

(Appellate Jurisdiction)

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Aqeel Ahmed Abbasi

Ambreen Khan

## Versus

... Respondent(s)

## ORDER

2. The amici curiae jointly emphasized that the marital obligations of both spouses commence upon the solemnization of the nikah, and that consummation has no bearing on the contractual rights and duties created under the marriage contract. They further clarified that while either spouse's failure to perform marital obligations may have a bearing on the right to maintenance, this determination must be fact-specific. For instance, if a wife unjustifiably refuses to fulfill her marital obligations, she may not be entitled to maintenance. Conversely, if the husband fails to perform his marital duties such as by refusing to cohabit with or make arrangements for his wife to reside with him, this would not disentitle the wife from claiming maintenance for the said period.



3. In addition to the above, the amici curiae independently submitted as follows:
- I. Dr. Abbasi submitted that Muslim jurists have consistently described marriage (Nikah) as a contract ('Aqd), a view well-reflected in classical fiqh texts such as Al-Hidāyah and Al-Fatawa Al-'Alamgiriyyah, both of which include chapters titled "Contract of Marriage" (Al-'Aqd al-Nikah). This understanding is mirrored in the jurisprudence of Pakistani superior courts, which have repeatedly characterized Nikah as a civil contract, as seen in cases such as *Muhammad Yousaf v. Huma Saeed* (2024 SCMR 1078) and *Shamim Akhtar v. ADJ, Sialkot* (1991 CLC 1142). He further submitted that following independence, the Pakistani judiciary gradually departed from rigid colonial-era precedents and began engaging more directly with Islamic legal sources in order to protect and expand women's rights within the institution of marriage. This judicial turn toward Islamic reasoning has been described as judicial Ijtihad, a practice that has notably contributed to the development of legal protections for women, including rights to divorce, custody of children, and financial remedies upon dissolution of marriage.<sup>1</sup> A landmark judgment in this regard is *Sardar Muhammad v. Mst. Nasima Bibi* (PLD 1966 Lahore 703), in which the Lahore High Court explicitly rejected earlier interpretations influenced by colonial jurisprudence that denied a wife's right to past maintenance. Justice Muhammad Afzal Cheema, writing for the Court, held that the husband's obligation to maintain his wife arises from the moment the marriage contract is concluded, and not from the occurrence of *rukhsati* or cohabitation. This principle was later endorsed by a division bench of the Supreme Court in *Muhammad Nawaz v. Khurshid Begum* (PLD 1972 SC 302). This consistent judicial approach is also reflected in statutory law, specifically, Section 9 of the Muslim Family Laws Ordinance, 1961, and Section 17-A of the Family Courts Act, 1964, both of which confirm that a wife's right to maintenance accrues immediately upon the solemnization of Nikah. It is not dependent on *rukhsati*,

<sup>1</sup> See M.Z. Abbasi, "Judicial Ijtihad as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," (2017) 24 Islamic Law and Society 384-411.



consummation, or physical residence with the husband. The legal and jurisprudential consensus affirms that marriage, as a civil and contractual institution, gives rise to immediate obligations including the duty of maintenance, regardless of subsequent ceremonial or domestic arrangements.

- II. Ms. Fatima Bokhari emphasized that the wife's right to maintenance is a fundamental entitlement, essential for her sustenance and security, and intrinsically connected to her constitutional rights to life, dignity, and equality. The only recognized limitation on this right is a narrowly defined, conclusively proven fault on the part of the wife. Such fault cannot be presumed, inferred, or considered in isolation from the broader social context and lived realities of women in Pakistan. As acknowledged by the Honourable Supreme Court, many women lack autonomous decision-making power within the family, including in matters such as compelling their husbands to provide them with a marital home, an obligation that is itself a core component of the right to maintenance. In such circumstances, any ambiguity must be resolved in a manner that upholds the rights of women. She submitted, in practice, women are routinely denied maintenance, including the provision of a marital residence, as part of a systemic pattern. She cited instances where husbands evaded their legal obligation to maintain their wives for as long as twenty years after the nikah, on the ground that *rukhsati* had not taken place. In such cases, courts have correctly upheld the wife's right to claim past maintenance, reaffirming that the obligation arises from the contract of marriage alone. She further clarified that maintenance is legally and conceptually distinct from dower (*mahr*); it is not subject to return, waiver, or deferment. Conditioning the right to maintenance on consummation would impose an unreasonable evidentiary burden on wives and empower husbands to evade their fundamental legal obligations. Such an approach, she argued, would gravely endanger a married woman's dignity and privacy under Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") and would undermine the State's constitutional duty to protect the institution of marriage and the family under

Article 35 of the Constitution. Introducing a contentious and unverifiable condition for a fundamental marital right would not only erode constitutional protections but also render the right to maintenance practically illusory.

4. Mr. Asad Ullah Khan-respondent has tendered appearance and submits that due to financial constraints he is not in a position to engage a counsel. We, therefore, appoint Mr. Umer Ijaz Gillani, ASC (Mobile No.0301-5011568) to assist the Court on behalf of the respondent pro bono. Office is directed to supply a copy of the titled petitions alongwith briefs of the amici curiae to Mr. Umer Ijaz Gillani, ASC.

5. Let these cases come up for arguments of learned counsel for the respondent on 17.06.2025.



Judge

Islamabad,  
12<sup>th</sup> May, 2025.  
Not approved for reporting  
*Iqbal*



Judge