

**MAINTENANCE (NAFAQAH) IN ISLAM AND COMPARATIVE STUDY UNDER  
PAKISTANI AND OTHER RELIGIOUS FAMILY LAWS**

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**ABSTRACT**

This paper explores the concept of maintenance (nafaqah) in Islam as a divine, moral, and legal obligation ensuring social justice and family welfare. Drawing from Qur'anic injunctions, the teachings of the Holy Prophet (P.B.U.H), and Hanafi jurisprudence, it examines the duty of maintenance owed to wives, minor children, widows, orphans, and in some cases, by grandparents or toward widowed daughters-in-law. The discussion integrates classical interpretations from D.F. Mulla's Muhammadan Law with statutory frameworks under the Muslim Family Laws Ordinance, 1961, and the Muslim Family Courts Act, 1964, which operationalize these principles in Pakistan's legal system. Emphasis is placed on how maintenance upholds human dignity, preserves family structure, and prevents destitution. The paper also presents a comparative overview of maintenance concepts in Christian and Hindu personal laws, highlighting Islam's comprehensive balance between compassion and enforceable duty. It concludes that Islamic law, especially under the Hanafi school, offers a fair and caring system that brings together divine values and the justice of modern law.

**Keywords:**

- Maintenance (Nafaqah)
- Christian, Hindu, and Parsi Personal Laws
- Family Welfare and Social Justice in Pakistan

## 1. Introduction

Maintenance or nafaqah is one of the most significant moral and legal obligations in family law. It refers to the financial support that a person is bound to provide to another under certain family or marital relationships. In Islamic jurisprudence, maintenance includes food, clothing, shelter, education, and medical care according to the social status of the parties. The duty of maintenance is not merely a civil liability but a religious command rooted deeply in the Qur'an and Sunnah.

This paper discusses the concept of maintenance in Islam and its codification under the Family Laws. It also provides a comparative insight into how maintenance is treated in Christian, Hindu and Jewish family laws, particularly within the legal framework of Pakistan.

## 2. Maintenance under Islamic Law

The Qur'an lays a strong foundation for the obligation of maintenance:

*"Men are the protectors and maintainers of women because Allah has given one more strength than the other and because they support them from their means." (Surah an-Nisa 4:34)*

*"Upon the father is the mothers' provision and their clothing according to what is reasonable." (Surah al-Baqarah 2:233)*

*"Let a man of wealth spend from his wealth, and he whose provision is restricted – let him spend from what Allah has given him. Allah does not burden a soul beyond what He has given it." (Surah at-Talaq 65:7)*

These verses clearly emphasize the duty of men, especially fathers and husbands to maintain their dependents within reasonable means.

The Holy Prophet Muhammad ﷺ said:

*"The best of you is those who are best to their families." (Tirmidhi)*

At another occasion, it was also said by the Holy Prophet Muhammad (peace be upon him):

*"It is sufficient sin for a man that he neglects those whom he is responsible to sustain." (Abu Dawood)*

Thus, neglecting maintenance is not only a legal fault but also a moral sin in Islam.

### Principles of Muhammadan Law

According to Mulla's Principles of Muhammadan Law, the obligation of maintenance arises from the relationship itself, and it continues as long as the relationship subsists or the law so requires. Key points include:

- A husband is bound to maintain his wife so long as she remains faithful and obedient to marital obligations.
- Parents are bound to maintain their minor children, whether

legitimate or illegitimate.

- Adult children must maintain their needy parents if they possess means.
- A widow is entitled to maintenance during *iddah* but not beyond, except from the estate of her deceased husband if left destitute.

Mulla also notes that maintenance includes lodging, food, clothing, and other necessities according to social standing.

### **3.Maintenance under Pakistani Statutes**

#### **Muslim Family Laws Ordinance, 1961 (MFLO)**

The MFLO 1961 modernized the enforcement of maintenance obligations through procedural improvements.

- Section 9 empowers the wife to apply for maintenance before the Chairman of the Arbitration Council if the husband neglects or fails to provide maintenance without lawful excuse.
- Failure to comply may lead to penalties and recovery through legal process.
- The Ordinance also provides protection to divorced women for maintenance during the period of *iddah*.

#### **Muslim Family Courts Act, 1964**

##### **Under this Act:**

- Family Courts have jurisdiction over suits for maintenance, dower, and restitution of conjugal rights.
- Schedule of the Act includes “suits for maintenance” as a distinct class.
- Family Courts are directed to decide such cases expeditiously, reflecting the Islamic spirit of protecting dependents from hardship.

#### **Maintenance under the Code of Criminal Procedure (Sections 488–490)**

Apart from personal laws, maintenance in Pakistan is also addressed under Sections 488 to 490 of the Code of Criminal Procedure, 1898, which provide a summary and speedy remedy for dependents neglected by a person with sufficient means. Under Section 488(1), a *Magistrate of the First Class* may order a husband or father to pay a monthly allowance for the maintenance of his wife, minor children, or parents if he neglects or refuses to maintain them. This provision operates independently of religious affiliation and applies to Muslims and non-Muslims alike, making it a secular safeguard against destitution. The law empowers the Magistrate to enforce the order through warrant or imprisonment in case

of default, ensuring compliance. Section 489 allows alteration of maintenance in case of changed circumstances, and Section 490 provides recovery mechanisms. These provisions reflect the State's responsibility to uphold social justice and reinforce the Islamic principle of ensuring financial protection for dependents.

However, despite these advantages, the law suffers from significant drawbacks. The quantum of maintenance prescribed under this section has historically been very low, failing to keep pace with rising living costs and inflation, which limits its practical benefit. Moreover, it does not fully account for modern family structures or gender equity and occasionally overlaps or conflicts with personal laws such as the Muslim Family Laws Ordinance, 1961. Its procedural simplicity can also become ineffective when the respondent evades service or conceals income. Nevertheless, these provisions remain a foundational step in recognizing maintenance as not merely a moral or religious obligation but also a legal right enforceable by the State, reflecting Pakistan's ongoing effort to align social justice with statutory protection for vulnerable family members.

#### 4.Types of Maintenance

##### **Maintenance of Wife (During Marriage)**

In Islamic law, the husband is under a strict and continuing obligation to maintain his wife as long as the marriage subsists and she remains faithful to the marital bond. This right arises from the very contract of marriage (*nikah*), which imposes on the husband the duty to provide for his wife's food, clothing, shelter, medical care, and all reasonable needs according to his means and her social status. The Holy Qur'an explicitly says:

*"Men are the protectors and maintainers of women because Allah has given one more strength than the other and because they support them from their means." (Surah an- Nisa 4:34)*

**The Prophet Muhammad ﷺ also emphasized:**

*"Feed her when you eat, clothe her when you clothe yourself, and do not revile her nor beat her." (Abu Dawood)* Under Mulla's

Muhammadian Law (Para 277), the husband is bound to maintain his wife even if she is poor or wealthy, provided she performs her marital duties and resides in his lawful home. However, the wife forfeits this right if she refuses conjugal cohabitation without lawful excuse (such as cruelty or non-payment of dower).

In Pakistan, this principle is legally recognized under Section 9 of the Muslim Family Laws Ordinance, 1961, which allows a wife to apply to the Arbitration Council for maintenance if her husband neglects or refuses to

maintain her. Courts also enforce this duty under the Muslim Family Courts Act, 1964, ensuring that wives are not left destitute during subsisting marriages.

### **Maintenance to Minor Children**

Under Islamic and Pakistani law, the father is primarily responsible for the maintenance of his minor children. If the father is poor but able-bodied, he must still earn to maintain them. If he is unable, the mother or paternal relatives may assist, but he remains morally responsible. Courts in Pakistan often determine maintenance by assessing the income and social status of the father.

### **Maintenance to Wife after Divorce**

In Islam, a divorced wife is entitled to maintenance during her *iddah* period (approximately three menstrual cycles or, if pregnant, until delivery). Qur'an states:

*"And for divorced women is maintenance according to what is fair – a duty upon the righteous." (Surah al-Baqarah 2:241)*

Beyond *iddah*, if the wife has custody of minor children, she may claim maintenance on their behalf. Under the law, the right of maintenance is enforceable through Family Courts.

### **Maintenance to Widow and Orphan Minor Children**

A widow is entitled to maintenance during *iddah* and, if destitute, from the estate of her deceased husband. The Qur'an commands:

*"And those of you who die and leave wives behind, they shall wait four months and ten days..." (2:234)*

*"And upon the heirs is the same [duty] as upon the father." (2:233)*

*Orphan minor children (yatama) are especially protected:*

*"Give to the orphans their property, and do not exchange the bad for the good, nor consume their wealth in addition to your own." (4:2)*

Hence, maintenance for orphans is not only lawful but a sacred trust in Islam. Trustees, guardians, and executors are responsible to ensure their sustenance from inherited property.

### **Maintenance by Grandparents**

Islamic jurisprudence extends the duty of maintenance beyond the immediate family to ascendants and descendants, establishing a social safety net grounded in kinship.

#### **(a) Grandparents' Duty to Maintain Grandchildren**

According to D.F. Mulla's Muhammadan Law (Paras 370–373) and classical *fiqh*, if the father is dead, poor or incapable, the grandfather

(paternal or maternal) becomes responsible for maintaining the minor grandchildren, provided he has sufficient means. This is derived from the Qur'anic injunction:

*“And those who are related by blood are nearer to one another in the Book of Allah.” (Surah al-Anfal 8:75)*

Jurists of all four Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali) agree that maintenance flows upward and downward along the line of descent i.e. parents maintain children, and if parents die or are unable, grandparents assume the duty. This principle is reflected in Pakistani case law as well.

The Apex Court in case titled "Humayun Hassan v/s Arslan Humayun & another" reported as PLD 2013 Supreme Court 557 has held as under;-

*“According to section 370, primarily it is the father who has to maintain his children upto the age specified therein. In case the father is indigent and incapable of earning by his own labour, the responsibility lies with the mother if she is in easy circumstances. The grandfather becomes liable on two conditions: firstly, the father is impoverished and infirm and the mother is also penurious, and secondly, he (the grandfather) is in easy circumstances.”*

***The Lahore High Court in case titled "Muhammad Ramzan v/s Ali Hamza and others" reported as PLD 2016 Lahore 622 in the following words; -***

*"The liability of grandfather starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but the liability of grandfather to maintain his grandchildren, is also dependent upon the fact that he is in easy circumstances."*

#### **(b) Maintenance to Widow Daughter-in-Law**

Under Islamic law, a daughter-in-law is generally not entitled to maintenance from her father-in-law merely by virtue of the relationship. Her right to maintenance arises primarily from her husband. However, certain equitable and humanitarian exceptions have developed through judicial interpretation and social justice principles.

If the daughter-in-law is widowed, has minor children, and no means of support, Islamic ethics and Pakistani courts recognize that her father-in-law or the deceased husband's estate should assist her for the sake of the grandchildren's welfare. This is consistent with the principle of *maslahah* (public welfare) and *ihsan* (benevolence).

#### **6. Comparative Analysis with Other Religions**

In Pakistan, family relations and maintenance obligations are governed by a plural legal framework shaped by diverse religious communities. Each personal law system under Islamic, Christian, Hindu and Parsi—prescribes its own standards for the financial support of dependents such as wives, children and widows. Among these, Islamic law stands out as the most systematically codified, combining religious morality, enforceable legal duty and state machinery through Family Courts for its implementation. In contrast, the Christian, Hindu and Parsi laws derive mainly from colonial-era statutes, emphasizing judicial discretion and contractual principles over spiritual obligation. A comparative study of these systems reveals how different faiths approach the universal question of protecting dependents and promoting family welfare. This reflection underscores that while methods differ, the underlying objective is to prevent

neglect, ensure dignity, and uphold social justice, which is shared across all legal traditions practiced in Pakistan.

**Christianity**

Christianity emphasizes charity and familial duty, but no codified personal law of Christians in Pakistan defines maintenance obligations in detail.

The Christian Divorce Act, 1869, and Succession Act, 1925 govern related matters. Courts, therefore, apply equitable principles— maintenance to wives or children is often decided through civil courts on moral and humanitarian grounds, not strict personal law.

**Hindu Law**

Under Hindu personal law, as codified in Pakistan’s Hindu Marriage Act, 2017, a husband is obliged to maintain his wife and children.

Section 17 of the Act provides that a wife may seek maintenance and separate residence if the husband neglects or deserts her. Hindu jurisprudence also recognizes maintenance for widows from ancestral property and for orphans through joint family obligations.

**Maintenance under Parsi Personal Law**

The Parsi community in Pakistan is governed by the Parsi Marriage and Divorce Act, 1936, which outlines their personal law on marriage, divorce, and maintenance. Under Section 39 of the Act, a Parsi wife is entitled to claim *alimony pendente lite* (maintenance during the proceedings) and permanent alimony or maintenance upon the conclusion of a divorce suit. The court may order the husband to pay such maintenance having regard to his income and the conduct of both spouses. The Act allows maintenance to be provided as a lump sum or in periodic payments, and the order remains enforceable until the wife’s remarriage or the husband’s death. Unlike Islamic law, Parsi law is derived from statutory provisions rather than religious injunctions, and the right to maintenance depends on judicial discretion rather than a continuing marital duty. This demonstrates a more contractual and procedural approach to maintenance as compared with the moral and religious foundation of maintenance (*nafaqah*) in Islamic law.

**Comparative Analysis of Maintenance in Major Personal Laws Practiced in Pakistan**

| Aspect                 | Islam                                                                                                       | Christianity                                                                           | Hinduism                                                                               | Parsi Law                                                                                                |
|------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Wife’s Maintenance     | Mandatory during marriage and <i>iddah</i> ; based on Qur’anic injunctions and husband’s financial capacity | Not expressly codified; discretionary under <i>Section 36 of the Divorce Act, 1869</i> | Mandatory; wife entitled under <i>Sections 9–10 of Hindu Marriage Acts (2016/2017)</i> | Allowed under <i>Section 39 of the Parsi Marriage and Divorce Act, 1936</i> during and after proceedings |
| Children’s Maintenance | Father primarily responsible; continues if child is minor or disabled                                       | Recognized as parental duty; limited judicial enforcement                              | Joint family and father’s duty under Hindu law                                         | Either parent may be directed to provide support; decided by the court                                   |

|                             |                                                                                |                                                                         |                                                                 |                                                                     |
|-----------------------------|--------------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------|
| <b>Widow's Maintenance</b>  | During <i>iddah</i> and, if destitute, from husband's estate or adult children | Not specifically codified; may depend on estate or charitable provision | Entitled to share from joint property or maintenance from heirs | May be granted permanent alimony under judicial discretion          |
| <b>Orphan's Maintenance</b> | Sacred duty; responsibility of relatives and the state as guardian of orphans  | Generally, charity-based; not a legal obligation                        | Supported by extended family or guardian                        | Estate guardianship; court may appoint trustees for minor's welfare |

Islamic law is the most systematically codified among these, combining religious morality, enforceable legal duty, and state machinery (Family Courts) for enforcement.

## **9. Conclusion**

Maintenance (*nafaqah*) in Islam is both a religious duty and legal right, enshrined in the Qur'an and Sunnah and enforced by Pakistani law. The obligation extends to wives, children, widows, and orphans, ensuring that vulnerable members of society are protected.

While other religions also uphold maintenance as a moral or social responsibility, Islamic law integrates it into a comprehensive legal framework, balancing compassion with enforceability. Thus, Islamic jurisprudence offers a model of social welfare through family justice, demonstrating how divine injunctions can harmonize with modern statutory systems for the betterment of all.

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