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# The Importance of Maintenance for Dependents and Muslim Law

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## ABSTRACT

*The Muslim law of maintenance, similar to the law of maintenance in most other legal systems, regards property as the primary and inherently individual matter. Unlike the Hindu system, it does not envision, as the usual state of affairs, the presence of a collective pool of family property that is preserved across generations for the common necessities. Maintenance, referred to as 'nafaqa', encompasses provisions for food, clothing, and shelter, although it is commonly understood to primarily pertain to the former. There exist three reasons for which one individual can provide maintenance to another: marriage, kinship, and property. Only wives, who are entitled to property sufficient for their maintenance, can assert a claim to be supported by their husbands. Their right to maintenance is akin to a form of compensation for their marriage contract. In the present study, we have expounded upon the legal responsibilities bestowed upon husbands to provide sustenance for their wives, progeny, and elderly individuals, while also considering the variables that influence the magnitude of such provisions. Furthermore, this research endeavors to delve into the historical underpinnings of maintenance, as well as explore the various forms of maintenance and the associated debt thereof. In sum, this inquiry accentuates the paramount importance of fulfilling legal duties in supporting dependents within the realm of Islamic law.*

**Keywords:** Maintenance, Maintenance for Wives, Maintenance in Muslim Law.

## I. INTRODUCTION

Maintenance is a crucial aspect of providing for dependents in Islamic law. The term "Nafqah" in Arabic serves as the corresponding concept for maintenance, denoting the expenditures made by an individual for the benefit of their family. Within the legal framework, maintenance encompasses three essential components, namely sustenance, attire, and accommodation<sup>3</sup>. The difficulty we faced in this is that the ancient lawyers do not observe the modern distinction between a legal and moral obligation. Therefore it is not always easy to say what is legally

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<sup>3</sup> Ameer Ali : Mohammedan Law, vol. II, p.358.

enforceable and what is merely an ethical recommendation<sup>4</sup>. The primary obligation that arises in marriage is the maintenance of the wife and children. The secondary obligation arises when a certain person has means and another is indigent.

The examination in question centers around the inquiry "Is one impeded by Islamic jurisprudence from accepting charitable donations?" In the event that one possesses resources beyond the norm, then one is considered impoverished. As per the Fatwa Alamgiri, possessing a surplus of 200 dirhams (equivalent to 60 to 80 rupees) beyond an individual's basic necessities was considered adequate to dissuade the individual from resorting to begging and to classify them as possessing sufficient means<sup>5</sup>. In Muslim law, those persons are entitled to get maintenance if they come under the purview of the following points. Such persons are:

1. The wife
2. The children
3. The parents and grandparents
4. The other relations

Obligations to maintain his wife the Muslim husband arise in the following two circumstances:

1. On account of status arising out of valid marriages, and,
2. On account of a pre-nuptial agreement entered into between the parties to the marriage, or between the parents in case both the parties or one of them is minor<sup>6</sup>.

The maintenance of women, children, and parents is a subject of great concern for all. Jurisprudentially, no system of law can afford to be casual to this significant aspect of human activity. In reality, every society from primitive to modern has tried to develop legal and extra mechanisms for its regulation, specifying the rights and obligations of each member of the society in the manner suited to them. In various Muslim countries, a great deal of legislation has taken place regarding issues related to the maintenance of women, children, parents, and other relatives<sup>7</sup>.

## **II. MAINTENANCE OF WIFE'S**

The notion of maintenance in Islamic law is rooted in the principles of justice, compassion, and social responsibility. It recognizes the inherent vulnerability and dependence of certain

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<sup>4</sup> Tyabji, 287

<sup>5</sup> Bailee I, 465; Tyabji 287.

<sup>6</sup> Dr. Paras Diwan, (147) Muslim law in modern India

<sup>7</sup> Maintenance of women and children under Muslim law: legislative trends in Muslim countries: M. Afzal Wani

individuals within a family structure and seeks to provide them with the necessary means to live a dignified life. The husband is bound to maintain his wife even if she is faithful to him and follows his reasonable orders. But a man is not bound to maintain his wife who refuses herself to him<sup>8</sup> or disobedient, unless the refusal or disobedience is justified by non-payment of prompt dower<sup>9</sup> or on the account of cruelty, she leaves the husband's house<sup>10</sup>. The decree of restitution of conjugal rights can't bar the wife from claiming maintenance. It is not only a piece of evidence to be taken by the magistrate in determining the wife's entitlement to maintenance<sup>11</sup>. Under Muslim law, the wife's right to maintenance is a kind of debt against the husband and has priority over the rights of all other persons to receive maintenance. According to Dull-ul-muhtar wife is *asl* (root) the children are *far* (branch) which means that the priority of the wife's rights of maintenance is over the children. A Muslim husband is bound to maintain his wife only in the case of valid (*sahih*) marriage Except in this only one case is also bound to maintain his wife in an irregular marriage when the marriage is irregular for want of witnesses. According to Durr-ul-muhtar maintenance is due only to the wife who has been regularly married<sup>12</sup>.

However, it is immaterial whether the wife is rich or poor, Muslim or non-Muslim, young or old, enjoyed or unenjoyed. The wife has the right to pledge the credit of her husband for providing herself with maintenance. In Muslim law, the obligation to maintain a wife does not arise, if the wife does not attain puberty. It arises when she attains puberty. Imam Shafii has different views and he says that a wife is entitled to maintenance immediately on marriage even though she has not attained puberty. Today in India all the schools of Muslim law, a wife who has not attained puberty is not entitled to maintenance<sup>13</sup>.

#### (A) Quantum of Maintenance

There are different opinions among Muslim authorities as to the amount of maintenance a wife is entitled to receive from her husband. According to the Hedaya school, the quantum of maintenance should be based on the rank and financial position of both parties. Imam Saifii also says that the financial position of both parties should be taken into consideration. There is a minute difference of opinion both the schools that in Hedaya law both the parties are to be considered while in Shafii law only that of the husband<sup>14</sup>.

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<sup>8</sup> Mahomed Ali Vs. Mt. Ghulam Fatima (1935)

<sup>9</sup> Bailee, 442 : najiman Nissa Vs. Serajuddin (1946) 228 I.C. , 198(46) A.P.

<sup>10</sup> Amir Mohammad Vs. Mst. Bushra (56) A. Raj. 102.

<sup>11</sup> Syed Gullam Sajjan Vs. Parveen Fatima (1980) 2 An W.R. 335, [Ramchandra Raju. J.J.]

<sup>12</sup> Paras Diwan (12<sup>th</sup> edition) p.148

<sup>13</sup> Tyabji (4<sup>th</sup> edition) P. 274

<sup>14</sup> Baillie, I, 441-42

Under the Hanafi legal system, the obligation to provide maintenance arises and is to be paid in the form of monthly installments, unless the court issues alternative instructions. Within the Shiite community, this duty is to be fulfilled daily.

### **(B) Maintenance of divorce and dower**

Before the ruling of the Supreme Court in the case of *Md. Ahmad Khan Vs. Shah Bano Begum*<sup>15</sup>, a divorced Muslim wife did not have the right to receive any financial support from her husband once the Iddat period had ended. Following the decision in the *Shah Bano Case*, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted, which introduced various provisions to offer relief to wives. After the dissolution of the marital bond, the female spouse is granted the right to receive financial support throughout the Iddat period<sup>16</sup>. Whether she is divorced revocably or irrevocably. According to the Hanafi School wife is entitled to get maintenance whether his divorce is revocably or irrevocably but in Shaifee law wife is entitled to get maintenance when she is revocably done.

It was seen in the Criminal Procedure Code (Amendment) Act, 1973 remodeled the old Sec. 488 and a new provision(now Sec. 125) and Explanation (b) to clause (1) of Section 125 defines a wife as a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried<sup>17</sup>. However, Chief Justice Chandrachud opined that, notwithstanding the absence of the amendment, it is incumbent upon a Muslim individual to provide financial support to his former spouse by the tenets of Muslim personal law. In the case of *Arab Ahemadha Vs. Arab Bail*<sup>18</sup>, The Gujrat High Court said that a divorced Muslim wife is entitled to maintenance even after the period of Iddat as well, and under Section 125, Criminal Procedure Code she is entitled to a reasonable and fair amount of maintenance. It was said that the wife agreed to relinquish her right to maintenance allowance under section 127(3)(c) of the Criminal Procedure Code she will not be entitled to maintenance allowance but no statutory right of the divorce under section 125 can operate to mitigate that claim. The aforementioned argument must be refuted as it lacks any factual or legal basis<sup>19</sup>. The Muslim Woman (Protection of Rights on Divorce) Act, 1986 only applies to a divorced woman. Proceedings under Section 125 are civil so if the court notices that a woman has appealed under Section 125

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<sup>15</sup> AIR 1985 SC 945

<sup>16</sup> Hedaya, 145; Bailee, 450; *Musammam Marian Vs. Kadir Baksh* (79) AO. 527.

<sup>17</sup> Criminal Procedure Code, 1973.

<sup>18</sup> AIR 1985 SC p. 952

<sup>19</sup> 1979 Cri. LJ 151(S.C.) Followed *Syed Mukhtar Ahmad Vs. Smt. Moonis Fatima*(1981) 18 A.C.C. 224, [R.B. Lai, J. (H.C.)].

of the Criminal Procedure Code, the court can treat the same as a petition under the Muslim Woman (Protection of Rights on Divorce) Act, 1986<sup>20</sup>. As per section 3 of the Muslim Women (protection of Rights on Divorce) Act, 1986 Muslim husband is entitled to provide a fair and reasonable amount of maintenance to his wife and has to fulfill all his arrangements after divorce. Under section 4 of this Act, a divorced woman is entitled to maintenance from her relatives who are entitled to her property after death. If the relatives are not able to maintain her then in that case Wakf board has been created by this act who take care of the maintenance of such women<sup>21</sup>.

### (C) Maintenance under Anti-nuptial Agreements

Maintenance under the Anti-nuptial agreement refers to the financial support that one spouse may provide to the other in the event of separation. The purpose of maintenance is to provide financial security and stability to both parties. The amount and duration of maintenance will depend on the specific terms of the agreement. Anti-nuptial agreement is not always enforceable. Courts may invalidate provisions that are deemed unfair or contrary to public policy. If an agreement with the first wife at the time of the second marriage of the husband stipulates that if she did not want to live amicably with the second wife, she will live separately from him, and claim maintenance from him is valid and enforceable.<sup>22</sup> If the agreement with the second wife that she wants to live in her parent's home then the husband will pay her a certain amount of maintenance is valid.<sup>23</sup> In the case of *Bhagwati Charan Singh Vs. Parmeshwari nan-dar singh*<sup>24</sup> The Hon'ble Supreme Court said that pre-nuptials are treated as unenforceable agreements since either party may be required to sign away the right to legal remedy in the division of the marital estate after the dissolution of marriage. In the case of *Radmacher Vs. Granatino*<sup>25</sup>, The court said that prenups do not hit public policy arguments if they are mutually and voluntary.

## III. MAINTENANCE OF THE CHILDREN

The welfare of the child is of utmost importance, as stated by the Hedaya. According to this legal source, the responsibility of providing for minor children lies solely on the father, and no other individual can be involved in this process. In the context of Muslim law, there is no

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<sup>20</sup> Iqbal Bano Vs. State of U.P(2007) 6 SCC, 785.

<sup>21</sup> Daniel Latifi Vs. Union of India, AIR 2001 SSC 958.

<sup>22</sup> Mansar Vs. Azizul, 1928 Oudh 330.

<sup>23</sup> Sakina Vs. Shamshad, 1936 Pesh 195.

<sup>24</sup> ILR 1942 AII 518.

<sup>25</sup> [2010] 3 WLR 1367

obligation for a person to support their illegitimate children<sup>26</sup>. However, the Hanafi school acknowledges the responsibility of nurturing illegitimate children once they reach the age of seven. It is worth noting that no school of Muslim law imposes any limitations on the parents of illegitimate children.

Under the Hanafi law school if the father is poor and the mother is rich then the mother is bound to maintain the children but the mother has the right to recover the amount spent on the maintenance of children where the father is in a position to repay it<sup>27</sup>. The Hanafi law imposes the obligation of maintenance on the grandfather when both parents are not in a position to maintain the children<sup>28</sup>. If the adult son has been disabled on account of some disease, or physical or mental infirmity or is engaged in the study then the father is bound to maintain<sup>29</sup>. If the adult daughter does not have any independent means of maintenance, the Father is bound to maintain her till she is married<sup>30</sup>. According to Islamic jurisprudence, a parent doesn't need to provide financial support to a married daughter<sup>31</sup>. In the legal case of Akhtari Begam Vs. Abdul Rashid<sup>32</sup>, the court ruled that the father is responsible for financially supporting his four-year-old child who resides with the mother.

Noor Sabha Khatoon Vs. Mohd. Qasim<sup>33</sup> In this case, the Hon'ble Court said that a divorced Muslim woman has the right to claim maintenance from his former husband till their children attain majority.

#### **IV. MAINTENANCE OF PARENTS, GRAND PARENTS, AND RELATIVES**

Under Muslim law, children are bound to maintain their necessitous parents and grandparents. The obligation of maintenance is not limited to biological parents but also extends to adoptive parents and those who have taken care of the child in their childhood. Sons and daughters both are equally liable to maintain their parents there is no difference between a daughter and a son in respect of their liability. But if a child is poor and other is in easy circumstances the liability lies on the child who is in easy circumstances. Under the Ithna Asharia Shia law, if both parents are in a state of neediness and are not impoverished, the child possesses the authority to equitably allocate the primary maintenance allowances between the father and mother. Furthermore, they are obligated to support their indigent relatives who fall within the prohibited

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<sup>26</sup> The Fatwai Alamgiri, I, 753

<sup>27</sup> The fatwai Alamgiri, I, 752

<sup>28</sup> Paras Diwan (12<sup>th</sup> edition, 2016) P.167

<sup>29</sup> The Hedaya, 147

<sup>30</sup> Baillie, I, 458

<sup>31</sup> Ameer Ali, II, 429

<sup>32</sup> AIR 1937 Lah. 236

<sup>33</sup> AIR 1997 SC 3280

degrees in proportion to the portion they would inherit from said relatives upon their decease. A father will not be entitled to maintain his son's widow<sup>34</sup>. For maintenance to senior citizens The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 imposes legal obligations for children and legal heirs to provide maintenance to senior citizens. This Act allows the State government to establish old age homes in every district. This Act also authorizes the state government to set up maintenance tribunals and appellate tribunals to decide the matters related to the maintenance of the elderly. This Act allows monthly allowances to senior citizens from their children's<sup>35</sup>.

In 2018, the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill was passed in which the government has tried to expand social security for elderly people. This Amendment brought changes related to relative's responsibility, increasing fine amount, Imprisonment period, and expanding the definition of children in this Act. Overall these Acts are made to impose certain responsibilities on children towards their parents<sup>36</sup>.

## V. CONCLUSION & SUGGESTION

From this article, we can discern the unfavorable state of the wife, children, and parents in terms of maintenance, a right that is rightfully theirs. The overarching notion of maintenance has been developed to safeguard the entitlements of the wife and ensure her esteemed livelihood. Furthermore, even in the event of marriage dissolution, the husband remains obligated to provide for his wife.

The future of maintenance laws in Islamic contexts is not without its challenges. One of the main challenges is the gap between place-based regulations and codified law, particularly in regulating family matters such as maintenance. This gap can lead to inconsistencies and disparities in the implementation of maintenance laws, as women and children often rely on the interpretation and jurisdiction of judges. Moreover, there is a need for continued legal reforms and awareness campaigns to address gender inequalities and ensure that maintenance laws in Islamic societies are effectively enforced. Furthermore, there is a need to address societal attitudes and perceptions towards maintenance laws. To overcome these challenges and ensure the effective implementation of maintenance laws, Islamic societies must place a greater emphasis on education and awareness regarding the rights and responsibilities outlined in Islamic family law. Furthermore, the involvement of the Islamic judiciary, both at the local and national level, is crucial in shaping and interpreting maintenance laws by the principles of social

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<sup>34</sup> Mahomed Abdul Vs. khairunnissa (1950) 52 Bom. L.R. 133, (50) A.B. 245.

<sup>35</sup> Welfare of Parents and Senior Citizens Act, 2007

<sup>36</sup> Maintenance and welfare of parents and senior citizens (Amendment) Bill, 2018.



justice and compassion. Overall, the importance of maintenance for dependents in Islamic law cannot be overstated. It serves as a means of promoting social and economic justice, safeguarding the rights and well-being of divorced wives and their dependents, and ensuring the stability and security of families in Islamic societies. Furthermore, the advancement of modernity and changing societal norms have also led to calls for reforms in maintenance laws within an Islamic framework. To address these calls for reform, Muslim societies must confront the challenges of balancing tradition and change in the interpretation of Islamic law. The challenges of modernization and change in the Muslim world have brought about the recognition of the need for reform in Islamic family law, with maintenance laws being one of the major areas that require attention. In the pursuit of reforming Islamic family law, two major issues need to be addressed - the relationship between tradition and change, and the means or methodology of reinterpretation and reform. In the context of maintenance for dependents in Islamic law, the importance of ongoing maintenance cannot be understated. It serves as a means of providing financial support and stability to women and children who may face economic hardship following divorce. This importance is emphasized in Islamic teachings, as evidenced by verses 241 and 242 of the Qur'an which highlight the obligation to provide maintenance to divorced wives who are unable to support themselves. Additionally, the legal frameworks of Muslim-majority countries have also recognized the significance of maintenance for dependents in Islamic law.

Under the provisions of Muslim and other personal laws, maintenance is not only granted to the wife but also to children, parents, grandparents, grandchildren, and other blood relations. The amount of maintenance provided to the wife, children, and other dependents is contingent upon the financial status of the individual responsible for providing maintenance. By Muslim law, women are regarded as equal to men, thus it is believed that they are unable to sustain themselves financially. Consequently, it becomes the husband's responsibility to provide maintenance to the wife under all circumstances, even if she is capable of supporting herself. We must exert more effort and encourage the participation of the judicial system and legislation to ameliorate the situation of wives under Muslim law. Although several Acts have been enacted, they have not succeeded in improving the conditions of wives. Additionally, every Muslim is obligated to provide maintenance for their ancestors and descendants. In 2007, the Maintenance and Welfare of Parents and Senior Citizens Act was enacted to impose obligations on children about their parents. Lastly, I would like to propose that the government formulate laws that can enhance the circumstances of wives, children, and dependents. The objective of the parliament extends beyond the creation of Acts aimed at improving conditions and social

standards; it also encompasses safeguarding the interests of society as a whole.

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