

Rights of Maintenance of a Muslim Wife under Islamic Law: A Legal Analysis

Jannatul Ferdous*

Abstract: Maintenance is one of the basic rights which the Islamic laws have provided for the Muslim women. Though there are plenty of general provisions in *Shari'ah* in favour of women, especially on inheritance and dower, men have been put under strict legal obligations for their women on matter of maintenance. *Nafaqa*, the Arabic synonym for 'maintenance', signifies all those things which are necessary to the support of life. It, therefore, comprehends food, raiment and lodging, though in common parlance it is limited to food other than luxurious items. A Muslim wife can claim it from her husband as a right. She is entitled to be maintained during subsisting of their marital life, and also during 'iddat' period which occurs after severance of their conjugal life. In Bangladesh, two primary statutes provide the provisions regarding maintenance, that is (i) The Muslim Family Laws Ordinance, 1961 (Ordinance No. VII of 1961) and (ii) The Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985). A wife, however, cannot claim maintenance as a right under some circumstances, such as on her status of a rebellious or *nashizah* whereby she denies to obey her husband. All these matters related to maintenance of the Muslim wife have been discussed in this article.

Keywords: Nafaqa, Iddat, Islamic law, Family law and Muslim wife.

Introduction

In Muslim societies, women have distinct position as regards both rights and status. Maintenance is one of the basic rights which the Islamic laws have provided for the Muslim women. In short, Maintenance signifies food, raiment and lodgings.¹ In the Sub-continental reality, most of the women, especially in the lower and lower middle class which comprise the greater part of the society, are financially too insolvent to support all the basic needs on their own. The general consequence is that the women

* Jannatul Ferdous, Senior Lecturer, Department of Law, Northern University Bangladesh, E-mail: jfkhushi@gmail.com

remain under men's control and supervision. Under this reality, maintenance is always considered as an integral part of all matrimonial proceedings in Muslim society. Though there are several general provisions in the *Shari'ah* in favour of women, especially on inheritance and dower, in some cases men have been put under strict legal obligations for their women, and maintenance is one of them. Obligation of a husband to maintain his wife arises out of the status of the marriage. Islamic Law considers men as the protectors and maintainers of their counterparts, because 'Allah has made the one of them to excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are devotedly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e. g. their chastity, their husband's property, etc).'² Islamic law grants a Muslim wife right to maintenance from her husband not only during the subsistence of the marriage but also reasonably after dissolution of the marriage.³ The order for maintenance is the law of Islam which comes directly from the Creator of men and women—Allah Ta'ala Himself, but such law is not clear even to the contemporary Muslims in general and is not practised sincerely by many of them. Therefore, the present study is an attempt to examine the rights of a Muslim wife in getting maintenance from her husband under Islamic laws in this regard generally in the Sub-continent and particularly in Bangladesh.

Meaning of Maintenance

The word 'Maintenance' literally stands for *Nafaqa*, an Arabic term, which means 'ikhrāj' or taking out. 'Nafaqa' signifies all those things which are necessary to the support of life.⁴ It, therefore, comprehends food, raiment and lodging, though in common parlance it is limited to food.⁵

According to Jamal J. Ahmad Nasir, maintenance involves the husband providing for his wife, at his own expense and according to his means, food, clothing, suitable housing with bathing facilities, toiletry necessities, and all medical fees and medicines that may be required.⁶

Beyond the dower, the husband's primary financial obligation towards his wife is that of maintenance.⁷ Once it is due, the maintenance of the wife is deemed a debt on the husband from the date of withholding it.⁸ Only on payment, such debt is settled under the Sharia.⁹ A Muslim wife can claim it from her husband as a right. She is entitled to be maintained during subsisting of their marital life, and also during *iddat* period which occurs after severance of their conjugal relation. After divorce, she is entitled

to maintenance during the *iddat* period but not during the *iddat* following the death of her husband.¹⁰ There is no controversy that the husband is bound to maintain the wife during the three months of *iddat* period, but there is a considerable controversy whether the maintenance extends beyond the *iddat* period.¹¹ It has been specifically provided in holy Quran that the divorced women shall wait for remarriage for three monthly periods and the woman in *iddat* live in the same style as you live, according to your means.¹² And the issue of the maintenance of a Muslim wife has been a very different part as compared to a Hindu wife.

Thus, the term 'maintenance' involves such kinds of necessities as food, clothes and lodging, but does not include luxurious items. In spite of some difference of opinions, it is widely accepted that medical charges and cost of education are not included, nor what administers to mere delight and enjoyment, such as *Khuzab* and *Kohl*.¹³ But, as the concept of social needs and social justice, no such hard and fast rules can be laid down permanently as to what should be the standard of education to form part of maintenance. In rapidly advancing society, the cost of education up to the higher secondary stage may be included under maintenance.¹⁴

Rights of Maintenance of a Muslim Wife under Islamic Law

A Muslim wife is entitled to maintenance during the continuance of marriage. Under Muslim law as per *Hedayah*, maintenance is due for the wife from the husband as a recompense for the matrimonial restraint and is one of the necessary and inherent conditions of the marriage contract.¹⁵ It is generally agreed that the wife is entitled to maintenance during the continuance of the marriage.¹⁶ Moreover, the wife is first in order of priority to this entitlement, even before the children, parents and relatives.¹⁷ The Holy Quran and the *Sunnah* of the Prophet Muhammed (SAAS) have commanded kindness to women. One specific consequence of this Divine command is man's responsibility for the full maintenance of the wife, a duty which he must discharge cheerfully, without reproach, injury or condescension.¹⁸

Thus, a Muslim husband has to provide maintenance to his wife during her sickness. On the other hand, women have been entrusted by Allah to provide a peaceful and comfortable home environment. It is one of the extraordinary beauties of Islam that by entrusting the male to the position of protector and provider, it frees the women from taking the extra burden of her own and her children's support, because woman has to give birth to children and to foster them and this is a tremendous hardship. Islam prescribes that a woman must obey her husband as long as he does not ask her to do

anything which is forbidden for her. In Islamic values, wife is regarded as a source of love, peace and compassion, as stated in the Quran:

*'And among His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are indeed signs for a people who reflect.'*¹⁹ And

*'... the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear...'*²⁰

The Islamic Law was introduced in the Indian sub-continent in the early eighth century and has its own value today.²¹ The personal law is constitutionally recognized²² and judicially enforced. It has now become an integral part of the Indian civil law system. Iraq's Revolutionary Command Council established a 'temporary maintenance fund' in their general budget in 1980; Egypt's 2000 legislation instituted a system based on payments from the Nasser Social Bank, but serious problems arose in the early years of its implementation, and it was not until late 2004 that further legislation provided the resources needed to advance maintenance payments; in Palestine, a law establishing a 'maintenance fund' that had been the target of advocacy efforts by women's groups was approved before the legislature turned its attention to the substantive text of family law.²³ According to Islamic rule, a person is bound to provide maintenance to his parents, wife, sons and daughters and in some cases other near relatives. Every relative within the prohibited degrees is entitled to maintenance. It is the liability of a person to maintain these relatives in proportion to his share in their property. But the question of maintenance of wife comes first.

Rights of Maintenance of a Working Wife

A Muslim husband is bound to maintain his wife in accordance with the provisions of Islamic laws as well as existing standing laws. The Islamic laws as well as other statutory laws of Bangladesh, India and Pakistan impose duty on the husband to maintain his wife. It is incumbent on a husband to bear the maintenance whether the wife is Muslim or *Kitabiyah*, poor or rich, young or old. The Holy Quran commands, *'Let him (husband) provide her (wife) maintenance according to his ability.'*²⁴ *It has further been commanded, 'provide for them (wives) the well-to-do according to his (husband) means and the straitened according to custom. This is an obligation for those who act kindly.'*

A wealthy husband is to provide maintenance to the servant of his wife, provided that the wife is free and not a slave.²⁶ In case of more than one wives, the husband must behave equally in respect of maintenance.²⁷ At the time of fixation of maintenance of wife under Hanafi laws, regard is to be given to rank, status and condition both of her husband and herself. That means it is to be considered whether the social or other status of husband and wife is equal or different. Hence, if both husband and wife are wealthy, he must provide maintenance in opulent manner, but if both are poor, he is required only to provide for her accordingly, but if he is rich and she is poor, he is to afford her a moderate subsistence.²⁹

Conditions under which a Wife is not Entitled to Maintenance

The general and Islamic rule is that wife is entitled to maintenance from her husband. It is a right of wife under Islamic law. But a wife cannot claim maintenance as a right under some circumstances, such as a rebellious or *nashizah*; such a wife is not entitled to maintenance. It has been observed in the Digest of Muhammadan Law as follows:

‘If a woman be a *nashizah* or rebellious, she has no right to maintenance until she returns to her husband’s house. By this expression it is to be understood that a woman who goes out from her husband’s house (*manzil*) and denies herself to him, must not be rewarded with maintenance. But if she ceases to be a *nashizah* or rebellious, she is again entitled to maintenance.³⁰ The right of the wife to maintenance is subject to the condition that she is not refractory or does not refuse to live with her husband without lawful cause.³¹ However, the wife will be entitled to maintenance even in case of living separately from her husband on lawful grounds which include

- a) Cruel behaviour of husband;
- b) The husband’s refusal to give prompt dower in case of claiming.

It is an obligation on the part of the husband to maintain his wife properly. The obligation of the husband effectively lapses only when the wife is formally held to be disobedient.³² In particular, if the wife is *nashuza* (disobedient) or refractory, under Muslim law, she is not entitled to maintenance and so her marriage cannot be dissolved on the ground of the husband’s failure to provide maintenance for a period of 2 years.³³ The husband will not be bound to provide maintenance to the wife if she is unable to have sex with him because of being under aged or if she refuses to have sex or to remain loyal to the husband in any other way. However, the wife is entitled to refuse her husband to have sex until the payment of prompt dower in case of her

claiming. A minor wife is not entitled to maintenance even though she is under the custody of the husband. This is the opinion of *Abu Hanifa*. But according to *Shafei*, a minor wife is entitled to maintenance.³⁴ A wife cannot claim maintenance if she has been imprisoned for any genuine offence or has eloped with somebody or has been taken away forcibly by another man.³⁵ However, if a woman is separated forcibly from her husband, there should be provisions for maintenance for her until she is obedient to her husband. If a wife is imprisoned for debt, her husband is not required to support her, because the obligation to matrimonial custody does not, in this case, originate with him.³⁶ A wife who apostatized is not entitled to maintenance from the husband;³⁷ nor is she entitled to maintenance when she becomes unchaste or when their marriage is happened by illegal contract, and after her husband's death. A pregnant widow is entitled to maintenance as against the whole of the state of her deceased master.³⁸ If a wife deserts her husband without sufficient cause and refuses to return to him, she is not entitled to maintenance,³⁹ so long as she is on her desertion. If the wife does not comply with the conditions imposed by Sharia, she loses her right to maintenance. Besides, if the marriage contract is void or irregular, then no question will arise for the spouses to claim maintenance.⁴⁰ However, maintenance is the lawful right of a Muslim wife under certain conditions and under a valid marriage contract. This right derives from the authority of the Quran, from the Prophet's traditions and from consensus.⁴¹

Provisions of Maintenance under Statutory Laws

The development of the law of maintenance can be divided into the British Indian period, Pakistani period and the Bangladeshi period. It is necessary to analyse the case history in elaborating the idea of maintenance in Bangladesh. There are some progressive judicial decisions,⁴² because of which Bangladesh has come on and off into the limelight of the discourse on Islam and women's human rights.⁴³

The following statutes in Bangladesh provide the provisions regarding maintenance:

- (i) The Muslim Family Laws Ordinance, 1961 (Ordinance No. VII of 1961) and
- (ii) The Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985).

Now we shall try to examine the provisions relating to maintenance of a wife provided in these two statutes with the provisions of Islamic law.

(i) The Muslim Family Laws Ordinance, 1961:

Section 9 of this Ordinance provides that, 'if any husband fails to maintain his wife adequately or where there are more wives than one, fails to maintain them equitably, the wife or all or any of the wives may, in addition to seeking any other legal remedy available, apply to the chairman who shall constitute an arbitration council to determine the matter, and the Arbitration may issue a certificate specifying the amount which shall be paid as maintenance by the husband.'

Section 9 provides a right only to the wife not to the children.

(ii) The Family Courts Ordinance, 1985:

Section 5 of the family courts ordinance runs as follows:

'Subject to the provisions of the Muslim Family Laws Ordinance, 1961, a family court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely-(a) Dissolution of marriage; (b) Restitution of conjugal rights; (c) Dower; (d) Maintenance; and (e) Guardianship and custody of children.

After above discussion it is to be noted that in case of maintenance, a Muslim wife has the following three legal rights:

Firstly, she can go to the Arbitration Council incorporated under section 9 of the Muslim Family Laws Ordinance, 1961.

Secondly, she can go to the Family Courts incorporated under section 5 of the Family Courts Ordinance, 1985.

Thirdly, she can file a suit in the criminal court according to section 488 of the Code of Criminal Procedure, 1898. But it is mentionable here that Sections 488, 489 and 490 of the Cr. P. C. have been omitted by the amendment of 2007. Therefore, the jurisdiction of the criminal court to entertain suits regarding maintenance was ousted by this amendment.

It shows that the above matters are to be tried by the family court. In *Abdul Khaleque vs Selina Begum*,⁴⁴ *Abdul Bari Sarker*, J, in exercising criminal revisional jurisdiction of the High court Division, held, 'The purpose of the family courts ordinance is to provide for speedy disposal of family matters by the same forum. There will be anomaly and multiplicity of proceedings if, in spite of the establishment of the family courts, 1985 the Magistrate continues to entertain cases for maintenance under section 488 of the Code of Criminal Procedure, 1898.

In *Azmatullah vs Mist-Imtiaz Begum*,⁴⁵ it was held that the wife is entitled to maintenance after divorce, during the period of *Iddat* and in *Safura Khatun vs Osman Gani Mollah*,⁴⁶ it was held that the period of *Iddat* extends to three months. According to the provision of the Dissolution of Muslim Marriage Act, 1939, a husband is entitled to maintain his wife only up to the period of *Iddat*. Under the *Shari'ah*, *Iddat* is a period of waiting of a divorced or widowed Muslim woman and she can remarry after the expiry of this period which extends three menstrual cycles. In case of pregnancy of the woman at the time of divorce, *iddat* extends up to the event of delivery even if it takes more than three months. If delivery happens before the expiry of three months, the period of *iddat* ends immediately with the event. When *iddat* is completed, then husband has no liability to maintain his divorced wife.

Though several schools of Islam permit polygamy but section 125(3) of the Code of Criminal Procedure, 1898 entitles a Muslim wife to live separately and receive maintenance from her husband if he contracts a second marriage or even keeps a mistress. This provision, incorporated in 1973, is a big step towards integrating modern ideas in the Islamic personal and family laws.⁴⁷

In regard to maintenance, two questions arose:

The first question was whether a woman is entitled to past arrears of maintenance.

And

The second question was whether a woman is entitled to post divorce maintenance beyond the period of *iddat*.

The first question was settled in the case of *Jamila Khatun vs Rustom Ali*.⁴⁸ In this case it was held that the wife is entitled to past divorce maintenance even in the absence of any specific agreement. Here it is mentionable that a wife is not entitled to maintenance unless stipulated in the *Kabinama* specifically. But in this case the Appellate Division of the Supreme Court of Bangladesh settled the issue of past maintenance and gave remedy to *Jamila Khatun* overturning the judgment of the High Court Division. Earlier, the High Court Division of the Supreme Court in *Rustom Ali vs Jamila Khatun* decided that the wife was not entitled to past maintenance.⁴⁹ But in deciding the fate of *Jamila Khatun* the Appellate Division of the Supreme Court settled down the issue of past maintenance in the case of *Jamila Khatun vs Rustom Ali* that the wife is entitled to past maintenance.

The second question was settled in the case of *Md. Hefzur Rahman vs Samsun Nahar Begum*.⁵⁰

The fact and decisions of this case are briefly mentioned below:

Defendant Hefzur Rahman divorced his wife (Samsun Nahar Begum, Plaintiff,) in 1980. Then his wife filed a suit in Comilla family court claiming unpaid dower money and maintenance payment of Tk. 1000 per month for herself and her minor son each. The Family Court declared decree in the following calculation: that

Tk.48000/- for unpaid dower, Tk.3000/- per month for maintenance for *iddat* period (three months) Tk. 1000/- per month as maintenance for the minor.

Then Hefzur Rahman filed an appeal to Comilla District Judge Court and the learned District Judge reduced the amount of maintenance of the minor child only.

The appellant again filed a revisional petition to the High Court Division (HCD) for further reduction of the amount of maintenance. The HCD held that both the wife and the minor son were entitled to Tk.1000 each per month on the ground that the appellant has enough capability to do so. The HCD raised a question as to whether a divorced wife could have claimed post divorce maintenance for a period beyond *iddat* from her ex-husband. On the basis of the verse 2:241, the HCD held that,

‘.....a person after divorcing his wife is bound to maintain her on a reasonable scale beyond the period of *iddat*, i.e. till she loses the status of divorce by remarrying another person.....;’

Hefzur Rahman further filed an appeal to the Appellate Division. Then the Appellate Division overturned the HCD ruling on post-divorce maintenance beyond *iddat* period. Finally, the judgment of the Appellate Division on maintenance was that the divorcee is entitled to maintenance during *iddat* period only.

Findings

01. Maintenance is a legal right;
02. A Muslim wife can claim it from her husband as a right;
03. Maintenance is one of the basic rights which the Islamic laws have provided for the Muslim women;
04. A Muslim wife cannot claim maintenance as a right under some circumstances though it is considered as a legal right on the part of the wife;
05. In short, maintenance signifies all those things which are necessary to the support of life. Therefore, it comprehends food, raiment and lodgings;

06. As women remain under men's control and supervision, so under this reality, maintenance is always considered as an integral part of all matrimonial proceedings in Muslim society;
07. The wife is entitled to maintenance during the continuance of the marriage and also during *iddat* period which occurs after severance of matrimonial life;
08. In case of more than one wives, the husband must behave equally in respect of maintenance;
09. The husband is not bound to maintain his wife if she becomes disobedient to him and does not abide by his reasonable orders and lives as a separate entity without any lawful reason;
10. The wife is entitled to file a suit against her husband if the second denies providing maintenance to her without lawful ground;
11. In case of claiming maintenance, a lawful marriage between the parties must be proved in accordance to their personal laws under which they are subject⁵¹ and in such cases the burden of proof lies on the wife.⁵²

Conclusion

Maintenance is one of the most important aspects of Islamic law that are codified in statutory laws. Much legal development has ensued through case law in Bangladesh. In the case of *Rustom Ali vs Jamila Khatun*, with respect to arrears of maintenance, the court ruled (in accordance with classical Hanafi law) that a Muslim wife is not entitled to arrears of maintenance. Maintenance will only be given her from the date the suit is brought before the family court until three months from the decree of dissolution of marriage. The former wife cannot claim arrears of maintenance unless they have a previously established agreement. Again in the case of *Md Hefzur Rahman vs Shamsun Nahar Begum* with respect to post divorce maintenance the court ruled that a Muslim husband's responsibility to maintain his divorced wife does not cease with the expiry of the period of *iddat*. That means he is bound to maintain his divorced wife on a reasonable scale for an indefinite period until she remarries. The Appellate Division of the Supreme Court overturned the decision of the High Court Division on 3 December 1998, leaving the classical Hanafi interpretation intact for the moment. A Muslim wife who obeys all the Islamic as well as legal rules stated above in this paper is entitled to maintenance from her husband. Again there is no controversy that the husband is bound to maintain the wife during the three months of

iddat period after severance of their conjugal relation. Although there are sufficient provisions in favour of establishing the right of maintenance of a Muslim wife but the social reality is far different. In most cases, women in Bangladesh get rare access to any sort of legal or judicial relief. By virtue of judicial pronouncements and other steps, rights of Muslim women have been restored but it will become fruitful only if both parties observe the law of Islam strictly. Law for maintenance of wife is available in Islamic law. Secular state and law thereof has made several attempts to change the character of Muslim family law including the present one. We can also seek a change of attitude towards women by implementing the Islamic laws and make them economically empowered by providing Zakat. Moreover, present statutory law is not purely Islamic as well. The true benefit from the law, Islam in general, maintenance in particular, can only be realized on making it the law of the land as well source of Islamic law. For better understanding a leading judicial decision in Bangladesh namely, *Md. Hefzur Rahman vs Shamsun Nahar Begum* is thoroughly analysed in this article. If not, true benefit from the law of Islam, as given by Allah, can be far from reality. For better restitution of rights, there is no alternative but to gain the knowledge of Islam and practice thereof by both parties. However, the law of maintenance in Bangladesh is a combination of codified law, local traditions and the traditional Muslim law.⁵³

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