

The Role of Muslim Family Law Ordinance 1961 in Protecting the Rights of Women, Case Studies from Mardan District

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Abstract



Spouses have several obligations over one another. In a marriage, the husband has rights over his wife and the wife has rights over her husband. Among these rights, the right of maintenance of wives is one of the most important. Numerous laws are there to protect the right of maintenance for wives. The Muslim family law ordinance of 1961 is one such law that ensures that women are treated fairly. Moreover, Islam also provides an explanation for the rights of partners in an Islamic marriage. If the terms of marriage declared at the time of Nikah are not satisfied, then the wife has the authority to seek help. Islam even gives women the right to get a divorce, if she is not treated or if her needs and rights are not satisfied. It is the foremost duty of husbands to look after their wives. They are accountable for giving them mental and physical support as well as financial support. Therefore, it is evident how much importance women have in Islam and how important maintenance is for Muslim women.

Keywords: Maintenance of Wives, Muslim Family Law Ordinance 1961, Case Studies, Mardan District.

Introduction

Islam is a religion that has a legal framework for all Muslims. These rights govern our day-to-day life. Some of these rights are for spouses for the purpose to bring peace, love, and harmony among them. Islam gives foremost importance to the family, as it holds the society together. In Islam, a family has both a political as well as a social role. Spouses have several obligations over one another. In a marriage husband has rights over his wife and the wife has rights over her husband. Among them, maintenance is one of the most important ones. Numerous laws are there to protect the law of maintenance for wives. Islam has rules and responsibilities that govern every aspect of our life. There are rules for married life also because marriage is considered a sacred relationship. Where both males and females have rights over one another. One special such right is of maintenance of wives on their husbands. Maintenance of wives means to look after every need of wives by their husbands. These needs are but are not limited to food, a roof overhead, clothing, etc (Kapoor, 2018).

The teachings of the Holy Quran have declared the importance of Maintenance:

“Treat women properly” (“Surah Al-Nisa: 19”).

“And on the child’s father [the husband] is their food and clothing.” (Surah An-Nisa, 233)

“Men are the protectors and maintainers of women because God has given the one more (strength) than the other, and because they support them from their means.” (Surah Al-Nisa, 34)

Pakistani law is helping women by protecting their rights of maintenance (Shahid, 2013). Moreover, it is important to mention that lawful entity in Pakistan has made some changes to accommodate the modern needs and requirements in the maintenance rights of women (Critelli, 2012). The main objectives of this Study are,

To identify the law of maintenance under Islamic and domestic law of Pakistan.

To find out problems that women face related to maintenance.

To find out how these laws are applied in selected cases in Mardan.

To suggest ways for improving the existing laws of maintenance in Pakistan.

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Research Questions

This study aims to answer the following questions:

What solutions are available to the wife under the Islamic and domestic laws of Pakistan if the husband fails to fulfil the maintenance of his wife?

How the maintenance law is relevant in Pakistan?

How can these laws be further improved?

How these laws are applied in selected cases in Mardan?

Significance of the study

Family laws hold a very important position in Muslim societies. The establishment of the “Muslim Family Law Ordinance 1961” safeguarded the rights of Muslim wives under the law of maintenance. The significance of this study is to explore laws of maintenance in Pakistan and also analyze them to identify their limitation and scope. It will also suggest and measures recommendations for improvement of the law of maintenance.

Literature Review

The maintenance of wives has been debated extensively in literature throughout history. According to the edict of the “Mulla’s Muhammadan”, “it is the right of the husbands to look after their wives (Ali, 2002; Greenhalgh et al., 2016; Haider, 2000). However, if their rights are not fulfilled, women can take the help of legal authorities and apply for the maintenance right in front of the lawful authority” (Mullah’s Muhammadan Law Section 278). Islamic Law had given every wife the right to maintenance, article one of the laws of 1920 edicted that maintenance is a total set of rights owed by the husband to his wife (Laeheem, 2020; Odimegwu, Odimegwu, & Bakker, 2020). To explain the example of family, “the wife has been described as the root of the plant while the children of a man are described as the branches of that plant”. This shows how much importance is given to the wife in Islam. And how much crucial maintenance for women (Batool & Zia-ul-haq, 2019; Saeed & Atta, 2018). However, if she disobeys her husband and is dishonest, she will be deprived of her rights and privileges of maintenance (Ali, 2002; Haider, 2000). Moreover, if a woman is a divorce, she will have the privileges of maintenance until her iddat period is over. After the completion of the Iddat duration, a woman will not be able to claim the maintenance from her spouse. Moreover, even if she seeks to file a complaint against her husband, she will be at a disadvantage.

Maintenance is compulsory upon the husband to pay during the period of marriage and after divorce, till the end of the iddat period (Batool & Zia-ul-haq, 2019). According to Imam Shafi (Muslim Jurist), the husband is duty-bound to fulfill all the needs of his wife along with sustenance but also to maintain her with medicines, clothing, suitable housing, etc. (Laeheem, 2020; Odimegwu et al., 2020).

Apart from Islamic laws, Hindu laws also protect the maintenance of wives. Section 18 to 28 deals with the right to maintenance of Hindu wives. According to section 18, in Hinduism, wives are given the rights of maintenance by their husbands (Garrusi, Nakhaee, & Zangiabadi, 2008). Moreover, they also have the right to live separately from their husbands (Section 18, Family Laws in India, Hindus Adoption and Maintenance act, 1956).

Case Studies

Case No:01

This case was heard before Zia Jehangir, Judge Family court, Mardan on 05/09/2015. Suit No 62/FC

Brief Facts of the Case

The plaintiff and defendant were married on 10-10-2014 for a Dower of two lakhs rupees, 10 tolas of gold, and a share of the defendant in his father’s house. The dower to the plaintiff is unpaid. Defendant used to treat the plaintiff harshly. Resulting in the plaintiff spending 10 months before this case at her father's house. During this time, the defendant didn’t provide maintenance.

The judgment of the Case

The court ordered that the defendant should give the dower to the plaintiff. And also, pay the maintenance allowance for the period of iddat.

Case No.02

This case was heard before Zia Jehangir, Judge family court, Mardan on 13/02/2015, Suit No 500/FC.

Brief Facts of the Case

The plaintiff filed suit against the defendant for the recovery of dowry and the medical expenses of their son. Plaintiff claims that the defendant expelled her from the house; therefore she was forced to

take refuge at her parent's house along with her son. The dowry at the defendant's house is being damaged. The defendant refused to return the dowry and also refused to pay the medical expenses.

The judgment of the Case

The court ordered the defendant to pay the pending medical expenses, maintenance, and dowry, failing so will result in severe punishment.

Case No.03

This case was heard at the court of Nasir Khan, family judge, Mardan on 14/12/2010. Suit No 5/FC.

Brief Facts of the Case

Both parties were married for 9 years. Dower was set at Rs. 5000/- and 8 tola gold. They had three daughters and one son. Defendant has the custody of his daughters while the plaintiff has custody of her son. Defendant also lied about being a bachelor before marriage. After 5 years of marriage, the defendant started quarreling with the plaintiff on small issues. Finally, the defendant divorced and expelled the plaintiff from home without paying dower, dowry, and maintenance.

The judgment of the case

The court ordered the defendant to pay the maintenance amount as well as the dower and dowry to the plaintiff.

Case No. 04

This case was heard for dower, maintenance, dissolution of marriage, and dowry on 25/09/2014, Before Samina Sahar, Judge Family Court, Mardan. Suit No 397/FC.

Brief Facts of the Case

Plaintiff filed suit against defendant for Recovery of dower, maintenance, and Dissolution of marriage on the ground of cruelty. The plaintiff claimed that the defendant after his father's death began to gamble and used to beat her. Defendant demanded Rs.80, 000/-, which the plaintiff was unable to give. Resulting in the defendant physically hurting the plaintiff and expelling her from the house. Even after the intervention of jirga, the defendant didn't change his behavior. On 06/08/2014, the defendant divorced the plaintiff.

The judgment of the Court

The court ordered the defendant to pay the maintenance, dowry, and dower to the plaintiff. Mother is entitled to have custody of the children and the father will be allowed to visit once per month.

Case No.05

This case was heard at the family court, Mardan before Judge Qurat-ul-Ain on 30/03/2017. Suit No 82/FC.

Brief Facts of the Case

Both parties were married on 17.03.2012 with a dower of ten tola gold and ten Marla plots. The behavior of the defendant changed after the birth of their daughter. Plaintiff faced harsh treatment and medical negligence. The defendant expelled the plaintiff and her ill daughter. Plaintiff resided at her parents' house. The defendant didn't provide any maintenance during this period. Based on the cruelty of the defendant, the plaintiff requested the dissolution of marriage.

The judgment of the Court

The court ordered the dissolution of Marriage based on Khula. Ordered the defendant to pay the maintenance. The defendant also should provide maintenance to their daughter. Dowry shall be returned as agreed upon the plaint. Plaintiff should have custody of her daughter.

Case No.06

This case was heard on 26/10/2015 for recovery of maintenance, dower and dowry, and dissolution of marriage. Before Samina Sahar, Judge Family Court, Mardan. Suit No 158/FC.

Brief Facts of the Case

Both parties were married on 01.02.2015 and the dower was fixed which the defendant hasn't paid yet. The parents of the plaintiff also gave her dowry and two Tola gold. From the beginning of their marriage, the defendant used to beat the plaintiff regularly. The defendant was already married before marrying the plaintiff. 5 months ago, the defendant expelled the plaintiff from his home, and at this time, he didn't give any maintenance to the plaintiff. The defendant was asked several times to admit the claims of the plaintiff but he refused. Resulting in creating a rift between the two parties and now the plaintiff contends dissolution of marriage.

The judgment of the Court

The court ordered a partial decree because the plaintiff was not able to prove her case completely. Court-ordered Khula. The request for recovery of the dower is declined. Iddat starts from the day of the judgment of the case. The defendant will return the dowry to Plaintiff. Also, the defendant will provide the maintenance amount to the plaintiff.

Case No.07

This case was heard on 22/10/2016 for dissolution of marriage, Before Samina Sahar, Judge Family Court, Mardan. Suit No 437/FC.

Brief Facts of the Case

Plaintiff and Defendant were married for 12 years. 10 Tola gold was fixed as dower, which is the defendant hasn't paid yet. From the starting days of marriage, the defendant used to treat the plaintiff cruelly and maltreated the plaintiff finally removing the plaintiff from home. The defendant didn't provide any maintenance. The defendant was asked to admit the claims of the plaintiff, but he refused.

The judgment of the Court

The court ruled a partial decree and ordered Khula. Claims for dower are declined, the iddat period starts from the day of the judgment of the court. The defendant will provide the maintenance amount to Plaintiff. The defendant will also return the dowry to Plaintiff.

Case No.08

This case was heard on 31/10/2016, Before Zia Jehangir, Judge Family Court, Mardan. Suit No 476/FC.

Brief Facts of the Case

The plaintiff has filed this suit against the defendant. Both parties were married on 14-03-2011. A dower of three Marla houses, and three tola gold, and also 6000 Rs in maintenance per month was decided. The behavior of the defendant changed and he maltreated the plaintiff. Finally expelling her from home without paying any maintenance and dower.

The judgment of the Court

This suit is partially decreed on Plaintiff being entitled to three tola gold from the defendant. Recovery of three Marla in dower. Plaintiff is also entitled to the recovery of her past maintenance and future maintenance until re-joining the defendant.

Case No.09

This case was heard on 16/07/2006 for Suit for Recovery of Dower, Maintenance, and Dowry, Before Nadia Gul Wazir, Judge Family Court, Mardan. Suit No 366/FC.

Brief Facts of the Case

Both parties married on 07.03.2005 and the dower was fixed. Which is pending to the defendant. Plaintiff was removed from the home in March 2006. Moreover, the defendant maltreated the plaintiff. Plaintiff asked several times for maintenance but the defendant didn't respond.

The judgment of the Court

The court ordered that defendant will provide dower and maintenance to the plaintiff, failing in this will result in severe punishment and fines.

Case No. 10

This case was heard on 26/04/2017. Suit for dower, maintenance, dowry. Before Samina Sahar, Judge Family Court, Mardan. Suit No 275/FC.

Facts of the Case

Both parties were married for more than two years. Two tola gold was fixed as dower, which the defendant has not provided yet. Soon after a month into marriage, the defendant and his family started maltreating and physically torturing the plaintiff. These beatings resulted in a miscarriage. The parents of the plaintiff had to provide all the help for medical expenses. The defendant didn't pay any maintenance fee during this time. On 02/08/2016, the plaintiff gave birth to a son. All the maternity expenses were borne by her father. The defendant didn't solve this dispute and didn't pay any maintenance and dower to the plaintiff.

The judgment of the Court

The court held that plaintiff shall receive the maintenance allowance per month until both spouses reunite again. As well as dowry, dower, and two tola gold. The Son of the plaintiff will also receive maintenance allowance from the day of his birth till his maturity. The defendant will give all the maternity expenses to the plaintiff.

Method

The method of research employed in this study is qualitative. With the help of a qualitative approach, we analyzed our data and concluded. In this study, we also analyzed the laws related to the maintenance of wives from an Islamic point of view. We also interpreted Islamic and Pakistani laws in the light of maintenance. We studied ten case studies in Mardan. These cases were heard in family courts for maintenance, dissolution of marriage, and entitlement for dower dowry. These cases were chosen because in all of the cases court decreed maintenance to the plaintiff. However, in all of these cases plaintiffs suffered. Therefore, these cases were selected to highlight the issues women face when they ask for their right to maintenance and also when they are divorced or when they seeking a divorce.

Findings

The importance of the Maintenance of women is visible from our data of case studies from the district of Mardan. In these cases, in seven cases court gave complete decrees, while in three cases court gave partial decrees. However, in all of the ten cases plaintiff was given maintenance by the defendants. Furthermore, women have the right after divorce to keep the property or other items of value that they received as gifts from her husband or relatives in the past. Moreover, women have moral obligations to take care of the gifts or items they received from her husband as a sign of respect and gratitude.

Discussion

The law for maintenance is mentioned under the Muslim legislation which states that; the wife has rights over her husband for providing continuous protection and support during the time of them being married and also after divorce till the time of iddat and their children coming to maturity. If the husband due to some reason is not able to give the maintenance amount or if he doesn't want to give the maintenance amount. Then wife can seek justice regarding this matter in the family court (Abbasi, 2016). The laws established in Pakistan have protected and supported the right of maintenance given to women. It is necessary to mention that Legislative bodies in Pakistan have analyzed the maintenance given to wives after divorce (Ali, 2000). That is why Muslim Family Law Ordinance 1961 and the West Pakistan Family Courts Act 1964 have some amendments to make it easy according to modern needs (Khan & Zubair, 2020). Women can also apply to the Arbitration council if she hasn't received her maintenance. Under section 9, women can receive help from the arbitration council, if their husband hasn't paid any maintenance to her. The Arbitration Council will establish what amount the husband has to pay to his wife (Mumtaz Ahmad, 1993).

Before further discussion, it is necessary to reproduce Section 9 of the ordinance, 1961. Section 9 states that "if a husband could not sustain the rights of her wife or if there is more than one wife and he became unable to sustain them appropriately, his wife or wives will have proper right to follow most available legal action, this will apply to the chairman who will employ an Arbitration Council which will suspect and interpret the scenario plus the Arbitration Council will also put out a certification which will determine the amount of which must be paid for the maintenance of wife by husband" (Munir, 2011).

Certain changes are made in the ordinance, to accommodate modern needs (Ali, 2002). The Islamic Council Ideology and the Secretariat of the law Justice Commission of Pakistan have made these changes (Mansuri, 2008). These changes are: husbands have to provide pending maintenance that they failed to pay before marriage (Jalal, 1991). The amount of maintenance should be established keeping in view the needs of women and their children. The Justice system should make sure to enforce the payment of maintenance (Ayatullah, 2019).

When deciding the amount of maintenance, the financial status of both parties should be kept in view. If the husband belongs to a rich family and his wife has needs, he has to pay accordingly, if he is not well off, both parties should come to a common ground as to not burden either of the parties (Mahtab Ahmad, Batool, & Dziegielewski, 2016).

Various scholars have various opinions about setting the maintenance amount. Some say, the amount should be established keeping in view the financial status of the husband, while some say the background of the wife should be kept in consideration. While some scholars take a moderate approach and consider the opinion of both parties important for establishing the amount of maintenance (Jafar, 2005).

Conclusion

In the conclusion of this study, it is believed that maintenance is a sacred right of women. Moreover, the legal system of Pakistan has provided and given support to women to seek help in getting maintenance amounts from their husbands, in case if they haven't paid maintenance. Muslim Family Law Ordinance of 1961 gives assurance to women that their rights will be upheld and they will be given justice, support, and protection.

Also, if a woman is pregnant or if she is in her iddat, her husband is obligated to give her maintenance allowance. The reason behind this is to ensure that the woman can lead a better and secure life. Throughout the world, the maintenance of wives is compulsory, and failing to do so will result in legal action. It is also concluded from this study that previous laws were not able to cover the past maintenance of women, while current changes in laws ensured proper support to these women.

Recommendations

It is observed from the above cases that women didn't receive maintenance early and it took time for them to receive maintenance. Moreover, they also suffered mental and physical anguish. The court should also protect the women to prevent any harm to them. The court should strictly look into cases related to Maintenance, as they are the basic right of women. If the party is unable to pay, they should be subjected to punishment. Maintenance should cover all the requirements such as food, clothing, shelter, health facilities. If the domestic court is unable to solve the issue in 6 months, plaintiffs can seek justice from Family courts. Upon decree, husbands should provide the maintenance allowance to their wives monthly. There must be some strict penalties on using, selling, destroying dower or dowry items. The justice system in seeking maintenance should not be expensive as to not burden the plaintiff. The court should also make sure that women are receiving maintenance from their husbands after the official decree of the court is released.

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