

Stereo.HCJDA 38.

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

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Writ Petition No.43280 of 2022.

Muhammad Afzal.

Versus

Judge Family Court, etc.

JUDGMENT.

Date of hearing: **20.11.2024.**

Petitioner by: Muhammad Imran Mushtaq Batalvi,
Advocate.

Respondent No.2 by: M/s Malik Muhammad Afzal
Khokhar and Rana Luqman Hanif,
Advocates.

AHMAD NADEEM ARSHAD, J. Through this constitutional petition filed under Article 199 of the *Constitution of Islamic Republic of Pakistan, 1973*, petitioner has called in question the validity and legality of judgment and decree dated 25.06.2022 passed by learned Judge Family Court whereby suit of respondent No.2 Esha Rani/Esha Bibi (*alleged biological daughter of the petitioner*) for recovery of maintenance allowance was decreed.

2. Necessary facts formulating background of the proceedings in hand are that Maryam Zahid (mother of respondent No.2) was allegedly raped by the present petitioner, for this occurrence an F.I.R. bearing No.134 dated 04.03.2020 was registered against him for offences under Section 376, 109 of Pakistan Penal Code, 1860, and as a result of said rape, Maryam Zahid conceived and ultimately minor respondent No.2 was born on 27.05.2020 and claimed that she is biological daughter of the petitioner. She (Esha Rani/Esha Bibi,

plaintiff/respondent No.2) instituted a suit for recovery of maintenance allowance and claimed that she being biological daughter is entitled to recover maintenance allowance from the petitioner. The petitioner/defendant turned up before the Court and contested the suit by filing written statement in contrast whereby he negated the version of respondent No.2 and claimed that minor Esha is not his daughter either legitimate or illegitimate. Learned Trial Court vide order dated 07.06.2022 fixed interim maintenance allowance of the minor at the rate of Rs.3000/- per month. Petitioner assailed said interim order of fixation of maintenance allowance through filing Writ Petition (No.39855 of 2022). The petitioner failed to pay the said interim maintenance allowance, hence, his defense was struck of vide order dated 25.06.2022 and the suit was decreed by awarding maintenance allowance to the minor at the rate of Rs.3,000/- per month. In the light of said judgment and decree this Court disposed of the Writ Petition (39855 of 2022) being infructuous. Hence, this petition.

3. I have heard learned counsel for the parties at length and gone through the record with their able assistance.

4. After hearing learned counsel for the parties and going through the record, I have noticed that this is not a case of recovery of maintenance allowance simpliciter. The biological mother of respondent No.2 has instituted the suit for recovery of maintenance allowance by claiming therein that she was raped by the present petitioner and for this occurrence an F.I.R. bearing No.134 dated 04.03.2020 was registered against him for offences under Section 376, 109 of Pakistan Penal Code, 1860. Contention of said lady in the plaint is that as a result of rape, she conceived and ultimately minor respondent No.2 was born on 27.05.2020, hence, being biological daughter of the petitioner, minor is entitled to recover maintenance allowance. The petitioner/defendant turned up before the Court and contested the suit by filing written statement in contrast whereby he negated the version of respondent No.2 and

claimed that minor Esha is not his daughter either legitimate or illegitimate.

5. The terms "legitimate child" and "biological child" are entirely different. "Biological Child" refers to a child who is genetically related to the parents. This term focuses on the genetic link between the child and the parents, rather than the legal or social status. A "biological child" can be born within a marriage or outside of it.

6. A "legitimate child" refers to a child born to parents who are legally married to each other at the time of the child's birth. This term primarily has legal significance and is used to distinguish children born within a lawful marriage from those born outside of marriage (historically referred to as "illegitimate" or "illegitimate children").

7. In case of a legitimate child, a woman/mother institutes a suit under The Family Courts Act, 1964 or approaches the Chairman of concerned Union Council in the light of Section 9 of Muslim Family Laws Ordinance, 1961, for recovery of maintenance allowance, the Court fixes interim maintenance allowance as a temporary arrangement and on failure of the defendant/father to pay interim maintenance the Court strikes off his defence and decrees the suit straightforwardly under Section 17-A of the Family Courts Act, 1964. But in the case where a woman claims maintenance for her child against the defendant/biological father, who denies the version, the woman would first need to establish, through trustworthy evidence, that the defendant is indeed the biological father of the child. The burden of proving that the defendant is the biological father of the child lies on the woman who claims the maintenance.

8. An illegitimate child is a child born out of wedlock either as a result of adultery or rape and he is not from *Syubhah* intercourse or not from a child of slavery. In Islam, a child's status can be determined through several methods. First, through legal marriage or *Fasid* marriage between both parents. Second, through *Syubhah* intercourse. The third is a father's acknowledgment that a child is his biological child. Forth, evidence by two fair male witnesses. The

fifth, *Qiyafah*, is the recognition by experts who specialized in determining descent base on physical characteristics and likeness. The sixth is through Deoxyribonucleic Acid or DNA tests on samples such as blood, hair, bone and saliva. The final method is through laboratory testing which has 99.99% accuracy in the determination of descent and can also be used to identify hereditary genealogy for inheritance. All the methods mentioned above are based on Hadiath of the prophet.

“(Descent) the child belongs to the span (legal marriage). While there is no right for adulterers.” (Al-Bukhari, 2000 Hadiath No.2092)”

9. Once paternity is established, the defendant would then be legally obligated to provide maintenance for the child. The court would assess the defendant's financial capacity and the child's needs to determine the appropriate maintenance allowance.

10. In view of the above, the Court has erred in law by granting maintenance for the child without first ensuring, through the proper process of evidence, that the child is indeed the biological offspring of the petitioner. In cases where paternity is disputed, it is essential for the Court to first establish, beyond a reasonable doubt, the biological relationship between the child and the defendant. Without recording sufficient evidence, the Court's decision to grant maintenance prematurely bypasses a critical step in determining legal responsibility. This failure undermines the principles of fairness and due process in family law proceedings.

11. During the course of arguments, learned counsel appearing on behalf of the petitioner mainly stressed that the Family Court lacks jurisdiction to adjudicate upon this matter. He adds that mother of minor respondent No.2 has to get a declaration from the competent Court that said minor is biological child of the petitioner. He also maintains that the petitioner is not bound to maintain an illegitimate child. Now I discuss said objections that whether the Family Court has jurisdiction to hear the case and whether the maintenance can be awarded to an illegitimate child.

12. Previously, the law relating to maintenance of a child was contained in Sections 488-490 of the Code of Criminal Procedure, 1898 (Cr.P.C.). For reference, Section 488 is reproduced as under:

"Order for maintenance of wives and children. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable maintain itself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding four hundred rupees in the whole, as such Magistrate thinks fit and to pay the same to such person as the magistrate from time to time directs."

Said Section provides that if a person, despite having sufficient means, neglects or refuses to maintain his wife or his legitimate or illegitimate child who is unable to maintain itself, such person may be ordered by a Magistrate to pay monthly allowance for the maintenance of his wife or child. Said Section made it obligatory upon the father to maintain his legitimate and illegitimate children.

Later on, Muslim Family Laws Ordinance, 1961, was introduced. Section 9 of the said Ordinance deals with maintenance. For reference, said Section is reproduced as under:

9. Maintenance.— (1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may, in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(1A) If a father fails to maintain his child, the mother or grandmother of the child may, in addition to seeking any other legal remedy, apply to the Chairman who shall constitute an Arbitration Council and the Arbitration Council may issue a certificate specifying the amount which shall be paid by the father as maintenance of the child.]

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, [to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.

(3) Any amount payable under sub-section (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue

Provided that the Commissioner of a Division may, on an application made in this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a

Collector to any other Collector, or to a Director, Local Government, or to an Additional Commissioner in his Division.

Said Section provides that if a person fails to maintain his wife or children, the wife or children has remedy to apply to the Chairman who shall constitute an Arbitration Council to determine the matter and Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance.

13. Subsequently, the West Pakistan Family Courts Act, 1964, was promulgated. Section 05 of the Act deals with the jurisdiction. For reference, said Section is reproduced as under:

- "5. **Jurisdiction**.- (1) Subject to the provisions of the Muslim Family Laws Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule.*
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.*
- (3) The High Court may with the approval of the Government, amend the Schedule so as to alter, delete or add any entry thereto."*

"SCHEDULE

[See Section 5]

[PART I]

- 1. Dissolution of marriage including Khula.*
- 2. Dower.*
- 3. Maintenance.*
- 4. Restitution of conjugal rights.*
- 5. Custody of children and the visitation rights of parents to meet them.*
- 6. Guardianship.*
- 6 A. Matters pertaining to return of child under the Hague Convention on the Civil Aspects of International Child Abduction, 1980."*
- 7. Jactitation of marriage.*
- 8. Dowry.*
- [9. Personal property and belongings of a wife.*

PUNJAB AMENDMENT

In the Schedule, in Part I, for entry at serial No.9, the following shall be substituted:

- "9. The personal property and belongings of a wife and a child living with his mother.*
- 10. Any other matter arising out of the Nikahnama."*

14. After enactment of above said provisions, the President through Ordinance XXVII of 1981 "Federal Laws (Revision and Declaration) Ordinance, 1981", repealed certain laws, which are

spent or have otherwise become unnecessary or have ceased to be in force otherwise than by express or specific repeal and Sections 488-890 Cr.P.C. were repealed.

15. Before repeal, Section 488 of Cr.P.C. was scrutinized by the Council of Islamic Ideology vide its report on Criminal Procedure Code and following observations were passed:

"It would be very strange to lay down that only the adulteress is to bear the brunt of the burden of the child and the law is powerless to make the adulterer liable to maintenance of the child(ren) though he was at least an equal partner in sexual enjoyment and in the birth of the unwanted child. There is no prohibition in Shari'ah for this. I am of the opinion that this Section is not repugnant to the Shari'ah, but it would be better to avoid any doubt and to replace the words 'putative father' with the expression 'the person from whom he was begotten'.

16. The august Supreme Court of Pakistan, in its judgment titled "Muhammad Khalil-ur-Rehman V. Mst. Shabana Rahman" (**PLD 1995 SC 633**), observed that grant of maintenance provided under Section 488 Cr.P.C. is covered by the provisions of West Pakistan Family Courts Act, 1964. It was held in the following words:

"When the matter ultimately came before this Court it was held that the pending proceedings under Section 488, Cr.P.C. were affected by the promulgation of W.P. Family Courts Act, which only changed the forum for decision of such cases. It will thus be seen that the grant of maintenance provided under Section 488, Cr.P.C. was specifically covered under the provisions of the West Pakistan Family Courts Act. Therefore, the Family Courts created under W.P. Family Courts Act, had the exclusive jurisdiction after the date of promulgation of West Pakistan Family Courts Act to try the cases of maintenance."

17. The Hon'ble Supreme Court of Pakistan in a Full Bench judgment cited as "Major Muhammad Khalid Kareem V. Mst. Sadia Yaqoob and others" (**PLD 2012 SC 66**), observed that Family Court has exclusive jurisdiction under Section 5 of West Pakistan Family Courts Act, 1964, to entertain, hear and adjudicate all matters which fall within the 1st schedule to West Pakistan Family Court's Act, 1964.

18. The West Pakistan Family Courts Act, 1964 is a special enactment designed to provide a streamlined, efficient, and accessible legal framework for resolving disputes related to marriage,

family affairs, and matters directly connected with family life. The Act was introduced with the goal of addressing the specific needs of individuals and families in disputes regarding personal relationships, such as divorce, maintenance, custody, dower, etc. One of the core purposes of the Family Courts Act is to ensure that family disputes are resolved as quickly as possible. Family disputes often involve sensitive matters, and the Act was designed to expedite the legal process, allowing parties to resolve issues without prolonged delays. The Act empowers the Family Courts to hear and decide matters related to marriage, divorce, maintenance, custody, and other family-related issues. It applies to a wide range of personal disputes that could arise in the context of family life.

19. Although the Family Courts Act, 1964 primarily focuses on issues directly related to marriage and family affairs but it has a broader implication that encompasses the welfare of the family unit. The Act's broad language is not limited to only the relationships between spouses, but also covers issues related to children, such as maintenance and welfare. These matters are inherently connected to family affairs because the maintenance of a child is essential to ensuring the well-being of the family unit as a whole.

20. Even though the wording primarily refers to "family affairs and marriage," maintenance for children is a logical extension of the Act's broader purpose of resolving disputes related to family welfare. The Act acknowledges the need to provide legal recourse for financial support of the family members, including children, when one party (typically the father) fails to fulfill their financial responsibilities.

21. Section 5 of the Family Courts Act, 1964 grants family courts jurisdiction over a wide range of issues related to marriage, maintenance, and custody. Specifically, it allows for the adjudication of maintenance claims for children, even if the claim involves the biological relationship between the child and the alleged father. The Act applies to matters concerning maintenance of "minor children" and the "welfare" of the family, and this includes situations where a

woman claims maintenance for her child from the alleged biological father. Given the family welfare principle embedded in the Family Courts Act, 1964, the claim of a woman for maintenance of her biological child can certainly be covered under the Act. The Act's jurisdiction over family matters is sufficiently broad to include disputes concerning child maintenance, even if the child's biological relationship with the alleged father is disputed. As long as the court is satisfied with the evidence of biological paternity or legal acknowledgment, it can entertain and adjudicate a claim for child maintenance under the provisions of the Family Courts Act, 1964.

22. In view of the above discussed legal provisions as well as judgments of the apex Court, it has become clear that the mandate provided under Section 488 of Cr.P.C. to the Magistrate subsequently came within the jurisdiction of Family Courts after promulgation of the Family Courts Act, 1964. Although, the words legitimate or illegitimate have not been specifically mentioned in the Act, but the word maintenance in its broader sense covers all the matters.

23. In view of the above discussion, this Court does not feel any hesitation to hold that while the Act specifically references "family affairs and marriage," its broader interpretation allows it to cover cases involving the maintenance of children, including disputes over biological paternity. Hence, the Family Court has jurisdiction to adjudicate upon the matter.

24. The Federal Shariat Court while dealing with the objection upon Section 90 (4) of the Sindh Children Act-XII of 1955 with regard to 'the person liable to maintain a child' as included in case of illegitimacy, the putative father of an illegitimate child observed as under:

"It was said that in Islam there is no concept of a putative father, but the law as envisaged above does not give any right to the person whose adulterous relationship with the mother of the child resulted in his birth. According to the Sunnah, the child is considered the child of his mother and does not inherit from the person who is responsible for his earthly existence, nor does such a person inherit from the child. The above sub-Section does not, in any manner belittle or make any incursion on this well-known principle. For the limited purpose of the Act, it merely makes him

responsible for bearing the expenses of the child. The Shari'ah proposition (the parentage is determined by the conjugal bed and the person committing adultery has only disappointment in store) applies to right of being a parent. It does not concern itself with liability. The word 'putative father' does not mean that any paternal right is to vest in him. This is only a manner of description to make him responsible for maintenance."

25. The rights of the children born of committing rape are seldom recognized in the Bangladeshi legal system. Such children are entitled to be known by the identity of their father or mother or both as prescribed in Section 13 of the Nari O Shishu Nirjatan Daman Ain, 2000 (The Prevention of Oppression Against Women and Children Act, 2000). Said Section is reproduced as under:

"Provision regarding the child born in consequence of rape:

Notwithstanding anything contained under any other law for the time being in force, any child born in consequence of a rape:-

- i. The maintenance of that child shall be borne by the person who commits rape;
- ii. The Tribunal may determine after the birth of the child , in whose custody the child shall be and how much money shall be provided to the legal guardian, by the person who commits rape, as expenses for the maintenance of the child;
- iii. This expenses shall be provided upto the period, the child attains twenty-one years if male and, marriage of the female child, if not disabled, and until the date he/she obtains the capability to earn his/her living, if disabled."

26. Section 144 of the "Bharatiya Nagarik Suraksha Sanhita", India, makes it responsibility of father to afford maintenance of his children whether legitimate or illegitimate.

27. Holy Quran Verse No. 2:233 makes it obligatory for mothers to breastfeed their children for two years and orders their fathers to afford maintenance of mother of the child. Translation of the verse goes as follows :-

"(2:233) If they (i.e. the fathers) wish that the period of suckling for their children be completed, mothers may suckle their children for two whole years. (In such a case) it is incumbent upon him who has begotten the child to provide them (i.e. divorced women) their sustenance and clothing in a fair manner. But none shall be burdened with more than he is able to bear; neither shall a mother suffer because of her child nor shall the father be made to suffer because he has begotten him. The same duty towards the suckling mother rests upon the heir as upon him (i.e. the father). And if both (the parents) decide, by mutual consent and consultation, to wean the child, there is no blame on them; if you decide to have other women suckle your children there is no blame upon you, provided you hand over its compensation in a fair manner. Fear Allah and know well that

Allah sees all that you do."

28. This verse makes no reference to illegitimate child. Allama Qazi Muhammad Sana Ullah Usmani in Tafsir-e-Mazhari interpreted the word **وعلى المولوده** as follows:

"(اور جس کا بچہ ہے (سپر) یعنی باپ پر کیونکہ بچہ اسی کی وجہ سے ہوتا ہے اور اسکی طرف منسوب کیا جاتا ہے۔ عبارت کا تغیر اس معنی کی طرف اشارہ کرنے کیلئے ہے کہ دودھ پلوانے کا وجوب اور دودھ پلانے والی کا خرچ باپ کے ذمہ ہے اور (لہ میں) لام اختصاص کے لیے ہے اور اسی وجہ سے ظاہر الروایت میں امام ابو حنفہ کا قول یہ ہے کہ بانو بڑی اور بانو بڑی کے کا خرچ خاص باپ ہی کے ذمے ہے ماں کے ذمہ نہیں ہے۔"

29. No reference has been made in the interpretation of the verse to the maintenance of child born without bond of nikah.

30. Sahih Muslim (Volume 4), Hadith (4431-32), narrates the incident of a woman who got pregnant as a result of Zina in the following words :-

"[4431] It was narrated from Sulaimân bin Buraidah that his father said: "Mâ'iz bin Mâlik came to the Prophet ﷺ and said: 'O Messenger of Allâh, purify me!' He said: 'Woe to you, go back and seek forgiveness from Allâh and repent to Him.' He came back shortly after that and said: 'O Messenger of Allah, purify me!' He said: 'Woe to you, go back and seek forgiveness from Allah and repent to Him. He came back shortly after that and said O messenger of Allah purify me!" The Prophet ﷺ said something similar, then when it was the fourth time the Messenger of Allah ﷺ said to him from what should I purify you?" He said: From Zina. The Messenger of Allah ﷺ asked, 'Is he insane?' and he was told that he was not insane. He said: Has he drunk wine? A man got up and smelt his breath and he did not find any smell of wine. The Messenger of Allah ﷺ said: 'Did you commit Zina? He said 'Yes.' So he ordered that he be stoned. The people were of two minds about him. Some said: 'He is doomed, he has been encompassed by his sin.' Others said: there is no repentance better than that of Ma'iz, he came to the prophet ﷺ put his hand in his and said kill me with stones.' This (controversy) carried on for two or three days, then the Messenger of Allah ﷺ came when they were sitting. He greeted them with Salâm then sat down, and said: 'Pray for forgiveness for Mâ'iz bin Malik. They said: 'May Allâh forgive Mâ'iz bin Mâlik.' The Messenger of Allâh said: 'He has repented in such a way that if it were to be divided among a nation it would be sufficient for them'

"[4432] Then the Ghâmîdi woman came and said: "O Messenger of Allah, I have committed Zina, purify me;" but he turned her away. The next day she said: "O Messenger of Allah, why are you

turning me away? Perhaps you are turning me away as you turned Ma'iz away. But by Allah, I am pregnant." He said: "Then no (not now), go away until you give birth." When she gave birth, she brought the child to him wrapped in a cloth, and said: "Here he is, I have given birth." He said: "Go away and breastfeed him until he is weaned." When she had weaned him, she brought the boy to him, with a piece of bread in his hand and said: "Here, O Prophet of Allah, I have weaned him, and he is eating food." He handed the boy over to one of the Muslim men then he ordered that a pit be dug for her, up to her chest he ordered the people to stone her."

Although, this Hadiath is referred by the Religious Scholars while commenting upon the maintenance of illegitimate child but careful examination of the Hadiaths (referred supra) reflects that the Holy Prophet ﷺ did not pass any order for maintenance and handed over the child to one of the Muslims present in the *Majlis*, as biological father of the child (Za'id) had already been stoned to death.

31. Para No. 370 of the D.F. Mulla's Muhammadan Law relates to maintenance of children and it goes as follows:-

370. Maintenance of children and grandchildren. (1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (S. 352) does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.
 (2) If the father is poor, and incapable of earning by his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.
 (3) If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances."

There is no prohibition by a biological father to maintain his illegitimate child.

32. While commenting on the relationship of illegitimate child with his biological father, the Honorable Lahore High Court in a case titled "Roshni Desai V. Jahanzaib Niazi" **PLD 2011 Lahore 423** observed :-

"Under Islamic Law, the father of an illegitimate child has no legal tie with the child even though he is the biological father and the blood tie between the two is undisputed. Such a father has no legal relationship whatsoever with the minor so much so that the

child does not inherit from his father or vice versa which is otherwise in the case of a legitimate offspring. However, an illegitimate child has a full legal tie with his mother and there is no obstacle in the way of the child inheriting from his mother or vice versa. In fact, the mother of an illegitimate child is not only entitled to the custody of the child but is also regarded as the guardian of the child to the total exclusion of the father. In this regard, one can refer to Ameer Ali's Muhammad Law, Volume II, page 238, Seventh Edition, which quotes the classic works of Radd-ul-Mukhtar to state that "the custody of illegitimate children appertains exclusively to the mother and her relations". Likewise, in DF Mulla's Mohmmadan Law, Seventeenth Education; at page 94 it is stated that "An illegitimate child is considered to be the child of its mother only and as such it inherits from its mother and her relations and they inherit from the .such child" and that "an illegitimate child does not inherit from its putative father or his relations. According to Gulzar Begum versus Suggi (62) A.S.C. 93, the right of custody of a minor illegitimate child can be enforced by his or her mother by means of a writ of habeas corpus."

33. Pre-emble of the Constitution of Islamic Republic of Pakistan, 1973, guarantees fundamental rights including equality of status. Article 2-A of the Constitution, the Objectives Resolution will be a part of substantive provision, which provides that sovereignty over the entire Universe belongs to Allah Almighty alone and the Authority which he has delegated to the state of Pakistan, through its people for being exercise with the limits prescribed by Him is a sacred trust. The Objectives Resolution, inter-alia, ensures the social justice as enunciated by Islam to be fully observed and Muslims are expected to be enable to order their lives in individual and collective spheres in accordance with the teachings and requirements of Islam as settled in the Holy Quran and Sunnah.

34. The Honorable Lahore High Court, while deciding appeal against conviction under section 376 PPC in case law reported as "Nadeem Maqsood V. the State" (**2015 P.Cr.L.J 1633**) not only upheld conviction but also awarded compensation Rs.10,00,000/- to the minor girl born as a result of the crime with following observation:-

"In view of all above, I am of the considered view that the minor baby girl born in result of crime committed by the appellant is "a person" suffering mental anguish and psychological damage for her whole life, thus, she is entitled for the compensation provided under the law. I, therefore under section 544-A(5), Cr.P.C. direct

the appellant to pay a compensation of Rs.10,00,000 (Rupees One Million) to the victim child namely Shazia Nadeem (her name is mentioned in Exh.PG, an application to the SHO for incorporation of fact of birth of girl child dated 7-12-2010) and in case of default of payment of such compensation the appellant shall suffer further imprisonment for a period of six months. Needless to add that the victim having her independent right to sue the appellant under the Civil Law is at liberty to do the same as and when she so desires and this order of compensation in her favour shall not prejudice her any claim on civil side. The compensation amount after realization shall be deposited in the name of the minor girl in the shape of Defence Saving Certificates and the amount so deposited shall only be payable to the minor after she attains her majority. It is important to clarify that in case of dire need of the minor, her legal Guardian can apply to the court of learned Guardian Judge for encashment of any part or the whole amount and the learned Guardian Court concerned shall pass an order keeping in view the best interest of the minor strictly in accordance with law. As far as fine of Rs.100,000 ordered by the learned trial court is concerned, the amount of fine if realized shall be paid to the victim of the rape Mst. Humaira Yasmeen under section 545 Cr.P.C.”

35. In view of the above discussion, equity, fair-play and justice demands that the respondent No.2, if proves to be a biological child of the petitioner, then she must be compensated and maintained by him. The person, having begotten the child, is bound to provide for its maintenance. The biological father is also morally under obligation to maintain his illegitimate child.

36. For the aforementioned reasons, this petition is hereby allowed. Consequently, the matter is remanded to the learned Trial Court with the direction to record the plaintiff's evidence regarding the specific claim made in the plaint that the petitioner/defendant is the biological father of respondent No. 2, Esha Rani/Esha Bibi. If, after recording the evidence, the Court concludes that the minor is indeed the biological child of the defendant, the proceedings may continue for the determination of the maintenance allowance.

37. Parties are directed to appear before learned District Judge, Nankana Sahib on 10.03.2025 who shall entrust the matter to the Court of competent jurisdiction at Tehsil Sangla Hill.

**(AHMAD NADEEM ARSHAD)
JUDGE.**

ANNOUNCED IN OPEN COURT ON _____

JUDGE.

APPROVED FOR REPORTING.

JUDGE.

*M. Arsalan**