

Under is shifted to the
paternal grandfather.
maintenance



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Under the Criminal Procedure Code, 1973, a son is entitled to claim maintenance up to the age of eighteen years. But the father is not bound to maintain his adult son unless such a son is infirm or disabled and is unable to maintain himself. Moreover if a minor son does not live with the father without any reasonable justification, the father is under no obligation to maintain him. A minor son cannot claim maintenance from his father for a separate living without any just cause.

Under Muslim law, the father is liable to maintain his daughter till she gets married. But, an unmarried daughter who does not live with her father has no right to claim maintenance unless the circumstances justify her separate living. The father is liable to provide maintenance also to his widowed or divorced daughter if she is unable to maintain herself. It may be noted that liability of a father to maintain his children is not affected by the fact that the child is in the custody of mother or any other person. A father is bound to maintain his son or daughter even if they are not in his custody, because he is the legal or natural guardian of his children.

However, if the father has no means to provide maintenance to his children, the mother is liable to maintain them if she is in easy circumstances. Where the mother too is unable to maintain them, the responsibility is shifted to the paternal grandfather.

Maintenance of Children under Muslim Women Act, 1986:

It is significant to note that under Section 3(1) (b) of the Muslim Women Act, 1986, a divorced Muslim woman is entitled to claim maintenance from former husband also for children under her custody, for a period of two

years. In other words, this section has limited Muslim father's liability to maintain his children born from his divorced wife only up to the period of two years. Thus, such children would be entitled to claim maintenance from their father only for two years. But, Section 125 Criminal Procedure Code 1973 provides that children (belonging to every community including Muslims) are entitled to be maintained by their father till they attain the age of majority (18 years) or, until they become competent to maintain themselves. Therefore, apparently there appears to be a conflict between the provisions of these two enactments.

However, the law relating to Muslim children's right of maintenance from their father is clear. As regards, maintenance of children after the dissolution of their parent's marriage is concerned, under Section 125 of the Criminal Procedure Code, such children are entitled to be maintained by father till they become adult (18 years). Their right to be maintained by father till they attain majority is their separate right which is not dependent on their mother's claim of maintenance from her former husband. Under Muslim Women Act, 1986 maintenance of such children by father is limited up to two years under the special circumstances.

But, after this period, father's liability is not extinguished; it continues till the children attain majority. *Noor Saba Khatoon v. Mohd. Quasim*, the Supreme Court has held that the obligation of a Muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced

wife. In brief, the facts of this case are as under. Noor Saba Khatoon and Mohd.

Quasim were married in 1980 and the couple had three children. On certain dispute the husband turned Noor Saba Khatoon out of the matrimonial home along with children who were of the age of 1-1/2 years, 3 years and 6 years respectively. Finding it difficult to maintain herself and her children, Noor Saba claimed maintenance for herself and also for the children from former husband Mohd. Quasim under Section 125 of Cr. P. C.

In the meanwhile Mohd. Quasim, the husband, divorced Noor Saba and married another woman Shahnawaz Begam and started living with her. In such situations, the question arose as to whether the rights of maintenance of the children (of divorced-couple) under Section 125 of the Criminal Procedure Code would be affected by their rights under Section 3 (1) (b) of the Muslim Women Act, 1986? Explaining the law on this point, the Supreme Court held that minor children's right to be maintained by father under Section 125 Cr. P. C.

is not, in any way, affected restricted or controlled by their right of maintenance under Section 3 (1) (b) of the Muslim Women Act. According to the Apex Court there is no conflict in the provisions of these two enactments because they deal with different situations as regards father's liability to maintain their minor children is concerned. In Muslim Women Act, 1986 provision has been made for father's liability to maintain children from his divorced woman living with her vis-a-vis such divorced woman's claim for her own maintenance.

Whereas, Criminal Procedure Code provides for a ' Muslim father's obligation, like that of a Hindu father, to maintain his minor children. There is, therefore, no conflict between the provisions of these two enactments. Their Lordships concluded as under: "..... Section 3 (1) (b) of the Act 1986 does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125 Cr. P. C. till they attain majority or, are able to maintain themselves, or in case of females, till they are married." It is significant to note that according to Tahir Mahmood to the minor children's right to claim maintenance from their father under Section 125 of the Criminal Procedure Code remain fully unaffected notwithstanding the enactment of Muslim Women Act, 1986.

There is nothing in the Muslim Women Act in any way affecting the application of provisions of Section 125 of Cr. P. C. to the children and parents governed by Muslim law.

Maintenance of Illegitimate Children:

Father is not the legal guardian of his illegitimate children.

He is, therefore, under no obligation to maintain his illegitimate son or daughter. In Pavitri v. Katheesumma, an illegitimate daughter of a Muslim male and a Hindu female, claimed maintenance from her putative father. The Kerala High Court held that the daughter was not entitled to get any maintenance under Muslim personal law. However, although a Muslim is not bound to maintain his illegitimate issue under his personal law yet, any agreement for the maintenance of an illegitimate child is valid and enforceable. According to Hanafi law, an illegitimate child is entitled to

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maintenance from its mother. But according to Ithna Asharia school of Shia law, the illegitimate child is not entitled to maintenance either from father or from the mother.

However, a father whether Muslim or non-Muslim, is under an obligation to maintain his illegitimate children under the Criminal Procedure Code, 1973. Section 125 of the Code provides that if a person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child, or his legitimate or illegitimate child who is adult but unable to maintain itself due to any physical or mental abnormality or injury, a Magistrate may order such person to make monthly allowance not exceeding five hundred rupees.