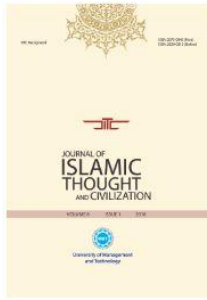


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**Provision of *Nafqah* Right to Child:  
The Islamic Wisdom and Implementation in Pakistan**

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**Abstract**

Islamic family law has specified child rights as the key social responsibility of parents and urged them to struggle for positive upbringing of their children. Prophet (SAW) and the companions (RA) set numerous traditions in relation to rights of children i.e., right of life, right of food, shelter and clothes, right of education and training and right of counting them as members of society. Islam bounds a father to bear the responsibility of *Nafqah* of his child. (Al-Baqarah 2:233). *Nafqah* consists of food, clothes and shelter. This responsibility also explains the title of *qawwām* for a husband (Al-Nisā 4:34). This research paper aims to discuss the *Nafqah* right of a child in Islam. *Sharī'ah* Law of *Nafqah* involves parents and state institutions to fulfill their responsibilities towards children up-bringing. Thus, protection of the right of *Nafqah* is the key responsibility of a Muslim state. In this study, a brief sketch of Pakistani law is presented with the help of few facts and figures about the provision of child right of *Nafqah* in Pakistan. The study also presents a comparison of the views of eminent Muslim scholars belonging to different schools of thought, regarding certain limitations that rule the provision of *Nafqah* to a child, like definitions of dependency and the responsibility of non-Muslim child on his Muslim father etc. Finally, Islamic wisdom regarding the practicality of child's right of *Nafqah* in Islamic society is presented in the research paper with the aim of highlighting its pertinence in maintaining a positive and sustainable human society.

**Keywords:** child right, Islamic wisdom, food and shelter, Constitution of Pakistan, *Nafqah*

**Introduction**

*Nafqah* is an Arabic word that conveys the meaning 'expenditure.' From an Islamic legal meaning *Nafqah* is translated as 'maintenance' which means that it is the responsibility of a husband to bear the expenses of his wife and children.<sup>1</sup> This responsibility is assigned to a husband due to the contract of *nikāh*, a father for having

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<sup>1</sup>Dorothy Eagle, *Oxford Illustrated Dictionary* (New York: Oxford University Press, 1979), 514; Paul Procter, *Cambridge International Dictionary of English* (Cambridge University Press, 1995), 854; Arif Ali Khan, *Encyclopedia of Islamic Law* (New Delhi: Pantagon Press, 2006), 6/281.

blood relation and on a master because of his ownership.<sup>2</sup> Allāh's commands regarding the *Nafqah* is revealed in the verse no 322 of Surah al-Baqarah,<sup>3</sup> which assigns responsibility of food and clothes upon a father. The verse 06 of chapter *at-Talāq* assigns the duty of making provisions for shelter.<sup>4</sup> Few traditions support and strengthen this duty or responsibility as well.<sup>5</sup>

A child is an individual falling in the age bracket or category starting from a new born till the age of puberty or the legal age of maturity.<sup>6</sup> Child's rights were recognized in the UN documents presented in the convention on child rights in 1924 at Geneva. Since then, a child's right of life, protection from violence, protection of dignity, provision of food, shelter and education etc. were defined and specified in the UNICEF documents from time to time. UNICEF seek support from countries in matters pertaining to the provision of child rights in their jurisdiction, in accordance to their conventional needs, however keeping in mind international definitions of child rights.<sup>7</sup> Before the revelation of the Qur'ān, children were not prominent in terms of having rights in the society. The text of the Qur'ān has mentioned in it a child as a member of the society. Qur'ān has specified child rights and indicated that it is the key social responsibility of parents to fulfil their duties regarding upbringing of their child.<sup>8</sup> Prophet (SAW) and the companions (RA) also set numerous traditions in relation to rights of children i.e., right of life, right of food, shelter and clothes, right of education and training and right of counting them as

<sup>2</sup>Muhammad b Ismail Bukhāri, *Al Jami Al Sahih*, "Bab Wujub un Nafqah 'ala ahl wal 'Ayal," [It is Obligatory to Spend for One's Wife and Household"] *Mausu'a Al Kutub us Sitta*, al-Mumlikha al-Saudia, Riyadh: Dar ul Nashr waTauzi, 2000), Hadith No 5355.

<sup>3</sup>Al-Qur'ān: al Baqarah 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 the 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, nor father on account of his child. And on the (father's) heir is incumbent the like of that (which was 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 Allāh and know that Allāh is All-Seer of what you do." <http://www.noblequran.com/translation/> retrieved on:02/08/17)

<sup>4</sup>Al-Qur'ān: At Talaqa 65:6, "Lodge them (the divorced women) where you dwell, according to your means, and do not treat them in such a harmful way that they be obliged to leave. And if they are pregnant, then spend on them till they deliver. Then if they give suck to the children for you, give them their due payment, and let each of you accept the advice of the other in a just way. But if you make difficulties for one another, then some other woman may give suck for him (the father of the child)." <http://www.noblequran.com/translation/> retrieved on:02/08/17)

<sup>5</sup>*Sahih Bukhari*, "Kitab un Nafqāt," [Supporting the Family], Hadith No 5364, "If a man does not provide for his family," *Mausu'a Al Kutub us Sitta* (al- Mumlikah al Saudia: Dar ul Nashr wa Tauzi, 2000), <https://sunnah.com/bukhari/69/14>.

<sup>6</sup>"NC-17," <https://en.oxforddictionaries.com/definition/child>, retrieved on:31/07/17

<sup>7</sup>"Adolescence and Youth," [http://www.unicef.org/adolescence/index\\_66834.html](http://www.unicef.org/adolescence/index_66834.html) Retrieved on: 26/04/18.

<sup>8</sup>Al Baqarah 2:233.

members of society. ‘Chapters of guardianship’ (*hidānah*), ‘feeding’ (*rada’ah*) and ‘expenditure’ (*nafqah*) in *Hadith* compilations provide these traditions certain validation in the form of Islamic argumentation and evidences.<sup>9</sup> Thus, the study of *Sharī’ah* law highlights the fact that it never leaves a child unprotected in any case. Moreover, it is the responsibility of Muslim state to ensure the provision of rights to a child.<sup>10</sup>

Child right of *Nafqah* in Islamic *Sharī’ah* is the basic fundamental right of a child deputed on his real father. *Sharī’ah* texts use the word *walad* and *aulād* for children of a man to whom he is responsible basic necessities such a food, clothes and shelter called *nafqah*. Majority of the scholars agree upon the definition of *aulād* that consists sons, daughters, grandsons and granddaughters who claim their right of *nafqah* from their father. Imam Abu Hanifah, Imam Shafi and Imam Ahmad bin Hanble also provided this definition in chapters related to *nafqah* while Imam Malik bin Anas states that only real sons and daughters have the right of *nafqah*<sup>11</sup> to be fulfilled by their fathers. A boy till the age of puberty is eligible to obtain this right from his real father while a girl can obtain it till her *Nikāh*. Disabled children (male and female) obtain the right of *nafqah* from their real father. If divorce occurs in a couple, in this situation again father is responsible to bear the maintenance of his real children.<sup>12</sup>

The *Nafqah* chapter of *Sharī’ah* highlights the Islamic wisdom which directly addresses the social set up of an Islamic society. Muslim social set up is based on *nikāh* and major objective of *nikāh* is procreation that helps in sustaining human society. *Sharī’ah* uses another term *ayālah* which means *kafālat* in Urdu language.<sup>13</sup> *Ayālah* is defined as expending money on family consisting of husband, wife and children.<sup>14</sup>

## 2. Entitlement of a Child for *Nafqah* in Islam

Boy is entitled for *nafqah* till the age of puberty. Exception is if he is disabled or mentally challenged which than entitles a father to provide him food, shelter and clothes

<sup>9</sup>Muhammad b Ismail Bukhari, *Jami al-Sahih Bukhari*, “Kitab us Sulhu,” *Mausu’a Al Kutub us Sitta* (Dar ul-Nashr-wa-Tauzi, 2000), Hadith No 5364, Translation: Hind bint `Utba said, “O Allah’s Messenger (SAW)! Abu Sufyan is a miser and he does not give me what is sufficient for me and my children. Can I take of his property without his knowledge?” The Prophet (SAW)! said, “Take what is sufficient for you and your children, and the amount should be just and reasonable. <https://sunnah.com/bukhari/69/14> retrieved on: 26/04/18).

<sup>10</sup>Abu Daud Sulaiman b Ashas, *Sunan Abu Daud*, “Kitab ut-Talaaq,” Chapter: “Regarding The Maintenance of One Who Has Been Irrevocably Divorced,” *Mausu’a Al Kutub us Sitta*, Hadith No 2286.

<sup>11</sup>Abdul Kareem Zaidan, *Al Fasl fi Ahkam al Maratuwal Bait il Muslim fi Shariat ill Islamia*, (Muassasatul Risalah, 1993), 10/159.

<sup>12</sup>Dr. Wahbah Zuhaili, *Al Fiqhul Islami wa Adillatuhu* (Damascus: Dar ul-Fikr, 1985), 7/821.

<sup>13</sup>Wahid uz-Zaman Kiranwi, *Al Qamoosul Jadid* [Urdu Arabic Dictionary] (Lahore: Idara e Islamiat, 1990), 589.

<sup>14</sup>Ibn-i-Manzoor, *Lisanul Arab* (Beirut: Dar Ahyaat Turathul Arabi, 1988), 4/4508.

even when he is older.<sup>15</sup> Girl is entitled till her *nikāh*. If a child is wealthy and earns money then father can expend that child's money on him.<sup>16</sup> If a girl is wealthy after the age of puberty, before her *nikāh* then she will not be entitled for *nafqah* from her father.<sup>17</sup> The amount of child's *nafqah* should be minimum amount required to fulfill basic requirements such as food, clothes and shelter. Non-Muslim child is also entitled for *nafqah* because this responsibility is related to general concept of parenthood or *walādat*. This point of view is supported by Maliki, Hanafi and Shāfi scholars while Hanbali scholars disagree with this point of view.

A child cannot claim the past period *nafqah* while a wife can claim it. This is because there is a difference between the type of *nafqah* for a child and for a wife. The *nafqah* of a child is only till the time he is needy (*muhtāj*) while the *nafqah* of a wife remains her right until she is in *nikāh* of her husband. This is the opinion of Hanbali, Hanafi and Shāfi school of thought. The Maliki scholars say that if court has specified a child's *nafqah* on his father and he did not provide it, then a child is entitled to receive it.<sup>18</sup>

A child's father is not exempted from this obligation even if he is not wealthy or not earning money. This obligation is due upon a father and hence he is entitled to earn money to expend it upon his child. However father will be demanded to expend money on his family as per his financial status.<sup>19</sup> A wealthy child is not entitled for *nafqah* from his father. His father will expend on him by taking money from his child's wealth.<sup>20</sup>

### 3. Philosophy of this Responsibility

#### 3.1. Protection of Life

Every human being has a basic fundamental right, protection of life. A child's right of protection of life related to the provision of food, clothes and shelter is fulfilled by his father and no one will be his partner in fulfilling this responsibility. In Arabic text of *hidāyah* words '*la yushāriku hu*'<sup>21</sup> are used meaning nobody will share this duty with

<sup>15</sup>Abdul Kareem Zaidan, *Al Fasl fi Ahkam al Maratuwal Bait il Muslim fi Shariat il Ilslamia* (Muassasatul Risalah, 1993), 10/159.

<sup>16</sup>Abdul Kareem Zaidan, *Al Fasl fi Ahkam al Maratuwal*, 10/161.

<sup>17</sup>Abu Bakr Kasani Alauddin, *Badai as Sanai fi Tarteeb al Sharai* (Beirut: Dar ul-Marifah, 2000), 4/49.

<sup>18</sup>Zuhaili, *Al Fiqhul Islami wa Adillatuhu*, 7/828.

<sup>19</sup>Al-Qur'an: at Talaq 65:7, Translation: "Let the Rich Man Spend According to His Means, and the Man whose Resources are Restricted, Let him Spend according to What Allāh has Given him. Allāh puts no Burden on any Person beyond what He has given him. Allāh will grant after hardship, ease." <http://www.noblequran.com/translation/> retrieved on:02/08/17)

<sup>20</sup>Abdul Rahman Jaziri, *Al Fiqh ala Madāhibul Arba'* (Beirut: Dar Ahya At Turāth al Arabi, 1976), 4/492.

<sup>21</sup>Burhan ud Din Marghinani, *Al Hidayah fi Sharhi Badayatul Muhtadi* (Beirut: Dar Ahya at Turath al Arabi, n.d.), 2/289.

father. Food is necessary for the nutrition of a child, clothes protect the child from weather and shelter protects the child from multiple types of dangers. *Nafqah* is consequently the fulfillment of the right of life and its protection. *Nafqah* is obligation and hence if a father is not expending on his child, he is a sinner. Mother is not bound to expend on her children even if she is wealthy.<sup>22</sup>

### 3.2. Superiority of Husband and *Nafqah*

Fulfillment as well as performance of *Nafqah*, allocates a superior status to husband in his home. Qur'ānic verse of al Nisa 34 says that a man is superior to woman because Allāh bestows him a superior rank, as he expends his wealth. Exegetes of the Qur'ān explains *Qawwām* as a person who is responsible to administer an institution efficiently.<sup>23</sup> Thus a husband is responsible to run the institution of family and sustain it for next generations. Qur'ānic revelations<sup>24</sup> and *Hadith* of the Prophet (SAW) emphasis upon education as well as training of family, stating them primary responsibilities of a husband.<sup>25</sup> Good manners such as being polite, showing love and minor punishments required during education and training are also assigned by *Shari'ah* upon a husband/father.<sup>26</sup>

### 3.3. After Divorce Maintenance of a Child

If divorce takes place between a husband and wife, the wife obtains the right of custody of the child. In this case child's father will pay for his expenses. If he refuses to pay mother can claim the maintenance from the court. Similar legal bindings are present in the Muslim family law of Pakistan. If the case goes to the family court then *qādhī*/judge will decide about the amount or type of maintenance to be given, depending upon the financial status of father.<sup>27</sup>

<sup>22</sup>Abdul Rahman Jaziri, *Al Fiqh ala Madahibul Arba'* 4/483.

<sup>23</sup>Muhammad Shafi, *M'arif ul Qurān* (Karachi: Maktaba e Dar ul Uloom, 2004), Al Nisa 4:34.

<sup>24</sup>At-Tarhīm 66:6.

<sup>25</sup>Abu Isa Muhammad b Isa Tirmizi, *Jami Tirmidi*, "Abwab Al Rada," *Mausu'a Al Kutub us Sitta*, Hadith No 1162.

<sup>26</sup>Muhammad Zaheer Abbas, Shamreeza Riaz, "Diversity of Interpretations Regarding *Qawwām* in Islamic Thought with Special Reference to Surah An-Nisa," *Pakistan Journal of Islamic Research* Vol 11, (2013): 01.

<sup>27</sup>Muslim Family Law Ordinance 1961, "Article 9. Maintenance.—(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 the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, [to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.(3) Any amount payable under subsection (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue." <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-jjjjjjjjjjjj>, retrieved on:02/08/17;

#### 4. Islamic Wisdom regarding Child's *Nafqah*

Islam, in its philosophy of rights and responsibilities, educates a comprehensive united social structure which never leaves a child unattended in any given circumstances.

Responsibility of a minor child lies on somebody like father, mother, relatives, society or the state. If a child is left unattended then his/her immediate family will be held responsible in this world as well as hereafter. Responsibility of a child consists of taking necessary measures for maintaining a healthy lifestyle, ensuring a healthy brain/mind of the child. In other words, a society should be developed on these lines so that a child's physical and mental development ensues well.<sup>28</sup>

When a child is born, his father is responsible to take care of his physical and mental development. Mother is the basic source of this child's nutrition, hence looking after the health of a mother is extremely important and should be taken care of.<sup>29</sup> Islam presents a comprehensive chapter of *Nafqah*, in order to address this pertinent issue in society.<sup>30</sup> Father, mother and then the state will support a child in his physical and mental development or health so that he can carry out his life activities aptly.

If a child is wealthy by birth, then obviously his ancestors have taken care of that child before his/her birth. In this case, again father will be asked to take money from his child's wealth and will take care of his child. Islam does not allow lie, fraud or deceit in everyday life activities. So, father is not allowed to commit any violence while performing his duty of taking care of his family. Thus, the *Sharī'ah* scholars recommend to collect evidences if a father is taking or using his child's wealth.<sup>31</sup>

In case, divorce takes place between a child's mother and father, then mother of the child will receive the amount of *nafqah* and will expend on the development of the child. If she is not wise then another woman will be deputed to receive the amount of *nafqah* from the father and will expend it on the development of the child.<sup>32</sup> A man acquires the rank of superiority on his family by the order of Allāh Almighty. *Sharī'ah* ensures that he will not misuse his superiority. Thus, the *Qāzi* (judge) accepts the

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Zaheer Advocate, "Maintenance of Wife and/or Child Under Muslim Family Laws Act In Pakistan," <http://www.zaheeradocate.com/maintenance-of-wife-andor-child-under-muslim-family-laws-act-in-pakistan/> retrieved on:02/08/17.

<sup>28</sup>Alauddin Abi Bakr bin Mas'ud Al Kasani, *Bada'i al Sana'i fi Tartib ush Sharā'i* (Beirut: Dar-ul Fikr, 1996), 3/442.

<sup>29</sup>Wahbah Al Zuhaili, *Al Fiqh Al Islami wa Addilatuhu* (Dar-ul Fikr, Bairut, 1984), 7/823.

<sup>30</sup>Abdur Rahman al Jaziri, *Kitab al Fiqh 'Ala Madahib ul Arba'* (Beirut: Dar-ul Fikr, 1976), 4/483.

<sup>31</sup>Ibid., 4/491.

<sup>32</sup>Muhammad bin Ali Shokani, *Addur ul Bahiyya* (Beirut: Dār ul Kutub-al Ilmiyyah, 1983), 225.

complaint of a woman for investigation to find out the truth for the sound use of superior rank of a man.<sup>33</sup>

*Sharī'ah* expects the state to be vigilant and make appropriate legal measures for performing superior responsibility of a man in his home.<sup>34</sup> State will be responsible if a man is poor not being able to support the expenses of his family<sup>35</sup> and not educated and too ignorant to support the education and training of his family.<sup>36</sup> State again is responsible if a man is not skilled enough to earn money to expend on his family.<sup>37</sup> Islamic concept of social welfare is that the state supports parents to perform their *Sharī'ah* obligation of doing physical and mental training and development of their children.<sup>38</sup>

*Nafqah* consists of three basic types of expenditure; food, clothes and shelter. The style of expending on these three basic types should be Islamic. During this period a child attains basic training in relation to manners and use of emotions. He learns about the importance of truth, love, respect, hatred, anger, happiness, sadness, attention and negligence etc. *Sharī'ah* puts great emphasis upon the importance of this stage of development of a child and commands a mother to take care of the child and commands a father to give money for his developmental expenses. Even if a mother is divorced by her husband she will be entitled for the custody of their child. This is because mother is more vigilant for the right training of her child. Mother's love does not destroy a child's personality while other relatives may leave the child inattentive and can be negligent towards their right training.<sup>39</sup> Same shows the tradition of Abu Dāud in which Caliph Hadrat Abu Bakr (RA) directed Hadrat Umer (RA) to leave his child to the child's mother when separation occurred among them.<sup>40</sup> This is the chapter of *hidānah* in the books of *ahkām*.

The shelter to be provided to wife and children from a man, invites us to focus on the environment of a home in the light of *Sharī'ah*, as shelter is related with the right of wife and children. In fact, it is the responsibility of a wife to take care of her husband and children for their physical and mental health, making provisions for a happy and calm

<sup>33</sup>*Fatawa Ālamgiri* (Karachi: Dar ul Isha'at, 1989), 2/586.

<sup>34</sup>*Constitution of Pakistan*, Articles 30-36.

<sup>35</sup>*Ibid.*

<sup>36</sup>*Ibid.*

<sup>37</sup>*Ibid.*

<sup>38</sup>*Sahih Bukhari*, "Kitab us Sulhu," *Mausu'a Al Kutub us Sitta*, Hadith No 7138. "Surely! Everyone of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is a guardian and is responsible for his subjects; a man is the guardian of his family (household) and is responsible for his subjects; a woman is the guardian of her husband's home and of his children and is responsible for them; and the slave of a man is a guardian of his master's property and is responsible for it. Surely, everyone of you is a guardian and responsible for his charges." <https://sunnah.com/bukhari/93/2>.

<sup>39</sup>Abdul Rahman Jaziri, *Al Fiqh ala Madahibul Arba*, ' 4/498.

<sup>40</sup>Abu Daud, *Sunan Abu Daud*, "Kitabut Talaq," *Mausu'a Al Kutub us Sitta*, Hadith No 2286.



environment. Thus the house or the place of living she is provided by her husband should be supportive and should help her to perform her responsibilities aptly. If children are not gaining good development, then husband will be uncomfortable. This is why, the place of living of a wife should be private where no other family member or a stranger may interfere. This chapter of shelter in *nafqah* is directly addressing the training and development of a family in peaceful environment.<sup>41</sup> It does not mean that they should live in a separate house but it means that they will live their life in privacy regarding fulfillment of their *Shari'ah* obligations as a family unit. Many Muslim countries' law ensures the responsibility of husband as provider. Libya, Algeria, Jordan, Kuwait and Iraq have fixed the duty of husband to bear the maintenance of his wife and children. While in Egypt women are given the right of custody of her children if husband cannot bear their responsibility properly.<sup>42</sup>

The age from birth till 5 years is a very critical age in terms of the psychological development of a child. Personality which develops during this stage remains till the end of their lives. During this stage a child faces numerous psychological experiences and deal with these conflicts in the light of the experiences that he undergoes during this stage. His decision power also develops during this stage.<sup>43</sup> Thus, *Shari'ah*'s wisdom of *Nafqah* highlights the most practical and appropriate guidelines to parents and the society about the correct up-bringing of a child.

### 5. Provision of Child Right of *Nafqah* in Pakistan

Constitution of Pakistan carries article 35 which specifies the protection of family, mother and child as the responsibility of the state. The criminal procedure code (CRPC) 1861 (which was amended time to time till 1898 and 1997) is the law which deals with the rights of mother and child regarding *nafqah*. Sections 488, 489 and 490 of its chapter 36 consist of *nafqah* law.<sup>44</sup> In section 488, procedure of demanding maintenance by a wife from her husband is explained, in case a husband neglects his wife and children in matters pertaining to their expenditures. The magistrate of first class has the authority to go through this case and after finding a proof of negligence from husband, will set a monthly allowance to be paid by the husband for fulfilling the maintenance of his wife and child. The maximum rate of this monthly allowance is five hundred rupees. If husband is poor and unable to afford *nafqah*, then wife cannot demand the maintenance

<sup>41</sup>Abdul Rahman Jaziri, *Al Fiqh ala Madahib al Arba*, 4/471.

<sup>42</sup>Jan Michiel Otto, *Shari'ah Incorporated A Comparative Overview of Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 206.

<sup>43</sup>Erik H. Erikson, "Erikson's Stages of Psychosocial Development," [http://psychology.about.com/library/bl\\_psychosocial\\_summary.htm](http://psychology.about.com/library/bl_psychosocial_summary.htm), cited on:02/08/17.

<sup>44</sup>Alamgir Muhammad Sirajuddin, *Shari'ah Law and Society* (New York: Oxford Press, 2010), 288.

allowance. If wife denies to live with her husband then she will not be eligible for this allowance.<sup>45</sup>

In 1961, Muslim family law ordinance was implemented in the country which acquired the section 9 related to maintenance.<sup>46</sup> According to this section, a wife can seek help from chairman union council for her maintenance to be paid by her husband. This section 9 of MLFO 1961 was only for the maintenance of wife. Child was not included in it.<sup>47</sup> So, in 2005, the Muslim family law amendment was presented. In this bill, minor child's entitlement for maintenance was included. Similarly, a divorced wife, if she is feeding the child of her husband, was also entitled for maintenance along with the child.<sup>48</sup> After that, Muslim family law amendment 2014 added that the amount of maintenance will be increased on yearly basis.<sup>49</sup>

As far as the implementation of these laws is concerned, there are many complications regarding the provision of justice to the entitled persons or the plaintiff. The major complication is the court system of Pakistan which needs to be improved and refined. The overall environment of a court revolves between allegations and their proofs, where each group tries their best to prove the other one wrong. The betterment of their family goes behind, which is the primary reason that most of the families are separated and the rate of reconciliation remains very low. One example of it is that if a wife approaches court for her right, the husband tries to prove her ineligible for this right by making accusations against her character. In this situation, the wife cannot continue her fight for the safety of her family, ultimately putting the survival of the family at risk. The main objective of this amount of maintenance should be assisting the child in their normal and sound development. On this basic ground, the procedures of provision of this right should be studied and handled by the experts.

Another hurdle is unawareness related to law in the society. A brief survey was conducted to find out the number of people who have knowledge about the family law of *nafqah* in Pakistan. For this purpose, a group of married female respondents were selected. A scale of *Nafqah* Right Awareness (NRA) was developed containing multi style responses. These results highlighted that only 10% respondents from a total of 1000 respondents had knowledge about it. 60% percent women mentioned of receiving money or expenses by their husbands. When respondents were asked a question for filling the column of *nān-nafqah* in *nikāh nāma*, only 6% said yes while majority was unaware

<sup>45</sup>Asaf A. A. Fyzee, *Outline of Muhammadan Law* (New York: Oxford Press 2008), 213.

<sup>46</sup>Inam ul Haq Mian, *Muhammadan Law* (Lahore: Mansoor Books), 441.

<sup>47</sup>Ibid.

<sup>48</sup>“Amendment in Sections 5 and 7 of the Muslim Family Laws Ordinance, 1961”

<https://pklegal.org/amendment-in-sections-5-and-7-of-the-muslim-family-laws-ordinance-1961/>, cited on: 29/05/18.

<sup>49</sup>Ibid.

about it. 30% agreed to fill this column with mutual discussion and understanding. Results reveal that in Pakistan, the main hurdle in the performance of this religious obligation is unawareness as well as ignorance in society regarding the teachings of Islam.

The conclusion that the author has drawn from this research is that Islamic wisdom of *nafqah* right protects a child in full length. A suitable social environment can develop by following the *Shari'ah*. Father mother and other relatives should participate in the development of a child. The state is entitled to make laws to ensure the implementation of *Shari'ah* instructions about *nafqah* right. Child's protection, food and education should be the key priority of a state. *Shari'ah* teachings, in this regard, should be consulted for the construction of laws and principles in matters pertaining to family laws that can contribute for the sustenance of human society.

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