

Form No.HCJD/C-121  
ORDER SHEET  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.40877 of 2021**

**Muhammad Riaz Ahmad**  
**Versus**  
**Mst. Shaheen Akhtar etc.**

Sr.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signatures of Judge and that of parties or counsel, where necessary.
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10.11.2022 Mr. Muhammad Jameel Rahi Sapra, Advocate for the  
petitioner.

Through this petition under Article 199 of the  
Constitution of the Islamic Republic of Pakistan, 1973,  
the petitioner has challenged the vires of judgment &  
decree dated 15.12.2020 passed by the learned Judge  
Family Court, Phalia who partially decreed the suit of  
respondents No.1 & 2 for recovery of marriage  
expenses of respondent No. 2 to the tune of  
Rs.1,50,000/- and also assailed the judgment & decree  
dated 26.05.2021 passed by the learned Addl. District  
Judge, Phalia who partially accepted the appeal of the  
petitioner, modified the judgment & decree of the  
learned trial court and decreased the amount of  
marriage expenses from Rs.1,50,000/- to Rs.1,00,000/-.

2. Brief facts of the case are that the petitioner  
contracted marriage with the respondent No.1, Mst.  
Shaheen Akhtar and during this wedlock, respondent

No.2/Mst. Maryam Riaz was born. The relationship between the spouses came to an end by pronouncement of divorce by the petitioner to respondent No.1, however, the respondent No.2 grown up while being in custody of her mother/ respondent No.1. That the marriage of respondent No.2 was solemnized with one Nawazish Ali and at this marriage ceremony total expenses amounting to Rs.3,00,000/- were afforded by the respondent No.1 who demanded the above said amount from the petitioner/defendant, the real father of the respondent No.2 but he refused to accept the demand of the respondents. This gainsayal resulted into filing of the suit. Petitioner filed contested written statement. As per divergent pleadings of the parties, following issues were framed:

1. *Whether the plaintiff No.1 is entitled to a decree for recovery of Rs.03-Lacs incurred on the marriage of plaintiff No.2? OPP*
2. *Whether the plaintiff has not come to the court with clean hands and as such is not entitled to any relief? OPD*
3. *Whether the suit of the plaintiffs is false and frivolous and vexatious, as such liable to be dismissed with special costs? OPD*
4. *Relief.*

Both the parties lead their respective oral and documentary evidence. The learned Judge Family Court partially decreed the suit. Against the said

judgment & decree, the petitioner filed an appeal which was partially accepted by the learned appellate court and modified the decision of the family Court as mentioned in para one of the instant judgment. Hence, this writ petition on the ground that the petitioner being father of respondent No.2 has regularly paid the maintenance allowance to his daughter/respondent No.2 till her marriage, as such, he is not under obligation to pay her marriage expenses.

3. I have heard the learned counsel for the petitioner at full length and gone through the record with his able assistance.

4. As per divergent pleading the core controversy revolves around the pivotal question *whether a Muslim father is under an obligation to pay the expenses incurred on marriage of his unmarried daughter besides paying the maintenance allowance or 'maintenance' of a daughter includes the 'marriage expenses'?* To answer above question, this Court intends to go through the definition of word **maintenance**. In Pakistan, the Muslim Family Laws Ordinance, 1961 and the West Pakistan Family Courts Act, 1964 deal with issues relating to the maintenance of the child. However, the word/term 'maintenance' has not been defined in the aforesaid laws, as such, it

is appropriate to borrow its literal dictionary meaning.

The word ‘maintenance’ has been defined in Black’s Law Dictionary (9<sup>th</sup> Edition) as under:

“.....5. Financial support given by one person to another..”

In Oxford Dictionary it has been defined as under:

“The money needed for somebody's living expenses; the act of providing this money.”

It has been defined in Para 369 of the Muhammadan Law as:

**“369. Maintenance defined.**—“Maintenance” in this Chapter includes food, raiment and lodging.”

The word ‘maintenance’ is derived from Arabic word ‘*Nafaq*’ which means ‘to spend’ and in literal sense, the word ‘*nafaqah*’ means what a person spends on his family. It is an inclusive explanation of the concept, not exhaustive and is only indicative in nature. Other liabilities are also included within the sweep of the concept of maintenance i.e. medical expenses, education expenses etc., can also go into and constitute the concept of maintenance. The right of maintenance does not limit itself only to food, raiment and lodging but also entails all the other necessary expenses for the mental and physical wellbeing of the recipient. As per Para 370(1) of the Muhammadan Law, a father is bound to maintain his daughter till she gets married.

For reference, Para 370(1) is reproduced as under:

**“370. Maintenance of children and grandchildren.—**

**(1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married.** But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (S. 352) does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.”

(emphasis supplied)

As per Section 9 (1-A) of the Muslim Family Laws Ordinance, 1961 [inserted through the Punjab Muslim Family Laws (Amendment) Act, 2015], if a father fails to maintain his child, legal remedy is provided to the mother/grandmother of the child in term of raising the said grievance before the Chairman. For reference, aforesaid provision is reproduced as under:

“9. Maintenance.-(1).....

(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.”

The maintenance paid by a father to his child is not a courtesy rather a religious, legal, moral and social duty of a father which cannot be put aside on frail grounds. Article 35 of the Constitution of the Islamic Republic of Pakistan, 1973 provides protection to the mother and child. For reference, aforesaid Articles are reproduced as under:

“35. The State shall protect the marriage, the family, the mother and the child.”

The above discussion lead to draw a conclusion that it would be absolutely safe to include marriage expenses also within the sweep of the concept of maintenance of an adult unmarried daughter.

5. The responsibility of the Muslim father is to act as guardian of his unmarried daughter. Even when a woman has attained puberty/majority she needs the help and assistance of her father to formally enter matrimony. The father must function as guardian on her behalf in such marriage to enable his daughter into the contract of marriage. This paramount responsibility of the father as guardian at the time of marriage of his daughter must necessarily bring with it the corresponding obligation to ensure that all necessary expenses in connection with the marriage are met by him. Father has the indisputable obligation to maintain his unmarried daughter and he has the obligation to ensure that the unmarried daughter under his charge is given away in marriage properly, as such the legal obligation to meet the reasonable marriage expenses of his daughter, as part of his obligation to pay maintenance to her. The responsibility of arranging marriage of a daughter undoubtedly not only requires emotional stress but also fall heavily on guardian's pocket. Admittedly, a father is bound to maintain his

daughter till her marriage but at eve of her marriage, how the burden of ‘maintenance’/monetary obligation can be shifted to a mother, who does not figure anywhere in the compulsion to provide ‘maintenance’ to his children. This will not only financially burden the person (a mother) to bear the marriage expenses of her daughter but also will be against the legal norms. The Kerala High Court has elaborated the issue of payment of marriage expenses of an unmarried daughter by her father in a judgment cited as Ismayil Vs. Fathima [2011 (3) KHC 825], the relevant portion whereof is reproduced as under:

“29. We are of the opinion that the above stipulations in the Personal Law, though they do not afford direct assistance to us on this controversy, can also be relied on to reach the conclusion that the Muslim father has the indisputable obligation to maintain his unmarried daughter. We find it safe to proceed to further hold that he has the obligation to ensure that the unmarried daughter under his charge is given away in marriage properly. He hence, has we hold, the legal obligation to meet the reasonable marriage expenses of his daughter, as part of his obligation to pay maintenance to her.

.....28. The above discussions lead us to the conclusion that the right/obligation to maintain the unmarried daughter includes the right/obligation to meet the marriage expenses of the unmarried daughters. This is so for all fathers - be they Hindus, Muslims, Christians or others. We adopt the following process of reasoning to, reach that conclusion. They all have the duty under their personal law to maintain their children. Even ignoring the personal law, as declared in Matliew Varghese (supra), such a right/duty can be spelt out from Article 21 of the Constitution. Duty to maintain is not limited to provide for food, raiment and

lodging. It includes the duty of the obligee to do all acts for the physical, mental and moral well being of the child. That duty has to be understood in the context of the Indian society in the modern constitutional republic. The concept has to be understood identically for persons belonging to all religious faiths in the secular polity. Where the inter pretor has elbow room, he must invoke the power of interpretation as a functionary of the State consistent with the mandate of Article 44 of the Constitution. The interpreter need not wait for the Parliament to enact a uniform civil code. Till that is done by the Parliament, the interpreter as a functionary of the State must draw inspiration from Article 44 of the Constitution in performing the duty/power of interpretation. So reckoned the duty to maintain the unmarried daughters under the personal law must in the present day Indian context include the obligation to meet the Carriage expenses of the unmarried daughters. For all members of the Indian polity, this has to apply. The Muslim father also, we hence hold, has the obligation to pay/meet the marriage expenses of his unmarried daughter. We must hasten to observe that the right/duty is only to meet the reasonable expenses, that too only when the daughter is dependent on the father.”

In view of above discussion, the answer to the question proposed earlier, is that a father is not only bound to maintain his daughter by providing financial support for her food, clothes, lodging, education, health etc. till her marriage but also responsible to bear the expenses incurred on her marriage according to his financial status.

6. Another aspect of the case is that it was second marriage of the petitioner with the respondent No.1, out of which respondent No.2 was born whereas petitioner from his earlier wedlock, has five daughters



who were/are maintained by the petitioner without any inconvenience or any excuse of any financial hardship. It can safely be presumed that at the time of respective marriages of his daughters from first wife, he would have faced all the required expenses without any hesitation. The petitioner/ defendant has not disputed the solemnization of marriage of his daughter/respondent No.2 rather he is objecting the claim of the respondents/plaintiffs towards payment of the expenses of marriage of respondent No.2. This contumacious refusal of the petitioner to pay the marriage expenses of his daughter/respondent No.2 is amount to penalizing her due to the reason that she has been living with her mother, who has been divorced by the petitioner which dissimilar treatment is evident discrimination among the daughters unfortunately applied by the father/petitioner.

7. The respondents/plaintiffs, through their suit, prayed for grant of Rs.300,000/- as marriage expenses whereas the learned Judge Family Court accepted the claim to the tune of Rs.150,000/-. Only the petitioner challenged the said decree through an appeal and the learned appellate Court, after considering and appreciating the oral as well as documentary evidence of the parties, reduced the quantum of amount from

Rs.150,000/- to Rs.100,000/-. Once again, the petitioner, instead of paying the said amount to the respondents filed the instant petition which shows his callousness towards his daughter/respondent No.2. The amount granted by the learned appellate Court, keeping in view the current financial needs as well as the social norms does not seem to be excessive as compare to the financial status of the petitioner, as such these findings do not require any indulgence by this Court in its constitutional jurisdiction.

8. Resultantly, this writ petition is **dismissed** in *limine* being devoid of any merits.

**(CH. MUHAMMAD IQBAL)**  
**JUDGE**

Approved for reporting.

**JUDGE**