



## DIVORCE AND MAINTENANCE UNDER THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

UMESHKUMAR

Associate. Prof. Faculty of Law, Agra College, Dr. Bhimrao Ambedkar University, Agra (U.P.) India

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**Abstract:** *India is a diverse land which abounds in personal laws. Every religion in personal matters is governed by its own laws. Since the beginning of time, there has been a debate about the legal position of Muslim women. When a divorcee causes emotional damage, it is the government's responsibility to provide her with proper facilities and security. As a result, the job of maintenance is required. Maintenance refers to all of the items that are required to sustain life, such as adequate food, clothing, and accommodation. Law of maintenance is personal as well as legal and constitutional right in nature .*

**Key Words:** Talaq, Iddat period, Shah Bano Case, Maintenance, S.125 Cr.P.C.

Family is the footing of a society which is considered as the most vital religious rite in all religions of the world. Nikah (marriage) is expressed in the Quran as Zauj (equal partner), which literally translates to "being absorbed in each other as rainwater absorbs in the land." If the partnership is unbalanced and disagreements arise, the religion permits Talaq for both sexes (divorce). However, the Quran instructs husband and wife to first try to resolve their problems amicably on their own, and if they are unable to do so, the Quran explains an exhaustive method to find a mutually agreeable solution. After the divorce, both of them are free from the bond and can freely marry someone else provided the wife would wait for iddat period to get over which is three months and if she is pregnant then she has to wait till the delivery. The reason behind the traditional period of three months is to find out if the lady is pregnant with the child of the former husband. The old age tradition is carried on because of the sole reason that no one challenged this logic in the modern era. During this time, the husband is responsible for all her expenses.

### Maintenance of Divorced wife

The Muslim Law of Maintenance comes into play only if the claimant (wife) has no means or property with which she can maintain herself. When a marriage is dissolved by death or divorce, the providers of Muslim law establish distinct regulations for the demand of support by the wife.

**Corresponding Author**

The wife is not entitled to maintenance during the term of iddat if the marriage is dissolved by death. When a marriage is ended by divorce, the wife is entitled to support throughout the iddat period. Even if the divorce is not notified to the wife after the term of iddat has expired, she is entitled to maintenance until it is. A Muslim husband is obligated to support his wife as long as she is faithful and obeys him, but he is not obligated to support her if she is unfaithful or disobedient. Maintenance of the wife is incumbent on the husband because this is the precept both in the Quran and the traditions. The wife is absolutely entitled to get maintenance from the husband even though she may have means to maintain herself.

In the case of Arab Ahemadha v. Arab Bail , According to the Gujarat High Court, a divorced Muslim wife is entitled to support even beyond the term of iddat and under Section 125 of the Code of Criminal Procedure. She is entitled to a reasonable and equitable amount of maintenance, with the courts ensuring that she has sufficient means of livelihood following the divorce and that she does not become destitute or be thrown out on the streets without a roof over her head or any means of supporting herself and her children. The same has been ordained by Quran:

"For divorced women maintenance should be provided on a reasonable scale.

This is duty on the righteous. (Ayat 241)  
Thus, doth God make clear His signs to you: In order



that you may understand. (Ayat 242)"

"And for the divorced woman also a provision should be made with fairness in addition to her dower. This is a duty incumbent on the reverent. (1964 ed)."

"There will be provision for divorced women in accordance with what is equitable." This is a duty that the righteous must fulfil. As a result, Allah makes His commands obvious to you so that you may grasp them."

**Shah Bano Case-** The case of Mohd. Ahmed Khan v. Shah Bano Begum alias Shah Bano Case agitated the ego of masculine counterpart and it was then the society realised that the Muslim divorcees should be given their rights. The judgement was not the first granting a divorced Muslim women maintenance under the Code of Criminal Procedure, 1973, it was the first where the Hon'ble Supreme Court narrated the Muslim law in depth. In April 1978, a 62-year-old Muslim woman, Shah Bano, filed a petition in court demanding maintenance from her divorced husband Mohammed Ahmad Khan, a renowned lawyer in Indore, Madhya Pradesh. Mohd. Ahmad Khan had granted her irrevocable talaq later in November. The two were married in 1932 and had five children- three sons and two daughters. After a long period of living with Ahmad Khan and his second wife, Shah Bano's husband had asked her to move to a separate apartment three years previously. Shah Bano went to court and requested maintenance for herself and her five children under Section 125 of the 1973 Code of Criminal Procedure. This clause is secular in character, and it imposes a legal obligation on the husband to support his wife if she lacks the financial means to do so. However, Ahmad Khan contested the claim on the grounds that under the Muslim Personal Law in India, a divorced women could be awarded maintenance only during the iddat period and not latter. In case if she wants maintenance then she will have to be given maintenance by the other relatives. His arguments were widely supported by the All India Muslim Personal Law Board which contended that courts take the liberty of interfering in those matters that are laid out under Muslim Personal Law, adding it would violate the Muslim

Personal Law (Shariat) Application Act, 1937. The board said that according to the Act, the courts were to give decisions on matters of divorce, maintenance and other family issues based on Shariat. This judgment was widely criticised by the Muslim community throughout the country. After detailed study, the decision was rendered by the Supreme Court of India in 1985 that Code of Criminal Procedure, 1973, would apply to all Indian citizens regardless of their religion as it is secular in nature.

Maintenance of wife under the Section 125 of Cr.P.C.: Section 125 of the Code of Criminal Procedure, 1973 which was earlier Section 488 of the old Code, conveys that a wife, whether Muslim or not is entitled to claim maintenance against the husband on the ground of the husband's refusal to maintain her.

Under Cr.P.C., only wife (a woman who has been divorced by or has obtained divorce from her husband & hasn't remarried) can claim for maintenance. The said section defines 'wife' as including a divorced wife, containing no words of limitation to justify the exclusion of Muslim women from the scope. The ambit of wife is defined irrespective of the religion professed by her or by her husband. A wife who refuses to stay with her husband due to legal grounds such as bigamy, cruelty & adultery has the right to special allowance under this Act. But a wife does not possess right to claim maintenance if she's living in adultery or she's living separately by mutual consent. The various sections of Cr.P.C. are criminal in nature and are used for the criminal charges. The benefit of the generous jurisdiction under Section 125 of the Code of Criminal Procedure, 1973 is available to the wife irrespective of the question whether the divorce was anterior or subsequent to the coming into force of the Code. The Section 125 of the Cr.P.C. states the provisions as follows:

"S.125 Order for maintenance of wives, children and parents.

(1) If any individual leaving adequate means dismisses or won't keep up with

(a) His spouse, incapable to keep up with herself, or

(b) His authentic or ill-conceived



minor kid, whether or not wedded, unfit to keep up with itself, or

(c) His authentic or ill-conceived youngster (not being a hitched girl) who has accomplished larger part, where such kid is, by reason of any physical or mental irregularity or injury unfit to keep up with itself,

(d) or, His dad or mom, incapable to keep up with oneself"

The arrangement under Cr.P.C. clarifies that If the spouse having adequate means disregards or won't keep up with his better half who can't keep up with herself, or his real or ill-conceived minor youngster, whether or not wedded incapable to keep up with themselves gave a wedded little girl and the significant kid who is strange either truly or intellectually, unfit to keep up with oneself, a Magistrate of the top of the line may, request to husband to pay a month to month remittance, for example, the Magistrate thinks fit. The Muslim Women (Protection of Rights on Divorce) Act 1986

The landmark legislation, namely, the Muslim Women (Protection of Rights on Divorce) Act 1986 was passed by the Rajiv Gandhi Government on 19th May, 1986 to protect the rights of Muslim Women in regard to Divorce after the decision of Shah Bano's Case was challenged before the Hon'ble Supreme Court. Progressive Muslims and others dubbed this enactment as a great setback for Muslim women.

The vital essentials of the Act are

- (i) Right to maintenance during the iddat period;
- (ii) Right to fair and reasonable provisions for the rest of her life;
- (iii) Right to alimony for the child until two years after divorce;
- (iv) Right to maintenance from the State Wakf Board in extraordinary circumstances.

The Act provides the Muslim- divorced woman a reasonable and fair provision of maintenance within the iddat period by her former husband and in case she maintains the children born to her before or after the divorce, the period shall extend to two years from the date of the birth of the children. She will also be entitled to mahr and all the

properties given to her by her relatives, friends, husband and the husband's relatives. If she does not receive all of these benefits at the time of the divorce, she may petition the magistrate for an order directing her former spouse to provide such support, pay mahr, or deliver the properties. Second, if a Muslim-divorced woman is unable to support herself after the iddat period, the Magistrate has the authority to order that her relatives who would be entitled to inherit her property on her death under Muslim Law in the proportions in which they would inherit her property pay her maintenance. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate would direct the other relatives who have sufficient means to pay, the shares of these relatives also. In any case, where a divorced person has no family members or such family members or any of them who has insufficient means to pay the support or different family members who have been approached to pay the portions of the defaulting family members additionally don't possess the ability to pay the upkeep requested by him or the portions of the family members who can't pay. In the case of *A.A. Abdulla v. A.B. Mohmuna Saiyadbhai*, the court held that a separated from Muslim lady is qualified for support and that this upkeep isn't restricted to iddat period. The choice depended on Section 3(1)(a) of The Muslim Women (Protection of Rights on Divorce) Act, 1986, of India .

The Act mandates that no provision has been made in the Act for the purpose of obtaining maintenance from her husband till the date of divorce, therefore till that date the provision of Cr.P.C. shall be applicable. The Act came in play on 19th May, 1986, therefore till 18th May, 1986 whether a woman was divorced or not she was entitled to maintenance under S.125 Cr.P.C. reason being that the Act is not retrospective in nature. The Act allows the Muslim husband to regain freedom of avoiding the payment of maintenance even in the iddat period if he claims that he is financially unfit to do so which is contrary to the principles of Muslim Law as the liability to maintain his wife during iddat period is unconditional and compulsory under any circumstances.

Section 3 of the Act does not apply if there



is a decree order of a Court granting maintenance to a wife earlier as the section does not start with a non-obstante clause. In the case of *Danial Latifi v. Union of India*, some guiding principles were laid down-

(i) a Muslim husband is liable to make reasonable and fair provisions for the future of the divorced wife. This includes the period beyond iddat period in terms of S.3(1) of the Act.

(ii) Liability of Muslim spouse to his separated from wife emerging under S.3 (1) (a) of the Act to pay upkeep isn't bound to iddat period.

(iii) A Muslim divorced person who has not remarried and has no means to keep up with herself after the iddat period can continue as given under S.4 of the Act against her family members who are at risk to keep up with her in relation to the properties which they acquire on her passing. Assuming any of the family members being not able to pay upkeep, the Magistrate might coordinate the State Waqf Board set up under the Act to pay such support.

Under Muslim law, Mehr or dower means a property which the husband is obliged to pay to his wife in consideration of her marriage. The wife can refuse to live with her husband and deny him to sexual intercourse so long as the prompt dower is not paid to her. The fair and reasonable provision mentioned in the Act should not be substituted with Mehr or dower. It can not be a consideration for divorce. It is an obligation of a husband arising from a contract, or otherwise imposed by law or custom on the husband as a token of his respect for his wife.

Conclusion

"In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to put her signature." The personality of a Muslim woman is considered to be the soul of the Muslim men in literal sense, who is tied to the apron strings of the rules formed by the patriarchy. The Rajiv Gandhi Govt. did create a law to regulate the pattern and provide reasonableness to the muslim divorcee but still the strings were left in the hands of the powerful former husband because according to the Act if they refused to let the petition be filed in S.

125 Cr.P.C. then the women may be deprived of their rights. It totally depends upon the discretion of the Magistrate how s(he) interprets the said Act so that the divorcee can live a secured life. The whole scenario signifies that religious traditions have more weight than gender equality and the only way to stop this is having a uniform law. The vibrations of Uniform Civil Code would lead to a positive impact on the Muslim personal law. It would allow the Muslim divorcees to claim maintenance for her lifetime.

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