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# **YBN UNIVERSITY**

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**RAJALATU, NAMKUM, RANCHI, JHARKHAND-834010**

## CHAPTER 4

### MAINTENANCE

It is called 'Nafaqu', It means food, raiment and lodging. The causes that make one person to maintain another are:

(i) Marriage (ii) Relationship (iii) Property

The higher obligation arises on marriage. Hence maintenance of wife and children is a primary obligation.

#### **Wife's right to maintenance:**

She is entitled to maintenance from her husband even though she may have the means and even if her husband has no means,

It is said that wife is the ASL means (root) and child is FAR means branch). Husband should maintain his wife after puberty. She must be obedient at all times In addition to legal maintenance he may have to provide for other special allowances. An agreement to allow the first wife to live with her parents and to pay her maintenance is valid.

**Polygamy is permissive in Islam:** Art. 25 of Constitution is not violated. However Cr. P. C, Sn, 125 may be applied, if the husband takes a second wife or keeps a mistress. She is entitled to maintenance.

*Right to sue;* She can sue if the husband refuses to maintain. The court may make an order not above Rs, 500 per month, under Cr. P.C, The right to maintenance ceases on the death of husband. Wife is entitled during Idda that is 4 months and 10 days, or if she is pregnant

(at the time of the death of the husband), until she delivers of the child. ,

**Shaw Banu's Case :** In this case, the Muslim husband H an advocate, divorced his wife Shaw Banu by declaring Talaq, when the wife sued for maintenace under Sn. 125 Gr, P. C. The Supreme Court held that she was entitled to maintenance irrespective of the personal laws of the spouses. The Parliament almost neutralised this decision by passing an Act: The Muslim Women (Protection of Rights in Divorce) Act 1986.

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Sn. 3 of this Act prevents a Muslim woman from seeking remedy under Sn. 125Cr. P.C. The Act further provides that the affected Muslim woman should claim maintenance from her relatives in the first instance, and from the Wakf Board if need be i.e., when the relatives are unable to maintain her.

***Failure to maintain:*** If a husband fails to maintain or neglects for two years, the wife is entitled to dissolution of her marriage under the Dissolution of Muslim Marriage Act 1939. But, she has no right to maintenance, for her life time, In respect of children, father should maintain the sons till they attain puberty and the daughters until they are married.