

**DE JURE NEXUS LAW JOURNAL**

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2<sup>nd</sup> Year, BBA LL.B.**MAINTENANCE UNDER MUSLIM LAW****ABSTRACT**

*This article is based upon the various laws which deals with maintenance of Muslim women, children, parents and relatives. It clarifies that when a Muslim Man is required to maintain his relations, under which circumstances they can file a suit against him asking for maintenance. It further explains different statutes stated by judges and jurists through case laws, explaining relevance of Iddat period in Muslim Law and how Ayats were quoted in landmark Judgements. The Muslim Law states that marriage the marriage shouldn't be batil or fasid to claim for maintenance.*

**KEYWORDS**

*Iddat, Ayats, Batil, Fasid*

**INTRODUCTION**

Maintenance Under Muslim Law is called Nafaqa. Nafaqa which literally means provisions of food, shelter and clothing by a man to his wife, son or daughter and to his old parents. As There was nothing specified in the Muslim texts related to the distinction between Nafaqa as a legal right or moral duty, the Bombay High Court concluded that 'to maintain' is a legal duty in the case *Mohd. Jusab v. haji Adam*<sup>1</sup>. It held that it is obligatory to maintain the wife, children and the relations arising out of blood. Following people are eligible to receive maintenance:

- A wife
- Children
- The needy parents
- Other necessitous relations within prohibited degrees.

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<sup>1</sup> Muslim Law by V. P Bhartiya.

Wife, minor sons, unmarried daughters, mother, father, father's father, father's mother are all entitled to maintenance depending upon their economic conditions.

### **MAINTENANCE OF A WIFE**

A wife has an absolute right to be maintained by her husband under Muslim Law. It is a legal obligation to maintain a wife if she is no means to maintain herself. Wife has a priority over other relation to be maintained. She is preferred over her children as well, as Muslim law considers the wife is the root of children. So, she is entitled for maintenance before her kids.

The wife can claim maintenance when:

- The marriage of hers is *Sahih* (valid).
- The marriage is not *batil* (void) or *fasid* (irregular).
- The husband is cruel with her. *Amir Mohammad v. Mst. Bushra (1956) Raj.*<sup>2</sup>
- After the 15 years of age and attaining puberty.
- If husband marries another woman and the first wife is unable to adjust with her.
- She is obedient and faithful towards her husband and maintains all matrimonial duties.

The wife is deprived of her right to maintenance when:

- She is not a major and is incapable to meet the basic conditions of marriage.
- Denies free consent to her husband for cohabitation at all reasonable times.
- Disobedient<sup>3</sup>[though no law explains the start and an end to disobedience on the part of wife]
- Never visited his house.
- Refuses to live in conjugal home without proper reason.
- Abandons conjugal home without specific reason.
- Desertion.
- Elopes with anyone.

A wife who lawfully leaves her husband's house and their marriage has not been consummated or refuses to cohabit due to the incomplete Dower. Her right of maintenance still exists and husband is bound to pay her maintenance. This was held in case *Amad Giri v. Mst. Bushra AIR (1955) J&K.1.*<sup>4</sup> The High Court of Allahabad ruled in *Itwari v. Asghari AIR (1960) All. 684*<sup>5</sup> that although limited polygamy may be recognized under Muslim law, a second marriage of one husband is "a continued wrong" against the first wife. A Muslim wife, therefore, whose husband has married a second wife, has the right to live independently and to be sustained. Similarly, Muslim women have a right to live separately if their husband keeps a mistress<sup>6</sup>.

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<sup>2</sup> 102. A wife is not entitled for maintenance if she has not visited her husband's place once also.

<sup>3</sup> A V. B ILR (1896)

<sup>4</sup> The Tech Solution: Amad Giri v Mst.Begha on 07 March 1955 - Judgement - LawyerServices

<sup>5</sup> lawyersclubindia; Itwari Vs Smt Asghari And Ors: Husband For Restitution Of Conjugal Rights Only As A Counter Blast To The Wife's Claim For Maintenance U/S 488 CrPc - Others

<sup>6</sup> Sarwari v. Shafi Mohammad, (1976) 1 Andh 255.

### **Maintenance of a Divorced Wife**

A divorced wife may only claim maintenance from the previous husband under Muslim personal law as applicable in India during the period in which she observes her Iddat. Iddat takes three cycles of menstruation or, if pregnant, until the child has been delivered. In *Mohd. Ahmad Khan v. Shah Bano Begum*<sup>7</sup>, the Supreme Court reiterated its stand and held that a divorced Muslim woman, so long as she has not remarried, is a 'wife' for the purposes of Section 125 of CrPC and is entitled to maintenance from her former husband. Quoting Ayats 241 and 242 of Quran the Supreme Court observed that Section 125 of the Criminal Procedure Code is not un-Islamic.

### **Maintenance of a Widowed Wife**

As soon as the husband dies, the wife loses her right to claim maintenance from her husband. Following the death of the husband, even during her period at Iddat the widow has no right to maintenance. The responsibility of Husband to preserve his wife is his own responsibility, which ends with his death. She has no right either to be maintained by her husband's family or out of the possessions of her husband. Section 125 does not contain 'widow' in the word 'wife,' so that, under the Criminal Procedure Code of 1973, a widow has no right to seek maintenance. The Privy Council observed that a widow under Muslim personal legislation is not entitled to get maintenance in *Aga Mohammad Jaffer v. Koolsoom Bibi*<sup>8</sup>.

### **Amount of Maintenance**

Under Hanafi law- by referring to the social positions of husband and wife.

Under Shafi law- by referring only to husband.

Under Shia law- by referring to the requirement of the wife in respect of food, clothing, residence and services.

### **Place to file a suit**

In *Syed Khaja Mohiuddin v. State of Andhra Pradesh*<sup>7</sup> the court had held that the section 125 gives the wife the choice of choosing where a case has to be filed. She can either file a case where she resides or the husband resides or the place where husband and wife have last resided.

### **MAINTENANCE OF CHILDREN**

The father needs to maintain his children:

- Until his sons attain puberty and daughter is unmarried.
- When his daughter is widowed or divorcee.
- When the child in the custody of the mother.

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<sup>7</sup>Legal Information Institute: Mohd. Ahmed Khan v. Shah Bano Begum

<sup>8</sup> <https://www.legitquest.com>: Koolsoom Beebee and Ors Vs. Aga Mahomed Jaffer Bindanim on 07 April, 1897 - Legitquest

The father is not bound to maintain children when:

- A minor son or an unmarried daughter refuse to stay with him without proper reason, in that case the father need not provide separate maintenance to them<sup>9</sup>.
- Adult son unless he is infirm.<sup>10</sup>
- “A child is capable of being maintained out of his own property.”<sup>11</sup>

If a father is infirm or poor the duty of maintaining children is of a mother. If she fails then the paternal grandfather will be responsible<sup>12</sup>. Father-in-law is under no obligation to maintain his widowed daughter-in-law<sup>13</sup>. *Noor Saba Khatoon v. Mohd. Quasim*<sup>14</sup> The Supreme Court decided that a Muslim father's obligation to maintain his minor children by having sufficient resources. Unable to maintain themselves until the majority is reached, even if the minor children live with the divorced wife, and the daughters till they are married are absolute.

### Illegitimate child

The illegitimate daughter of a Muslim male and a Hindu woman in *Pavitri v. Katheesumma AIR (1959) Ker. 319*. claimed the maintenance of her suspect father. The High Court of Kerala decided that the child had no right to receive maintenance in accordance with Muslim Personal Law. Though, there was no duty of a father to maintain his illegitimate child but after amendment of section 488 of Cr.P.C,1908 in 1955 the father was bound to pay Rs. 500 per month in the name was maintenance. In a case *Sukha v Ninni, AIR 1966 Raj 163* it was held that the illegitimate child cannot be left to the misfortunes of vagrancy as there are no laws related to maintenance, the child will be provided maintenance under section 488 of Cr. P c. Although, Court cannot award maintenance u/s 488 of Cr.PC unless asked for.

### **MAINTENANCE OF PARENTS**

A man is supposed to maintain his father, mother, grandfathers, grandmothers if they happen to be in a necessitous condition. if the parents are able to earn then too the child needs to maintain them. The obligation to maintain parents is irrespective of the sex of children. Either son or daughter can or have to maintain their parents as it is a question of life and death, being an urgent matter. The amount of the maintenance can be equally divided by them. There is no distinction in this obligation between a son and a daughter; their responsibility to maintain the parents is equal. However, if a child is poor and the other child is capable, then that child has to maintain his or her parents<sup>15</sup>.

### **MAINTENANCE OF OTHER REALTIONS**

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<sup>9</sup> Bayabai v. Esmail, (1941) Bom. 643.

<sup>10</sup> Hedaya page 146.

<sup>11</sup> Mulla page 383.

<sup>12</sup> Fyzee page 214

<sup>13</sup> Md. Abdul v. Khairunnissa, 1953.

<sup>14</sup> LawLex.Org: Case Summary: Noor Saba Khatoon vs. Mohd. Quasim.

<sup>15</sup> Kasim v. Sadiq (1938) PC 169.

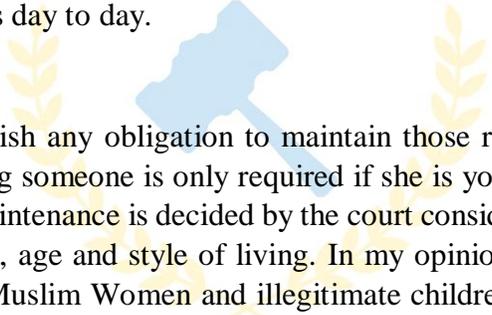
When a needy person is not maintained by any of the parents and children, his relatives are required to maintain them. The Muslim legislation on family maintenance is founded on the reciprocity concept. The family members who can inherit a person's property have a commensurate duty to maintain them for others who are impoverished and the relative is easy to deal with. No individual is required to maintain a collateral relationship. The responsibility to keep the relative only applies if a person is within the forbidden degrees by the person claiming maintenance's consanguinity (Blood Relationship). Secondly, such a relative is only accountable as far as his part in the properties of a maintained person (via an inheritance) is concerned.

### **WHEN PAYABLE**

Maintenance becomes due from month to month or as directed by court. According to Shia law the maintenance is payable as day to day.

### **CONCLUSION**

Muslim Law does not establish any obligation to maintain those relations who are not directly related to a man. Maintaining someone is only required if she is your wife or an offspring or are your parents. The price of maintenance is decided by the court considering various aspects such as their life before maintenance, age and style of living. In my opinion the amendment to this law will be very helpful for the Muslim Women and illegitimate children as some provisions are left vague and ambiguous such as disobedience and maintenance respectively.



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