Maintenance under Muslim Law:

1. Introductory Note

Under section 9 of the Muslim Family Law Ordinance 1961 wife willing to perform conjugal rights but deserted by husband without any lawful excuse could claim maintenance. In the absence of any allegations of cruelty or immoral behaviour of husband, wife is entitled to claim her maintenance. Wife can't claim maintenance for the period during which she lives with her parents deserting her husband without any lawful excuse.

1. **Meaning:**

Generally, maintenance includes clothing, lodging and food. "Maintenance" is a term which must vary according to the requirements of the time and the status of the persons entitled to get maintenance and the person liable to maintain.

According to **Halsbury's Law of England**, "maintenance is the name given to the weekly or monthly payments which may be ordered on a decree of divorce'. Maintenance of the children is a similar provision for their benefit, which may be made in proceedings for divorce, nullity Judicial separation of restitution of conjugal right.

In the words of **Baillie**, "maintenance signifies all those which are necessary for the support of life and includes suitable food, raiment and lodging. Medical expenses are not included nor what administers to mere delight and enjoyment." Maintenance varies according to the position and status of the persons concerned.

3. Maintenance of Wife:

A Mohammadan husband's obligation to maintain his wife arises:

- 1. During the subsistence marriage.
- 2. After the dissolution of marriage with certain limitations.
- 3. Incidents of maintenance.
- 4. On account of an agreement.

1. Maintenance during subsistence of marriage:

During the subsistence of a marriage the following, points emerge regarding maintenance.

a. Duty of Husband to maintain his wife during subsistence of marriage:

It is the duty of a Mohammedan husband to maintain his wife even if she is rich; having sufficient means to maintain herself and even the husband has no source to maintain her. She is entitled to a separate apartment exclusively for herself and her husband.

According to Schacht "The maintenance of the wife comprises food, clothing and lodging, i.e., a separate house or at least a separate room which can be locked, for the well to do also servant, she is not obliged to bear any part of the expenses of the matrimonial establishment."

a. Marriage must be valid:

A husband is to maintain his wife of a valid (Sahih) marriage and not of a void or irregular marriage. He is bound to maintain the wife of an irregular marriage only when the marriage is

irregular for want of witnesses. It is immaterial whether the marriage is consummated or not. In the words of Durr-ul-Mukhtar, maintenance is due only to the wife who has been regularly married, (i.e. when the marriage is Sahih) and if the marriage is found irregular, such as when he had married her while in Iddat for another husband, or if the marriage is void, such as when he has married his father's wife, then man may demand back any money that he might have given her for her maintenance.

a. Maintenance starts from puberty:

During minority wife is not entitles to get her maintenance, she can claim her maintenance only on attaining puberty. But under the Shafi law wife becomes entitled for maintenance immediately on marriage even if she is minor at the time of marriage.

a. Obedience of Wife:

The wife is only entitled for maintenance when she remains faithful to her husband and obeys his reasonable commands. She loses her right of maintenance when she leaves her husband's place without reasonable cause.

According to Tyabji "She is entitled to maintenance from her husband only when she places, or offers to place, herself in his powers, so as to allow him free access to herself at all lawful times, and obeys all his lawful commands.

a. Wife's accessibility for cohabitation:

The refusal of wife for sexual intercourse to her husband disentitles her from maintenance. But she can claim maintenance if her husband is unable to sexual intercourse due to impotency or minority

1. Maintenance after the Dissolution of Marriage:

_	may be dissolved either by death or divorce or an apostasy. The law relating to during these three circumstances is different.
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a. Disso	lution by death:
	The wife is not entitled to maintenance when the marriage is dissolved by death, even during the period of Iddat or even if she is pregnant
a. Disso	lution by divorce:
	The wife is entitles to get maintenance from her husband during the period of iddat when the marriage is dissolved either by khula or ila or zihar. It is immaterial whether the divorce is revokeable or irrevokeable or she is pregnant or not. The Shias and the Shafis are of the opinion that the wife is not entitled to maintenance during the period of Iddat if marriage is dissolved in the irrevocable form of divorce but if the wife is pregnant, then only she is entitled to

(c) Dissolution due to misconduct of wife:

maintenance till delivery.

A wife is not entitled to claim any maintenance if the marriage is dissolved due to her misconduct or apostasy. Under the Shia Law on return to her faith, the right of the wife to maintenance would revive immediately, even in the absence of the husband. As the Muhammadan Law does not recognize any duty/responsibility on husband to maintain his divorced wife after the period of iddat therefore the wife is not entitled to get her maintenance after expiry of period of iddat even she revive to Islam.

1. Incidents of Maintenance:

Some of the incidents of the right of wife to maintenance are as follows:

a. **Priority:**

Under Mohammedan Law, wife's right of maintenance has priority over the rights of all other relations entitled to receive maintenance as it is a debt against the husband. According to Durr-ul-Mukhtar the reason for priority of wife's right of maintenance over the children is that the wife is Asl (root) and the children are far (branch).

a. Maintenance when becomes due:

Generally, maintenance is payable in monthly instalments. But the Court may direct payment to be made either daily or monthly or annually. Under the Shia and Shafi laws, maintenance is payable from day to day.

a. Assessment of maintenance:

The value of maintenance shall be determined according to the ranks and financial position of both the parties. According to Shafts, the quantum of maintenance should be determined only according to the rank and financial position of the husband. Under the Shia Law, it should be determined according to the wife's requirements and due regard should also be given to the custom of her equals. But the Court has power to fix the amount of maintenance and even increase it according to the circumstances of the case.

a. Recovery of advance of maintenance:

According to Sunni law If the maintenance is paid by the husband in advance, he would not be entitled to revoke it even though marriage is dissolved either by death or divorce. But under the Shia Law, if any advance of maintenance is made for any stipulated period and the marriage is dissolved before the expiration of that period; the husband can claim a proportionate refund of the amount for the unexpired period.

a. Recovery of arrears of maintenance:

A Muhammadan wife cannot recover arrears of maintenance, unless there is some agreement or a decree passed by the Court. But under the Shia and Shafi Laws, arrears of maintenance considered as debt from the husband can be recovered without any agreement or a decree by the Court.