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Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

....

WRIT PETITION NO.50 of 2024

MUHAMMAD MAROOF and others

versus

Mst. MARIAM FAROOQ and others

JUDGMENT

Date of hearing:	**22.04.2024**
Petitioners by:	Ch. Mehboob Alam, Advocate.
Respondents No.1 by:	Sajjad Ali and Raja Muhammad Nasrullah Waseem, Advocates.
Amici Curiae:	M/s Agha Muhammad Ali Khan and Chaudhary Imran Hassan Ali, Advocates.

MIRZA VIQAS RAUF, J. The petitioners are the paternal uncles of respondent No.2 (hereinafter referred to as "respondent"), who alongwith his mother respondent No.1 instituted a suit for recovery of maintenance allowance, dowry articles, gold ornaments, currency in the form of Euro, documents and in alternate price of Rs.28,77,400/-, impleading the petitioners (uncles) and Muhammad Bashir (grandfather) in the array of defendants with the averments that respondent No.1 was married with Muhammad Farooq Ahmad on 18th December, 2015, who was son of Muhammad Bashir and brother of the petitioners. It is asserted that during subsistence of marriage, the "respondent" was born on 12th July, 2017, however, Muhammad Farooq Ahmad took his last breath on 17th September, 2021. It would not be out of place to mention here that Muhammad Bashir (grandfather) also passed away during the proceedings before

the Family Court. The suit was resisted by the petitioners, who submitted their joint written statement. From the divergent pleadings of the parties, multiple issues were framed and ultimately, the suit was decreed by way of judgment dated 05th June, 2023. Feeling dissatisfied, the petitioners preferred an appeal before the learned District Judge, Jhelum, whereas, the "respondent" also challenged the judgment and decree of the Family Court through a separate appeal, however, both the appeals were dismissed by way of consolidated judgment dated 01st November, 2023, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Learned counsel for the petitioners submitted that being paternal uncles, the petitioners cannot be made liable to pay maintenance to "respondent" especially when respondent No.1 being mother is alive. It is contended that in terms of Paragraph 370 of *D.F. Mulla's Principles of Muhammadan Law* in absence of father, the primary liability to pay maintenance to the minor child lies upon the mother and grandfather. Learned counsel emphasized that the concurrent findings burdening the petitioners to pay maintenance to "respondent" are not tenable under the law.

3. Conversely, learned counsel for the "respondent" submitted that the petitioners, being uncles of the minor child, are bound to maintain her. He added that the petitioners are deriving benefits from the property left by their deceased father in which minor has also her legal share. It is contended that petitioners are liable to pay maintenance to the minor and as such impugned judgments are unexceptionable. In order to supplement his contentions, learned counsel has placed reliance on *TAHIR MAHMOOD versus ADDITIONAL DISTRICT JUDGE, BUREWALA and others* **(PLJ 2024 Lahore (Note) 19)**, *Mst. FARIDA BIBI and others versus*

JUDGE FAMILY COURT and others **(2024 MLD 145)**, *HASSAN AHMAD KHAN KANWAR and others versus ADNAN HASSAN and others* **(2020 CLC 1701)**, *UMER DARAZ versus FAMILY JUDGE and 3 others* **(2018 CLC 1786)** and *ABDUL MAJEED versus ADDITIONAL DISTRICT JUDGE FAISALABAD and 4 others* **(PLD 2012 Lahore 445)**.

4. This petition was admitted for regular hearing by way of order dated 12th January, 2024, however, keeping in view the importance of the matter in issue, M/s Imran Hassan Ali and Agha Muhammad Ali, Advocates were appointed as *amici curiae* to assist the Court by way of order dated 05th March, 2024.

5. Mr. Imran Hassan Ali, Advocate, while making reference to *Surah al-Baqarah* submitted that the petitioners cannot claim immunity from paying maintenance to their niece. It is added that as per famous religious scholars, it is persistent view that in absence of father, responsibility of maintaining the minor child shifts upon his close relatives, including the uncles. It is contended that in terms of principles reiterated in *Fatawa-e-Alamgiri*, when a person dies leaving property and young children, their maintenance is to be taken out of their shares in the estate. Learned counsel contended that the minor is daughter of Muhammad Farooq Ahmad, who is deceased son of Muhammad Bashir and as such she is entitled to get share of his father from the estate left by her grandfather.

6. On the other hand, Agha Muhammad Ali, Advocate submitted that it is admitted position on the record that in his lifetime, Muhammad Bashir (grandfather) was paying interim maintenance to the minor till his death. He added that both the courts were justified to award maintenance to the minor. Learned *amicus*, in support of his contentions, also made reference to *Surah Al-Imran* and placed reliance on the law

laid down in *HAJI NIZAM KHAN versus ADDITIONAL DISTRICT JUDGE, LAYYALPUR and other* **(PLD 1976 Lahore 930)**, *ABDUL MAJEED versus ADDITIONAL DISTRICT JUDGE and others* **(PLD 2012 Lahore 445)** and *GHAFOOR AHMED BUTT versus Mst. IRUM BUTT* **(PLD 2011 Lahore 610)**.

7. Arguments heard, record perused.

8. Though suit was instituted for multiple claims but now the parties are in contest only to the extent of issue of maintenance. Before making any deliberation on the moot point involved in this petition it would be advantageous to observe that there are certain admitted facts which cannot be kept aside while pondering upon the core issue.

9. Muhammad Farooq Ahmad, husband of respondent No.1 and father of the "respondent" was son of Muhammad Bashir and brother of the petitioners. He took his last breath on 17th September, 2021. After his death, suit was instituted by the respondents arraying Muhammad Bashir (grandfather) and petitioners (uncles) in the array of defendants. Muhammad Bashir (grandfather) passed away during pendency of the suit, who was paying the interim maintenance allowance in terms of order of the learned Judge Family Court. Muhammad Bashir left the property in the shape of two houses and agricultural land, which certainly has to devolve upon the petitioners as his sons and the "respondent", which is in possession of petitioners and they are deriving benefits therefrom. Parties are admittedly Muslim and observing Hanafi faith. Even otherwise, there is general presumption that all the Muslims in Pakistan are presumed to be governed by *Hanafi Fiqa* unless proved otherwise. Reference to this effect can be made to *SHER MUHAMMAD and others versus Mst. FATIMA and others* **(2016 MLD 185)**, *Mst. RASHIDAN BIBI through Legal Heirs versus Mst. JANTARY BIBI through*

Legal Heirs and 2 others **(2005 MLD 1202)**, *Mst. SARDAR BIBI versus MUHAMMAD BASHSH and others* **(PLD 1954 Lahore 480)** and *NUR ALI and another versus MALKA SULTANA and others* **(PLD 1961 (W.P.) Lahore 431)**.

10. Above all being the Muslims, the parties to the *lis* are to be governed by the Quranic injunctions. To this effect *Surah 2 Al-Baqarah, Ayat 233* is very pertinent for the resolution of matter in issue, which reads as under:-

ِروَوازلقلَ ُ ُ َ وَا هلمَ دٰنُولُ و وتِ ُ دُ ُ كُيل سهُروَبِ ضِتُ وَعل نُ ِنَ ُ دُ ُ هِابِ لموَ ّ علَ َ ُ ردَوَو عَهل نِ ُ فُ ُ ا حَلوَوالل َ َ ِرُيِ ُ ت ثُ ُ كَكَل ماثِل لِ ُ ُ فُ ُ يِ ُ نذٰلُفِلمَكَ ُ ُ سُنُ ُ ُ اِ ُ فا الِ ُ ُ َ رأُنُدَ ُ وُاارسانعَدَاُ ُ هَياِتف مُ ُ ُ صَا ال ّ رلً ُ ُ ُ َ َ ُ ضَلَ ُ ُ َاعَ ُ عَت نُةَتَ ُ ضَا را ّ رُ ُ ٍ ضوَاوِ َل مُعَدَنلةُ هُمَ ُ اُ ّ لَمُ ُ وَ َ بوِلت وَلوشَدِ ِاد لوهَ ِ رُاهُ ُ ُ

فلَ ُ جناحَ ُ عَليهِمَا وَاِنُاردْتُ ُ ُ ّ اُنُتستَ َ ضع واُاولَ َ د كمُفلَ ُ جناحَ ُ عَلي

كمُاذَاُسَل مت م ماُاتيت مُبِ ِ لمع روفِ ُ ُ وَات قواُ ا لُلُ ُ وَاعل مواُ ا نُ ُ ا لُلُ ُ بِاُ

تعمَل ونَ ُ بصِيُ ﴿233:2﴾

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

11. The theme of above Ayat of *Surah Al-Baqarah* is explained by various religious scholars in their own words. Some of which are as under:-

"Divorced mothers will breastfeed their offspring for two whole years, for those who wish to complete the

nursing of their child. The child's father will provide reasonable maintenance and clothing for the mother during that period. No one will be charged with more than they can bear. No mother or father should be made to suffer for their child. The father's heirs are under the same obligation. But if both sides decide—after mutual consultation and consent—to wean a child, then there is no blame on them. If you decide to have your children nursed by a wetnurse, it is permissible as long as you pay fairly. Be mindful of Allah, and know that Allah is All-Seeing of what you do."

(Dr. Mustafa Khattab, The Clear Quran)

"Mothers may nurse [i.e., breastfeed] their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is their [i.e., the mothers'] provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allāh and know that Allāh is Seeing of what you do."

(Saheeh International)

"Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No-one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent the like of that (which was incumbent on the father). If they desire to wean the child by mutual consent and (after) consultation, it is no sin for them; and if ye wish to give your children out to nurse, it is no sin for you, provide that ye pay what is due from you in kindness. Observe your duty to Allah, and know that Allah is Seer of what ye do."

(M. Pickthall)

"The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be Treated unfairly on account of her child. Nor father on account

of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a fostermother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear
Allah and know that Allah sees well what ye do."

(A. Yusuf Ali)

"اور مائیں دودھ پلائیں اپنے بچوں کو پورے دو برس اس کے لیے جو دودھ کی مدت پوری کرنی چاہے اور جس کا بچہ ہے اس پر عورتوں کا کھانا اور پہننا ہے حسب دستور کسی جان پر بوجھ نہ رکھا جائے گا مگر اس کے مقدور بھر ماں کو ضرر نہ دیا جائے اس کے بچہ سے اور نہ اولاد والے کو اس کی اولاد سے یا ماں ضرر نہ دے اپنے بچہ کو اور نہ اولاد والا اپنی اولاد کو اور جو باپ کا قائم مقام ہے اس پر بھی ایسا ہی واجب ہے پھر اگر ماں باپ دونوں ا پس کی رضا اور مشورے سے دودھ چھڑانا چاہیں تو ان پر گناہ نہیں اور اگر تم چاہو کہ دائیوں سے اپنے بچوں کو دودھ پلواؤ تو بھی تم پر مضائقہ نہیں جبکہ جو دینا ٹھہرا تھا بھلائی کے ساتھ انہیں ادا کر دو اور اللہ سے ڈرتے رہو اور جان رکھو کہ اللہ تمہارے کام دیکھ رہا ہے۔ "

[Ahmed Raza Khan Barailvi (Kinz-ul-Iman)]

"جو باپ چاہتے ہوں کہ ان کی اولاد پوری مدّت رضاعت تک دودھ پیے، تو مائیں اپنے بچّوں کو کامل دو سال دودھ پلائیں۔ اس صورت میں بچّے کے باپ کو معروف طریقے سے انہیں کھانا کپڑا دینا ہو گا۔ مگر کسی پر اس کی وسعت سے بڑھ کر با ر نہ ڈالنا چاہیے، نہ تو ماں کو اس وجہ سے تکلیف میں ڈالا جائے کہ بچّہ اس کا ہے، اور نہ باپ ہی کو اس وجہ سے تنگ کیا جائے کہ بچّہ اس کا ہے--- دودھ پلانے والی کا یہ حق جیسا بچّے کے باپ پر ہے، ویسا ہی اس کے وارث پربھی ہے--- لیکن اگر فریقین باہمی رضا مندی اور مشورے سے دودھ چھڑانا چاہیں، تو ایسا کرنے میں کوئی مضائقہ نہیں۔ اور اگر تمہارا خیال اپنی اولاد کو کسی غیر عورت سے دودھ پلوانے کا ہو، تو اس میں بھی کوئی حرج نہیں بشرطیکہ اس کا جو کچھ معاوضہ طے کرو، وہ معروف طریقے پر ادا کردو۔ اللہ سے ڈرو اور جان رکھو کہ جو کچھ تم کرتے ہو ، سب اللہ کی نظر میں ہے۔" "یعنی اگر باپ مر جائے ، تو جو اس کی جگہ بچہ کا ولی ہو ، اسُے یہ حق ادا کرنا ہوگا۔" **[Syed Abu Ali Maududi (Tafheem-e-Qur'an)]**

"مائیں اپنی اولاد کو دو سال کامل دودھ پلائیں جن کا ارادہ دودھ پلانے کی مدت بالکل پوری کرنے کا ہو اور جن کے بچے ہیں ان کے ذمہ ان کا روٹی کپڑا ہے جو مطابق دستور کے ہو۔ ہر شخص اتنی ہی تکلیف دیا جاتا ہے جتنی اس کی طاقت ہو۔ ماں کو اس کے بچہ کی وجہ سے یا باپ کو اس کی اولادکی وجہ سے کوئی ضرر نہ پہنچایا جائے۔ **وارث پر بھی اسی جیسی ذمہ داری** ہے، پھر اگر دونوں)یعنی ماں باپ(اپنی رضامندی اور باہمی مشورے سے دودھ چھڑانا چاہیں تو دونوں پر کچھ گناہ نہیں اور اگر تمہارا ارادہ اپنی اولاد کو دودھ پلوانے کا ہو تو بھی تم پر کوئی گناہ نہیں جب کہ تم ان کو مطابق دستور کے جو دینا ہو وہ ان کے حوالے کردو، اللہ تعالیٰ سے ڈرتے

رہو اور جانتے رہو کہ اللہ تعالیٰ تمہارے اعمال کی دیکھ بھال کر رہا ہے۔"

(Maulana Muhammad Junagarhi)

اور مائیں اپنے بچوں کو ان لوگوں کے لیے پورے دو سال دودھ پلائیں جو پوری مدت دودھ پلوانا چاہتے ہو۔ اور بچے والے کے ذمے بچوں کی ماؤں کا دستور کے مطابق کھانا اور کپڑا ہے۔ کسی پر اس کی طاقت سے زیادہ بوجھ نہ ڈالا جائے۔ نہ کسی ماں کو اس کے بچے کے سبب سے نقصان پہنچایا جائے اور نہ کسی باپ کو اس کے بچے کے سبب سے اور اسی طرح کی ذمہ داری وارث پر بھی ہے۔ پھر اگر دونوں باہمی رضامندی اور صلاح سے دودھ چھڑا دینا چاہیں تو دونوں پر کوئی گناہ نہیں۔ اور اگر تم اپنے بچوں کو کسی اور سے دودھ پلوانا چاہو تو اس میں کوئی حرج نہیں، جب کہ تم ان کو دستور کے مطابق وہ ادا کرو جو تم نے دینے کا وعدہ کیا ہے اور اللہ سے ڈرتے رہو اور جان رکھو کہ جو کچھ تم کرتے ہو اللہ اس کو دیکھ رہا ہے۔"

(Maulana Amin Ahsan Islahi) (Tadabbur-e-Qura'an)

"اور مائیں اپنے بچوں کو پورے دو سال تک دودھ پلائیں ، ان لوگوں کے لیے جو پوری مدت تک دودھ پلانا چاہتے ہوں اور جس کا بچہ ہے اس کے ذمہ ہے ان ماؤں کا کھانا اور کپڑا دستور کے مطابق کسی کو حکم نہیں دیاجاتا مگر اس کی برداشت کے موافق نہ کسی ماں کو اس کے بچہ کے سبب سے تکلیف دی جائے، اور نہ کسی باپ کو اس کے بچہ کے سبب سے اور یہی ذمہ داری وارث پر بھی ہے پھر اگر دونوں باہمی رضا مندی اور مشورہ سے دودھ چھڑانا چاہیں تو دونوں پر کوئی گناہ نہیں ، اور اگر تم چاہو کہ اپنے بچوں کو کسی اور سے دودھ پلواؤ تب بھی تم پر کوئی گناہ نہیں بشرطیکہ تم قاعدہ کے مطابق وہ ادا کر دو جو تم نے ان کو دینا ٹھہرایا تھا اور اللہ سے ڈرو اور جان لو کہ جو کچھ تم کرتے ہو، اللہ اس کو دیکھ رہا ہے۔"

(Maulana Wahiduddin Khan)

"Mothers (should) suckle their children for two full years, for one who wants to complete the (period of) suckling. It is the obligation of the one to whom the child belongs that he provides food and clothing for them (the mothers) with fairness. Nobody is obligated beyond his capacity. No mother shall be made to suffer on account of her child, nor the man to whom the child belongs, on account of his child. Likewise responsibility (of suckling) lies on the (one who may become an) heir (of the child). Now, if they want to wean, with mutual consent and consultation, there is no sin on them. And If you want to get your children suckled (by a wetnurse), there is no sin on you when you pay off what you are to give with fairness, and fear Allah, and be assured that Allah is watchful of what you do."

(Taqi Usmani)

"اور مائیں اپنے بچوں کو پورے دو سال دودھ پلائیں یہ)حکم(اس شخص کے لئے ہے جو پوری مدت تک دودھ پلوانا چاہے۔ اور دودھ پلانے والی ماؤں کا کھانا اور کپڑا دستور کے مطابق باپ کے ذمے

ہوگا۔ کسی شخص کو اس کی طاقت سے زیادہ تکلیف نہیں دی جاتی)تو یاد رکھو کہ(نہ تو ماں کو اس کے بچے کے سبب نقصان پہنچایا جائے اور نہ باپ کو اس کی اولاد کی وجہ سے نقصان پہنچایا جائے اور اسی طرح)نان نفقہ(بچے کے وارث کے ذمے ہے۔ اور اگر دونوں)یعنی ماں باپ (آپس کی رضامندی اور صلاح سے بچے کا دودھ چھڑانا چاہیں تو ان پر کچھ گناہ نہیں۔ اور اگر تم اپنی اولاد کو دودھ پلوانا چاہو تو تم پر کچھ گناہ نہیں بشرطیکہ تم دودھ پلانے والیوں کو دستور کے مطابق ان کا حق جو تم نے دینا کیا تھا دے دو اور خدا سے ڈرتے رہو اور جان رکھو کہ جو کچھ تم کرتے ہو خدا اس کو دیکھ رہا ہے۔"

(Fatah Muhammad Jalandhari)

"اور بچے والی عورتیں دودھ پلاویں اپنے بچوں کو دو برس پوری جو کوئی چاہے کہ پوری کرے دودھ کی مدت اور لڑکے والے یعنی باپ پر ہے کھانا اور کپڑا ان عورتوں کا موافق دستور کے تکلیف نہیں دی جاتی کسی کو مگر اس کی گنجائش کے موافق نہ نقصان دیا جاوے ماں کو اس کے بچہ کی وجہ سے اور نہ اس کو کہ جس کا وہ بچہ ہے یعنی باپ کو اسکے بچہ کی وجہ سے اور وارثوں پر بھی یہ لازم ہے [1]پھر اگر ماں باپ چاہیں کہ دودھ چھڑا لیں یعنی دو برس کے اندر ہی اپنی رضا اور مشورہ سے تو ان پر کچھ گناہ نہیں اور اگر تم لوگ چاہو کہ دودھ پلواؤ کسی دایہ سے اپنی اولاد کو تو بھی تم پر کچھ گناہ نہیں جبکہ حوالہ کر دو جو تم نے دینا ٹھہرایا تھا موافق دستور کے اور ڈرو اللہ سے اور جان رکھو کہ اللہ تمہارے سب کاموں کو خوب دیکھتا ہے۔"

"یعنی اگر باپ مر جاوے تو بچہ کے وارثوں پر بھی یہی لازم ہے کہ دودھ پلانے کی مدت میں اس کی ماں کے کھانے کپڑے کا خرچ اٹھائیں اور تکلیف نہ پہنچائیں اور وارث سے مراد وہ وارث ہے جو محرم بھی ہو۔"

(Shaykh al-Hind Mahmud al-Hasan) (Tafsir-e Usmani)

(Underlining supplied for emphasis)

12. There is since no codified law in Pakistan dealing with the issue in hand, so for the purpose of clarification, dissimilar opinions of the famous jurists can also be taken note of. To this effect reference can be made to *Badai Al Sanai Fi Tartib Al Sharai* by *Imam Ala-ud-Din Al Kasani*. The following excerpts from the translation by Hafiz Muhammad Saadullah, published by Research Cell, Dyal Singh Trust Library, Lahore (1993), Volume 4, are most relevant:-

محرم رشتہ داروں کا نفقہ

"قرابة الولادة کے علاوہ وہ قریبی رشتہ دار جن سے نکاح حرام ہوتا ہے مثلاً بہن بھائی چچا پھوپھی وغیرہ، ان کے نفقہ کے وجوب میں علماء کا اختلاف ہے۔ ہمارے اصحاب)احناف(کا مؤقف یہ ہے کہ ان کا نفقہ)ان کی احتیاجی کے وقت(واجب ہے جب کہ امام مالک اور امام شافعی رحمہااللہ کے نزدیک ان کا نفقہ واجب نہیں ہے۔ امام مالکؒ تو یہاں تک فرماتے ہیں کہ باپ بیٹے کے ایک دوسرے پر نفقہ کے علاوہ کسی کا نفقہ واجب نہیں حتیٰ کہ دادا پر پوتے کا اور پوتے پر

اپنے دادا کا نفقہ واجب نہیں۔ اس سلسلے میں اختلاف کی وجہ یہ ہے کہ احناف کے نزدیک یہ قرابہ)رشتہ داری("مفترضۃ الوصل محرمۃ القطع" ہے یعنی جس کا جوڑنا شرعاً فرض اور توڑنا حرام ہے اور امام مالکؒ و امام شافعیؒ کے نزدیک اس قرابت کو یہ درجہ حاصل نہیں۔ امام شافعیؒ اور امام مالکؒ نے اپنے مؤقف پر اس بات کو دلیل بنایا ہےکہ اللہ تعالیٰ نے صرف والد پر نفقہ کو واجب ٹھہرایا ہے نہ کہ کسی دوسرے پر اپنے اس قول میں کہ " وَ عَلَى الْمَوْلُوْدِ لَهٗ رِزْقُهُنَّ وَ كِسْوَتُهُنَّ بِالْمَعْرُوْفِ" ۔ لہٰذا جو شخص قرابۃ میں والد کی مثل ہو گا اس پر تو نفقہ واجب ہو گا ورنہ نہیں۔ امام شافعیؒ کے نزدیک "وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ ")البقرۃ: ۲۳۳( )اور وارث پر بھی شیر خوار بچہ کا اسی طرح کا بندوبست لازم ہے(کو اس بات کی دلیل نہیں بنایا جا سکتا کہ محرم رشتہ داروں کا نفقہ بھی واجب ہےکیونکہ حضرت عبداللہ بن عباسؓ نے اس جز, "وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ " کا تعلق " لاَ تضَۤارَّ وَا لِدَ ةٌ بِوَلَدِهَا وَ لاَ مَوْلُوْدٌ لَّهٗ بِوَلَدِهٖ" سے قائم کیا ہے نہ کہ "نفقہ" اور "کِسوۃ" کے ساتھ ۔ امام شافعیؒ کے نزدیک ا یت کے اس حصے کا معنیٰ یہ ہے کہ وارث کو یتیم کے معاملے میں ضرر نہ پہنچایا جائے جس طرح ماں یا باپ کو ان کے بیٹے کے باعث ضرر نہیں پہنچایا جا سکتا۔"

"ہمارے احناف کی دلیل بھی سورۃ بقرۃکی مذکورہ ا یت نمبر ۲۳۳ کا یہی حصہ ہے یعنی "وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ" ۔ حضرت عمر بن الخطابؓ ،حضرت زید بن ثابتؓ اور تابعین کی ایک جماعت نے اِس کا عطف نفقہ اور کِسوۃ پر تسلیم کیا ہے نہ کہ " لَا تضَۤارَّ " یا کسی دوسرے لفظ پر۔ معنیٰ یہ ہوں گے کہ جس طرح باپ پر اپنے شیر خوار بچہ کے دودھ پلانے کا بندوبست لازم ہے اسی طرح)باپ کی وفات کی صورت میں(بچے کے وارث پر اس کے دودھ پلانے کا بندوبست لازم ہے۔ دوسرے یہ کہ اِس جملے)وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ(کا عطف اگر وَ عَلَى الْمَوْلُوْدِ لَهٗ پر تسلیم کیا جائے تو یہ اسم کا عطف ، اسم پر ہو گا اور یہ معروف و اولیٰ ہے اور اگر اِس کا عطف " لاَ تضَۤارَّ " پر مانا جائے تو یہ اسم کا عطف، فعل پر ہو گا اور یہ غیر اولیٰ ہے۔ پھر یہ کہ اگر اس کا عطف " لَا تضَۤارَّ " پر ہوتا تو چاہیے یہ تھا کہ جملہ "وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ " کے بجائے "وَالْوَارِثِ مِثْلُ ذٰلِكَ " ہوتا۔"

نفقۃ الاقارب کے وجوب کا سبب

"جہاں تک "قرابۃ الولادۃ" کے نفقہ کے وجوب کے سبب کا تعلق ہے تو اس کے وجوب کا سبب یہی ولادت)جننا(ہے کیونکہ ولادت ہی سے جزئیت اور بعضیّت ثابت ہوتی ہے اور انسان پر اپنے کُل اور جُز, سب کو زندہ رکھنا واجب ہے۔ یا ولادت میں اقربا, کے نفقہ کے وجوب کا سبب وہ "قرابۃ" ہے، جس کا قطع کرنا)توڑنا(حرام ہے۔ کیونکہ جب اس قرابۃ کو قطع کرنا حرام ہوا تو ہر وہ سبب بھی حرام ہو گا جو اِس قرابۃ کے قطع کی طرف لے جائے گا۔ ذی رحم محرم رشتہ دار پر اس کی احتیاجی کے وقت خرچ کرنے کی قدرت کے باوجود خرچ نہ کرنا باعثِ قطع رحمی ہےتو خرچ نہ کرنا حرام ہو گا اور جب خرچ نہ کرنا حرام ہوا تو خرچہ کرنا ضرورۃً واجب ہوا جب یہ بات معلوم ہو گئی تو ہم کہتے ہیں کہ قرابۃ جو انسان پر نفقہ کو واجب کرنے والی ہے، دو حال سے خالی نہیں یا تو وہ حالتِ انفراد میں ہو گی یا حالتِ اجتماع میں۔ قرابت کا حالتِ انفراد میں ہونے کا مطلب یہ ہے کہ ایک ا دمی کے سوا کوئی دوسرا ایسا قریبی ا دمی نہ ہو جس پر نفقہ واجب ہوتا ہو۔ ایسی صورت میں جب اس پر کل نفقہ کے وجوب کے سبب پائے جائے کہ جملہ شرائط جمع ہو جائیں تو کل نفقہ اس پر واجب ہو گا اور وہ شرائط ہیں ولادت، محرم، رشتہ داری اور کوئی مزاحم نہ ہونا۔ اور قرابت کے

حالتِ اجتماع میں اصل یہ ہے کہ بیک وقت بہت سے ایسے قریبی رشتہ دار موجود ہوں جن پر شرعاً نفقہ واجب ہوتا ہو۔ ایسی صورت میں جب کہ قریب کے اور دور کے رشتہ دار مجتمع ہو جائیں تو قرابۃ الولادۃوغیرہ میں "اقرب")سب سے زیادہ قریبی(پر نفقہ ہو گا۔ اگر دو ا دمی قرُب میں برابر ہوں تو قرابۃ الولادۃ میں ان دونوں میں سے کسی ایک کو ترجیح دینے کی کوئی دوسری وجہ تلاش کی جائے گی اور اس پر نفقہ واجب ہو گا جس کے حق میں کوئی ترجیحی رحجان پایا جائیگا لیکن نفقہ ان دونوں پر حصۂ میراث کے مطابق تقسیم نہ ہو گا۔ اور اگر وہ دونوں وارث ہوں اور کسی ایک میں کوئی ترجیحی رجحان بھی نہ پایا جائے تو نفقہ انُ دونوں پر بقدر میراث واجب ہو گا) یہ تفصیل تو تھی قرابۃ الولادۃ میں(اور قرابۃ الولادۃ کے علاوہ دوسری محرم رشتہ داری میں انُ دو میں سے ایک وارث اور محجوب) جس کی وراثت کا حصہ روک دیا گیا (ہو تو نفقہ وارث پر ہو گا اور اسے وارث ہونے کی وجہ سے ترجیح دی جائے گی اور اگر وہ دونوں وارث ہوں تو دونوں پر بقدر میراث نفقہ واجب ہو گا۔ یہ اس لیے کہ قرابۃ الولادۃ میں نفقہ حق ولادت کی وجہ سے واجب ہوتا ہے نہ کہ حق وراثت کی وجہ سے جس کی دلیل یہ ہے کہ اللہ تعالیٰ نے فرمایا: " وَ عَلَى الْمَوْلُوْدِ لَهٗ رِزْقُهُنَّ وَ كِسْوَتُهُنَّ بِالْمَعْرُوْفِ" ۔)اور جس کے لیے بچہ جنا گیا ہے یعنی باپ اس پر ان ماؤں کا کھانا اور کپڑا دستور کے مطابق لازم ہے(اس ا یت کریمہ میں اللہ تعال یٰ نے نفقہ کے وجوب کو ولادت کے نام کے ساتھ متعلق کیا ہے جبکہ قرابۃ الولادۃ کے علاوہ دوسری محرم قرابۃ میں نفقہ حق وراثت کی وجہ سے واجب ہوتا ہے۔ اللہ تعالیٰ نے فرمایا " وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ")اور وارث پر بچے کے دودھ کا بندوبست اسی طرح لازم ہے(یہاں اللہ تعالیٰ نے نفقہ کو وراثت کے ساتھ متعلق فرمایا ہے لہٰذا بقدر میراث واجب ہو گا۔"

مسائل

" اگر ایک حاجت مند ا دمی کا باپ اور دادا دونوں موجود ہوں تو اس کا نفقہ باپ پر واجب ہوگا نہ کہ دادا پر کیونکہ باپ اقرب)سب سے زیادہ قریبی(ہے۔ اور اگر باپ تنگدست اور دادا فراخدست ہو تو بھی نفقہ باپ پر ہے بشرط کہ وہ لنجا نہ ہو البتہ دادا کو حکم دیا جائے گا کہ وہ پوتے پر خرچ کرے اور جب اس کا باپ) اور اس دادے کا بیٹا(دینے کے قابل ہو جائے تو اس سے وصول کر لے۔"

ایک شبہ کا ازالہ

"یہ نہیں کہا جائے گا کہ اولاً اللہ تعالیٰ نے فرمایا کہ " وَ عَلَى الْمَوْلُوْدِ لَهٗ رِزْقُهُنَّ" اور باپ پر ماؤں کا نفقہ لازم ہے (پھر فرمایا "وَ عَلَى الْوَارِثِ مِثْلُ ذٰلِكَ") اور وارث پر بھی اسی قسم کا بندوبست لازم ہے(ماں چونکہ وارث ہے لہٰذا اسے بھی باپ کے ساتھ اولاد کے نفقہ میں شریک ہانا چاہئے---"

"کیوں کہ ہم کہتے ہیں کہ اللہ تعالیٰ نے " وَ عَلَى الْمَوْلُوْدِ لَهٗ رِزْقُهُنَّ" فرما کر جب بچے کا سارے کا سارا نفقہ باپ پر واجب ٹھہرایا تو باپ کی موجودگی میں ماں پر نفقہ کا وجوب شکل ہو گیا۔ لہٰذا ماں پر نفقہ اس وقت لازم ہو گا جب باپ نہ ہو گا تاکہ نص پر دونوں حالوں میں "من کل الوجہ" عمل ہو سکے۔

" اگر باپ تنگدست مگر محنت مزدوری سے عاجز نہ ہو اور ماں فراخدست ہو تو)چھوٹی اولاد کا(نفقہ باپ پر ہے البتہ ماں کو حکم دیا جائے گا کہ فی الحال وہ بچوں پر خرچ کرے اور جب بچوں کا

باپ فراخدست ہو جائے تو اس سے وصول کر لے۔ ماں کی طرف سے بچوں پر خرچ کرنا اگر بحکم قاضی ہو تو یہ خرچہ بچوں کے باپ کے ذمہ دَین ہوگا ورنہ نہیں۔"

" اگر ایک حاجت مند ا دمی کی ماں اور دادا موجود ہوں تو اس ا دمی کا نفقہ ان دونوں پر بقدر میراث واجب ہوگا یعنی ایک تہائی ماں پر اور باقی دو تہائیاں دادا پر۔"

"اگر ایک ا دمی کی ماں اور سگا یا سوتیلا بھائی یا بھائی کا بیٹا اور سگا یا سوتیلا چچا موجود ہوں تو اس کا نفقہ سب پر بقدر میراث واجب ہو گا یعنی ایک تہائی ماں پر اور باقی دو تہائیاں بھائی، بھائی کے بیٹے اور چچا پر ---"

"جب ا دمی کا چچا اور پھوپھی موجود ہوں تو اس کا نفقہ صرف چچا پر واجب ہے کیونکہ وہ دونوں اگرچہ قرابۃ میں تو برابر ہیں مگر وارث ہونے میں برابر نہیں لہٰذا چچا کے وارث ہونے کی وجہ سے اسے ترجیح دی جائے گی۔"

"اسی طرح چچا اور ماموں موجود ہوں تو بھی نفقہ صرف چچا پر ہو گا۔ کیونکہ وہی وارث ہے لہٰذا بوجہ وارث ہونے کے اسے ترجیح دی جائے گی۔"

"اگر ا دمی کا چچا پھوپھی اور خالہ موجود ہوں تو اس کا نفقہ صرف چچا پر عائد ہو گا کیونکہ چچا اگرچہ قرابت)صلہ رحمی(میں تو انُ)پھوپھی اور خالہ(کے برابر ہے مگر وارث ہونے میں برابر نہیں کیونکہ وہ دونوں چچا کی موجودگی میں وارث نہیں ہوتیں۔ لہٰذا نفقہ چچا پر ہی ہو گا نہ کہ انُ پر ہاں اگر چچا تنگدست ہو تو پھر اس ا دمی کا نفقہ پھوپھی اور خالہ پر ہے اور چچا بمنزلہ میت کے ہے۔"

ایک قاعدہ

"مذکورہ اختلاف میں اصل قاعدہ یہ ہے کہ ہر وہ ا دمی جو تماممیراث کا واحد مالک بنتا ہو جب وہ تنگدست ہو تو اسے میت تصور
کر لیا جاتا ہے اور جب اسے میت تصور کر لیا گیا تو ظاہر ہےنفقہ باقی اقربا, پر بقدر میراث واجب ہو گا۔ اور جو ا دمی تمام میراث
کا نہیں بلکہ بعض میراث کا وارث بنتا ہو اسے میت تصور نہینکیا جاتا ۔ اس کے ساتھ باقی ورثا, پر بھی بقدرِ میراث نفقہ واجبہوتا ہے۔"

نفقۃ الاقارب کے وجوب کی شرطیں

"نفقہ ہذا کے وجوب کی شرطیں کئی ایک ہیں ۔ بعض "مُنفَق علیہ")جس پر خرچ کیا جانا ہو(سے خاص ہیں، بعض "مُنفِق")خرچ کرنے والے (سے اور بعض اِن کے علاوہ دوسروں سے۔"

مُنفقَ علیہ سے متعلق شرائط

"مُنفَق علیہ")جس پر خرچ کیا جانا ہو(سے متعلق تین شرائط ہیں۔

۱۔ **تنگدست ہونا:** "مُنفَق علیہ" سے متعلق پہلی شرط تو اس کا تنگدست ہونا ہے لہٰذا جو ا دمی دولتمند ہو اس کا نفقہ قرابۃالولادۃ یا قرابۃ المحرم میں کسی دوسرے قریبی پر واجب نہ ہو گا۔۔۔"

وہ تنگدست جو نفقہ کا مستحق قرار پاتا ہے اس کی تنگدستی کی حد میں اختلاف ہے۔ ایک قول یہ ہے کہ نفقہ کا مستحق وہ تنگدست ہے

جو صدقہ لے سکتا ہے اور جس پر زکوۃ واجب نہ ہو۔ ایسا محتاج ا دمی جس کا اپنا ذاتی مکان اور خادم ہو ا یا وہ اپنے قریبی دولت مند سے نفقہ لینے کا مستحق ہے یا نہیں؟ اس بارے میں روایات مختلف ہیں ایک روایت میں وہ مستحق نہیں حتی کہ ایسی محتاج اگر بہن ہو تو بھائی کو حکم نہیں دیا جائے گا کہ وہ اس پر خرچ کرے اسی طرح اس کی بیٹی اور ماں کو بھی حکم نہیں دیا جائے گا کہ وہ اس پر خرچ کریں اور ایک دوسری روایت میں ایسا محتاج مستحق ہے. پہلی روایت کی وجہ یہ ہے کہ نفقہ ہذا غیر محتاج کے لیے واجب نہیں ہے۔ اور وہ ا دمی جس کے پاس اپنا مکان اور خادم ہو وہ محتاج نہیں کیونکہ وہ اپنے مکان کا بعض حصہ یا تمام کا تمام فروخت کر سکتا ہے اور خود تھوڑے کرائے والے مکان میں رہ سکتا ہے یا اسی طرح خادم کو فروخت کر سکتا ہے۔ دوسری روایت کرنے والوں کا استدلال اس چیز سے ہے کہ مکان کا فروخت کرنا یا فروخت ہو جانا کبھی کبھار ہوا کرتا ہے دوسرے یہ کہ ہر ایک کے لیے کرائے کے مکان میں رہنا یا مشترک مکان میں رہنا ممکن نہیں ہوتا اور یہی بات صحیح ہے کہ ایسے محتاج کو اپنا مکان بیچنے کے لیے نہ کہا جائے گا۔ بلکہ اس کے قریبی عزیز کو کہا جائے گا کہ وہ اس پر خرچ کرے۔ اس بات کی صحت پر یہ بھی قرینہ ہے کہ ایسے محتاج لوگ صدقہ کے مستحق ہوتے ہیں اور انہیں اپنے مکانات بیچ دینے کو نہیں کہا جاتا۔"

"۲۔ **<u>کمانے سے عاجز ہونا:</u>** مُنفَق علیہ سے متعلق دوسری شرط یہ ہے کہ وہ کمانے سے عاجز ہو بایں طور کہ وہ لُنجاہو، فالج زدہ ہو، اندھا ہو، پاگل ہو، اس کے دونوں ہاتھ کٹے ہوئے ہوں یا شل ہوں پاؤں کٹے ہوئے ہوں یا شل ہوں یا اس کی ا نکھیں پھوڑ دی گئی ہوں وغیرہ یعنی اس سے کوئی ایسا عارضہ لاحق ہو جو اسے کمانے سے مانع ہو، ورنہ اگر وہ صحیح وتندرست ہو اور کمائی کر سکتا ہو تو اس کا نفقہ کسی دوسرے پر عائد نہیں کیا جا سکتا ----"

"۳۔ **<u>مطالبہ کرنا</u>**: مُنفَق علیہ سے متعلق تیسری شرط یہ ہے کہ وہ نفقہ کا مطالبہ کرے۔ یہ شرط اس مُنفَق علیہ سے تعلق رکھتی ہےہے جوقرابۃ الولادۃ میں سے نہ ہو بلکہ قرابۃالمحرم میں سے ہوقرابۃالولادۃ کے علاوہ کسی دوسرے قریبی کا نفقہ اس وقت تککسی پر لازم نہیں ہوتا جب تک کہ وہ قاضی کے سامنے دعویٰ دائر نہ کرے اور قاضی حکم نہ دے۔"

مُنفِق سے متعلق شرائط:

"**<u>دولتمند ہونا:</u>** مُنفِق)خرچ کرنے والے(سے متعلق شرائط میں سے قرابۃ الولادۃ کے علاوہ دوسری شرط محرم قرابت میں اس کا دولت مند ہونا ہے لہٰذامحرم قرابت) جس سے نکاح کی دائمی حرمت ہو(میں اس ا دمی پر نفقہ لازم نہ ہوگا جو دولت مند نہ ہو اگرچہ کمانے پر قادر ہی ہو۔ کیونکہ اس نفقہ)قرابۃالولادۃ کے علاوہ دوسرے محرموں کے نفقہ(کا وجوب صلہ رحمی کے طور پر ہے۔ اور ظاہر ہے ایسی صلہ رحمی اغنیا پر واجب ہوتی ہے نہ کہ فقراء پر۔

"**<u>دولت مندی کی حد</u>**: جب قرابۃ ذی رحمی میں مُنفِق کا دولت مند ہونا شرط قرار پایا تو ضروری ہے کہ اس دولت مندی کی حد کا تعین کیا جائے جس سے یہ نفقہ واجب ہوتا ہے۔ اس سلسلے میں امام ابو یوسفؒ سے یہ مروی ہے کہ انہوں نے نصاب زکوۃ کا اعتبار کیا ہےابن سماعہ کہتے ہیں کہ میں نے امام ابو یوسفؒ کو یہ فرماتے سنا کہ" میں زی رحم محرم کے نفقہ پر اس ا دمی کو

مجبور نہیں کرتا جس کے پاس اتنا مال موجود نہ ہو جس پر زکوۃ واجب ہوتی ہو اور اگر ایک ادمی کے پاس نصاب زکوۃ) ۲۰۰ درہم(سے صرف ایک درہم کم ہو اور اس کے اہل و عیال بھی نہ ہو ،ادھر اس کی محتاج بہن ہو تو میں اسے) نصاب زکوۃ نہ ہونے کی وجہ سے(مجبور نہیں کرتا کہ وہ اپنی محتاج بہن پر خرچ کرے۔ اگرچہ وہ اپنے ہاتھ سے کام کرتا ہو اور ماہانہ پچاس درہم کماتا ہو۔ "ہشام نے امام محمدمحمدؒ سے یہ روایت کی ہے کہ انہوں نے فرمایا جب ایک ا دمی کے پاس ایک مہینے کا نفقہ موجود ہو اور اپنے بال بچوں کے پورے مہینے کے خرچ سے کچھ زائد بھی بچ رہتا ہو تو میں اسے مجبور کروں گا کہ وہ ذی رحم محرم پر خرچ کرے البتہ وہ شخص جس کے پاس جمع تو کوئی چیز نہ ہو مگر روزانہ ایک درہم کماتا ہو جس میں سے چاردانق اسے اور اس کے بال بچوں کے لیے کافی ہو رہتے ہو تو اسے باقی دانق اس قریبی محتاج پر خرچ کر دینے چاہیے ----"

"<u>)علامہ کاسانی کے خیال میں(امام محمدؒ نے جو کچھ فرمایا ہے وہ زیادہ مناسب ہے---"</u>

مُنفَق علیہ اور مُنفِق کی مشترکہ شرائط

وہ شرائط جن کا تعلق مُنفَق علیہ اور مُنفِق دونوں سے ہے ، وہ دہ قسم کی ہیں:

۱. **<u>دین کا ایک ہونا</u>:** قرابۃ الولادۃ کے علاوہ دوسری قرابۃ الرحم میں ایک شرط دونوں کا اتحاد الدین)دین کا ایک ہونا(چنانچہ اس قرابۃ)قرابۃ الرحم(میں مسلمان اور کافر کے درمیان نفقہ جاری نہیں ہوتا۔ باقی رہی قرابۃ الولادۃ تو اس میں دین کا ایک ہونا شرط نہیں چنانچہ مسلمان پر اپنے ذمی ماں باپ کا نفقہ لازم ہے اسی طرح ذمی پر اپنی چھوٹی اولاد کا نفقہ، جو حکماً مسلمان سمجھی جاتی ہے اور اس بالغ مسلمان اولاد کا نفقہ واجب ہے جو کسی وجہ سے مستحق نفقہ ہو---"

۲. **<u>وطن کا ایک ہونا</u>:** مُنفَق علیہ اور مُنفِق دونوں اس سے متعلقدوسری شرط قرابۃ الولادۃ میں "اتحاد الدار") ملک و وطن کا ایکہونا(ہے چنانچہ اس ذمی جو دارالاسلام میں رہتا ہے اور اسحربی جو دارالحرب میں مقیم ہے، کے درمیان نفقہ جاری نہینہوتا اور نہ ہی ذمی اور دار الاسلام میں بطور ستائین) اسلامیحکومت سے اجازت طلب کر کے ا نے والے(حربی کے درمیاننفقہ جاری ہو سکتا ہے کیونکہ اگرچہ وہ دارالاسلام میں مستائمن ہے مگر بہرحال حربی ہے۔ دارالاسلام میں اس کا ا نا اپنے کسی مقصد کی خاطر ہے اور دوبارہ دارالحرب لوٹ جائے گا علاوہ ازیں سربراہ مملکت اسے کسی بھی وقت واپس بھیج سکتا ہے۔ دار الاسلام میں طویل قیام اس کے لیے ممکن نہیں۔ تو گویا دونوں کے وطن مختلف ہو گئے۔ اسی طرح دارالاسلام میں مقیم مسلمان اور دارالحرب میں مقیم حربی کے درمیان نفقہ جاری نہیں رہ سکتا چاہے وہ مسلمان ہو جائے مگر ہماری طرف)دارالاسلام میں(ہجرت نہ کرے۔ کیونکہ وطن ایک نہیں۔ "

دیگر شرط: قضائے قاضی

"وہ شرط جس کا تعلق مُنفَق علیہ اور مُنفِق کے علاوہ کسی دوسری چیز سے ہے، وہ نفقہ القرابۃ کی ایک قسم یعنی قرابۃ الولادۃ کے علاوہ قرابۃ الرحم میں "قضائے قاضی")عدالتی فیصلہ(ہے۔ چنانچہ یہ نفقہ)نفقۃ ذی رحم("قضائے قاضی")عدالتی فیصلہ(کے

بغیر واجب نہیں ہوتا مگر قرابۃ الولادۃ کے نفقہ میں قضائے قاضی شرط نہیں۔ وہ قضائے قاضی کے بغیر بھی واجب ہوتا ہے جس طرح کے بیوی کا نفقہ قضائے قاضی کے بغیر واجب ہوتا ہے۔"

مقدارِ نفقہ کا بیان

"نفقۃ الاقارب کی بالاتفاق اتنی مقدور واجب ہے جتنی کافی ہو رہے۔ یہ حاجت کے وقت اور حاجت ہی کی وجہ سے واجب ہوتا ہے لہٰذا اس کا اندازہ بقدر حاجت ہوگا جتنی حاجت ہوگی اسی قدر واجب ہوگا۔ ہر وہ شخص جس پر کسی دوسرے قریبی کا نفقہ واجب ہو رہا ہے تو اس پر اس)مُنفِق علیہ(کا کھانا، پینا، کپڑا، رہائش واجب ہے اور اگرمُنفَق علیۃ دودھ پیتا بچہ ہے تو اس کی رضاعت کا خرچہ بھی واجب ہوگا۔ کیونکہ اس نفقہ کا وجوب ضرورت کے لیے ہے اور ان چیزوں کے بغیر چارہ کار نہیں۔ اور اگرمُنفَق علیہ کا کوئی خادم ہو تو اس کا نفقہ بھی مُنفِق کی ذمہ ہوگا کیونکہ خادم بھی مُنفِق علیہ کی جملہ ضروریات میں سے ہے۔"

13. Second of the series is *Al Hidayah fi Sharh Bidayat al-Mubtadi* by *Burhan-ud-Din al-Farghani al-Marghinani*, which is one of the most influential books of Hanafi jurisprudence. Following excerpts from its translation by Imran Ahsan Khan Nyazee (2015) are most relevant:-

> "Maintenance is due for each relative within the prohibited degree of marriage if such relative is a poor minor, or is a poor major woman or is a major male who is poor and has a chronic illness or is blind. The reason is that maintaining the bond of the womb is obligatory in the case of close relatives and not distant relatives, and the distinguishing factor is that they be in the prohibited degree of marriage.
> Allah, the Exalted, has said, "An heir shall be chargeable in the same way." In the recitation of Abd Allah ibn Mas'ud (God be pleased with him), "An heir within the prohibited degree of marriage shall be chargeable in the same way." Thereafter, it is necessary that attributes like need, minority, and being a female be found. Chronic illness and blindness are signs of need due to the existence of the
> inability."
>
> "The share of maintenance is in proportion to the share of inheritance and the person will be compelled to pay it. The reason is that mentioning the heir in the text is an indication for considering the (share in) inheritance. Further, liability is in proportion to revenue, while compelling is for the satisfaction of the right of one to whom it is due."
>
> "Maintenance is not obligatory on the poor man, because it is made obligatory for strengthening

> the bonds of the womb and he is entitled to it himself so how can the obligation be demanded from him? This is distinguished from the maintenance of the wife and his minor child, because he made it binding upon himself by going ahead with the contract, because interests are not secured without it, and in such a case difficult financial straits do not operate. Thereafter, financial ease is determined on the basis of the *nisab*, according to what is narrated from [Imam] Abu Yusuf (God bless him). According to [Imam] Muhammad (God bless him), it is determined by what is in excess of maintenance for himself and his family for a month or by what is surplus over this through his permanent and daily earning. The reason is that what is taken into account in the case of the rights of individuals is the ability and not the *nisab*, as that is for financial ease. The fatwa today is on the first view where the *nisab* is the *nisab* that prevents *sadaqah* (payment of *zakat*)."
>
> (Underlining supplied for emphasis)

14. Similarly, *Durr Al Mukhtar* by Allama Ala-ud-Din Haskafi, which is 17th century book on Islamic jurisprudence and is considered to be an authoritative work on the subject also sheds light on the subject in the following words:-

> "اور اگر باپ اور ولدِ صغیر دونوں غریب و نادار ہوں تو باپ کمائی کرے اور اگر کمائی کی طاقت نہ ہو تو سوال کرے اور چھوٹے بچے کو کھلائے اور کسب میسر نہ ا ئے یا کافی نہ ہو تو قریب یعنی قرابت دار چچا یا ماموں ان دونوں کو نفقہ دیں اور جب باپ کو قدرت حاصل ہو جائے تو نفقہ کا معاوضہ ادا کر دے۔"
>
> "اور کتابِ مُنیہ میں لکھا ہے کہ لڑکوں کا باپ تنگدست محتاج ہے اور ان کی ماں مالدار ہے تو قاضی کی طرف سے ماں کو حکم دیا جائے کہ وہ بچوں کا نفقہ پورا کرے اور یہ نفقہ باپ کے ذمہ قرض رہے گا۔"
>
> "اور اسی طرح ماں پر جبر کیا جائے گا لڑکے کے نفقہ کے لیے تاکہ جب باپ سفر سے واپس ا جائے تو نفقہ کی رقم باپ سے واپس لے لے ۔"
>
> " اور کتاب خانیہ میں لکھا ہے کہ ایک شخص محتاج ہے اور اس کے دادا اور اس کی ماں موجود ہیں تو اس محتاج شخص کا نفقہ ان دونوں کی ارث کے مطابق واجب ہے۔) یعنی جس حساب سے اور جس مقدار میں ان کو وراثت میں حصہ ملتا ہے اسی کے مطابقان پر نفقہ واجب ہے(اور کتاب القنیة میں لکھا ہے کہ ایک محتاجشخص کی ماں اور نانا موجود ہیں تو اس شخص کا نفقہ ماں پر واجب ہوگا اور اگر محتاج کا چچا اور نانا موجود ہیں تو محتاج کا نفقہ نانا پر واجب ہوگا اور کتاب بحر الرائق میں فقہاء کے اس

قول پر اشکال کیا ہے کہ ایک محتاج کی ماں ہے اور چچا تو اس کا نفقہ دونوں پر ان کی ارث کے مطابق ہے۔"

" صاحب بحر الرائق نے کہا اگر ایک شخص کے ماں اور چچا اور نانا تو کیا نفقہ صرف ماں پر ہی واجب ہوگا یا ارث کے مانند ہوگا یہاں پر دونوں کا احتمال ہے۔"

" نیز واجب ہے ہر قرابت دار زی رحم محرم کا صغیر ہو۔ یا مونث ہو مطلقاً اگرچہ مونث صحیح تندرست اور بالغہ ہی کیوں نہ ہو۔ یا پھر مذکر بالغ ہو لیکن کسب کرنے سے عاجز ہو گا نفقہ بھی واجب ہے۔ دائمی اور جان لیوا بیماری ہو مثلاً لنگڑا، اندھا، غافل ناسمجھ اور فالج زدہ ہونا وغیرہ۔ اور کتاب الملقی اور مختار میں اس قید کا اضافہ بھی کیا گیا ہے کہ وہ بالغ ہو اور بخوبی پیشہ نہ کر سکتا ہو۔ اس وجہ سے کہ وہ احمق ہے۔ یا عمدہ خاندان والا ہے یا طالب علم ہو۔ دراں حالیکہ کہ یہ مذکورہ لوگ سب کے سب فقیر و تنگدست ہوں۔ اور ان کے لیے صدقہ کا لینا حلال ہو۔ اگرچہ ان کے رہنے کے لیے مکان اور خدمت کے لیے خادم بھی موجود ہوں۔ صحیح قول کی بناء پر۔ بدایع۔ "

" اور ذی رحم محرم کا نفقہ ارث کی مقدار کے مطابق واجب ہے۔ حق تعالی کے اس قول کی بنا پر "اور وارث پر واجب ہے مثل اس کے"۔ لہٰذا جبر کیا جائے گا قریب پر نفقہ دینے کے لیے۔"

(Underlining supplied for emphasis)

15. Reference to this effect can also be made to *Fatawa-eAlamgiri* which is 17th century CE compendium of rulings on different subjects of Islamic jurisprudence. It served as a legal code in the late Mughal era in the sub-continent. The following excerpts are from the translation by Maulana Syed Ameer Ali:

"ایک مرد تنگ دست کا ایک لڑکا صغیر ہے پس اگر مرد مذکور کمائی کرنے پر قادر ہو تو اس پر واجب ہوگا کہ کمائی کر کے اپنے بچہ کو کھلائے یہ فتاوٰی قاضی خان میں ہے۔ اگر مرد مذکور نے کمائی کرنے سے انکار کیا کہ کمائی کرے اور ان کو کھلائے تو وہ اس امر کے واسطے مجبور کیا جائے گا اور قید کیا جائے گا یہ محیط میں ہے اور اگر مرد مذکور کمائی کرنے پر قادر نہ ہو تو قاضی ان کا نفقہ مفروض کر کے ان کی ماں کو حکم دے گا کہ بمقدار مفروضہ مقدرہ قرض لے کر ان پر خرچ کریں پھر جب ان کا باپ آسودہ حال ہو تو اس سے واپس لےاور اسی طرح اگر باپ کو اس قدر ملتا ہے کہ فرزند کا نفقہ دے سکتا ہے مگر وہ نفقہ دینے سے انکار کرتا ہے تو قاضی اس مرد پر نفقہ مقرر کر دے گا پھر اولاد کی ماں اس سے اس قدر وصول کرے گی اور اسی طرح اگر قاضی نے اولاد کے باپ پر نفقہ مقرر کر دیا مگر اس مرد نے اولاد کو بلا نفقہ چھوڑ دیا اور قاضی کے حکم سے اولاد کی ماں نے قرضہ لے کر ان پر خرچ کیا تو عورت مذکورہ اس قدر مال کو اولاد کے باپ سے لے لے گی اور باپ اپنی اولاد کے نفقہ کے واسطے اگر نہ دے تو قید کیا جائے گا۔"

" اور اگر باپ مر گیا اور بہت قسم کا مال چھوڑا اور اولاد صغیر چھوڑی تو اولاد کا نفقہ ان کے حصوں میں سے ہوگا۔"

نفقہ ذوی الارحام کے بیان میں

" نفقہ ہر ذی رحم محرم کے واسطے ثابت واجب ہے بدیں شرط کے وہ صغیر فقیر ہو یا عورت بالغہ فقیر ہو یا مرد فقیر لنجا ہو یا اندھا ہو پس یہ نفقہ بحساب قدر میراث کے واجب ہوگا اور اس پر اس نفقہ دینے کے واسطے جبر کیا جائے گا یہ ہدایہ میں ہے اور میراث کا درحقیقت ہونا معتبر نہیں ہے بلکہ اہلیت ارث معتبر ہے یہ نقایہ میں ہے اور اگر ذوی الارحام غنی ہوں تو ان میں سے کسی کو نفقہ دینے کا حکم نہ کیا جائے گا اور مردان ذوی الارحام جو بالغ ہوں اور تندرست ہوں ان کے نفقہ کے واسطے کسی پر حکم نہ دیا جائے گا اگرچہ سر دست فقیر ہوں اور عورتیں ذوی الارحام حالانکہ بالغہ ہوں ان کے واسطے نفقہ واجب ہے اگرچہ تنگدست ہوں در صورتیکہ وہ نفقہ کی محتاج ہوں یہ ذخیرہ میں ہے۔"

" اگر مرد فقیر کی ماں و دادا دونوں مالدار ہوں تو اس کا نفقہ ان دونوں پر بقدر حصہ میراث کے واجب ہوگا یعنی ایک تہائی ماں پر اور دو تہائی دادا پر واجب ہوگا اور اسی طرح اگر ماں وسگا بھائی دونوں مالدار ہوں تو بھی یہی حکم ہے اور اسی طرح اگر ماں وسگے بھائی کا بیٹا یا سگا چچا یا کوئی عصبہ دیگر مالدار ہوں تو دونوں پر بقدر ان کے حصہ میراث کے تین تہائی واجب ہوگا اور اگر مرد فقیر کی نانی و دادا ہو تو نفقہ دونوں پر چھے حصے ہو کر ایک حصہ نانی پر اور پانچ حصے دادا پر واجب ہوگا اور اگرچہ چچا سگا اور پھوپھی سگی مالدار ہو تو نفقہ چچا پر ہوگا نہ کہ پھوپھی پر اور اسی طرح اگر اس کا سگا چچا اور سگا ماموں ہو تو نفقہ چچا پر ہوگا نہ کہ ماموں پر-----"

"اور اصل اس باب میں یہ ہے کہ جو شخص اہل میراث میں سے کل میراث بسبب عصبہ لینے والا تھا جب وہ تنگدست ہو تو ایسا قرار دیا جائے گا کہ گویا وہ مر گیا ہے اور جب وہ مرا ہوا قرار دیا گیا تو باقیوں کا جو استحقاق اس کے مر جانے کی صورت میں میراث کا پیدا ہوا ہے اسی حساب سے ان پر نفقہ واجب ہوگا اور جو شخص تمام میراث نہیں بلکہ بعض میراث کا لینے والا ہے وہ تنگدستی کی صورت میں مثل مردہ کے قرار نہ دیا جائے گا پس باقیوں پر اسی قدر حساب سے نفقہ واجب ہوگا جس طرح وہ اس مفلس وارث کے ساتھ میراث کے مستحق ہیں۔"

(Underlining supplied for emphasis)

16. Then comes Neil B.E. Baillie, who in his book '*A Digest of Muhammadan Law'* has summarised the doctrines of Hanafi code of jurisprudence, in following words:

> "If a man who is in straitened circumstances, and has a young child, is able to earn anything for its maintenance, it is incumbent on him to do so, and if he refuses, he may be imprisoned. Though he should be able to earn anything, the judge is still to decree maintenance against them, and to direct the mother to borrow for it on her husband's credit, and when he is an easier circumstance, she may have recourse against him for it. In like manner, when the father is able, but refuses. and the judge has decreed the maintenance of a child against them, or when, after decree against him, he abandons the child without

leaving the means of subsistence, and the mother incurs debt for its maintenance under the direction of the judge, she may have recourse to her husband for it, and the father maybe imprisoned for the maintenance of the child."

"And, in like manner, if the child's mother be rich …, while its father is poor, she may be ordered to maintain the child, and the maintenance will be a debt against the father if he be not infirm, but, if he be so, he is not liable."

"When a person has died leaving property and young children, their maintenance is to be taken out of their shares in the estate."

"By easiness of circumstances is to be understood the possession of property equal to a *nisab*, according to Abu Yousuf, whose opinion has been adopted for the *fatwa*. And the *nisab* in question is that the possession of which forbids the acceptance of alms, or, in other words, a surplus of 200 dirhams over one's on necessities."

"Every relative within the prohibited degrees is entitled to maintenance, provided that, if a male, he is either a child and poor, or, if adult, that he is infirm or blind and poor, and if a female, that she is poor whether a child or adult. The liability of a person to maintain these relatives is in proportion to his share in their inheritance, not (of course) his actual share, for no one can have any share in the inheritance of another till after his death, but his capacity to inherit. And this rule is applicable only among persons who are equal in respect of propinquity. No adult male, if in health, is entitled to maintenance though he is poor; but a person is obliged to maintain his adult female relatives though in health of body, if they require it. The maintenance of a mere relative is not incumbent on any poor person; contrary to the maintenance of a wife and child, for whom poor and rich are equally liable."

"If he has a mother and grandfather, they are both liable in proportion to their shares as heirs, that is, the mother in one third, and the grandfather in two thirds. So also, when with the mother there is a full brother, or the son of a full brother, or a full paternal uncle, or any other of the *asubah* or residuaries, the maintenance is on them by thirds according to the rules of inheritance."

"… when a person who takes the whole of the inheritance is in straitened circumstances, his inability is the same as death, and being as it were dead, the maintenance is cast on the remaining relatives in the same proportions as they would be entitled to in the inheritance of the person to be maintained, if the other were not in existence; and that when one who takes

> only a part of the inheritance is in straitened circumstances, he is not to be treated as if he were dead, and the maintenance is cast on the others, according to the shares of the inheritance to which they would be entitled if they should succeed together with him."
>
> (Underlining supplied for emphasis)

17. The most cited book before the Courts in Pakistan is *D.F. Mulla's, principles of Muhammadan Law*, upon which the learned counsel for the petitioners though has also relied heavily but it cannot be equated with statute book as main sources of Sharia are *Holy Quran*, *Sunnah*, *Ijma* and *Qias*. The significance and relevance of *Muhammadan Law by D.F. Mulla* came under discussion in the case of *KHALIDA SHAMIM AKHTAR versus GHULAM JAFFAR and other* **(PLD 2016 Lahore 865)** and it was held as under:-

> "6. The Quranic Command, as reflected here-in-above, in Verse No.12 of Surah Nisa has completely been ignored in the case, in hand, rather a totally contrary view is being preferred.
>
> The main sources of Shariat are; Holy Qur'an, Sunnah, Ijma and Qias and the Hon'ble Federal Shariat Court in case titled "*Muhammad Nasrullah Khan v. The Federation of Pakistan and another*" (Shariat Petition No.06/I of 2013) has held that, if something in any Book is proved to be different from Quran and Sunnah, that would be invalid.
>
> Muhammadan Law by D.F.Mulla, not only in the present case, but other cases also is oftenly quoted for a reference. The Hon'ble Federal Shariat Court, in the referred judgment, has held that, said law is in fact only a reference book and not a statutory law applicable in Pakistan, in the sense that the legislature has not enacted the same. It is just an option of the Court to consult the same on the basis of equity and refer to the principles mentioned in paragraphs of the said book, at times, and that too casually in some matters only. Moreover, the rules quoted in Muhammadan Law are not at all applicable, if in the opinion of the Court, they are found opposed to justice, equity and good conscience. These rules are not even referred to in situations directly covered by the Holy Quran or Sunnah or by binding Ijma and Qias."

Reference to the above effect can also be made to *Messrs NAJAAT WELFARE FOUNDATION through General Secretary versus FEDERATION OF PAKISTAN through Secretary Ministry of Law, Justice and Parliamentary Affairs Islamabad and 4 others* **(PLD 2021 Federal Shariat Court 1**). Relevance extract from the same is reproduced hereunder:-

> "9. The book titled, The Principles of Muhammadan Law by D.F Mulla, first published in 1905, was and one of the most popular books among this class and category of legal literature but it was not the only one. Some other notable books which were compiled or written before it and some after it were equally used by the courts and academia. Some of these are as follows:
>
> 1 Faiz Badrudin Tyabji, Principles of Muhammadan Law:
>
> An Essay at a Complete Statement of the Personal Law Applicable to Muslims in British India, Butterworth, 1919.
>
> 2. Sir Roland Knyvet Wilson, Anglo-Muhammadan Law:
>
> A Digest Preceded by a Historical and Descriptive Introduction of the Special Rules now Applicable to Muhammadans as Such by the Civil Courts of British India: with Full References to Modern and Ancient Authorities., W. Thacker and Company, 1903.
>
> 3. Shama Churun Sircar, The Muhammadan Law:
>
> Being a Digest of the Law Applicable Especially to the Sunnis of India, Thacker, 1873.
>
> 4. Roland Knyvet Wilson, An Introduction to the Study of Anglo-Muhammadan Law, 1894.
>
> 5. Faiz Hassan Badrudin Tyabji, Muhammadan Law: The Personal Law of Muslims, 1940.
>
> 6. Mr. Justice Abdur Rahim, The Principles of Muhammadan Jurisprudence , Madras 1911.
>
> 7. Syed Ameer Ali Muhammadan Law, 2 volumes Calcutta 1892.
>
> 8. Neil B.E. Baillie, A Digest of Moohamadan Law (chiefly translation from Fatawa Alamgiri) 2 Volumes 1874.
>
> 9. Sir W.H. Macnaghten, Principles and Precedents of Moohammadan Law, Calcutta 1825.
>
> 10. Sir R.K. Wilson An Introduction to the Study of AngloMuhammadan Law, 1894.

11. Sir William Jones Al Sirajiyyah or the Muhammadan Law of Inheritance Culcutta 1792.

There are many books which are normally included in "the AngloMuhammadan Law" classification, above mentioned are some famous books which are commonly used for easy reference even today. All those translators and compilers of legal manuals or books were deeply entrenched in the colonial system, being either imperial and colonial officials or members of the legal elite of Colonial India. For example, W.H. Macnaghten was a court registrar in the service of the East India Company in Bengal, N.E. Baillie was the Assistant
Secretary to the Indian Law Commission and an attorney to the
Supreme Court of Judicature at Fort William in Bengal, Syed Ameer Ali was a lawyer and judge in Calcutta, while Faiz Badruddin Tyabji was a lawyer and judge in Bombay and D.F. Mulla was lawyer in Bombay. Some of the authors of the Anglo Muhammadan literature were Muslims but they were not trained in the Islamic legal tradition, having been educated in England or at the very least, subject to an English legal syllabus. Their efforts coincided with the overall efforts of the British colonial masters of that time to appease the Muslim subjects of the sub-continent. Although translators sometimes clearly stated that the texts were actually commentaries on law. Such as Neil B.E. Baillie's "A Digest of Moohammadan Law". Despite such acknowledgements these legal texts quickly earned an authoritative status in colonial courts which regarded these texts as the final word on topic of Muslim personal law discussed in those books. These texts, were in other words, made to stand alone without reference to other commentaries. This practice was contrary to Islamic tradition of referring to various sources, especially parallel commentaries, in the process of adjudication. In contrast, legal practitioners in the British colonial regime rarely went beyond colonial sanctioned texts to examine the Quran, Hadith or other legal texts not prescribed by their predecessors. Even Muslim members of the colonial elite such as Faiz Tyabji and Syed Ameer Ali merely replicated patterns of colonial codifications in their own volumes in the early twentieth century since they were not trained in usul al-fiqh (Principles of Islamic Jurisprudence) or they consciously avoided challenging British legal lexicon.

10. The perception of the petitioner, about the book of D.F. Mulla that its continuous, unaltered, uninterrupted, uniform and constant practice has attributed it a force of

law hence it comes under the definition of Clause (c) of Article 203-B of the Constitution of Islamic Republic of Pakistan , is wrong for the following reasons:

Firstly; D.F. Mulla edited many editions of his book during his lifetime by incorporating the developments made by the judicial pronouncements and various legislative measures. For example the 8th Edition of his book contained 16 Chapters while the 10th edition contained 19 Chapters. D.F. Mulla did acknowledge that he largely relied upon the translation of Hedaya by Hamilton and translation of Fatawa Alamgiri by Baillie. Hence, relying on secondary sources by D.F. Mulla is itself a question mark on the validity of the opinion contained therein and on the understanding of the Islamic Law by him. Mulla in addition to the incorporation of precedents of the higher judiciary incorporated the changes required due to the promulgation of new enactments like Mussalman Wakf Validation Act, 1913 and "Mussalman Wakf Validation Act, 1930", this process of edition continued even after the death of Mulla by the editors of the subsequent editions on his book due to introduction and promulgation of the new laws in the area of Muslim Personal law like for example the "Dissolution of Muslim Marriages Act, 1939". Like any other reference book its updating and rectifications was a fundamental requirement. This demonstrates that the book of Mulla kept on changing according to the changing requirements. Hence the understanding of the petitioner about the consistency and the continuity of the Mulla's book is incorrect. The Book titled the "Principles of Muhammadan Law" authored by D.F. Mulla was first published in 1905; then, it was edited at least ten times by its author before his death in 1935. Even after the death of its author, it was edited number of times by different editors. If we compare the first edition of 1905 with the updated editions being published in Pakistan, generally under the title of "Mulla's Principles of Muhammadan Law" by different publishers and also those editions, which were published in India under the same title after the death of D.F.

Mulla. One can find many changes by way of amendments in the numbered paragraphs, addition of new paragraphs, deletion of some old paragraphs and even alteration of wording within the paragraphs for example:

i. The total number of chapters in the First Edition of 1905 were 13 while the current edition of the same book contained 19 chapters and many appendices. ii. The total number of paragraphs in the First Edition, which were numbered to give the sense that each paragraph contains some principles of Islamic law, was 228 but now it contains 375 paragraphs. iii. The scheme of the book has also been shuffled and reshuffled many times since it first published as the sequence of its chapter have been arranged and rearranged many times.

iv. The book is written and presented in such a way that a presumption attached to it is that each of its numbered paragraph contains some principle of Islamic law, which were mostly translated or copied by the author D.F. Mulla from the English translation of Hedaya, Sirajiyya, Fatawa Alamgiri and some other works of English authors like Neil B.E. Baillie and Sir Roland Knyvett Wilson, etc., as acknowledged by the author (D.F. Mulla) in the prefatory note of his book as:

> "I have fallen back upon the translations of the Hedaya and the Fatawa Alamgiri, with such modifications as were necessary or proper for the requirements of modern law"….. "This work is in the main modelled on the plan of Sir Roland Wilson's excellent Digest of Anglo Muhammadan Law..."

Despite the scheme and arrangement as explained by the author in the prefatory, there are some paragraphs which are based on the rulings or judgments of some Indian High Courts like High Court of Bombay and Calcutta, etc, which are though judicial precedents but in no way can be called as principles of Muslim Personal Law (For example paragraphs 322 and 333 (3) are based on judgments of Bombay High Court. Similarly some of the paragraphs are opinions of other English authors (for example paragraphs 333, 334 and 336(v)(ii) are based on opinion of Baillie.

v. Some paragraphs in the book are based on customary laws prevalent in some territories of India predominantly Muslim

population of a specific area of India. Such customary practices cannot be generalized as an Islamic principle for Muslims generally and more specifically they have no relation whatsoever with the Muslim population of Pakistan For example Para-172 which reads as:

"172. Gift by a Muhammedan governed by Marumakkatyam law to a tawazhi.-A tawazhi consists of a mother and all her children and descendants in the female line. It is a corporate unit, and capable of holding property as such. Therefore, where a Muhammedan who follows the Marumakkatyam law, makes a gift of property to his wife and all her children constituting a tawazhi, without any expression of intention as to how they are to hold and enjoy it, the gift will be deemed to be a gift to the tawazhi, and the donees will take the property subject to the incidents of an ordinary tawad or tawazhi property, one of which is impartibility. But when the gift is to the wife and her children by him, to the exclusion of her children by a former husband, the gift cannot be deemed to be one to a tawazhi, and the donees will take the property as tenants-incommon in equal shares with power to alienate their respective interests."

vi. At some instance it appears that it is a mere legal cross-reference book when it refers to some other enactments, for example paragraph 225 contains the reference of enactments relating to administration of trust which apply to Wakf also. Para 225 is reproduced as under:

"**225. Enactments relating to administration of trust, which apply to Wakfs also**.---The following is a list of enactments which provide for the protection, enforcement and administration of public endowments:--

(i) Official Trustees (Act II of 1913)

(ii) Charitable Endowments Act VI of 1890, sections 2, 3, 4, 5, 6 and 8.

(iii) Religious Endowments Act (XX of 1863), section 14.

(iv) The Code of Civil Procedure, 1908, sections 92-93. (v) Charitable and Religious Trusts Act (XIV of 1920)." vii. At times it contains suggestions for the Court the manner to decide an issue which in no way can be

binding upon any Court of Pakistan. Para 204 is reproduced herein below:

"204. Appointment of Mutawalli.---(1) The founder of the Wakf has power to appoint the first Mutawalli, and to lay down a scheme for the administration of the trust and for succession to the office of Mutawalli. He may nominate the successors by name, or indicate the class together with their qualifications, from whom the Mutawalli may be appointed, and may invest the Mutawalli with power to nominate a successor after his death or relinquishment of office.

(2) If any person appointed as Mutawalli dies, or refuses to act in the trust, or is removed by the Court, or if the office of Mutawalli otherwise becomes vacant, and there is no provision in the deed of Wakf regarding succession to the office, a new Mutawalli may be appointed.

(a) by the founder of the Wakf;

(b) by his executor (if any);

(c) if there be no executor, the Mutawali for the time being may, subject to the provisions of section 205 below, appoint a successor on his death-bed;

(d) if no such appointment is made, the Court may appoint a Mutawalli. In making the appointment the Court will have regard to the following rules:-

(i) the Court should not disregard the directions of the founder except for the manifest benefit of the endowment;

(ii) the Court should not appoint a stranger, so long as there is any member of the founder's family in existence qualified to hold the office;

(iii) where there is a contest between a lineal descendant of the founder and one who is not a lineal descendant, the Court is not bound to appoint the lineal descendant, but has a discretion in the matter, and may in the exercise of that discretion appoint the other claimant to be Mutawalli."

[Emphasis added]

Secondly; The very title of the work "Mohammedan Law" contains a term "Mohammedan" this term is often criticized by Muslims of the sub-continent which was and is alien to Muslims in the context in which it was used by the compiler of the work i.e., D.F. Mulla. M. Hidayatullah, the Chief Justice of India has stated in the Preface of his book Mulla's Principle of Moharnmadan Law (16th edition

1968) as "The name of the book "Mahomedan Law" has been retained but I may say that this expression was coined by the English,

Islamic law was not Mahomed's Law. The expressions 'Mahomedan' and 'Mahomedanism' are not correct and, in a sense, are even objectionable. The proper expressions are Islamic Law and Muslim Law. The Pakistani Courts have shown preference for these two expressions and writers on the subject prefer one or the other of the two latter expressions." Modern Muslims dislike the terms Mohammedan and Mohammedanism, which seem to them to carry the implication of worship of Mohammed, as Christian and Christianity imply the worship of Christ. Although the work itself is a result of hard work but mere using a 'misnomer' for referring it in its title made the whole effort bit controversial amongst the population for which it was compiled by its compiler. According to Merriam Webster Dictionary it was first used in English in 1681 whereas the Oxford English Dictionary cites 1663 as the first recorded usage of the English term. According to Cambridge Dictionary this word "Mohammedan" was previously often used for "Muslim" in English, but Muslims consider it offensive because it suggests that they worship Mohammed rather than Allah. Apparently, there is no conspiracy behind its use as suggested by some. The English word is derived from New Latin Mahometanus, from Medieval Latin Mahometus, Muhammad. Perhaps it is an example of existing gulf and misunderstanding between the major cultures and religions of the world that existed in eighteenth and nineteenth centuries which dispersed and dispelled with globalization. Now, the term 'Mohammedan' has been largely superseded by Muslim or Islamic. Mohammedan was commonly used in English and other

European languages literature until at least the mid1960s.The term Muslim is more commonly used today at the wake of globalization, and the term Mohammedan is widely considered archaic or in some cases even offensive. The American Heritage Dictionary of the English Language, Fourth Edition (2000) annotates the term as "offensive" Muhammadan and Mohammedan are based on the name of the Prophet Mohammed (S.A.W), and both are considered offensive [Kenneth G. Wilson, The Columbia Guide to Standard American English, p. 291]. The Oxford

English Dictionary has "its use is now widely seen as depreciatory or offensive", referring to English Today "The term Mohammedan [...] is considered offensive or pejorative to most Muslims since it makes human beings central in their religion, a position which only Allah may occupy". With this felonious feeling associated with the title of any scholarly work makes it difficult to place it at any higher place.

Thirdly; the appreciation and use of this book in the legal fraternity since 1905 to 1947 is different from its use after the independence of Pakistan. After independence, the superior Courts of Pakistan started viewing this book differently and all the other books of this category i.e. which are the part of Anglo-Mohammadan Legal Literature. Though the work done by Mulla being a non-Muslim is remarkable and quite comprehensive, at least to the extent of topics of Islamic Law which are included in this book in certain way; but the very understanding of the basis of Islamic Jurisprudence is somewhat lacking. This aspect becomes evident from the very start of the book where it explains the `Sources of Islamic Law' in paragraph 33 of his book as:

> "33. Sources of Muhammedan Law.---There are four sources of Muhammedan Law, namely, (1) the Koran; (2) Hadis, that is, precepts, actions and saying of the Prophet Mohammad, not written down during his lifetime, but preserved by tradition and handed down by authorized persons; (3) Ijmaa, that is, a concurrence of opinion of the companions of Mohammad and his disciples; and (4) Qiyas being analogical deductions derived from a comparison of the first three sources when they did not apply to the particular case." [Emphasis added]

The term "Source of Islamic Law" is a comprehensive term which is defined by the Supreme Court as :

(i) The First Source, The Holy Qur'an.---This is the first and the great legislative Code of Islam. To the writers on the Muslim Law, Qur'an is the first source of law in point of time no less than in point of importance. It is original, primary, basic and most fundamental source of the Islamic Shariah. It is the Last Book of His revelations for entire humanity. Hence, its teachings shall ever remain the fountain of all guidance of all times, ages and people. On points and matters where there is a direct mandate of the Holy Qur'an the same are to be decided and handled in accordance therewith.

(ii) The Second Source: The Sunnah.--(i.e. the Hadis, i.e. the precepts, actions and sayings of the Holy Prophet (may peace and blessings of God be on him) are then the second source of Islamic Law. For relationship between the Holy Qur'an and the Sunnah and for its sanction in the Holy Qur'an itself see a detailed discussion in "A Code of Muslim Personal Law" by Dr. Tanzil-urRahman (at pages 3 to 9). The Sunnah may be three types namely(i) Sunnat-ul-Qaul (سنتہ القول) i.e. -all words, counsels or precepts of the Prophet; (ii) Sunnat-ul-fieel (سنتہ الفعل) ",,. i.e. his actions, works and daily practices ; and (iii)

Sunnat-ul-taqrir i.e. his silence implying a tacit approbation on his part of any individual act committed by his disciples. At this place it may be mentioned that all the Hadis collectively can further be classified into three categories from the point of view of their inter se priority. The order of their priority is as follows :--

(1) Ahadis-i-Mutawter (احادیث متواتر) These are those traditions which have received universal publicity and acceptance in each one of the three periods namely (a) the period of the "Companions who were more righteous and had often shared the counsel of the Holy Prophet; (b) the eriod of the Successors of the "Companions" known as Tabaeen; and (c) the period of their successors known as Taba-e-Tabaeen (تبع تابعین)

(2) Ahadis-i-Mashhura (احادیث مشهوره) These are those traditions which through known publicly by a great majority of people, do not possess the character of universal frame. They carry conviction of genuineness but are reported by a limited number of "Companions" and thereafter in the two successive periods aforesaid.

(3) Ahadis-i-Wahid (احادیث واحد) These are those traditions which depend on isolated individuals.

(iii) The Third Source': Ijma'a (اجماع) It is of three types, namely:

(i) Ijmaa, i.e. consensus of the "Companions" of the Holy Prophet which is universally accepted throughout the Muslim world and is unrepeatable (ii) Ijmaa of the jurists; and (iii) Ijmaa of the people, i.e. the general body of the Muslims. It is to be mentioned that in this way Ijmaa cannot be confined or limited to any particular age or country. It is completed when the jurists, after due deliberation, come to a finding. It cannot then be questioned or challenged by an individual jurist. Ijmaa of any age may be reversed or modified by the Ijmaa of the same or subsequent age.

(iv)The Fourth Source : *Ijtehad by Qyas* or analogical deductions. It is an extension of law from the original text by means of common cause or effective cause, i.e. 'illat'. It is a process of deduction which is not to change the law 'of the text. It is applicable in cases not covered by the language of the text, but may fall under the reason of the text. Therefore, in importance, Qyas, occupies a place next to the Holy Qur'an, Hadis and Ijmaa.

v) There are other sources also like (i) Istihsan; (استحسان) (ii) Istislah (استصلاح) (iii) Maslaih-al-Mursalah (مصالح مرسلہ) (iv) Istidlal (استدلال) (v) Illat (علت) (vi) Urf (عرف) and (vii). Taqlid (تقلید) etc. We need not go into the detailed discussion of all these and for our purpose it is sufficient to mention that these are all methods through which the law from the Holy Qur'an and the Sunnah is deduced, those two remaining the fundamental and primary sources at all times (and often termed as the "text" or the "original text")."[Ref: PLD 1980 SC 160, para 4]

Fourthly: D.F. Mulla's book Principles of Muhammadan Law and all the other books which are part of legal literature generally called as "Anglo Muhammadan Law" as explained in paras 8 and 9 supra are remarkable work being the first of its kind in the English language, there

is an inherent problem of understanding of Islamic
Jurisprudence in it in a traditional sense. All their authors were English trained lawyers and they were instrumental in solidifying the colonial rule over the Muslim subjects trying to produce a genre of so-called Muslim personal law in English language in somewhat 'codified' manner they helped to placate the Muslim population against the British rulers. They help to make an aura and impression of congeniality amongst the Muslim subjects towards the rulers. They all worked painstakingly, meticulously and thoroughly in the compilation of Anglo-Muhammadan literature. In some cases, they did the translation of the old source material in English too; but they all remained limited and restricted towards adopting the Fatawa or the opinions of the Ulema of Hanafi school of thought. This was because of the obvious historic and political reasons specific both of that era and area. Sub-continent was ruled by the Mughals and Hanafi Fiqh was the official Mashab of the Mughals, Fatawa-i-Alamgiri was the major book which was in vogue during that period. D.F. Mulla's book as well as all the other books of its category lost their relevance after the creation of Pakistan apart from other reasons, one reason is their somewhat time bound and myopic view of Muslim Personal law which was restricted only to the fatawa of Hanfi school. There is nothing wrong in practice as such, but the English rulers did not understand the fact that Islamic Jurisprudence or Fiqh is not subject to a stagnant theme. Islamic Fiqh gives you a general directions and ways and manner of thinking on the basis of settled principles called Usul al-Fiqh.

The basis of Islamic Injunctions is Quran and Sunnah as explained by the Constitution of the Islamic Republic of Pakistan in its Article 227.

"Provisions relating to the Holy Quran and Sunnah.-

(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to
such injunctions.

Explanation.-In the application of this clause to the personal law of any Muslim sect, the expression

"Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of nonMuslim citizen their status as citizens."

18. In order to transform the provisions relating to the maintenance, Section 9 of the Muslim Family Laws Ordnance 1961 was amended through Muslim Family Laws (Amendment) Act, 2015 and Sub-Section 1-A was added to the following effect:-

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

Section 17-A of the West Pakistan Family Courts Act, 1964 was also substituted through Family Courts (Amendment) Act, 2015 so as to safeguard the rights of wife and children during pendency of the suit, which reads as under:-

> "**S.17-A. Suit for maintenance**.- (1) In a suit for maintenance, the Family Court shall, on the date of 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.

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stands 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.

19. So far as the liability of the petitioners being the uncles of the minor to pay maintenance is concerned, similar proposition previously came under discussion in the case of *HASSAN AHMED KHAN KANWAR and others versus ADNAN HASSAN and others* **(2020 CLC 1701)** and it was held as under:-

> "6. …So far as objection raised by the learned counsel for the petitioners that after the death of petitioner No.1 Hassan Ahmad Khan, his legal heirs are not liable to pay the maintenance allowance, suffice it to say that this argument is misconceived because admittedly the inherited property of the respondent No.1 is still in possession of the petitioners and the respondent has right to receive the maintenance as well as fruits of his owned share of land in shape of mesne profit as well till the possession of the land is given to him. The question regarding the payment of maintenance has already been answered by the learned appellate court while passing the impugned judgment and decree dated 23.12.2014 reproduced in para-54 above. When question confronted by this Court to the learned counsel for the petitioners whether the possession of the land owned by the respondent No.1 is handed over to him, he frankly admitted that possession of the land is still with the petitioners which has not yet been handed over to the respondent but in this regard, a separate litigation is pending. There is no any substance in the objection raised by the petitioner on the execution of the decree. The petitioners are duty bound to pay the maintenance allowance until and unless they are enjoying the possession of the land owned by Mohy-ud-Din father of the respondent No.1. As such, the learned courts below rightly passed the impugned orders and no illegality has been committed."

20. It is established fact on the record that Muhammad Bashir (grandfather) was owner of two houses and agricultural land and on

his death, suit properties have devolved upon not only the petitioners but the "respondent". Admittedly, properties are under possession of the petitioners and they are deriving benefits therefrom. There is a command by the Almighty Allah in *Surah* 6 *Al-An'am, Ayat* 152 prohibiting the use of property of the orphans, which is reproduced below:-

وِلَ تَ قۡرَبُ وۡا مَالَ الۡيَتِيۡمِ ا لَ بِ ِل تِ ۡ ِ هِيَ احۡسَ ن حَ تِٰ يَ بۡ

ل غَ ا ش ده ۡ وَاوۡف وۡا الۡكَيۡلَ ۡ ُ وَالۡمِيۡ زانَ بِلۡقِسۡطُ ۡ لَ ۡ َ ن كَلِ فُ

ن فۡسًا ا لُ َ وسۡعَهَاُ وَاذا ق لۡت مُ ۡ فاعۡ دل وَلۡوَلوُ ۡ كَ ۡ انَ ۡ ذَاُ

ق رۡبُ ۡ وَبعَهۡدِ ۡ ُ ا لِلُ ۡ اوۡف وۡاُ ۡ ذُ ۡ ُل كُمۡ ۡ ُ وَ صُ ۡ كُمۡ ۡ ُ بِهُلعَل كُمۡ ۡ تذ

ك روۡنَ ۡ ُ ﴿152:6﴾

> "And do not come near the wealth of the orphan—unless intending to enhance it—until they attain maturity. Give full measure and weigh with justice. We never require of any soul more than what it can afford. Whenever you speak, maintain justice—even regarding a close relative. And fulfil your covenant with Allah. This is what He has commanded you, so perhaps you will be mindful."

The petitioners are since deriving benefits from the properties inherited from their father, who was (grandfather) of the "respondent" so they are liable to pay the maintenance till handing over the share of the "respondent" in the estate left by her deceased grandfather.

21. From the above noted Islamic principles, it can easily be inferred that if the minor had no property or the income from his/her properties is insufficient to meet his/her needs after its possession has been handed over to him/her, the uncles would be liable to pay 2/3rd of the maintenance fixed by the court on account of their

kinship and rest of 1/3rd would be contributed by the mother of the minor.

22. There can be another eventuality that no one is available to look after the minor. In such a situation, we cannot lose sight of the fact that we are citizens of an Islamic State and cannot leave the minor(s) at the mercy of socio-economic miseries. In the case of *ABDUL MAJEED VERSUS ADDITIONAL DISTRICT JUDGE AND OTHERS* **(PLD 2012 Lahore 445)**, a learned Single Bench of this Court dealt with the issue in the following manner:-

> 22. The State by feeling its responsibility, both at Federal and Provincial level, has constituted the institutions for social welfare and Bait-ul-Maal is one of such institutions and in establishment of Bait-ul-Maal the Province of Punjab has taken lead when through Act, VII of 1991 i.e. the Punjab Bait-ul-Maal Act, 1991, was promulgated on 30th March, 1991 and the basic principle of said legislation was to provide for the establishment of charitable funds and by virtue of Section 5 of the said Act, the utilization of the Bait-ul-Maal has been provided, which includes the relief and rehabilitation of the poor and the needy, particularly poor widows and orphans, educational assistance to the poor and deserving students and other purposes also. There are District Bait-ul-Maal Committees in view of Section 7(3) of the said Act working at all district levels.
>
> 23. In addition to above legislation there is also a Zakat and Ushr Ordinance (XVIII), 1980, which provides the manner of collection of such funds and utilization thereof includes the assistance to the needy, particularly the orphans and widows by virtue of Section 8 thereof, which is reproduced herein below:-
>
> 8. **Utilization of Zakat Funds**.---The moneys in a Zakat Fund shall be utilized for the following purposes, namely,
>
> (a)assistance to the needy, the indigent and the poor particularly orphans and widows, the handicapped and the disabled, eligible to receive Zakat under Shariah for their

subsistence or rehabilitation, either directly or indirectly through Deeni Madaris, or educational, vocational or social institutions, public hospitals, charitable institutions and other institutions providing health care.

24. The system of Zakat can be linked up with the Family Courts to the extent that if the Family Court is of the view that the persons liable to pay maintenance are poor and those who should have to receive maintenance also fall under the clause of eligible persons entitled to receive Zakat funds, then the suitable directions to Zakat and Ushr Council be also issued.

25. At Federal Level, considering the responsibility of the State in different social matters institution under the name of Pakistan Bait-ul-Maal has been established by promulgating Pakistan Bait-ul-Maal Act, 1991, which opened with the wording of preamble as under:-

WHEREAS it is the duty of the State to provide for basic necessities of life, such as food, clothing, housing, education and medical relief for all citizen irrespective of their sex, caste, creed or race, who are permanently or temporarily unable to earn their livelihood on account of sickness or unemployment or circumstances beyond their control. Section 4 of Pakistan Bait-ul-Maal Act further elaborate its purposes in the following manner:--

(4). **Administration of Bait-ul-Maal**.---The Bait-ul-Maal shall be administered by the Board and the moneys in the Bait-ul-Maal shall be utilized for the following purposes namely:--

(a)to provide financial assistance to destitute and needy widows, orphans, invalid, infirm and other needy persons"

(b)……

26. There is also a Child Support Programme under the

Pakistan Bait-ul-Maal scheme and its objectives naturally contain to promote primary school education and to reduce dropout ratio by providing additional resources to ultra poor families for sending their children to schools.

27. In the Local Government Ordinance, promulgated in all provinces simultaneously the needs of poor and needy persons are catered under the head of Community Development by constitution of Social

Welfare Institutions, Bait-ul-Maal Wing and relief and rehabilitation proceedings at District level.

28. The over-all picture emerges before us in view of analysis of all what has been discussed above is, that on papers, we have announced good ideas, but its practical effect is no where seen and the persons like petitioner, who themselves deserve to be looked after or maintained, are burdened to share their, what they are getting a meager amount with others, and in such manner, we are pushing the people behind poverty line, where reportedly 40 % of our population is already suffering miseries by living under that poverty line.

29. We have to look forward, if we want to live in a dignified manner, not only as a State, but also in all our individual lives and we have to pay respect and dignity to the people, with whom the social contract in the shape of Constitution has been entered into by the State through the chosen representatives of the people.

30. Our Family Courts are also expected not to deal with the delicate matters touching the rights of the people, particularly the destitute ladies and needy minors and instead of dealing with their such affairs in a mechanical manner, there is a need to adopt a new line of action to start with the creation of a society, which is dreamed of as a social welfare State. By putting the persons behind the bars for non-providing the maintenance to deserving people, no service is being offered to such needy people, but their miseries are being added. This needs some new venues to be opened and it is suggested as follows:--

    (i) The legislators and the Pakistan Law Commission, which recommends suitable legislation, are to take steps to amend the provisions of Section 9 of Muslim Family Laws Ordinance, 1961. Section 5 and Schedule of West Pakistan Family Courts Act, 1964, to enable the minors to get their right of maintenance through a recognized mode of law through judicial process,

    (ii) The Family Courts in the Province, if reached to the conclusion that father or the grand-father, as the case may be, are themselves not in a position to afford in easy circumstance to maintain their dependents, after an inquiry as provided in C.P.C. for pauperism, to direct the plaintiffs before the said courts to implead the State as a respondent in the pending list and then

to direct the relevant organ or authority of the State, including Bait-ul-Maal and the Local Governments to regularly pay the determined maintenance to the minors. Needless to mention here that when the right of the minors or ladies seeking maintenance has been determined by a court of law, there will be no further need to verify their such claims by the organ or authority, which would be directed to pay the maintenance to such people.

31. The office is directed to circulate the copies of this judgment to all the learned District Judges in the Province, who will direct the learned Judges of the Family Courts to observe the procedure as is proposed above.

32. In order to ascertain as to what is the position in District Faisalabad with regard to the Community Development Program, which is a part of the Bait-ul-Maal Scheme, report was solicited from District Co-ordination Officer, Faisalabad and the same was furnished through the Provincial Law Officer and the D.C.O. has reported that the Community Development Department of City District Government, Faisalabad is actively helping the weaker parts of the society. The D.C.O., Faisalabad is directed to register the minors, viz, Arman Tayyab son of Muhammad Tayyab Majeed and Mst. Zainab Tayyab daughter of Muhammad Tayyab Majeed, residents of House No.151-D, St.No.4/5, Mohalla Fateh Abad, Faisalabad, as regular beneficiaries from District Bait-ul-Maal and Rs.5000/- per month per minor, is to be regularly paid to them without any break or fail w.e.f. May, 2012. The son Arman Tayyab is entitled to continue to get the maintenance till his age of majority, whereas the daughter Mst. Zainab Tayyab is entitled to get the maintenance till her marriage. 10% annual increase will be added in the fixed maintenance. The compliance report be furnished by the D.C.O. to the Deputy Registrar (Judl.) of this Court for examination by the Court within a fortnight."

23. The nutshell of above noted threadbare discussion is that the petitioners have failed to point out any illegality or material irregularity in the impugned judgment. Resultantly, this petition fails and is **dismissed** with no order as to costs.

24. Before parting, I deem it apt to appreciate the assistance rendered by the *amici curiae*, which enable this Court to reach at this conclusion.

25. These are the detailed reasons of my short order dated 22nd April, 2024, which reads as under:-

> "For the reasons to be recorded later, this petition is dismissed with no order as to costs."

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE