



Muslim Maintenance

1M.KRISHNADEVI, 2S.ABISHA

1STUDENT , 2STUDENT

1DHANALAKSHMI SRINIVASAN UNIVERSITY ,

2DHANALAKSHMI SRINIVASAN UNIVERSITY

ABSTRACT

The topic is about Muslim Maintenance and the persons who are eligible to get maintenance under the Muslim law for wife, children, and daughter-in-law, grand-parents and grand-children. There are some sections that speaks about the purpose and critical analysis under the Muslim Law and the CRPC (code of criminal procedure) sections converted into BNSS (Bharatiya Nagarik Suraksha Sanhita).

INTRODUCTION

Maintenance is a crucial concept in family law because it reflects a moral and legal duty that every person owes to those dependent upon them. Under the Muslim law framework as well as under statutory law, the obligation to provide *nafqah* (maintenance) ensures that vulnerable dependents—such as wives, children, parents and divorced women—are not left without support. In modern times, the idea of maintenance is no longer viewed as merely a personal duty but a statutory obligation backed by enforceable legal mechanisms.

MEANING OF MAINTENANCE

Definition from *Halsbury's* Laws of England

Halsbury defines maintenance as the weekly or monthly amount ordered by a court in cases of divorce or nullity for the support of the wife. A similar provision exists for children. Although this definition originates from English matrimonial law, Indian courts have often relied on it for understanding the broader concept.

Meaning under Muslim Law

Under Muslim personal law, maintenance is known as “*nafqah*”. The term signifies expenses for:

- Food
- Clothing
- Residence (shelter)

The emphasis is on providing the essentials required for a dignified life.

Tyabji's View

According to **Tyabji**, many of the classical rules about calculating maintenance were developed in ancient times and do not easily fit into modern socio-economic conditions. He stresses that maintenance has to be understood flexibly and according to contemporary standards of living.

DEFINITION'S:

1. **Hedaya** - “All those things which are necessary to the support of life, such as food, cloths and lodging; many confined it solely to food”.¹
2. **Durrul-ul-Mukhtar** - “Nafaqu literally means that which a man spends over his children; in law it means feeding, clothing and lodging; in common use it signifies food”.²
3. **Fatawa Alamgiri** - “Maintenance comprehends foods, raiment and lodging, though in common parlance it is limited to the first”.³
4. **Mulla** - “Maintenance (nafaqah) under Muslim law means provision for food, clothing and lodging and such other necessities as are required for the sustenance of a wife or other dependants according to the status of the parties”.⁴
5. **Dr Paras Diwan** - “Maintenance is that amount which a person is bound to provide for the support of another, for food, clothing, residence, education and medical attendance, having regard to the position and circumstances of the parties”.⁵
6. **Ratanlal & Dhirajlal** (Criminal Procedure, on Sec. 144 BNSS) - “The word ‘maintenance’ in Section 144 BNSS means such allowance as is necessary for the subsistence of the claimant, to prevent vagrancy and destitution, having regard to the means of the person liable and the needs of the person entitled”.⁶

PERSONS ENTITLED TO MAINTENANCE

Even after integration with statutory law, personal law continues to guide entitlement for maintenance among Muslims.

1. Wife

A Muslim wife is entitled to maintenance as long as she remains faithful, obedient and lives with the husband. Under statutory law, the term “wife” includes a woman:

- Who has been divorced,
- Or who has obtained a divorce from her husband,
- And has not remarried.

This expanded definition is now fully recognized in Indian law.

2. Children

¹ The book Hedaya, a prominent text in Hanafi Muslim law defines maintenance.

² In the book Durrul-ul-Mukhtar (commentary on Tanwir al-Absar), in the chapter on maintenance, explaining that nafaqa in its literal sense means expenditure over one's dependents, and in legal usage includes food, clothing, and lodging, though commonly the word is used to denote food alone.

³ Fatawa Alamgiri (also known as Al-Fatawa al-Hindiyya), in the sections dealing with family law and maintenance, clarifying that “maintenance” in law covers food, clothing, and lodging, despite ordinary usage restricting it to food.

⁴ Mulla, Principles of Mohammedan Law, chapter on “Maintenance (Nafaqah)”.

⁵ Paras Diwan, Modern Hindu Law / Family Law (definition of maintenance; often cited generally for Indian family-law concept of maintenance).

⁶ Ratanlal & Dhirajlal, The Code of Criminal Procedure, commentary under old S. 125 CrPC (now S. 144 BNSS).

Minor children are entitled to maintenance irrespective of their legitimacy, though fathers hold primary responsibility.

3. Parents

Indigent parents may also claim maintenance from their children.

SECTION 144 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS): ORDER FOR MAINTENANCE

Purpose of Section 144 B NSS

Section 144 empowers a Magistrate to order maintenance for:

- Wife
- Children (legitimate or illegitimate)
- Father or mother

Meaning of Key Terms

Minor: A person who has not attained majority under the Indian Majority Act, 1875.

Wife: Includes a divorced woman who has not remarried.

Date from Which Maintenance Is Payable

1) The Magistrate may direct payment:

- From the date of the order, or
- From the date of the application—depending on circumstances.

This provision helps avoid hardship during long litigation.

Consequences for Non-payment

If a person fails to comply with a maintenance order without reasonable cause:

- A warrant may be issued for recovery
- The defaulter may be sentenced to imprisonment up to one month for each month of default

This coercive mechanism ensures that orders are not ignored.

Conditions Where Wife Cannot Claim Maintenance

A wife loses her right to maintenance when:

- She is living in adultery
- She refuses to live with her husband without sufficient reason
- Both are living separately by mutual consent

These disqualifications reflect earlier CRPC principles and remain unchanged in the B NSS.

Cancellation of Maintenance Order

If the husband proves any of the above grounds, the Magistrate may cancel the maintenance order.

SECTION 145 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS): PROCEDURE

Proceedings under Section 144 may be initiated in any district:

1. Where the person from whom maintenance is claimed resides, or
2. Where the wife resides, or
3. Where both last resided together.

The court may also pass orders relating to costs.

SECTION 146 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS): ALTERATION OF MAINTENANCE

If circumstances change—such as increase or decrease in income—the Magistrate may

- Increase
- Decrease
- Cancel

the allowance previously ordered.

SECTION 147 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS): ENFORCEMENT OF MAINTENANCE ORDER

A copy of the maintenance order must be provided free of cost to the beneficiary.

The order may be enforced by any Magistrate in the district where:

- The defaulter is located,
- Identity of parties is established, and
- Default in payment is proved.

MAINTENANCE OF MUSLIM WOMEN – JUDICIAL DEVELOPMENT

Courts have played an essential role in shaping the rights of Muslim women, particularly divorced women.

IMPORTANT CASE LAWS

Below are major judgments with proper explanations.

1. Shah Bano Case (1985)

Case: Mohd. Ahmed Khan v. Shah Bano Begum (AIR 1985 SC 945)

Facts: Shah Bano, a 62-year-old Muslim woman, was divorced by her husband who gave her talaq. She sought maintenance under Section 125 CrPC (now Section 144 BNSS). Her husband argued that he had paid *mehr* and was liable only during the *iddat* period.

Issue: Can a Muslim divorced woman claim maintenance under Section 125 CrPC (now BNSS Section 144)?

Judgment:

The Supreme Court held:

A Muslim woman is entitled to maintenance beyond *iddat* if she cannot maintain herself.

Personal law cannot override a secular statutory provision like Section 125.

Importance: This case expanded maintenance rights for Muslim women and led to debates resulting in the Muslim Women (Protection of Rights on Divorce) Act, 1986.

2. Danial Latifi v. Union of India (2001)

Facts: After the Shah Bano controversy, Parliament enacted the 1986 Act. Many argued that the Act curtailed rights of divorced Muslim women.

Judgment:

The Supreme Court upheld the Act but interpreted it to mean:

A husband must make a reasonable and fair provision for the future of the divorced wife, not just during *iddat*, but for her entire life.

This amount must be paid within the *iddat* period.

Effect: This interpretation preserved the spirit of Shah Bano.

3. Shamim Ara v. State of U.P. (2002)

Facts: The husband tried to avoid maintenance claiming that he had divorced his wife. The alleged divorce was neither communicated nor properly pronounced.

Judgment:

The Supreme Court held:

- Mere pleading in court cannot amount to divorce.
- A valid talaq requires proof of reasonable cause and proper attempts at reconciliation.

Importance: It prevented husbands from avoiding maintenance by claiming arbitrary *talaq*.

4. Iqbal Bano v. State of U.P. (2007)

Facts: A divorced Muslim woman sought maintenance under Section 125 CrPC.

Judgment:

The Court held:

- Even under the Muslim Women Act, she can approach the Magistrate under Section 125 (now Section 144 BNSS).
- It is a secular remedy.

Kerala High Court – Khatoon Nisa Case

Judgment: A divorced woman unable to maintain herself is entitled to maintenance even after *iddat* until she remarries.

APPLICATION OF BNSS SECTIONS IN MUSLIM MAINTENANCE CLAIMS

Even though Muslim personal law governs *nafqah*, BNSS provides:

- Speedy remedy
- Uniform procedure
- Enforceable orders

A divorced Muslim woman has two options:

1. Claim under the Muslim Women (Protection of Rights on Divorce) Act, 1986, or
2. Claim under Section 144 BNSS (just like the earlier Section 125 CrPC).

Courts have clarified repeatedly that BNSS is not overridden by personal law.

CRITICAL ANALYSIS

Importance of BNSS for Muslim Women

The BNSS retains the spirit of CrPC focusing on:

- Social justice
- Protection of abandoned women
- Fast and summary proceedings

Preventing Misuse

The conditions such as:

- Adultery
- Refusal to live without cause
- Mutual consent separation

ensure that maintenance is not claimed unfairly.

Modern Interpretation

Courts today apply maintenance provisions liberally, keeping constitutional goals in mind.

CONCLUSION

Maintenance under Muslim law and the BNSS represents a balance between personal law principles and secular statutory protections. Courts have repeatedly emphasized that the purpose of maintenance is not to punish the husband but to ensure that women, children, and parents are not left destitute. With BNSS replacing CrPC, the numbering has changed, but the essence remains. The judiciary continues to protect Muslim women from unjust abandonment and ensures that maintenance law remains a tool of social welfare.