initiatives.

8. Continue Harmonizing Law with Child's Best Interests:

Finally, all stakeholders – legislators, judges, lawyers, and administrators – should internalize that the *child's best interests are paramount*. If a procedural rule can be read strictly or leniently, choose the lenient reading that preserves the child's claim. Incorporating this principle explicitly into family law – perhaps an amendment that says “In all decisions regarding maintenance of children, the court shall have regard to the welfare of the child as a primary consideration” – would align with Article 3 of the CRC and guide lower courts in exercising their discretion.

By implementing the above recommendations, Pakistan can move towards a more robust and equitable child maintenance system. The goal is to ensure that every child, regardless of family circumstance, receives adequate financial support for a healthy and secure upbringing. This requires not only strong laws and court judgments but also effective enforcement and a supportive social framework.

Conclusion

In sup up, it is inferred that the legal landscape of child maintenance in Pakistan has undergone significant development, guided by both the enduring principles of Islamic law and the progressive interpretations of the superior judiciary. The Supreme Court of Pakistan's recent

rulings demonstrate a clear commitment to ensuring that children receive adequate financial support, reflecting a blend of religious, domestic, and international norms that prioritize the child's best interests and welfare.

Through this study, it is analyzed that Pakistani law squarely places the primary financial responsibility for children on the father, echoing the Islamic mandate of the father's duty to provide for his offspring. The principle that the child's welfare is paramount has been repeatedly affirmed; maintenance is no longer viewed in minimalistic terms of subsistence but as a means to secure the child's overall well-being, including education, health, and a standard of living in line with the family's status. The Supreme Court has effectively aligned the law with socio-economic realities, acknowledging that supporting a child through higher education or until gainful employment is often essential for enabling the child to become a self-reliant adult.

The study also highlights that Pakistan's courts have become more child-centric in procedure – they are willing to cut through technicalities and curb dilatory tactics to ensure that support reaches children without undue delay. This is reflective of a broader shift towards viewing children's rights as independent and deserving of robust protection, rather than adjunct to parental disputes. It is noteworthy that these legal improvements resonate with Pakistan's commitments under the U.N. Convention on the Rights of the Child, reinforcing that domestic law is moving towards greater harmony with international child rights standards.

The trajectory of legal reforms and case law in Pakistan indicates a convergence towards a balanced approach to parental responsibilities. It underscores that while fathers are the primary providers, this role is to be exercised in a manner that is fair and attuned to the child's needs in a changing socio-economic environment. Mothers, on the other hand, though not traditionally burdened with financial obligations, are increasingly recognized as crucial contributors to the child's welfare, whether through direct care or, in exceptional cases, financially when the need arises. The courts seek to ensure that neither the

letter nor the spirit of the law is used to shortchange the child.

Thus, upholding children's rights to maintenance is not only a legal duty but a societal one. The Court's judgments echo a moral truth ingrained in both our religious ethos and international human rights: that every child is entitled to a standard of living adequate for their growth and development, and it is the collective responsibility of parents, family, and the state to guarantee this right. With continued legal reform, vigilant judicial oversight, and effective implementation, Pakistan can move closer to a future where no child's potential is stunted due to lack of basic support. The findings of this research underscore the progress made and the steps still needed, a clarion call for continued commitment to the welfare of our children, who are indeed the most vulnerable yet most valuable members of society.

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