BLOGS

Maintenance under Muslim law

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Under the Muslim law of Maintenance (*nafaqa)* the obligation of a Muslim arises only if the claimant has no means or property to maintain himself or herself. Under Muslim law the following persons are entitled to maintenance:

- Wife
- Young children
- The necessitous parents
- Other necessitous relations within the prohibited degrees.

Maintenance to Muslim Wife

Under Muslim law, the wife's right to be maintained by her husband is absolute. A Muslim husband is bound to maintain his wife of a valid marriage even if there is no agreement in this regard. A Muslim husband is not bound to maintain the wife of void or irregular marriage except when the marriage is irregular for want of witnesses.

Wife's right of maintenance is a debt against the husband. It is an independent right. The husband's obligation to maintain his wife exists only so long as the wife remains faithful and obeys all his reasonable orders i.e. discharge her own matrimonial duties.

If the consummation is not possible due to wife's own ill health or old age or faulty organ she is not guilty of transgressing her matrimonial obligations towards the husband and may lawfully claim maintenance from the husband.

The wife could also claim future maintenance on account to pre-nuptial agreement viz. sustainable maintenance in the event of ill-treatment. Arrears of maintenance cannot be claimed by any relative other than a wife. The right of the wife to maintenance exists in spite of the fact that she can maintain herself out of her own property.

Maintenance of wife under Criminal Procedure Code, 1973

The refusal of the wife to perform her matrimonial obligation towards husband and her claim of maintenance is to be examined not only under Muslim personal law but also under the Criminal Procedure Code. The claim of wife for the maintenance under this act is an independent statutory right not affected by her personal law.

A Muslim wife, who lives separately due to her husband's second marriage, is entitled to claim maintenance allowance under the provisions of Criminal Procedure Code, 1973.

In **Begum Subanu alias Saira Banu v. A.M Abdool Gafoor**, the Supreme Court held that irrespective of a Muslim husband's right to contract a second marriage, his first wife would be entitled to claim maintenance. A Muslim wife, whose husband neglects to maintain her without any lawful justification, is entitled to file a suit for maintenance in a civil court under her personal law. She is also entitled to enforce her right under the CrPc 1973. Where a Muslim wife is in urgent need, she may apply for an order of maintenance under section 125 of the Criminal Procedure Code; 1973. A magistrate of the first class may then order the husband to provide monthly allowance not exceeding five hundred rupees, for the maintenance of his wife.



Maintenance of the divorced woman

It can be discussed under the following heads

- Muslim personal law
- Section 125 Criminal Procedure Code 1973 and
- The Muslim Women (Protection of Rights on Divorce) Act,1986

Muslim personal law

A divorced wife can claim maintenance from the former husband only for that period during which she is observing her *Iddat.* The duration of *Iddat* on divorce is three menstruation periods or, if pregnant, till delivery of the child. The former husband's liability extends only up to the period of *iddat,* not beyond that.

Section 125 of the Criminal Procedure Code 1973

The term 'wife' includes a 'divorced wife'. Section 125 is applicable also to a divorced Muslim wife. Section 127(3) provides that the order of maintenance in favour of a divorced wife shall be cancelled, and such woman shall not be entitled to maintenance under the following circumstances:

- Where the divorced woman has remarried
- Where such woman has received the whole sum due to her on divorce under any customary or personal law, and
- Where the woman, after obtaining a divorce from her husband, has voluntarily surrendered the right to maintenance.

In **Mohd. Ahmad Khan v. Shah Bano Begum** AIR 1985 SC 945, 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 purpose of section 125, and is entitled to maintenance from her former husband.

Maintenance under The Muslim Women (Protection of Rights on Divorce) Act,1986

Maintenance during the Iddat: The divorced woman is entitled to a reasonable and fair amount of maintenance for herself during the Iddat period from her former husband

Maintenance after the Iddat: The divorced woman who remains unmarried after the Iddat, and is unable to maintain herself, is entitled to get maintenance from her such relatives who would inherit her properties upon her death. In the absence of any such relatives or, where they have no sufficient means, then ultimately the liability to maintain her is cast upon the Waqf Board of the state in which she resides.

The Muslim Women (Protection of Rights on Divorce) Act,1986 has now made the operation of section 125-128 of the Criminal Procedure Code optional in respect of Muslim woman.

In **Danial Latifi and others v. Union Of India** all the writ petitioners challenging the constitutional validity of the Muslim Women Act 1986 were clubbed together in this P.I.L. under article 32 of the constitution. The writ petition was dismissed by the Supreme Court challenging the validity of Muslim Women Act 1986. The Court upheld the validity of the Act.

In **A. Yousuf v. Sowramma** it was held by the court that whatever the cause may be the wife is entitled to a decree for the dissolution of her marriage if the husband fails to maintain her for a period of two years, even though the wife may have contributed towards the failure of the maintenance by her husband.

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