

# [The to provide maintenance even when the](https://assignbuster.com/the-to-provide-maintenance-even-when-the/)

The Darr-ul-Muhtar lays down that if the father and his young child are both without means, then the father must earn it, and, if he is unable to work for his living, then he must get it by asking alms, so that he may provide for the child. The father is required to provide maintenance even when the child is in the custody of the mother or any other person entitled to its custody. Even when the father has divorced the mother of the child, his obligation to maintain his children continues.

Father’s obligation to maintain his child even after he had divorced his wife is not affected by the Muslim Woman (Protection of Rights on Divorce) Act, 1986. This has been further reiterated by Supreme Court that right to maintenance of Muslim children is not affected by the Act even when they are living with the divorced wife. At one time it was thought that in such a case only bare maintenance need be provided, but this is no longer correct; the father has to provide full maintenance. Apart from the usual requirement of maintenance, such as for food, shelter, clothing, education and medical care, the Muslim law-givers also enjoin upon father to provide a nurse for his child. Under the Ithana Ashari law, if the mother herself nurses the child, then she is entitled to receive hire.

When it is said that father’s obligation to maintain his children is personal, it does not mean that children’s right to maintenance can be made a charge on father’s property. The mere fact, that the father is in straitened circumstances, is no excuse for not maintaining the children. Any person, who provides maintenance for children or incurs debt for maintaining them, can recover the amount actually spent on their maintenance.

Although the father’s obligation to maintain his children is personal, it is not absolute. The father has no obligation if the children have their own property or income. In case it is necessary, the father has also the power of selling the property of his children.

It is immaterial that the father is in a position to maintain them. The father’s obligation to maintain his children arises only when the children have no property. However, if the father has maintained his children out of his own resources, he cannot recover the amount so spent on the children out of their property.

Similarly, if the children are earning, then the father has the right to spend their earnings for their maintenance, though he is bound to keep the surplus in trust for them. However, the work, in which the children are employed or engaged, must be suitable to their station in life. Ordinarily, father’s obligation to maintain children terminates on their attaining majority exceptionally he has the obligation to maintain major children also.