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Bill

further to amend the Family Courts Act, 1964

Whereas it is expedient further to amend the Family Courts Act, 1964 (XXXV of 1964), in its application to the extent of Islamabad Capital Territory, for the purposes hereinafter appearing;

It is hereby enacted as follows: -

1. Short title and commencement. - (1) This Act may be called the Family Courts (Amendment) Act, 2024.

(2) It shall come into force at once.

2. Substitution of Section 17A, Act XXXV of 1964.- In the Family Courts Act, 1964, (XXXV of 1964) hereinafter referred to as the said Act, for section 17A, the following shall be substituted, namely:-

"17 A. Suit for maintenance. - (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteenth 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 stand increased at the rate of ten percent each year.

(4) For the purposes of fixing the quantum of maintenance, the Family Court shall, generally or in particularized state of non-availability of sufficient evidence on behalf of parties, shall embark upon inquiry about estate and resources of the defendant as defined under sections 11 and 39 of the Income Tax Ordinance, 2001, and in this regard summon the relevant documentary evidence from the Federal Board of Revenue and any organization public or private, body or authority to determine the estate and resources of the defendant."

STATEMENT OF OBJECTS AND REASONS

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." Importantly, Article 4 of the Constitution clearly states that it is inalienable right of subjects to be treated in accordance with law and no action detrimental to their reputation, life, and liberty shall be taken except as per law.

It is imperative to note that women and children approaching the Court in family matters are protected by Article 4 of our Constitution and, therefore, must be treated in accordance with the law laid down in S. 17(A) of the "Act". The main object of the "Act" is for protection and convenience of the weaker and vulnerable segments of the society i.e. women and children. Thus, the Family Court is legally obliged to assess the quantum of maintenance as per dictate and criteria mentioned in Section 17-A (4) of the "Act. It is the duty of the Family Court to ascertain the 'estate' and 'resources' of the defendant.

While examining the jurisprudence laid down in family matters, it has noticed that Family Courts are not properly following the procedure in this regard as time consuming litigation in shape of family suits involving issue of maintenance allowance are being decided without just determination of 'estate' and 'resources' of husband/father for fixing maintenance allowance.

In order to ascertain the quantum of maintenance Courts need to pursue the provisions stipulated in Sections 11 and 39 of the Income Tax Ordinance, 2001 (the "Ordinance 2001"), which encapsulate the gist of the definition reproduced above by way of stating range of sources of income. Section 11 of the Ordinance 2001 states that the income can be classified under the heads of salary, income from property, income from business, capital gains and income from other sources, whereas Section 39 of the Income Tax Ordinance, 2001 provides that head of income from other sources includes dividend, royalty, profit on debt, additional payment on delayed refund under any tax law, ground rent, rent from sub-lease of land or a building, income from the lease of any building together with plant or machinery, income from provision of amenities, utilities or any other service connected with the renting of building, annuity or pension, prize bond etc. and such other sources defined therein.

Thus, benefit may be fetched from said Sections 11 and 39 of the Income Tax Ordinance, 2001 for purpose of determining what were the 'estate' and 'resources' of the Respondent No.1 falling in Section 17-A (4) of the "Act". Similarly, on the date of the first appearance of the defendant, the court should fix interim monthly maintenance for wife or a child.

Hence the bill has been proposed in order to fill up the lacunas in existing laws.

**SENATOR SAMINA MUMTAZ ZEHRI
MEMBER-IN-CHARGE**