

## **Guideline for *Sothue* – Child Support Allowance**

### **1. Background**

*Sothue* is the amount paid by one parent to the other parent or custodial guardian to bring up a child or children. It is a legally required payment under the Marriage Act 1980 that a parent makes to support his or her children for their basic needs, food, clothing and shelter. A parent pays *sothue* when they divorce or separate, or at times even if they were never married to make sure they each provide their share of financial support for their children. While the Marriage Act, 1980 provides the need to pay a sum of *sothue* in cash amounting to twenty percent of his or her “*monthly income*” to each child or the total of not exceeding forty percent of monthly income in case of more than two children, the Act neither defines nor explains or provides an explanation as to what constitutes “net income.” This has led to inconsistent interpretation and application of the provisions aggravated by the ever-changing nature of the income – with some parties seeking to claim *sothue* based on gross income, basic income or net income. Similarly, there has also been confusion among the courts as to whether certain allowances are calculable for the consideration of determining *sothue*. In view of this, this Guideline seeks to rationalize the determination of *sothue*.

### **2. Guiding Principle**

The payment of *sothue* is guided by the following principles:

- a. The best interest of the child;
- b. The *sothue* is reasonable, just and fair for the child, custodial and paying parents – that the child continues to live at least as much as possible to the family’s standard of living before divorce or separation and that the non-custodial parent’s income, ability to pay and custodial parent’s income and needs are best assessed;
- c. Both the parents have meaningful involvement in the children’s lives and their upbringings;
- d. The child receives proper parenting to help reach their full potential, and each parent meets their responsibilities as a parent;
- e. Maintenance of institution of family through constant familial interaction, bonding and obligation between parents and children; and
- f. Taxability of the income is not the sole test in determining the income of the *Sothue* paying parent.

### **3. Determination of *Sothue***

- a. Section Kha 7.3.1 of the Marriage Act provides that in absence of agreement when the mother has the custody of children, the father shall pay a sum in cash amounting to twenty per cent of his monthly income per month to each child as child support allowance.

- b. The total amount of *sothue* shall not exceed 40% of the monthly income of the father irrespective of the number of divorced spouses and children.

**4. Determination of Income of:**

**a. Salaried Parent**

- i. Section Kha 8.1.3(a) of the Marriage Act provides that income shall mean net salary/wage in the case of employees.
- ii. “Net Salary/Wage” mentioned above shall mean the sum of basic salary and all the allowance earned by the father subtracted by mandatory deductions.

**Net Salary/Wage = (Basic Salary + Allowances) - Mandatory Deductions**

- iii. “Mandatory Deductions” means the sum of Tax Deduction at Source (TDS), Group Insurance Scheme (GIS), Provident Fund (PF) and Health Contribution(HC).

**Mandatory Deductions = TDS + GIS +PF +HC**

**b. Business Person**

- i. Income for a business person, who have net taxable incomes of the preceding three years, means average net taxable incomes of the preceding three years.

**Net Income of the Business Person = Sum of Net Taxable Incomes of the Preceding Three Years ÷ 3**

- ii. Income for a business person, who has the next taxable income of the preceding two years, means the average net taxable income of the preceding two years.

**Net Income of the Business Person = Sum of Net Taxable Incomes of the Preceding Two Years ÷ 2**

- iii. Income for a business person, who has the next taxable income of the preceding one year, means the next taxable income of the preceding one year.

**Net Income of the Business Person = Sum of Net Taxable Incomes of the Preceding One Year.**

- iv. If a person has just started doing business and the child support has to be paid, the child support should be computed after the business tax is paid. The child support amount may be ascertained after the taxes are filed and paid in a lump sum.
- v. In the event there is not even one net taxable income of the preceding year, the Court shall impute the income to the paying parent keeping

regard to the past earnings, actual earning capacity, educational background, and earnings of others with similar education/professional backgrounds and whether the parent is using his or her best efforts to obtain appropriate employment.

- vi. The income of the taxi drivers shall be determined from a few taxi drivers of the same locality who will be called randomly by the Court and work out their average income.

**c. Unemployed Person and Farmer**

*Sothue* paying parents who do not have paid jobs must pay *sothue* based on the national minimum wage in force pursuant to Section Kha 8.1.3 of the Marriage Act.