

RIGHT TO MAINTENANCE TO MUSLIM WOMEN: UNDER THE ANALYSIS OF SHAH BANO CASE

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Abstract

We can see that in Muslim law, maintenance after divorce has been a contentious issue. Initially, the claim to maintenance of a divorced Muslim woman was derived from two sources: Section 125 of the Criminal Procedure Code and the Muslim Personal law. There was a dispute between the two since, under the Criminal Procedure Code, a woman's entitlement to seek maintenance extended beyond *iddat* period, yet under the Muslim personal law, the husband was only required to pay support during the *iddat* time.

Keywords: Muslim Law, Women, Gender Equality, Maintenance, Criminal Procedure Code.

1. Introduction

In Indian society, there has always been a conflict between female equality and religious customs. Religious traditions take precedence above gender equality, and as a result, the amelioration of injustices encountered by a specific gender, mainly women, is suppressed in order to sustain majoritarian religious ideals¹. Implementing progressive universal principles that transcend class, religion, and gender inequalities and apply consistently to all is an effective method to combat such marginalization. Only via such application can legislation have a positive impact on gender equality.

Section 125 of the Code of Criminal Procedure is one such progressive statute. It is a uniformly applicable provision that enables civil remedies to enforce a person's fundamental commitment to support his wife, children, or parents while they are unable to do so. Normally, the rights and duties outlined in this section take precedence over personal laws.² Previously, this was subject to the **Muslim Women [Protection of Rights on Divorce] Act, 1986**, which is a self-contained statute that constitutes the responsibilities of a Muslim husband or other relatives towards a Muslim woman and offers remedies for enforcing the woman's rights.³ This Act codifies the Muslim law notion that a husband's obligation to provide maintenance to his divorced wife lasts only until the *iddat* period. Furthermore, Section 125 cannot apply to a Muslim lady unless both the husband-and-wife consent to it under Section 5 of the Act. The law has evolved through judicial opinion, and it is presently thought that there is no conflict between the

1. Siobhan Mullally (2004), *Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case*, 24 (4) OJLP, at p. 671.

2. *Umar Hayat Khan v. Mahboobunisa* (1976) Cri.LJ 395 (Kant).

3. Chandrachud Y.V. and V.R. Manohar (2006), *The Code of Criminal Procedure*, Wadhwa, Nagpur, at p. 253.

Act and the Code.⁴

In the case of *Shamim Bano v. Ashraf Khan*,⁵ however, has now cleared the judicial situation. The case is a watershed moment because it reads Section 125 of the Code of Criminal Procedure to be generally applicable to women, independent of personal law's opinions on the subject. Taking the lead from the well-known *Shah Bano* case,⁶ the Apex Court ruled that Section 125 applied to Muslim women and that they were entitled to maintenance regardless of Mahomedan law's opinions on the subject.

It has been determined that Muslim women are entitled to maintenance under Section 125 of the Code both before and after divorce; they can seek maintenance under the Act's provisions.⁷ This article investigates the development of jurisprudence for the protection of Muslim women's rights.

2. DEFINITION OF THE TERM MAINTENANCE

All essentials for survival are included in the definition of upkeep. Because Muslim law does not define the term *per se*, the basic meaning of the term can be well implied by comparing to the definition given under Hindu law, and so this reference will be relevant. According to **Hindu law**, the term means:

*"In all situations, provisions for food, clothes, residence, education, and medical treatment and treatment; in the event of an unmarried daughter, reasonable expenses incurred as a result of her marriage."*⁸

According to **Halsbury's law of England**:

"Maintenance is the term given to the weekly or regularly scheduled installments that may be asked on a declaration of separation or nullity to be made for the upkeep and support of the wife amid the life partners' combined lives. As a result, it is a relative acquisition for their profit, which can be made in procedures of judicial separation, nullity, divorce and restitution of conjugal rights."

Definition of the term 'maintenance' in **Muslim Law**:

"The law of maintenance was somewhat hazy under historical Sharia law, because there was no separation between a legal requirement and an ethical or moral duty under Muslim law, making it difficult to distinguish what a person is legally required to do and what is only a moral duty."

A husband is required under Quranic law⁹ that can provide maintenance to his wife and family, and the phrase refers to the amount he is required to pay. The term used for maintenance in Muslim law is *nafaqa*, and it includes food, raiment, and housing, however conventional phraseology limits it to the first.¹⁰

Despite having the means to care for herself, the wife is entitled to maintenance from her husband. Furthermore, the marriage contract will contain the payment of specific expenses by the husband, where the husband would be obligated to pay these to the wife. These allowances are known as *kharch-e-*

4. *Shaikh Babbu v. Sayeda Marat Begum* (1999) Cri.LJ 4822 (Bom).

5. Cri. App. No. 820 of 2014.

6. *Mohd. Ahmed Khan v. Shah Bano Begum and Ors* (1985) 2 SCC 556.

7. *Abdul Rashid v. Farida* (1994) Cri.LJ 2336 (MP).

8. Section 3(c) of the Hindu Adoption and Maintenance Act, 1986.

9. Khan Ephroz (2003), **Women and Law: Muslim Personal Law Perspective**, Rawat Pub., at p. 302.

10. Wadje Ashok (January 7, 2013), *Maintenance Right of Muslim Wife: Perspective, Issues and Need for Reformation*, (NLU-J), at pp 14-28.

pandan, guzara, mewa khore, and so on. Women can assert this as a right. There are some exceptions. These are: a wife cannot claim maintenance if she is disobedient; a wife will not receive maintenance if she does not grant her husband absolute free access; and a wife who deserts her husband is usually not entitled to maintenance.

Because the husband's commitment to sustain his wife is his personal liability, the wife is not allowed to be maintained by his relatives or out of his possessions after his death.¹¹

As a result, we have established that the wife has the right to maintenance. The following event gives rise to such a right. These are as follows:

- 1) Matrimony.
- 2) Separation.
- 3) Pre-nuptial agreement.

We can now proceed to list the sources from which these rights have evolved. There are three significant sources. These are as follows:

- 1) Islamic Personal law.
- 2) Section 125 of the Indian Criminal Procedure Code.
- 3) The Muslim Women (*Protection of Rights on Divorce*) Act of 1986.

3. SHAH BANO DECISION AND ITS CONSEQUENCES

The famous case of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*¹² was the first to bring this conflict of opinion to light.¹³ In this case, a sixty-two-year-old Muslim woman was divorced by her husband, who exercised his indisputable right to '*talaq*'. The Apex Court constitutional court ruled that a divorced Muslim woman is entitled to support under Section 125 of the Code. The Court based its decision on religious scriptures of Mahomedan law and Quranic interpretations, and it also declared that the husband cannot avoid his obligation to pay maintenance by paying mahr or maintenance during the *iddat* period.

The conservative Muslim community protested and agitated against this decision, seeing it as an intrusion into their personal law.¹⁴ As a result of the pressure, the government bowed in and passed unanimously the Muslim Women (*Protection of Rights on Divorce*) Act, 1986, which took precedence over the uniformly applied Criminal Procedure. This Act stated that Muslim women had the right to support from their husbands only during the *iddat* period, whereupon the burden of maintenance was shifted to her family or the District Waqf Board. As a result of the impact of politics and orthodoxy, the ability to appeal under Section 125 was mostly restricted to Muslim women, and the law, which should have promoted women's rights, became anti-secular¹⁵ and anti-feminist.

This is the current maintenance law for divorced Muslim women. However, courts have attempted to broadly construe the provisions of the Code and the Act in order to grant relief to Muslim women.

11. Chakraborty G. (2003), **Law of Maintenance**, Sodhi Pub., at p. 13.

12. (1985) 2 SCC 556.

13. (1985) 2 SCC 556.

14. *The Shah Bano Legacy*, The Hindu, 10th Aug, 2003, at p 4

15. Dasgupta Rajashri [1987], **Historic Judgment and After**, Vol. 22: 17 EPW, at pp. 748–749.

Earlier, the Apex Court based on such harmonious creation, and it is important to examine these decisions to gain a comprehensive knowledge of the maintenance *status quo*.

4. THE NEED FOR A COHERENT INTERPRETATION OF THE STATUTES

One of the most noteworthy instances following the *Shah Bano* decision is *Danial Latifi and Anr. v. Union of India*,¹⁶ in which *Shah Bano's* lawyer herself challenged the Act's constitutional legitimacy. The Apex Court endeavored to clear up the confusion caused by conflicting judgements in the aftermath of *Shah Bano* in this decision. The Constitution Bench reached a compromise in which it accepted the Act's constitutionality but determined that the provision for support would apply equally to the Muslim community.¹⁷ The Bench broadly read Sections 3 and 4 of the Act, holding that a divorced Muslim woman is entitled to fair and sufficient provision for livelihood as well as maintenance, and that the husband is obligated to provide this during the *iddat* period (*as stated by the Act*). It was held, however, that this maintenance is not restricted to the *iddat* period, and that a Muslim woman is entitled to maintenance for the rest of her life or until she remarries.¹⁸ The Court understood the Act to suggest that the limitation in the Act was on the period within which such maintenance or provision had to be made, rather than the form or duration of maintenance. Thus, the Supreme Court attempted to grasp the intent of Section 125 of the Code and apply it to Muslim women on a secular basis. It emphasized the necessity for uniformly applied legislation to prevent future cases of discrimination and arbitrary deprivation.

However, one flaw in *Daniel Latifi* was that the court failed to recognize Section 125 inaccessibility to Muslim women. While Section 125 purports to be universally applicable, it requires the assent of both the woman and the husband to be invoked. Pragmatically, the spouse would not agree to being liable to Section 125 of the Code when he is subject to less obligation under the Act. If a divorced Muslim woman is unable to support herself after *iddat* period, she cannot seek maintenance from her ex-husband and must rely on family or the State Waqf Board. As a result, in most circumstances, women are unable to claim Section 125 of the Code, and this clause is only nominally secular.

5. SITUATION DECIDED AFTER SHAMIM BANO CASE

The Supreme Court properly decided in the *Shamim Bano* case that *Shamim Bano* is entitled not only to *mehr*, jewelry, and maintenance under Section 3 of the Act, but also to maintenance for the post-*iddat* period, which was not mentioned in the ruling granting mahr. As a result, the Apex Court made a praiseworthy attempt to equalize Muslim women with other communities. Furthermore, regardless of the fact that her husband, Ashraf Khan, had not consented, the Bench upheld her plea under Section 125 of the Code. The Court recognized that if the Section 125 application was denied, *Shamim Bano* would be rendered helpless because the Magistrate's order simply guaranteed *mehr* and did not provide her with any maintenance. As a result, anticipating a miscarriage of justice, the court decided that the boundaries of Section 125 should be applied.

Thus, decisions such as *Shamim Ara* have improved on *Shah Bano* and given credibility to Section 125 secular nature; this secular characteristic has been beneficial in defending Muslim women from tyranny at the hands of male orthodoxy. However, the Muslim Women (*Protection of Rights on Divorce*) Act remains an impediment to these attempts. As a result, it is vital to explicitly define the scope of this

16. (2001) 7 SCC 740.

17. Feminism and Multicultural, at p. 673.

18. (2001) 7 SCC 740.

Act by limiting it to ensuring reasonable and fair *mehr* and maintenance during the *iddat* term. Cases like these have aided in eroding the exclusivity of female discriminating legislation in marriage and other areas.

The government shall assume this duty for maintenance throughout the post-*iddat* period in order to provide Muslim women with the uncompromised, secular right to file a petition under Section 125 of the Code. As a result, the legislature must change the Act to limit its application exclusively to acquiring *mehr* and to abolish Section 5, which requires the husband's approval to obtain maintenance under Section 125 of the Code. Such a result would be harmonious because it considers religious differences while also prioritizing the wellbeing of divorced women.

6. CONCLUSION

We can see that in Muslim law, maintenance after divorce has been a contentious issue. Initially, the claim to maintenance of a divorced Muslim woman was derived from two sources: Section 125 of the Criminal Procedure Code and the Muslim Personal law. There was a dispute between the two since, under the Criminal Procedure Code, a woman's entitlement to seek maintenance extended beyond *iddat* period, yet under the Muslim personal law, the husband was only required to pay support during the *iddat* time. Section 127 of the Criminal Procedure Code of India was included to settle this. However, it was unsuccessful in settling the disagreement and serving as a substitute for maintenance. In this context, the historic *Shah Bano* case was resolved, which established the legal stance. The case granted primacy to the Criminal Procedure Code and over Muslim Personal law, and held that if the divorced woman does not have the means to support herself, it is the husband's obligation to support her for her entire lifetime, and therefore much beyond the period of *iddat*. The decision infuriated traditional Islamic organizations, who considered it as an intrusion on their personal law. In response to public pressure, the then—government established the Muslim Women (*Protection of Rights on Divorce*) Act in 1986. According to this act, the husband is entitled to provide fair and reasonable maintenance during the *iddat* term. This created a lot of ambiguity and confusion over the interpretation of the terms specified. Another major decision, *Daniel Latifi v. Union of India*, cleared up the uncertainty. In this case, the Apex Court maintained the Act's constitutional validity, ruling that it does not violate Articles 14, 15, and 21 of the Indian Constitution. The Court interpreted the terms to mean that the husband is obligated to provide for the divorced woman's maintenance even after *iddat* period, because the term fair and reasonable maintenance implied this kind of reading. Within was intended to suggest that such maintenance should be performed during the *iddat* period. The requirement, however, does not end with *iddat* period. As a result, the case is credited with serving the dual objective of upholding the constitutional legitimacy of the Act and reaffirming the position established in *Shah Bano* case. This argument has been supported by the Court on numerous occasions and remains unchanged. Caries danger is also increased. Patients' lack of oral hygiene due to medical conditions, as well as parents' indulgent attitude toward their children's sugar intake, are two variables that contribute to dental caries.