

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Bench-II:**

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Aqeel Ahmed Abbasi

**Civil Petition No. 1107-L of 2015 and Civil Appeal No. 247-L of 2017**

(Against the judgment dated 28.04.2015 passed by the Lahore High Court, Lahore in W.P. No. 29864/2014)

Ambreen Akram

**... Petitioner**

**Versus**

Asad Ullah Khan etc.

**... Respondents**

For the Petitioner: Mr. Rana Rashid Akram Khan, ASC.

For the Respondents: Mr. Umer Ijaz Gilani, ASC, a/w respondent No. 1 in person.

Amici Curiae: Professor Khaled Abou El Fadl, Distinguished Professor of law, UCLA School of Law, Dr. Muhammad Zubair Abbasi, Lecturer in Law, School of Law and Social Sciences, University of London and Ms. Fatima Yasmin Bokhari, CEO Musawi, Advocate High Court, assisted by Barrister Khadija Yasmin Bokhari, Advocate High Court.

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk and Ms. Uzma Zahoor, Civil Judge/Research Officer, Supreme Court of Pakistan.

Date of Hearing: 08.07.2025.

**JUDGMENT**

**Syed Mansoor Ali Shah, J.-** This case raises two foundational questions at the intersection of Islamic law, constitutional rights, and lived social realities: When does a Muslim woman become entitled to maintenance within a marriage? And, under what circumstances, if any, may a husband be excused from his marital obligation to pay maintenance to his wife? At stake is not merely the contemporary interpretation of Islamic law, but the very meaning of marriage (*nikah*) and marital relationship, the scope of financial independence of a woman within marriage and our Constitution's<sup>1</sup>

<sup>1</sup> Constitution of the Islamic Republic of Pakistan (1973).

promise to uphold the dignity, privacy and equality of an individual, the protection of the family and participation of women in all spheres of life.

2. Brief facts giving rise to these questions are that marriage between the petitioner (wife) and the respondent (husband) was solemnized through the contract of marriage ("nikahnama") dated 02.11.2012. Though *rukhsati*<sup>2</sup> was mutually scheduled for February 2013, the respondent delayed it for over a year. In October 2013, the petitioner claimed maintenance for the period since marriage by approaching the Family Court, Faisalabad<sup>3</sup>. Despite submitting a written statement, the respondent remained absent during reconciliation proceedings, prompting the court to proceed *ex-parte* awarding maintenance at Rs. 3,000/- per month from the date of the marriage till the subsistence of the marriage through judgment and decree dated 12.03.2014. Aggrieved, both parties filed appeals before the learned District Judge, Faisalabad. Meanwhile the respondent divorced the petitioner on 02.05.2014. The District Court partly allowed the petitioner's appeal on 27.10.2014, dismissed that of the respondent, and enhanced the maintenance allowance from Rs. 3,000/- to Rs. 5,000/- per month till the subsistence of marriage.<sup>4</sup> Subsequently, both parties approached the Lahore High Court, Lahore and *vide* judgment dated 28.04.2015 ("impugned judgment"), the High Court allowed the respondent's petition on the ground that as the marriage was never "consummated," the petitioner was not entitled to maintenance and dismissed the petition of the petitioner and set aside the judgments and decrees of the courts below. Hence, the instant petition for leave to appeal and connected civil appeal<sup>5</sup> by the petitioner before this Court.

3. Learned counsel for the petitioner argued that the impugned judgment is legally unsustainable and contrary to settled principles of family law. He submitted that the petitioner was lawfully entitled to maintenance from the date of marriage until the date of divorce, particularly in view of the respondent's persistent failure to perform *rukhsati* and take the petitioner to her marital home. Conversely, learned counsel for the respondent-husband, Mr. Umer Ijaz Gilani, ASC appointed by the Court in view of the respondent's plea that

<sup>2</sup> The English word for "*rukhsati*" is "to depart" or "to take leave". It refers to the ceremony where the bride leaves her family home to join her husband's household after the wedding. It can also be translated as "farewell" or "seeing-off".

<sup>3</sup> The petitioner claimed monthly maintenance of Rs. 25,000, along with arrears for the period from November 2012 to October 2013.

<sup>4</sup> It is noted that the appellate court failed to consider that, during the pendency of the appeal, the respondent had already divorced the petitioner.

<sup>5</sup> The connected civil appeal was filed against the petition dismissed that of the petitioner by the Lahore High Court.

he was unable to engage counsel submitted that the respondent contracted marriage under family pressure and never promised for *rukhsati*. Being dissatisfied with the marriage from the outset, he subsequently divorced the petitioner. Referring to *The Hidayah*<sup>6</sup>, learned counsel argued that a wife's entitlement to maintenance arises only once she shifts to the husband's residence, which, according to him, did not occur in the present case. Therefore, according to the learned counsel, the judgments and decrees of the courts below were based on a misapplication of the law and facts, and the High Court rightly set them aside through the impugned judgment.

#### Submissions of the Amici Curiae

4. Professor Khaled Abou El Fadl, in his amicus brief submitted via email from the University of California Los Angeles (UCLA), United States, addressed the classical juristic foundations of maintenance (*nafaqa*) under Islamic law. He noted that the concept of maintenance is traditionally rooted in *ihtibās*, commonly understood as the wife's availability for the marital relationship. He outlined two principal juristic approaches. The majority *Ḥanafī* and early *Shāfi'ī* position holds that maintenance becomes obligatory upon the conclusion of a valid marriage contract, irrespective of consummation, unless the wife is at fault. In contrast, the *Mālikī*, *Ḥanbalī*, and later *Shāfi'ī* view links *ihtibās* more narrowly to consummation. Even under the latter view, Professor El Fadl explained, if the wife offers herself for cohabitation and the husband fails to consummate the marriage through no fault of hers, her entitlement to maintenance may still arise. Ultimately, he endorsed the *Ḥanafī* position, firmly rejecting the notion that maintenance is a *quid pro quo* for conjugal access. He described such a framing as "clearly patriarchal and disrespectful towards women," arguing instead that maintenance becomes due upon the formation of a valid marriage contract. Professor El Fadl emphasized that once a valid contract is concluded, the wife "relies to her detriment" on the marital bond and becomes unavailable to other suitors, thereby acquiring a legitimate right to maintenance, even in the absence of consummation, particularly where the husband has failed to provide a marital home. He concluded his submissions by stating: "...that at a minimum, the position that would entirely be consistent with *Shar'ah* is that if there is a valid contract, and a woman does not unreasonably

<sup>6</sup> Burhan al-Din al-Farghani al-Marghinani, *Al-Hidayah: The Guidance*, vol 2, tr Imran Ahsan Khan Nyazee (Federal Law House 2015).

refuse to consummate the marriage before seeking a divorce, then she should be entitled to *nafaqa*.”

5. Dr. Muhammad Zubair Abbasi, similarly, contended that under both Islamic and Pakistani law, a husband's duty to maintain his wife arises immediately upon a valid marriage, regardless of *rukhsati* or consummation. He critiqued colonial-era interpretations<sup>7</sup> for embedding patriarchal assumptions that wrongly condition a wife's entitlement to maintenance on physical obedience or cohabitation. Contrasting this with the classical Islamic view of marriage as a solemn civil contract (*'aqd*) not a transactional exchange, Dr. Abbasi underscored that maintenance flows directly from the contract. Relying on Islamic principles, classical jurisprudence, and statutory developments such as Section 9 of the Muslim Family Laws Ordinance, 1961 (“MFLO”) and Section 17A of the Family Courts Act, 1964 (“Act”), he argued that courts have rightly affirmed that consummation is not a precondition to maintenance. He submitted that unjustly tying maintenance to consummation undermines women's constitutional rights to dignity and equality under Articles 14, 25, and 35 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”). In conclusion, Dr. Abbasi urged the Court to reaffirm that maintenance is a legal and constitutional duty activated by the marriage itself.

6. Ms. Fatima Yasmin Bokhari, argued that a wife's right to maintenance flows directly from the solemnization of a valid marriage, and is neither conditioned on consummation nor on the socio-cultural practice of *rukhsati*. Citing constitutional provisions, Islamic principles, and case law, she contended that making maintenance contingent on consummation undermines women's constitutional rights, enables bad-faith avoidance by husbands, and imposes an unfair evidentiary burden on wives. Ms. Bokhari called on the Court to move beyond patriarchal constructs historically embedded in classical jurisprudence. She critiqued the “maintenance-obedience complex” that links a wife's right to financial support to her physical submission, arguing that such a notion is neither Qur'anic nor consistent with contemporary Islamic values. She emphasized that Islam envisions marriage as a contract of

<sup>7</sup> Legal historians have noted how the flexible and context-sensitive nature of classical *fiqh* was transformed into a rigid, codified system known as Anglo-Muhammadan Law, later termed Muslim Personal Law during the colonial period in British India. See Scott Kugle, ‘Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia’ (2001) 35 *Modern Asian Studies* 257-313; Elisa Giunchi, ‘The Reinvention of Shari’a under the British Raj: In Search of Authenticity and Certainty’ (2010) 69 *The Journal of Asian Studies* 1119-1142.



mutual respect, compassion, and reciprocity not subordination.<sup>8</sup> Maintenance, she submitted, is not a reward for obedience but a legal entitlement grounded in dignity and mutual care inherent in the marital bond. Referencing reforms in countries like Tunisia, Morocco, and Turkey, where obedience is no longer tied to maintenance, and marriage is redefined based on equality,<sup>9</sup> she called on the Court to affirm maintenance as an unconditional right consistent with both Islamic teachings and Pakistan's constitutional promise of gender justice and equality.

7. We have heard the learned counsel for the parties and have hugely benefited from the wisdom of the amici curiae. We have carefully examined the impugned judgment, the applicable law, and the record of the case. We now proceed to address the questions framed above.

A. When does a Muslim woman become entitled to maintenance within a marriage?

8. Marriage under Islamic law is regarded both as an act of devotion (*ibadat*) and a social transaction (*muamalat*).<sup>10</sup> According to Baillie, marriage, like other contracts requires declaration and acceptance for its constitution and both, must be expressed in such a manner as to demonstrate the intention, without any sort of ambiguity.<sup>11</sup> According to Dr. Tanzil-ur-Rahman, marriage or nikah is a religious legal contract that regularizes the physical relationship between man and woman, establishes the lineage of their progeny and creates civil rights and obligations between them.<sup>12</sup> The essential requirements of a valid marriage include offer (*ijab*) and acceptance (*qabul*),<sup>13</sup> exchanged either directly or through representatives or guardians,<sup>14</sup> along with free and informed consent.<sup>15</sup> These elements

<sup>8</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (2nd edn, Oxford University Press 1999) and Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (rev edn, University of Texas Press 2019).

<sup>9</sup> Ashraf Booley, 'Progressive Realisation of Muslim Family Law: The Case of Tunisia' (2019) 22 Potchefstroom Electronic Law Journal; World Bank, *Morocco's Family Code (Moudawana) at Ten: Legal Accomplishments and Social Realities* (World Bank 2015) <https://openknowledge.worldbank.org/server/api/core/bitstreams/a4915bd1-bdd1-52ec-9d88-97399b5f6d8d/content> accessed 15 July 2025; Laura A Weingartner, 'Family Law and Reform in Morocco – The Mudawana: Modernist Islam and Women's Rights in the Code of Personal Status' (2005) 82(4) University of Detroit Mercy Law Review 687–714; D Engelcke, 'Family Law Reform in Algeria: National Politics, Key Actors, and Transnational Factors' in DH Gray and N Sonneveld (eds), *Women and Social Change in North Africa: What Counts as Revolutionary?* (CUP 2018) 308.

<sup>10</sup> Anshul Parashara, 'Nikah under Muslim Law' (2022) Jus Corpus Law Journal <https://www.juscorpus.com/nikah-under-muslim-law/> accessed 16 July 2025.

<sup>11</sup> Neil B.E. Baillie, *A Digest of Moohummudan Law* (Smith Elder 1865) ch 1.

<sup>12</sup> Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, vol 1 (Hamdard Academy 1978).

<sup>13</sup> Muhammad Yousaf v. Huma Saeed 2024 SCMR 1078; Mohammed Salim v. Shamsudeen (2019) 4 SCC 130; Shayara Bano v. Union of India AIR 2017 SC 4609 and Imran Ahsan Khan Nyazee (tr), *Al-Hidayah: The Guidance*, vol 1 (Federal Law House 2015) ch 54, 723.

<sup>14</sup> Muhammad Hori and Eliva Sukma Cipta, 'The Purpose of Marriage in Islamic Philosophical Perspective' (2019) 2(1) Journal of Islamic Studies 18.

<sup>15</sup> Muhammad Yousaf v. Huma Saeed 2024 SCMR 1078.

align with the statutory requirements for a valid civil contract and marriage is now established under our jurisprudence to be a solemn civil contract (*'aqd*).<sup>16</sup> In Pakistan, every marriage solemnized under Muslim law must be registered under the MFLO,<sup>17</sup> and the *nikahnama* serves as the principal documentary proof.

9. While marriage under Islamic law is indeed a civil contract, it is far more than a mere legal arrangement; it is the foundation of a deeply personal and moral relationship rooted in mutual respect, compassion, and shared responsibility. The Qur'an describes the marital relationship as one of love (*mawaddah*) and mercy (*rahmah*)<sup>18</sup>, and enjoins equitable treatment, protection, and financial support as essential obligations within this framework underscoring the spiritual and emotional dimensions that animate the marital union. Upon entering marriage, the wife commits not simply to a legal contract but to a marital relationship, a bond of care, dignity, and cohabitation. This relational commitment, rather than any notion of physical submission or patriarchal obedience, is what gives rise to the right of maintenance.

10. Maintenance flows not from dominance, but from the mutual obligations and moral fabric that underpin the marital bond. Any interpretation that reduces this right to the wife's subordination negates the ethical core of the relationship as envisioned by both the Qur'an and constitutional values such as dignity, equality, and non-discrimination. The entitlement to maintenance thus must be understood as a recognition of the wife's role in nurturing the marital relationship, not as a reward for submission, but as a legal and moral consequence of her commitment to that relationship.

11. All major Islamic schools of thought recognize maintenance as a legal right of the wife, grounded in the husband's financial responsibility and the imperative to uphold her dignity.<sup>19</sup> According to The Hidayah, "when a woman surrenders into the custody of her husband, it is incumbent upon him thence to supply her with food,

<sup>16</sup> Muhammad Yousaf v. Huma Saeed 2024 SCMR 1078; Saleem Ahmed v. Government of Pakistan PLD 2014 FSC 43 (holding that a Muslim marriage is a civil contract creating mutual rights and obligations) and Mst. Khurshid Bibi v. Baboo Muhammad Amin PLD 1967 SC 97. See Musawi and Sindh Judicial Academy, *Muslim Family Laws Bench Book for Judges in Pakistan* (2023), Muhammad Munir, "Marriage in Islam: A Civil Contract or a Sacrosanct?" (2008) 31(1) *Hamdard Islamicus* 1.

<sup>17</sup> Section 5, Muslim Family Law Ordinance, 1961.

<sup>18</sup> Qur'an 30:21 (Surah Ar-Rum).

<sup>19</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Ilmiah Publishers 2003) ch 12.

clothing, and lodging.”<sup>20</sup> This notion of “surrender” lies at the heart of what jurists have historically termed the “maintenance-obedience complex”.<sup>21</sup> This is the idea that a wife’s entitlement to maintenance is conditional upon her obedience, most often defined in terms of physical availability for conjugal relations. In classical jurisprudence, particularly within the *Ḥanafī* and *Ḥanbalī* schools, this was expressed through the doctrine of *ihtibās*, which refers to the wife’s seclusion or retention in the marital home for the husband’s access. However, this reductive formulation, which treats marriage as a transactional exchange of physical obedience for material support, is incompatible with the Qur’anic vision of marriage as a solemn covenant based on affection and compassion. Modern Islamic legal thought, especially as shaped by the doctrine of *Maqāṣid al-Sharī’ah* (objectives of Islamic law), compels a broader and more egalitarian interpretation. As al-Ghazālī outlines in *al-Mustasfā*, the Sharī’ah seeks to protect five essentials: religion, life, intellect, family, and property.<sup>22</sup> Later scholars such as al-Shāṭibī (in *al-Muwāfaqāt*), Ibn ‘Ashūr, and Jasser Auda have extended these to include dignity, justice, and social well-being.<sup>23</sup> Applying this purposive framework, the institution of marriage is not premised on the wife’s “surrender” but on mutual commitment, emotional and physical companionship, cooperation, and shared responsibility. A commitment that actualizes dignity, justice and social well-being. It aims to establish a moral and familial order rooted in justice and compassion<sup>24</sup> and entails mutual moral control, and not one-sided authority.<sup>25</sup>

12. Prominent contemporary scholars have sharply criticized the maintenance-obedience framework as both patriarchal and doctrinally unsound. Professor Khaled Abou El Fadl, after a thorough examination of classical sources, contends that treating maintenance as “compensation for sexual enjoyment” degrades women and violates the ethical foundations of the *Sharī’ah*. Dr. Abbasi has similarly challenged the colonial legacy embedded in South Asian jurisprudence, arguing that British judges selectively invoked Islamic principles to

<sup>20</sup> Sheikh Burhanuddin Abi Al Hassan Ali Marghinani, *The Hidaya: Commentary on Islamic Laws*, vol 1 (Charles Hamilton tr, Darul-Ishaat 2005) 241.

<sup>21</sup> Amina Wadud, *Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective* (2nd edn, Oxford University Press 1999) and Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur’an* (rev edn, University of Texas Press 2019).

<sup>22</sup> Abū Ḥamid al-Ghazālī, *al-Mustasfā min ‘Ilm al-Uṣūl* (vol 1, Dār al-Kutub al-‘Ilmiyyah 1993, Beirut).

<sup>23</sup> Jasser Auda, *Maqāṣid al-Sharī’ah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought 2008) and Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī’ah* (Dār al-Kutub al-‘Ilmiyyah 1997, Beirut).

<sup>24</sup> Muhammad Hori and Eliva Sukma Cipta, ‘The Purpose of Marriage in Islamic Philosophical Perspective’ (2019) 2(1) *Journal of Islamic Studies* 18.

<sup>25</sup> *Mehvish Kazmi v. Parvaiz Hussain* PLD 2022 SC (AJ&K) 1.



reinforce Victorian norms of male authority, thereby curtailing women's rights under the guise of Muslim personal law.<sup>26</sup> Fatima Bokhari has drawn attention to reforms in several Muslim-majority jurisdictions that have moved away from traditional notions of *qiwamah*, *wilayah*, and the "obedience-maintenance complex", opting instead for legal models premised on mutual respect and support rather than female subordination.<sup>27</sup> Accordingly, maintenance should not be viewed as a *quid pro quo* for physical obedience, but as an inherent legal and ethical obligation arising from the marital contract. It is intended to protect the wife's dignity, autonomy, and financial security. Interpretations that condition this entitlement on physical submission not only distort Islamic legal principles but also enable coercive control. A just and contemporary approach guided by *Maqāṣid al-Sharī'ah*, constitutional norms, and feminist jurisprudence must displace obedience-based reasoning in favor of frameworks that center equality, welfare, and mutual respect.

13. Maintenance as an obligation arising directly from the marital contract has also been affirmed by the statutory framework of Pakistan, which treats maintenance as an absolute and enforceable right, rather than a conditional or discretionary entitlement. Section 9<sup>28</sup> of the MFLO empowers a wife to initiate proceedings before the Family Court for the recovery of maintenance upon the husband's failure or neglect to provide for her, without requiring proof of consummation, cohabitation, or obedience. The provision reflects a rights-based orientation, enabling women to assert financial claims independently of social customs or physical residence with the husband. Similarly, Section 17A<sup>29</sup> of the Act enhances the enforceability of such claims by

<sup>26</sup> Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge University Press, 2018) 99-74 and 87-93.

<sup>27</sup> Musawah, "Rethinking Qiwamah and Wilayah" (November 14, 2024), <https://www.musawah.org/knowledge-building/rethinking-qiwamah-and-wilayah/> accessed 25 July 2025.

<sup>28</sup> 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. (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.

<sup>29</sup> 17A. Suit for maintenance.—(1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.

(2) In a decree for maintenance, the Family Court may:

(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and

(b) prescribe the annual increase in the maintenance.



introducing an expeditious, summary procedure for the recovery of arrears of maintenance.<sup>30</sup> The introduction of this provision is a testament to the legislature's recognition of the structural barriers faced by women in asserting marital rights, and its attempt to provide a gender-sensitive and accessible remedial mechanism. Together, these statutes form a beneficial and pro-women legal framework<sup>31</sup> that affirms maintenance as a substantive, unqualified right flowing from the existence of a valid marriage not from performance, obedience, or physical availability. The courts in Pakistan have consistently interpreted these provisions in line with constitutional guarantees and Islamic legal principles, holding that a wife's entitlement to maintenance accrues immediately upon the solemnization of a valid marriage.<sup>32</sup>

### Consequences of Nikah: Cultural Practices and Patriarchal Notions

14. *Rukhsati*, in our social fabric, is a customary practice marking the bride's departure from her parental home to join her husband. The term *rukhsati* literally means "to depart" or "to take leave,"<sup>33</sup> and while culturally significant, it holds no independent legal status under Islamic or statutory law.<sup>34</sup> While the solemnization of marriage marks the formal commencement of the marital relationship, it also carries immediate legal consequences under Islamic law, our jurisprudence and the statutory framework of Pakistan.<sup>35</sup> A valid marriage is not a mere ritual or symbolic act; it is the point from which the spouses assume legal status and corresponding rights and obligations.<sup>36</sup> The expression of acceptance at the time of marriage is the ultimate evidence of a woman's willingness to enter into the marital relationship and to discharge her matrimonial obligations.<sup>37</sup> A wife's right to maintenance becomes absolute when she demonstrates such willingness, which is reinforced from her waiting for *rukhsati* to be effected. To condition a wife's entitlement to maintenance on *rukhsati* or consummation undermines legal certainty and enables husbands to

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.

(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.

<sup>30</sup> Yasmeen Bibi v. Muhammad Ghazanfar Khan, PLD 2016 SC 613.

<sup>31</sup> Saif-ur-Rehman v. ADJ Toba Tek Singh 2018 SCMR 1885.

<sup>32</sup> Zeeshan Iftikhar Butt v. Maria Asif 2019 CLC 777; Muhammad Nawaz v. Khurshid Begum, PLD 1972 SC 302; Rashid Ahmad Khan v. Nasim Ara PLD 1968 Lahore 93 and Sardar Muhammad v. Nasima Bibi PLD 1966 Lahore 703.

<sup>33</sup> Rekhta Dictionary, "Rukhsati" <https://www.rekhtadictionary.com/meaning-of-rukhsati> accessed 16 July 2025.

<sup>34</sup> Najam-ur-Rehman v. Masooma Hassan 2023 CLC 991; Muhammad Sharif v. ADJ 2007 SCMR 49 and Shamim Akhtar v. ADJ, Sialkot 1991 CLC 1142.

<sup>35</sup> Section 5, Muslim Family Laws Ordinance, 1961.

<sup>36</sup> Muhammad Munir, 'Maintenance of Wives under Muslim Law: An Analytical Study' (2008) 31(2) Hamdard Islamicus 33, 35.

<sup>37</sup> Haseen Ullah v. Mst. Naheed Begum PLD 2022 SC 686.

evade their financial responsibilities by invoking social customs or delaying performance. Such an approach imposes an unconstitutional burden on women and reinforces patriarchal norms that make a woman's financial rights contingent upon her physical availability or subservience. This is incompatible with the dignity and equality promised under the Constitution.

Answer to Question No. 1

15. A holistic reading of the aforesaid contemporary Islamic principles, constitutional and statutory protections, and judicial precedents affirms that the right to maintenance flows unconditionally from the solemnization of a valid marriage and constitutes a binding legal duty.

B. Under what circumstances, if any, may a husband be excused from his marital obligation to pay maintenance to his wife?

16. While the general rule is that maintenance becomes payable upon the solemnization of a valid marriage, classical Islamic jurisprudence does recognize narrowly defined exceptions where the wife's conduct may temporarily affect her entitlement to maintenance. Such as, according to *Hidayah*, if a wife is disobedient or refractory and departs from the matrimonial home without her husband's consent, she forfeits her right to maintenance until she returns and submits, as the breach of matrimonial restraint is attributed to her.<sup>38</sup> Baillie, similarly, observes that if the wife's conduct amounts to *nushūz* (rebellion), the husband would be justified in suspending maintenance.<sup>39</sup> Dr. Tanzil-ur-Rahman identifies the 'control' of husband over his wife as a condition precedent for his duty of maintenance. However, he acknowledges that where the husband, due to his own fault such as impotence or unwillingness to cohabit is unable to keep his wife with him, her entitlement to maintenance remains unaffected.<sup>40</sup> Historically, all the above referred interpretations and that of the classical doctrine of *nushūz*, particularly in the *Ḥanafī* and *Ḥanbalī* schools, that calls for submissiveness, obedience or surrender of wife, while placing the husband in control or ownership of wife, were interpreted through a patriarchal lens. These have reduced marital obligations to the wife's physical availability (*ihtibās*) for conjugal access. Such formulation

<sup>38</sup> Sheikh Burhanuddin Abi Al Hassan Ali Marghinani, *The Hidayah: Commentary on Islamic Laws*, vol 1 (Charles Hamilton tr, Darul-Ishaat 2005) 242.

<sup>39</sup> Neil B.E. Baillie, *A Digest of Moohummudan Law* (Smith Elder 1865) 97.

<sup>40</sup> Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, vol 1 (Hamdard Academy 1978), 259.

construes marriage as a transactional contract rather than a covenant based on mutual respect, emotional companionship, and shared responsibilities. Such a reductive view is incompatible with the higher objectives (*Maqāsid al-Sharī'ah*),<sup>41</sup> which prioritize dignity, justice and human welfare. Contemporary jurists like Mohammad Hashim Kamali and Jasser Auda urge a shift from rule-based formalism to purpose-driven reasoning, where *Sharī'ah* is read as a living, ethical system aligned with fundamental rights and evolving social realities.<sup>42</sup> Accordingly, the husband may be excused from paying maintenance only in very limited circumstances where he can prove, through clear and cogent evidence, that the wife has wholly and unjustifiably repudiated the marital relationship, including emotional, residential, and relational aspects. The burden of proof lies squarely on the husband. A refusal to cohabit arising from abuse, neglect, coercive control, behaviour or absence of appropriate living arrangements does not amount to *nushūz* or unjustifiable repudiation of the marital relationship by the wife. Where the husband fails to effect *rukhsati*, does not provide a residence, withholds the agreed dower,<sup>43</sup> or fails to facilitate travel documentation (e.g., a visa), the wife's non-cohabitation cannot be construed as voluntary withdrawal from marital relationship. In such cases, her entitlement to maintenance remains intact.

17. More troublingly, conditioning a wife's entitlement to maintenance on proof of consummation creates an untenable and constitutionally suspect standard. It forces women to disclose intimate and deeply private aspects of their married life in public judicial proceedings, contrary to their constitutional right to dignity and privacy under Article 14 of the Constitution. The burden to prove or disprove consummation, a fact often unverifiable and inherently private, places women in an impossible position and risks compounding their vulnerability within the justice system. To interpret *nushūz* in such contexts is not only doctrinally flawed but also facilitates coercive control and economic subjugation. Denying maintenance under these circumstances weaponizes patriarchal customs and undermines the ethical foundations of Islamic law. This exception, therefore, must be narrowly

<sup>41</sup> Jasser Auda, *Maqāsid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought 2008).

<sup>42</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003); Jasser Auda, *Maqāsid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought 2008); Jasser Auda, *Reclaiming the Higher Objectives of Islamic Law: Towards a New Maqasid Methodology* (International Institute of Islamic Thought 2010); Taha Jabir al-'Alwani, *The Ethics of Disagreement in Islam* (International Institute of Islamic Thought 2004) and Abū Ishāq al-Shātibī, *al-Muwāfaqāt fi Uṣūl al-Sharī'ah* (Dār al-Kutub al-'Ilmiyyah 1997, Beirut).

<sup>43</sup> Haseen Ullah v. Mst. Naheed Begum PLD 2022 SC 686; Tariq Mehmood v. Farah Shaheen 2010 YLR 349; Najam-ur-Rehman v. Masooma Hassan, 2023 CLC 991; Muhammad Sharif v. ADJ 2007 SCMR 49 and Abdul Fahim v. Mst. Shahnaz Begum 2003 CLC 1450.



construed and reformulated through the lens of *Maqāṣid al-Sharī'ah*, constitutional guarantees of equality, dignity, and social justice under Articles 14, 25 and 35 of the Constitution, and progressive jurisprudence. The above lens provides that unreasonable and unjustified denial or withdrawal of the wife from a marital relationship is the only exception to grant of maintenance.

#### Answer to Question No. 2

18. A husband may only be excused from paying maintenance where he proves through clear, cogent, and compelling evidence that the wife has wholly and unjustifiably withdrawn from the marital relationship including its emotional, residential, and relational aspects. The burden of proof lies squarely on the husband. This exception in favour of the husband must be narrowly construed to support structural gender inequalities which demand a cautious and rights-oriented approach to interpreting such exceptions, ensuring that maintenance remains a shield against economic vulnerability, not a tool of coercion.

#### Conclusion

19. A holistic reading of contemporary Islamic jurisprudence, statutory enactments, constitutional protections, and judicial precedents affirm that a wife's right to maintenance is neither contingent upon consummation or *rukhsati*, nor subject to the discretion of the husband. It flows unconditionally from the solemnization of a valid marriage and constitutes a binding legal duty. In essence, the only legitimate ground for suspending this obligation arises where the husband discharges a high burden of proof to establish that the wife has wholly and without justification withdrawn from the marital relationship understood not merely as physical access but encompassing the full spectrum of emotional, residential, and relational life. Absent such proof, the obligation to provide maintenance persists. This understanding not only gives effect to the egalitarian spirit of Islamic law but also reinforces the constitutional commitment to dignity (Article 14), equality (Article 25), and protection of the family unit (Article 35). In a patriarchal society, where economic dependence often fuels systemic injustice, the right to maintenance must be safeguarded as an essential constitutional, legal, and ethical entitlement. Any attempt to curtail it must therefore be subjected to the strictest constitutional and jurisprudential scrutiny.

The present case

20. In the present case, there is no dispute that the parties entered into a valid marriage. Nor is there any allegation, much less evidence, that the petitioner refused consummation or cohabitation without reasonable cause. On the contrary, the record reveals that the respondent failed to provide a marital abode, made no arrangements for *rukhsati*, and did not take steps to fulfill his basic obligations under the marital contract. There is similarly no factual or legal basis in the record to invoke the narrow exception to the respondent's obligation of maintenance. No credible evidence has been led to suggest that the petitioner willfully withdrew from the marital relationship or refused cohabitation without valid cause. The wife's inability to cohabit due to the husband's own failure to facilitate *rukhsati* does not defeat her claim to maintenance.<sup>44</sup> She cannot be penalized for non-consummation that resulted from the respondent's own inaction. To suggest otherwise would allow men to weaponize the absence of consummation often caused by their own neglect as a mean to escape financial responsibility, thereby trapping women in marriages devoid of both rights and dignity. In view of these settled principles, the Court finds that the petitioner's right to maintenance accrued upon the solemnization of marriage and continued throughout the subsistence of the marital bond. Considering that the divorce took place during the pendency of the said litigation, the maintenance period will continue till the period of *iddat*. The denial of maintenance in the present case, in light of the respondent's default and the absence of any fault on part of the wife, was contrary to law and is accordingly set aside.

21. In view of the foregoing discussion, the impugned judgment is set aside. The wife's entitlement to maintenance from the date of valid marriage is affirmed in the sum for Rs 5000/- per month adjudicated upon by the District Court and shall also include maintenance for the period of *iddat*. The petition is accepted, converted into an appeal, and allowed. The connected civil appeal is also allowed.

22. The Court deems it important to acknowledge the valuable role of amici curiae in assisting on complex questions of constitutional law, Islamic jurisprudence, and gender justice. The Court records its appreciation for the invaluable assistance rendered by Professor Khaled Abou El Fadl, Dr. Muhammad Zubair Abbasi, and Ms. Fatima Yasmin

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<sup>44</sup> Najam-ur-Rehman v. Masooma Hassan 2023 CLC 991.

Bokhari for their insightful submissions, which greatly aided the Court's deliberations. Their interventions anchored in international human rights, Islamic law and constitutional law brought comparative depth, sharpened normative clarity, and helped contextualize the matter within broader global frameworks.

23. The institution of the amicus is essential to ensuring that adjudication remains informed, inclusive, and principled. It is imperative that constitutional courts in Pakistan continue to institutionalize this practice, especially in matters of significant public consequence or global relevance. The amicus curiae serve as a vital bridge between law and justice, local realities and global perspectives, the bench and the academy. Embracing this inclusive model of judicial deliberation enhances not only the legitimacy and quality of judgments, but also affirms the judiciary's commitment to learning, openness, and constitutional dialogue.

24. Before parting, we find it imperative to offer guidance on a foundational aspect of judicial responsibility: *the role of judicial language*. In family law adjudication, the impact of a judge's words extends far beyond the courtroom. It is therefore essential to consider how judicial language can either uphold or undermine the values our Constitution enshrines.

#### Gender sensitive judicial language

25. We note with concern the language used in the impugned judgment, which states that "*...maintenance allowance is the right of wife after consummation of marriage and after crossing the barrier, it becomes the responsibility of the husband to maintain his wife.*"<sup>45</sup> This formulation is deeply patriarchal. The language employed by courts in family law cases does more than resolve individual disputes; it actively shapes public understanding of rights and obligations within marriage and the broader family structure. Judicial language carries normative force. It influences how justice is perceived, internalized, and practiced. Terms such as "surrender," or "submit" are rooted in patriarchal frameworks and reinforce outdated notions of gender hierarchy and female subordination. These expressions cast women as passive recipients in marriage rather than equal partners, undermining their legal and constitutional status. It is therefore imperative that judicial reasoning and expression be firmly anchored in the constitutional

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<sup>45</sup> Impugned judgment, paragraph 5.



values of dignity, equality, and non-discrimination, while also reflecting the lived realities of litigants and the prevailing social context. Judges, particularly in family law matters, are not merely arbiters of individual disputes; they are reformers and thought leaders capable of guiding society toward progressive and inclusive thinking. They bear a constitutional and ethical duty to adopt gender-sensitive, rights-based language that affirms the equal legal status of women as full and autonomous persons. Judicial decisions must avoid stereotypes, promote tolerance, and embody the principles of substantive justice.<sup>46</sup> In fulfilling this transformative role under the Constitution, the judiciary does more than interpret law; it reshapes societal attitudes and advances equality through every word it speaks. Language is never neutral. It either reinforces the status quo or propels society toward a more just and equal future.

**Announced.**

Islamabad,

11/09 September, 2025.**Approved for reporting.**

Umer A. Ranjha, LC\*

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<sup>46</sup> Zahida Parveen v. Government of Khyber Pakhtunkhwa (2025 SCP 107).