

**Amendment in Section 9 of the  
Muslim Family Laws Ordinance 1961 and  
Schedule of the Family Courts Act 1964**

**Report No.77**

## **Amendment in Section 9 of the Muslim Family Laws Ordinance 1961 and Schedule of the Family Courts Act 1964**

The Lahore High Court in a case Muhammad Aslam v Muhammad Usman (2004 CLC 473) took note of the following issues:

1. Grant of past maintenance to the divorced wife.
2. Grant of past and future maintenance of minor children.
3. Quantum of maintenance.
4. Effect of an agreement for payment of Compensation relating to past and future maintenance.

Brief facts of the case are that the petitioner demanded maintenance for herself and the minors. It was contended that she was divorced by her husband due to whims and caprice and without any reasonable cause. Relying on the case of Shah Bano Begum (AiR 1985 SC 945), it was further argued that the divorcee wife, if neglected and deserted by husband due to whims and caprice, then she is entitled for maintenance for milk of suckling baby, as ordained in the Holy Quran (2:233)

The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear. No mother shall be treated unfairly on account of her child. And on (father's) heir is incumbent the like of that (which is incumbent on the father). If they both decide on weaning by mutual consent, and after due consultation, there is no sin on them. And if you decide on a foster suckling mother for your children, there is no sin on you, provided you pay (the mother) what you agreed (to give her) on reasonable basis. And fear Allah and know that Allah is All seer of what you do.

The judgment resolved the following issues:

- (i) Maintenance of herself (divorced wife) upto Iddat period; and
- (ii) Maintenance of herself and other minor beyond the period of Iddat on ground of breast-feeding to the suckling baby.

The Court desired an amendment in Section 9 of the Muslim Family Laws Ordinance 1961, to enable the Chairman, Arbitration Council to grant maintenance to a destitute divorced wife and proposed to enact separate provisions of law in the same Ordinance. The judgment is of an immense importance, giving a new idea for giving maintenance to wife beyond period of Iddat.

Before proceeding further, it may be relevant to reproduce Section 9 of the Ordinance 1961, which reads as under:

**Maintenance:** (i) If any husband fails to maintain his wife adequately or where there are more wives than one fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2)...

(3)...

Under this section, only a wife or wives can claim maintenance and not their minor children. The law is silent on this issue though maintenance is being allowed on principles of Islamic law and not as a right under the Ordinance 1961, as decided in case Abdul Latif v Mst. Bakhat Bhari (1985 CLC 1184). The relevant extract reads as under:

I have given careful consideration to the submission made at the Bar by learned counsels for both the parties, under section 9 of the Muslim Family Laws Ordinance a neglected wife can apply for maintenance against her husband. Unfortunately for her, no provision exists under the Ordinance 1961 in regard to the maintenance for minors. Reasons for this omission is best known to the legislature and it is not for the court to supply. In absence of such a provision in the Ordinance the Chairman who is a designated authority under the provisions of law, has no jurisdiction to award maintenance to the minors. Jurisdiction unless conferred by law cannot be assumed.

A Family Court under section 5 read within Part I of the Schedule of the West Pakistan Family Courts Act 1964 has jurisdiction as under:

**Jurisdiction:** (1) Subject to the provision of the Muslim Family Laws Ordinance 1961 and the Conciliation Courts Ordinance 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule and Schedule confers jurisdiction to decide matters:

1. Dissolution of marriage.
2. Dower.
3. Maintenance.
4. Restitution of Conjugal rights.
5. Custody of children.
6. Guardianship.
7. Jectitation of marriage.
8. Dowry.
9. Personal property and belongings of a wife.

In the absence of specific provision for the maintenance of minor children, in Section 9 of the Muslim Family Laws Ordinance 1961, a Family Court has no jurisdiction to grant maintenance because section 5 of the Act 1964 confers jurisdiction pertaining to Section 9 of Ordinance 1961. This is a lacuna in law which needs to be cured by adding minor children beside the expression wife or wives in Section 9 of the Ordinance. The Court in its judgment (2004 CLC 473) observed that:

A divorcee wife if neglected and deserted by her husband at his whims and caprice then she is entitled for maintenance for milk of the suckling baby...it was further observed that the legislature having the supreme power to enact and legislate law, may, if so, deems fit look into this aspect of the matrimonial life and make amendments in Section 9 of the Family Laws Ordinance 1961, enabling the Chairman, Arbitration Council to grant maintenance to a destitute divorce wife and may enact separate provisions of law in the same Ordinance.

The view is also supported by the Quranic Injunctions wherein it is ordained:

The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of mother's food and clothing on a reasonable basis...(2:233)

As there is no such provision in law to provide cost of mother's food and clothing who is nourishing a suckling baby beyond the period of Iddat, therefore, it is proposed that in section 9 of the Muslim Family Laws Ordinance 1961, a new sub-section 1-A may be added as under:

(1-A) On divorce, if the wife has a suckling baby, she shall be entitled to the cost of living for the period she suckles the baby but not exceeding two years.

Accordingly, the words "cost of living" should be added at S. No. 3 of the Schedule of the Family Court Act 1964 as under:

3. Maintenance and cost of living.

The issue was discussed in the meeting of Law & Justice Commission of Pakistan held on 20 August 2005. The Commission constituted a Committee comprising Chief Justice, Federal Shariat Court, Justice (R) Qazi Muhammad Farooq and Mrs. Nasira Iqbal, Advocate to examine the question as to whether section 9 of the Muslim Family Laws Ordinance, 1961 can be amended, so as to enable the Chairman, Union Council to award cost of living to a suckling mother, on account of breast feeding the child, beyond the Iddat period. It was further decided that an Islamic scholar or Alim Judge of the Federal Shariat Court may also be co-opted for consultation on the issue.

A meeting of the Committee was held on 12 December 2005 under the Chairmanship of Chief Justice, Federal Shariat Court and attended by Mr Justice (R) Qazi Mohammad Farooq, Mr Justice Dr Fida Mohammad Khan, Judge Federal Shariat Court and Mrs Nasira Iqbal.

The Committee unanimously agreed to the proposal and re-phrased, new Sub-section 1-A of Section 9 of the Muslim Family Laws Ordinance 1961 and Section 3 of the Schedule of Muslim Family Court Act 1964, as follows:

“(1-A) On divorce, if the wife has a suckling baby, she shall be entitled to the adequate cost of living for the period she suckles the baby but not exceeding two years”.

Accordingly, the words “cost of living” should be added to S. No. 3 of the Schedule of the Family Court Act 1964 as follows: -

“3. Maintenance and cost of living of divorcee wife having a suckling baby”.

Revised proposed amendment and Bills follows:

Comparative Table showing existing and proposed amendments in Section 9 of the Muslim Family Laws Ordinance and Schedule of Act 1964.

### Amendment in Muslim Family Laws Ordinance 1961

Existing	Amended
<p><b>Section 9. Maintenance.-</b> (1) If any husband fails to maintain his wife adequately or where there are more wives than one fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.</p>	<p><b>Section 9. Maintenance.-</b> (1) If any husband fails to maintain his <i>minor children</i>, wife adequately or where there are more wives than one fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.</p> <p>“(1-A) On divorce, if the wife has a suckling baby, she shall be entitled to the adequate cost of living for the period she suckles the baby but not exceeding two years”.</p>

### Amendment in the Schedule of the Family Courts Act 1964

Existing	Amended
1. Dissolution of marriage including Khula.	1. No change.
2. Dower.	2. No change.
3. Maintenance.	3. "Maintenance and cost of living of divorcee wife having a suckling baby".
4. Restitution of conjugal rights.	4. No change.
5. Custody of children, and the visitation rights of parents to meet them.	5. No change.
6. Guardianship.	6. No change.
7. Jactitation of marriage.	7. No change.
8. Dowry.	8. No change.
9. Personal property and belongings of a wife.	9. No change.

Draft bills follows:

**A****Bill**

further to amend the Muslim Family Laws Ordinance, 1961

WHEREAS it is expedient further to amend the Muslim Family Laws Ordinance, 1961 (Ordinance VIII of 1961), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act may be called the Muslim Family Laws (Amendment) Act, 2005.
  - (2). It shall come into force at once.
2. **Amendment of section 9, Ordinance VIII of 1961.**- In the Muslim Family Laws Ordinance, 1961 (Ordinance VIII of 1961), in section 9,-
  - (a) in sub-section (I), after the word "his" the words and comma "minor children," shall be inserted; and
  - (b) after sub-section (I), amended as aforesaid, the following new sub-section shall be added, namely:-

"(1-A) On divorce, if the wife has a suckling baby, she shall be entitled to the adequate cost of living for the period she suckles the baby but not exceeding two years".

further to amend the Family Courts Act, 1964

WHEREAS it is expedient further to amend the Family Courts Act, 1964 (W.P. Act XXX V of 1964), for the purpose hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act may be called the Family Courts (Amendment) Act, 2005.  
(2) It shall come into force at once.
2. **Amendment of Schedule, W.P. Act XXX V of 1964.**- In the W.P. Family Courts Act, 1964 (XXX V of 1964), in the Schedule, in Part I, in serial number 3, after the word "Maintenance" the words "and cost of living of divorcee wife having a suckling baby" shall be added.

**Commission's deliberation on 4.2.2006**

The above working paper was considered by the Commission in its meeting held on 04.2.2006 and the following are the deliberations :-

The Commission observed that right to maintenance of children is covered in the Muslim Family Laws Ordinance 1961 and the Family Courts Act 1964 for seeking relief from courts. However, seeking maintenance out-side the court from the Arbitration Council/Chairman, Union Counsel, children unlike the mother, cannot apply to the Arbitration Council. The Commission resolved that the Muslim Family Laws Ordinance 1961 may be amended suitably, enabling the children to seek maintenance from the Arbitration Council/Union Council also before approaching the Family Court. The Commission further observed that the suit for maintenance takes long time for final disposal from lower court to higher court, therefore, the word "may" used in section 17-A of the Family Courts Act 1964 may be substituted by the word "shall" for making it mandatory for the Family Court to grant interim maintenance to the wife and children pending disposal of the case when the re-conciliation proceeding fails. The Commission further observed that major disabled children are not entitled to maintenance, therefore, resolved that disabled major children who cannot maintain themselves may also be made entitled to maintenance by amending the law. The Commission further approved amendment to entitle divorced wife with suckling baby to get adequate cost of living for a period not exceeding two years.