

JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
(JUDICIAL DEPARTMENT)

Writ Petition No.126306 of 2017

Muhammad Aslam

Vs.

Judge Family Court, Ferozewala, etc.

Date of Hearing	07.03.2023
For the petitioner	Mr. Muhammad Asif Mian, Advocate
For Govt. of Punjab	M/s Muhammad Shan Gul and Qamar Zaman Qureshi, Advocate General and Additional Advocate General respectively
For Respondents No.3 & 4	M/s Abaid Ullah Bhatti, Adnan Tariq, Muhammad Asif Chohan and Mian Muhammad Sajid, Advocates
<i>Amici Curiae</i>	M/s Muhammad Shahzad Shaukat, Zafar Iqbal Kalanori, Khalid Ishaq and Malik Muhammad Awais Khalid, Advocates

JUDGMENT

RAHEEL KAMRAN, J:- This judgment shall deal with ten petitions brought under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (‘the Constitution’) i.e. W.P.No.126306 of 2017, W.P.No.7911 of 2017, W.P.No.98903 of 2017, W.P.No.119360 of 2017, W.P.No.159598 of 2018, W.P.No.1594 of 2019, W.P.No.61038 of 2019, W.P.No.1807 of 2021, W.P.No.308 of 2022 and W.P.No.8768 of 2023, as these involve similar questions in controversy.

2. Primarily, the following two questions are under consideration for decision in these petitions: -

1. *Whether a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is appealable under section 14(2)(c) of the Family Courts Act, 1964 by the judgment debtor if the aggregate amount of the decree is more than Rs.5000/- per month?*
2. *Whether Clauses (b) and (c) of Subsection (2) of Section 14 of the West Pakistan Family Courts Act, 1964 are not ultra vires to the Constitution of Islamic Republic of Pakistan, 1973 after insertion of Article 10-A in the Constitution?*

3. Learned counsel for the petitioners contend that legislative intent for enactment of provisions of clauses (b) & (c) of subsection (2) of section 14 of the Family Courts Act, 1964 ('the Act') was to curtail the right of appeal for meager amount of Rs.5000/- in aggregate. According to them, such curtailment is flooding this Court with challenges. The wisdom that at least one appeal must be provided is jurisprudentially well recognized in law. If there are more than one children and the decree, even if for less than Rs.5000/- per child may adversely affect for being beyond financial resources of the defendant without judicial scrutiny in appeal. They finally contend that such interpretation has to be adopted as would advance the remedy of appeal. Reliance in this regard has been placed on the case of Abdul Rahim and 2 others vs. Messrs United Bank Ltd. of Pakistan (PLD 1997 Karachi 62).

4. Mr. Muhammad Shahzad Shaukat ASC, learned Amicus Curiae, contends that the ouster of appeal under section 14 of the Act is not against any party to the proceedings but a decree which is indivisible. He maintains that if a decree is cumulatively for an amount Rs.5000/- or less per month, the right of appeal under clause (c) of section 14(2) of the Act is curtailed. He adds that judgment in the case of "Sarfraz vs. Additional District Judge and 5 others" (2017 YLR 1684) is not supported by the text of section 14(2)(c) of the Act. He emphasizes that at least one right of appeal

against a judgment and decree of the Family Court is a vested right and ouster of such right under section 14(2)(c) *ibid* renders the provision repugnant to injunctions of Islam and abridges the fundamental right to fair trial as enshrined in Article 10A of the Constitution. In support of his contentions, reliance has been placed on the cases of Messrs Chenab Cement product (Pvt.) Ltd. and others vs. Banking Tribunal, Lahore and others (PLD 1996 Lahore 672), Pakistan through Secretary, Ministry of Defence vs. the General Public (PLD 1989 SC 6) and Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456).

5. Mr. Shan Gull, learned Advocate General, Punjab, while endorsing arguments of Mr. Muhammad Shahzad Shaukat, Advocate Supreme Court maintains that the ouster of appeal visualized under section 14(2)(c) of the Act is in relation to a decree for maintenance of Rs.5000/- or less per month and not in relation to maintenance per person. He adds that being an ouster clause, the same has to be construed strictly. He further contends that Article 3 of the Constitution mandates elimination of exploitation and section 14(2)(c) *ibid* does not deprive a poor of his right of appeal. He finally contends that the fundamental right to a fair trial was added to the Constitution after insertion of clause (c) in section 14(2) of the Act and such post-amendment clause has to be construed keeping in view the doctrine of eclipse. Reliance in this regard has been placed on the cases of Bhikaji Narain Dhakras and others vs. State of Madhya Pradesh and another (A.I.R. 1955 SC 781), Thomas Dana vs. State of Punjab (A.I.R 1959 SC 387) and Saiyyid Abula'la Maudoodi and 2 others vs. The Government of West Pakistan and another (PLD 1964 SC 673).

6. Mr. Zafar Iqbal Kalanori ASC, learned Amicus Curiae, has taken the position on question No.1 that the amount of Rs.5000/- or less specified in clause (c) of section 14(2) of the Act, for the purpose of exclusion of right of appeal, is cumulative. In

support of such plea, he has placed reliance on the case of Muhammad Latif Kashif vs. Judge Family Court/Civil Judge, 1st Class, Bahawalpur and 3 others (PLD 2005 Lahore 296). According to him, the right of at least one appeal is a universally recognized principle, be it inquisitorial jurisdiction or adversarial jurisdiction. He emphasizes that the object of an appeal is to provide a possibility for correction of an error in appeal arising from a judgment and decree determining right and civil liability by the Family Court. He adds that the remedy under Article 199 of the Constitution is not an alternate of appeal for such remedy is a matter of discretion of the Court. He finally contends that the right to fair trial includes one right of appeal and clause (c) of section 14(2) of the Act, in so far as it takes away the right of appeal, is void being in violation of Article 10A of the Constitution and the same is discriminatory inasmuch as the Appellate Court shall legitimately consider if any interim relief against the decree is available against women and children and on what terms?

7. Mr. Khalid Ishaq ASC, learned Amicus Curiae, contends that one right of appeal is not, of necessity, part of the right to fair trial enshrined in Article 10A of the Constitution. He emphasizes the distinction between a right of appeal being curtailed or prohibited and the right of appeal being regulated. Further contends that no *mala fide* could be attributed to the legislature, however, the *bona fides* of the legislature as also the purpose and object of a statute may be considered in determination of the vires of a statute. As regards interpretation of section 14(2)(c) of the Act, he contends that purposive rather than a literal approach to the interpretation is to be adopted while construing the said provision and only such construction was permissible as would advance the purpose of the provision enacted rather than interpretation which would defeat its objects. Being a beneficial provision in the Act, he adds, the same must be interpreted liberally in a manner so that the

benefit conferred was advanced rather than frustrated or subverted. He finally contends that Article 25(3) of the Constitution unequivocally allowed for special provisions to be made for the benefit of women and children as an exception to the general rule of equal treatment and the said article clearly allowed positive discrimination in favour of women and children, therefore, section 14(2)(c) of the Act is a valid piece of legislation enacted for the benefit of women and children to regulate the right of appeal against meager amount of maintenance decreed per month in their favour. He places reliance on the case of Shaukat Ali vs. Election Commission of Pakistan through Secretary, Islamabad and others (2018 SCMR 2086), Messrs Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others (2018 SCMR 802) and Saif-Ur-Rehman vs. Additional District Judge, Toba Tek Singh and 2 others (2018 SCMR 1885). Finally, he poses a question as to whether 10% annual increase under section 17A(3) of the Act would render the decree appealable?

8. Arguments heard. Record perused.

9. To answer the first question posed for our consideration, as stated in paragraph No.2 herein above, it would be advantageous to reproduce the section 14(2)(c) of the Act, which reads as follows: -

“S. 14. Appeal.- (1)

(2) No appeal shall lie from a decree by a Family Court-

(a)

(b)

(c) for maintenance of rupees (Five thousand) or less per month.”

Rules governing interpretation of section 14(2) of the Act

10. Purposive approach is the rule for interpretation of section 14(2) of the Act, which has been enunciated by the Supreme Court of Pakistan in the case of Saif-Ur-Rehman vs. Additional District Judge, Toba Tek Singh and 2 others (2018 SCMR 1885) in the following way: -

10. Before proceeding further, it may be appropriate to contextualize the Family Courts Act, 1964 in general and section 14(2), in particular. Out of the general canvass of the forum and procedure for adjudication of the claims and disputes, a jurisdiction has been carved out through the enactment of the Family Courts Act, 1964, creating a special forum i.e. the Family Court for adjudication of the family disputes in accordance with the special procedure as set forth in the aforesaid Act of 1964 and the Rules framed thereunder i.e. The West Pakistan Family Courts Rules, 1965. The purpose of this exercise is evident from the preamble of the Act of 1964 i.e. "expeditious settlement and disposal of disputes relating to marriage and family affairs". The nature of disputes which can be brought before the Family Court for adjudication have been set forth and enumerated in Part I of the Schedule referred to in section 5 of the Act of 1964. **It is now settled law that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects.** Reference, in this behalf, may be made to the judgments reported as *Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others* (1992 SCMR 710) and *Hudabiya Engineering (Pvt.) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others* (PLD 1998 Lahore 90).

11. The second aspect of the Family Courts Act, 1964 and the Rules framed thereunder as amended from time to time would reveal its gender sensitivity. A glance at Section 3 of the Act of 1964 reveals that women Judges are specifically catered for. The residence of the wife can be a determining factor for conferring territorial jurisdiction, in certain Suits as is evident from the provisions of Rule 6 of the West Pakistan Family Courts Rules, 1965. There can be no escape from the fact that the tone and tenor of the Family Courts Act, 1964 and the Rules framed thereunder are beneficial in nature. **It is an equally settled law that beneficial provisions in a Statute must be interpreted liberally in a manner so that the benefit conferred is advanced rather than frustrated or subverted.** Reference, in this behalf, may be made to the judgments of this Court reported as *Lahore Development Authority through D.G., Lahore and another v. Abdul Shafique and others* (PLD 2000 SC 207) and *Pakistan Engineering Co. Limited, Lahore through Managing Director v. Fazal Beg and 2 others* (1992 SCMR 2166).

12. Section 14(2) of the Family Courts Act, 1964, must necessarily be approached and interpreted in the above backdrop and in accordance with the aforesaid principles i.e. the purposive object thereof achieved and being beneficial in nature, the benefits so conferred are actualized.

13. Subsection (1) of section 14 of the Act of 1964, confers a right of appeal. However, by virtue of subsection (2) of section 14 of the Act of 1964, this right of appeal has been curtailed. **The obvious purpose of curtailing the right of appeal is to avoid the benefits**

of any decree which may have been passed being tied up in an appeal before a higher forum. It has also been noticed that in only three eventualities that even the right of first appeal has been curtailed. In all three eventualities, the decree would be for the benefit of the wife for dissolution of marriage under Clause (a), for dower or dowry under Clause (b) and for maintenance under Clause (c). The last may also be for the benefit of a minor. Thus, the only logical and reasonable interpretation, which is in accordance with the purposive of the Act and in line with the beneficial nature thereof would be that a judgment-debtor of a decree envisages in Clauses (a), (b) and (c) of subsection (2) of section 14 of the Act of 1964, would not have a right of appeal so that the disputes mentioned therein are resolved expeditiously and the benefits conferred through such decree reach the decree-holder without being frustrated. However, the said provision cannot be interpreted so as to exclude a right of appeal to a wife whose claim of dower or dowry has been partially or entirely declined. For such an interpretation, would defeat the purpose and object of the Act of 1964 and frustrate its beneficial nature.

14. This Court while interpreting section 14(2) of the Act of 1964, in its judgment reported as Tayyaba Yunus v. Muhammad Ehsan and others (2010 SCMR 1403) held that where a Suit for dower has been dismissed, the wife has a right of appeal under section 14(2) of the above-said Act of 1964.

15. In a case pertaining to dissolution of marriage, this Court in the judgment reported as Abid Hussain v. Additional District Judge, Alipur, District Muzaffargarh and another (2006 SCMR 100) held as follows:

"The object behind non-provision of appeal in case of dissolution of marriage is to protect women, an under privileged and generally oppressed section of our society from prolonged and costly litigation. It aims to put a clog on the right of husband."

16. Thus, the only possible purposive beneficial and rational interpretation of section 14(2) of the Act of 1964, is that the right of appeal of a husband against whom a decree has been passed is curtailed, if the amount awarded is less than the amount, which is mentioned in the said provision. However, in no event the right of the wife to file an appeal is extinguished if she is dissatisfied with any decree in a Suit for dower or dowry." (Emphasis supplied by this Court)

Articles 9, 14 and 25 of the Constitution and vires of section 14(2) of the Act

11. Maintenance is a basic condition for subsistence with dignity, as guaranteed under Articles 9 and 14 of the Constitution. The decree for maintenance, if any, is for the benefit of wife or a child. The purpose or object of curtailing and restricting the right of

appeal against a decree qua maintenance under section 14(2)(c) of the Act is to ensure that the disputes qua maintenance are resolved expeditiously and benefits conferred through such decree reach the decree holder(s) without being frustrated. The legislature manifestly intends to save the wife and or child, who usually fall within the marginalized or disadvantage segment of the society, from having to incur cost, face delays and bear rigors of litigation in appeal for realization of a meager decretal amount specified therein. Article 25 of the Constitution that guarantees equality before law and entitlement to equal protection of law expressly preserves authority of the State under clause (3) thereof for making any special provision for the protection of women and children. In the case of Shrin Munir and others vs. Government of Punjab through Secretary Health, Lahore and another (PLD 1990 SC 295), the Supreme Court of Pakistan issued the following direction to the legislatures:

“16. Clause (2) of Article 25 prohibits distinction on the basis of sex alone. However, the very next clause (3) controls the rest of Article 25 by providing that "nothing in this Article shall prevent the State from enacting any special provision for the protection of women and children". It implies, therefore, that while the difference on the basis of sex can be created and maintained, it shall be done only in those cases where it operates favourably as a protective measure for and not against women and children. The field of prohibition, of adopting sex, as a criteria for making a distinction, is thereby reduced to only that category wherein sex is adopted as a standard for discriminating against females generally and against males only if it is not as a measure protective of females. Discrimination against a group or an individual implies making an adverse distinction with regard to same benefit, advantage or facility. All pervasive nature of this constitutional provision is self evident. In interpreting Constitution and also in giving effect to the various legislative measures, one distinction has to be consistently kept in view and it is that classification based on reasonable considerations is permissible and not violative of the principle." (Emphasis supplied by this Court)

Threshold of Rs.5000/- cumulative or per claimant

12. Plea of the petitioners that curtailment of right of appeal under section 14(2)(c) of the Act is confined to a decree, which is cumulatively for an amount of Rs.5000/- or less per month is not

supported by the very language of the said provision. It is nowhere specified in clause 14(2)(c) that no appeal shall lie from a decree cumulatively for an amount of Rs.5000/- or less per month. Had the legislature intended so, it would have added words “in aggregate” or “in total” after the words five thousand occurring in clause (c) of section 14(2) *ibid*. It is trite law that reading in of words or meaning into a statutory provision is not permissible when its meaning is otherwise clear. As a matter of statutory interpretation, Courts generally abstain from providing omissions in a statute. Reliance in this regard is placed on the cases of Messrs State Cement Corporation of Pakistan Ltd. Vs. Collector of Customs, Karachi and another (1998 PTD 2999), Abdul Haq Khan and others vs. Haji Ameerzada and others (PLD 2017 Supreme Court 105) and Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others vs. Dr. Lal Marjan and others (2022 SCMR 566). There are several legislative examples where expressions such as *aggregate amount*, *amount in total* or *amount in aggregate* have been used by the Federal or Provincial legislatures in various statutes, which is conspicuously absent in section 14(2)(c) of the Act. Reference in this regard is made to the provisions of rule 48(1)(b) of Order XXI, rule 11(b) of Order XXXIV and section 34 & its sub-section (2) of the Code of Civil Procedure, 1908, section 17 of the Court Fees Act, 1870, sections 21(1), 100C(3)(f), 113(2)(a) and 153(1)(a)&(b) of the Income Tax Ordinance, 2001. When the amount of Rs.5000/- or less is not specified in section 14(2)(c) to be in aggregate, the decree passed for such an amount for each of the claimants remains not appealable. The decree may be passed in a suit allowing, rejecting or partly allowing claims of plaintiffs therein. The claim for maintenance in relation to each of the plaintiffs constitutes an independent cause of action that may be allowed, rejected or partly allowed in favour of any plaintiff. The plaintiffs can jointly file their claims or separately.

Each claim is to be adjudicated in terms of respective entitlement of the plaintiffs. Even if separate complaints are presented on behalf of each of the claimants, because of the overlapping assertions, consolidation of suits for adjudication remains a serious legal and pragmatic possibility. If, for example, three children of a judgment debtor have been held entitled by the Family Court to maintenance at the rate of Rs.4000/- per month each, it would be anomalous and absurd interpretation of section 14(2)(c) to suggest that the judgment debtor shall be entitled to prefer an appeal against such decree when passed in a single suit on the pretext that the decree is to be cumulatively considered for an amount of Rs.5000/- or less per month, however, his right of appeal under the said provision is restricted if decrees to the same effect are passed in three suits instituted on behalf of each of the children of the judgment debtor. This would unnecessarily encourage multiplicity of proceedings without any substantive basis thereby adversely affecting administration of justice in family cases, therefore, such interpretation must be avoided. Reliance in this regard is placed on the cases of Central Government of Pakistan and others vs. Suleman Khan and others (PLD 1992 Supreme Court 590) and Uzin Export Import Enterprises For Foreign Trade, Karachi vs. Union Bank of Middle East Ltd. (PLD 1994 Supreme Court 95).

13. Additionally, it has been aptly noted by the learned Judge in Chamber of this Court in the case of “Sarfraz vs. Additional District Judge and 5 others (2017 YLR 1684) that: -

“7

(a)

(b)

(c) for maintenance of rupees five thousand or per month.

.....it is not a matter of pecuniary jurisdiction of the court rather it is a matter of right of minors and wives who are constrained to live a deserted life and Section 14(2)(c) of the Act mentions the amount of maintenance allowance for a single person and not the accumulative one for all the children and wife. If it is accepted as held by the Hon'ble Judge, what would happen if such

number is five or more as in such a situation, the protection provided by Section 14(2)(c) of the Act would go down even below the level of Rs.1,000/- which was the limit provided before the recent amendment made in 2015 and would be highly insufficient for survival of any individual. In my view, the legislature vide said amendment has desired to increase the earlier limit of Rs.1,000/- to Rs.5,000/- per head and has not fixed it as a whole for all those who have such right against one person. As such, I am of the considered view that since the amount of maintenance allowance granted to each of the plaintiffs was less than Rs.5,000/-, the appeal keeping in view Section 14(2)(c) of the Act was not maintainable.

8. Even otherwise, the minors are admittedly children of the petitioner and it is his responsibility to maintain them for which meager amounts of Rs.4,500/- for each of the minor have been awarded which are hardly sufficient to meet with the requirements of the minors keeping in view their day-to-day needs of food, abode, clothing, schooling etc. The petitioner being father of the minors cannot be allowed to escape from his responsibilities of maintaining their children under any law of the land.”

14. In view of the foregoing, it is found that in terms of section 14(2)(c) of the Act, a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is not appealable.

Scope of Article 10-A of the Constitution and vires of section 14(2) of the Act

15. In order to deal with the other question as to whether the provisions of subsection (2) of section 14 of the Act are void being repugnant to Article 10A of the Constitution, it would be proper to reproduce the said Article: -

“10A. Right to fair trial.-- *For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”*

While Article 10A of the Constitution guarantees right to fair trial and due process for the determination of civil rights and obligations of a person, however, there is nothing in the language of the said article that guarantees at least one right of appeal against all such determinations. It has been held in paragraphs No.18 & 19 of the

judgment dated 19.06.2023 passed by the Supreme Court of Pakistan in Constitution Petitions No.21, 22 & 23 of 2023 that:-

“18. A contemporary article with similar characteristics as Article 10-A of our Constitution can be found in Article 6 of the European Convention on Human Rights (“**ECHR**”). For ease of reference, the relevant portion of the said Article for the purpose of these petitions i.e. Article 6(1) is reproduced hereunder:

“Article 6 Right to fair trial

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

In this context, the High Court of England & Wales in Dorairaj vs. Bar Standards Board ([2018] EWHC 2762 (Admin)) was petitioned to declare certain sections of the Crime and Courts Act of 2013 incompatible with Article 6 of the ECHR on the ground that an independent appellate forum was not available. While dismissing the application seeking a declaration of incompatibility, the High Court held that:

“44. ... Whilst article 6 guarantees an individual a right to a fair trial, where an article 6-compliant decision is made by a court, it is trite law that article 6 does not guarantee a right of appeal (see, e.g., *Porter v United Kingdom* [1987] Application No 12972/87) ..”

Similarly, in Sablon vs. Belgium (Application No.36445/97 @ para 86), the European Court of Human Rights held that Article 6 did not apply to the examination of an application to reopen civil proceedings.”

Repugnancy to Injunctions of Islam

16. In the case of Federation of Pakistan and others vs. Public At Large and others (PLD 1988 Supreme Court 202), while deciding Civil Shariat Appeals from the judgment dated 27.03.1984 passed by the Federal Shariat Court declaring various provisions of the West Pakistan Press and Publications Ordinance, (XXX of 1963) to be repugnant to injunctions of Islamic, it was held that section 48 of the said Ordinance be amended to the effect that in addition to the appeal provided for therein in respect of the orders already specified in section 48, an appeal shall also be competent against the orders passed under sections 4, 12, 9, 10 and 24.

Likewise, in the case of Pakistan through Secretary Ministry of Defence vs. General Public (PLD 1989 SC 6), Shariat Appellate Bench of the Supreme Court of Pakistan declared section 133 of the Pakistan Army Act (XXI of 1962), section 140 of

Pakistan Navy Ordinance (XXXV of 1961) and section 162 of the Pakistan Air Force Act, 1953 to be repugnant to injunctions of Islam barred the remedy of appeal against conviction by the Court Martials and the necessary amendments were ordered to be carried out by 1st January, 1989.

Recently, the above views were endorsed by the 15 Members Full Bench of the Supreme Court of Pakistan on 11.10.2023 in Constitutional Petition No.6 rejecting a challenge to vires of the right of appeal to a Larger Bench conferred by section 5 of the Supreme Court (Practice and Procedure) Act, 2023 from an order under Article 184(3) of the Constitution while observing as under:-

“A standard good worldwide practice and the Injunctions of Islam, require that an appeal be provided and when two interpretations are possible, the one that conforms with the Injunctions of Islam shall be adopted.”

Be that as it may, it is noteworthy that in view of the provisions of Article 203D, it is essentially authority of the Federal Shariat Court, if any, to declare any law repugnant to injunctions of Islam and jurisdiction of this Court in that regard is indeed expressly barred under Article 203G of the Constitution. Resultantly, we are unable to declare the provision of section 14(2)(c) of the Act to be repugnant to injunctions of Islam.

Effect of annual increase under section 17A(3) of the Act

17. As regards plea qua annual increase under section 17A(3) of the Act, suffice it to say that the said provision comes into operation where the Family Court has failed to prescribe the annual increase in the maintenance while passing the judgment and decree. Annual increase under the said provision does not form part of adjudication resulting in the decree, however, the same is automatically enforceable by operation of law, therefore, it cannot be taken into consideration for the purpose of section 14(2)(c) of the Act.

Effectiveness of the remedy under Article 199 of the Constitution

18. There is no cavil to the proposition that remedy under Article 199 of the Constitution cannot be equated with the right of appeal provided under any law inasmuch as the former is confined to interference in the cases of violation of law whereas the latter includes arriving at any point of view after reappraisal of evidence. Reliance in this regard is placed on the cases of Shajar Islam vs. Muhammad Siddique and 2 others (PLD 2007 Supreme Court 45), Mst. Tayyeba Ambareen and another vs. Shafqat Ali Kiyani and another (2023 SCMR 246) and M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others (2023 SCMR 1434). However, the curtailment of right of appeal under section 14(2)(c) of the Act is in very limited circumstances which does not unreasonably restrict access to justice when this Court, in its supervisory jurisdiction under Article 199 of the Constitution, keeps a check on whether the judgment impugned in such proceedings is based on any patent violation of law, disregard of evidence available on the file or in denial of fair procedure which ought to have been followed in the facts and circumstances of the case. Needless to reiterate that Article 25(3) of the Constitution permits special provisions to be made for the benefit of women and children and the right of appeal of a husband or father has been ousted under section 14(2)(c) of the Act only in such limited cases where the amount of maintenance was deemed by the legislature to be meager.

Provision of legal aid

19. Adjudication of claims entail physical and psychological toil, incurring of financial resources and a degree of perseverance to succeed for the enforcement of one's rights. More often than not, it is quite an ordeal for a resourceless wife and/or child to invoke jurisdiction of the Family Court to claim maintenance when a husband/father fails to perform his obligation in that regard, particularly in the absence of a well established legal aid

system. Province of the Punjab, through Act No.XIX of 2018, enacted the Punjab Legal Aid Act, 2018 section 3 whereof provides for Punjab Legal Aid Agency to be established by the Government by notification in the official gazette to provide legal aid service to an indigent person, *inter alia*, in family disputes relating to divorce, maintenance, dowry, dower or custody of children. However, the said agency has not been operationalized till date. To ensure effective enforcement of the rights of access to justice and fair trial as guaranteed under Article 9 and 10A of the Constitution to women and children, Government of the Punjab is directed to operationalize the Punjab Legal Aid Agency within a period of three months to provide legal aid services to indigent persons in the family matters.

Conclusion

20. The above-mentioned questions are answered accordingly, however, the ultimate fate of these petitions shall be decided individually by the respective Single Bench in the light of above discussion, keeping in view the facts and circumstances of each case. Before parting, we would like to record our special thanks for the able assistance rendered by the learned *Amici Curiae*.

(MUHAMMAD AMEER BHATTI)
CHIEF JUSTICE

(RAHEEL KAMRAN)
JUDGE

(MASUD ABID NAQVI)
JUDGE

Announced in open Court on 13.02.2024.

JUDGE

CHIEF JUSTICE

JUDGE

Approved for Reporting