

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Shahid Waheed
Justice Musarrat Hilali
Justice Naeem Akhtar Afghan

C.A.No.1413/2021

(On appeal against the order dated 29.09.2020 passed by the Islamabad High Court, Islamabad in W.P.No.431/2019)

Muhammad Aslam Chattha ...Appellant(s)

VERSUS

Shehnaz Akhtar Zahoor Ahmed and another ...Respondent(s)

For the Appellant(s) : Mr. Zulfikar Khalid Maluka, ASC
Alongwith Appellant in person

For Respondent No.1 : Hafiz Arfat Ahmad Ch., ASC

Date of Hearing : 22.09.2025

JUDGMENT

Shahid Waheed, J: - This appeal, by leave, originates from a family suit initiated by the respondent under the Family Courts Act, 1964, seeking a decree against the appellant for the recovery of her maintenance allowance, and challenges the judgment issued by the Islamabad High Court on 29th of September, 2020. The leave was granted to determine the extent of the period for which a neglected wife can claim maintenance, concentrating on the maximum retrospective period that the Court can consider when deciding such claims. This issue is significant in many family disputes, which often focuses on the legal boundaries of neglect, entitlement, and retrospective claims. Therefore, we will examine it in some detail.

2. It is widely acknowledged that a legal system's essence is deeply rooted in the values prevalent within a given society. It would not be an overstatement to assert that our society upholds these values on a moral foundation, particularly concerning women's rights, ensuring they are not subjected to any legal

hardship. This ethical framework is fundamentally rooted in Islamic principles, which place a profound emphasis on the status of a wife within the marital relationship. According to Islamic traditions, the most fundamental right a wife possesses over her husband is to be treated with utmost respect and kindness. Upon entering marriage, a woman assumes specific financial rights, thereby placing an obligation on her husband to fulfil all necessities that contribute to a comfortable life. It becomes the husband's responsibility to provide essential provisions such as housing, food, clothing, healthcare, and other basics necessary for her well-being. In light of these values and in accordance with Articles 2-A, 3, 9, 25(3), 31, 34, 35, 37, and 38 of the Constitution—legislatures have established special provisions designed to support women in distress and safeguard them from moral and material neglect. The overarching intention of our laws is to prevent mistreated wives and abandoned divorcees from spiralling into financial and emotional ruin. Therefore, it is essential to consider the Islamic ethos and broader sociocultural context when resolving such disputes. From this perspective, we will analyse the present case.

3. To understand the appellant's grievances, it is helpful first to appreciate the fabric of facts that underpin this appeal. On 14th of July 2002, the respondent married the appellant, marking the beginning of their cohabitation. The respondent contended that since 2004, the appellant had effectively abandoned her, failing to provide any financial support for maintenance. She further alleged that shortly before initiating the suit, the appellant had insulted and demeaned her, leading to severe repercussions, and had outright refused to fulfil his obligation to pay maintenance. Founded on these assertions, the respondent filed her suit before the Family Court on 11th of May 2017, seeking a decree for the recovery of Rs.50,000/- per month in maintenance dating back to June 2004. The appellant, however, contested her claims. After reviewing the evidence presented by both parties, the Family Court ruled in favour of the respondent, determining her entitlement to recover maintenance at Rs.10,000/- per month from June 2004 until the subsistence of the marriage. The Court further decreed that the maintenance allowance would escalate by 15% annually.

The appellant chose to appeal this judgment. On appeal, while the findings regarding non-payment and the amount of maintenance were affirmed, the period for retroactive maintenance was altered, confining the respondent's entitlement to recover only from the date of filing the suit until the marriage concluded. This modification prompted the respondent to petition the High Court, seeking a writ of certiorari to annul the decree of the first appellate court and reinstate the Family Court's decree. The High Court granted the writ, subsequently restoring the Family Court's decree. Now, the appellant does not dispute the amount of the maintenance allowance; his sole contention is that, pursuant to the principle established in Khurshid Begum's case,¹ the respondent should not be entitled to past maintenance beyond a six-year period.

4. It bears mentioning that marriage in Islam is fundamentally understood as a contract between a man and a woman who are legally capable of entering into this union. Unlike certain religious traditions that treat marriage as a sacramental rite solely intended to invoke divine grace, Islamic marriage encompasses both spiritual and practical dimensions, with significant legal obligations and consequences. One of the primary responsibilities that arises from this contract is the husband's duty to provide maintenance for his wife, which must be commensurate with his financial means for the duration of the marriage. Once this legal obligation is established, it becomes enforceable through the judicial system, supported by the community's recognised legal norms. The nature of the marriage contract remains intact despite the accumulation of claims for maintenance; such claims do not alter the fundamental rights and responsibilities derived from the contract itself. Importantly, any argument suggesting that past maintenance cannot be claimed, while only current maintenance is allowable, effectively imposes a condition on the contract that is not legally supported. It is crucial to understand that the enforceability of the contract, along with all its associated obligations, is immediate upon any breach of the contract. In cases concerning maintenance allowances, a wife's cause of action arises the moment her husband begins to neglect his duty to support her.

¹ Muhammad Nawaz V. Khurshid Begum and 3 others (PLD 1972 SC 302)

Therefore, an argument asserting that delays in approaching the court would exempt the husband from liability for past maintenance lacks both reason and logic. The time elapsed prior to the wife's court action will still be taken into account when determining the duration for which maintenance is owed. In this context, arrears in maintenance are considered an outstanding debt owed by the husband, who remains liable to fulfil this obligation regardless of any formal agreements or decrees in favour of the wife. Under Islamic law, a wife is only required to demonstrate that her husband has neglected her for a specific period and has not provided the maintenance to which she is entitled, without any fault on her part. If it is ascertained that the husband has failed in his duty to support her, he becomes liable not only for future maintenance but also for any past due amounts, reflecting the period during which she was deprived of financial support. This legal framework emphasises the protection of a wife's rights within the marriage contract, ensuring that her needs are met in a manner that is both adequate and just.

5. It would not be out of place to highlight that the wife's right to maintenance is also established through the Holy Quran, Sunnah, Ijma, and Ijtihad of scholars or jurists. According to the Holy Quran, Allah states in **Surah Al-Baqarah, verse 233** "...*But the father of the child shall bear the cost of their food and clothing on equitable terms...*" This verse identifies the husband as the father and holds him accountable for the maintenance of both the child and the mother according to his financial ability. Under Sharia, it is required that a husband provide what is reasonably sufficient for his wife and children, as guided by the principles and teachings of Islamic law. In **Surah At-Talaq, verse 65**, Allah (SWT) says, "*Let them live in the same style as you live, according to your means; do not annoy them to restrict them. And if they are pregnant, spend your resources on them until they have delivered their burden; and if they nurse your offspring, provide for them fairly and consult together on what is just and reasonable. If you find yourselves in difficulties, let another woman nurse the child on the father's behalf...*" Additionally, **Surah At-Talaq, verse 7** states: "*Let the man of means spend according to his means; and he whose resources are limited should spend according to what Allah has*

given him. Allah does not burden a person beyond what He has given him." Furthermore, **Surah Al-Baqarah, verse 241** specifies: "For divorced women, maintenance should be provided on a reasonable scale. This is a duty on the righteous." **Surah An-Nisa 4, verse 34** emphasises: "Men are the protectors and maintainers of women because Allah has given one more strength than the other and because they support them from their means." Surah **At-Talaq, verse 1** provides: "O Prophet! When you divorce women, divorce them at their prescribed periods and accurately count their waiting periods. And fear Allah, your Lord: do not expel them from their houses, nor shall they leave except in the case of open lewdness..." It is important to note that these Quranic verses indicate that a husband is responsible for providing maintenance to his wife, including a divorced wife during her waiting period, based on his means and ability.

6. According to the Sunnah, it was reported that the Holy Prophet (SAW) in his farewell sermon stated, "*Fear Allah in your affairs with women; you have taken them under the covenant of Allah. You have indeed made lawful the interaction with them by the word of Allah; they have rights over you to be fed and clothed generously.*" ²A companion once asked the Holy Prophet (SAW), "*What are the rights of a wife over her husband?*" The Prophet replied: "*Let him feed her whenever he eats and clothe her whenever he clothes himself; he should not abandon her except in the house, nor should he strike her face or disgrace her.*" ³The Holy Prophet (SAW) also advised Hind bint Uqbah, the wife of Abu Sufyan, on her complaint regarding maintenance, saying, "*Take from his property what is necessary for your needs and the needs of your children equitably.*" ⁴

7. Jurists have unanimously agreed that a wife is entitled to maintenance from her husband as a general rule. They formulated a maxim stating, "*Whoever is confined because of another or for the benefit of another person, then the obligation of maintaining the confined person is on the beneficiary of the confinement.*" ⁵ Ibn Munzir on the above maxim observed that it is

² Saqib. S. (1983) Fiqh as Sunnah, Dar al-fikr, Beirut, Lebanon, Vol.3

³ Ibid

⁴ Al-asqalani, AA, Fathul-Bari, Cairo, Vol 9/507

⁵ Saqib. S. (1983) Fiqh as Sunnah, Dar al-fikr, Beirut, Lebanon, Vol.3

essential to recognise that a wife is often confined to the home after marriage and cannot earn a living outside of it. For this reason, she must necessarily be supported by her husband, who benefits from her confinement. Consequently, Ibn Qudama stated that all jurists have agreed that an adult husband is responsible for maintaining his wife or wives unless she is recalcitrant or disobedient.

8. A comprehensive survey of case law reveals that numerous questions have emerged over time concerning a wife's entitlement to a decree for past maintenance. These questions encompass several critical points: the entitlement of a wife to a decree for past maintenance in the absence of a specific agreement, the capacity of an Arbitration Council under the Muslim Family Laws Ordinance of 1961 or a Family Court under the Family Courts Act of 1964 to issue certificates or decrees related to arrears of maintenance, and the fundamental issue of from what point a neglected wife may rightfully receive her allowance, or to put it more precisely, whether such an allowance should be granted from the date when the cause of action arises, from the date the wife submits her application to the Arbitration Council or initiates her suit in the Family Court, or from the date when the court ultimately renders its order or decree in her favour. These complex questions were decisively addressed by a Division Bench of the Lahore High Court in the case of Nasima Bibi.⁶ In its ruling, the High Court meticulously examined the provisions outlined in the Muslim Family Laws Ordinance, 1961, drew upon various authoritative texts on Islamic law, and considered Quranic verses alongside the perspectives of the Hanafi, Shafi, Hambali, and Maliki schools of thought. The High Court articulated two pivotal conclusions: first, that a husband's obligation to provide maintenance to his wife begins with the solemnization of their marriage, contingent upon certain conditions; and secondly, that the hesitation or delay of a neglected wife in promptly approaching the court, or her attempts to seek alternative remedies outside the courtroom, should not unjustly strip her of her right to maintenance from the moment her cause of action arose. Building upon these important findings, the High Court affirmed that the

⁶ Sardar Muhammad V. Mst. Nasima Bibi and others (PLD 1966 (W.P) Lahore 703)

judicial system possesses the authority to grant maintenance, while also emphasising that such decisions must take into account the considerations of limitation and the specific circumstances surrounding each individual case. The Supreme Court subsequently endorsed this interpretation in the case of Khurshid Begum,⁷ which provided further clarification by underscoring that Article 120 of the Limitation Act of 1908 applies to cases seeking the recovery of past maintenance allowances. The relevance of Article 120 in such contexts was further confirmed by the Supreme Court in the case of Farah Naz,⁸ solidifying the framework for addressing claims for past maintenance in family law.

9. This brings us to an examination of the legal framework established by Article 120 of the Limitation Act of 1908. This Article stipulates a statutory period of six years for filing a suit in instances where no specific time limit is designated elsewhere in the Schedule of the Act. The timeframe is computed from the moment the right to sue accrues. Before delving deeper, it is imperative to highlight two critical points regarding the application of this statute. Firstly, the statute of limitations should be applied unhesitatingly when its applicability is clear. However, in situations where two interpretations are possible—one that risks depriving an individual of their rightful claims, and another that affirms their right to recovery—it is prudent to favour the interpretation that seeks to uphold justice and prevent unjust hardships. Secondly, the statute of limitations merely prescribes a timeframe within which a party must approach the courts to file a suit; it does not per se affect, govern, or regulate the validity or existence of the claim presented in the suit. In the context of maintenance, it is important to recognise that maintenance payments are due on a monthly basis. Consequently, non-payment transforms each missed payment into an accruing debt, and the longer this debt remains unpaid, the greater its cumulative impact becomes. Therefore, the statute of limitations is not concerned with how many months or years the debt has been accumulating; instead, it focuses solely on the right to bring a claim for recovery of that debt. From this standpoint, we must assess when the right to sue accrues to a wife under Article 120 in her pursuit to reclaim

⁷ Muhammad Nawaz V. Mst. Khurshid Begum and 3 others (PLD 1972 SC 302)

⁸ Mst. Farah Naz Vs. Judge Family Court, Sahiwal and others (PLD 2006 SC 457)

this debt. According to this Article, "the right to sue" is triggered when the defendant makes a clear and unequivocal threat to infringe upon the rights asserted by the plaintiff in the suit. However, it is crucial to note that not every remark or action perceived as a threat qualifies; for a threat to necessitate legal action, it must effectively undermine or jeopardise the asserted right. There exists an important exception to this general principle in the context of continuing wrongs. In the scenario of maintenance, the cause of action effectively persists month by month, thereby constituting a "continuing wrong" in accordance with Section 23 of the Limitation Act of 1908.⁹ This means that a cause of action arises anew with each passing month—de die in diem. The concept of continuing or successive causes of action is well established in the legal framework of the Limitation Act of 1908. When a party faces recurring or successive causes of action—whether originating from the terms of a contract or by operation of law —each instance presents a fresh opportunity that resets the limitation period. Notably, a party's failure to utilise a previous cause of action does not inhibit its ability to capitalise on a subsequent one. In the case at hand, evidence indicates that the appellant's refusal to pay maintenance occurred within six years prior to the filing of the suit, a fact that is duly recounted in the plaint. As a result, the respondent's suit was filed within the permissible timeframe established by law.

10. It is important to note that the Family Court has determined that the appellant has demonstrated negligence in his responsibility to maintain the respondent. The first appellate court did not overturn this finding, nor has it been contested before us. However, it has been argued that the appellant is willing to pay for past maintenance obligations but insists that he will not cover any amounts due for the period beyond six years. This argument reveals the appellant's desire to abandon the respondent, potentially leaving her with deep emotional scars. By attempting to leverage legal technicalities to evade his obligations, he reveals a troubling disregard for his responsibilities. The arrears of maintenance are, in essence, a debt owed by the husband (the

⁹ Venkopadhyaya v. Kavari Hengusu (2 Madras 36), Holes v. Chard Union (1894) 1 Ch. 293, Basawanewa Balappa v. Balappa Shivappa (AIR 1936 Bombay 289) and Mst. Ramzanu Bibi v. Ibrahim (deceased) through L.Rs and others (2025 SCMR 955)

appellant) to his wife (the respondent). The law clearly mandates that he must fulfil his duty to support her, thus he remains liable for the maintenance owed for the past periods. Just because a substantial amount of time has passed—specifically, six years—does not absolve him of the financial responsibilities he owes to his wife. As the respondent's suit was timely, she is entitled to collect past maintenance for the period delineated in her plaint and substantiated by evidence. The law serves as a protective shield for the vulnerable, ensuring that the husband (the appellant) is held accountable for his every cunning stratagem. Even if he attempts to obscure his responsibilities behind a facade of legal jargon, the consequences for his obstinate actions will inevitably come to light. Therefore, we uphold the judgment delivered by the High Court in all its aspects.

11. Consequently, the appeal is dismissed. However, given the circumstances surrounding this case, we choose to make no order regarding costs.

Judge

Judge

Judge

Announced in open Court on _____ at Islamabad.

Judge

APPROVED FOR REPORTING
Irfan Aslam + Libah Nadeem, LC