

# MAINTENANCE UNDER MUSLIM LAW

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## ABSTRACT

***Under Muslim Law, a man is bound to maintain his wife irrespective of his and her means and, his minor children, if he is not indigent. He is obliged to maintain his other relatives from whom he can inherit, if he has means to do so, and they are indigent.***

**Keyword:** *wives, divorced, Liability, religion, descendants, ascendants, collaterals*

### 1. CONCEPT OF MAINTENANCE

The term maintenance ay relates to maintenance of wives, divorced wives, widows, children, old and infirm parents' concubines etc.

The Arabic equivalent of 'maintenance' is Nafaqa, which literally means, "What a person spends over his family". In its legal sense, maintenance signifies and includes three things:

- I. food
- II. clothing, and
- III. lodging.

Generally, maintenance includes food, clothing and lodging. Maintenance is the name given to the weekly or monthly payments which may be ordered on a decree of divorce, or nullity to be made for the maintenance and support of the wife.

**Kharcha-i-pandan** – this is the duty of the husband to maintain his wife and children. The wife is also under the duty to be obedient towards her husband and allows him free access at all reasonable times. Kharch-i-pandan is the absolute property of wives and she is at liberty to use it according to her sweet will. It is a personnel allowance, and it cannot be transferred even though payment secured on immovable property.

**Principle of maintenance** – The principle upon which the Muslim law of maintenance is based are briefly summarized as follows:

- I. Under Muslim law there are very few provisions for the maintenance of the relatives. As general rule, no relation except a wife who is in 'easy circumstances', has any claim for maintenance. But a Muslim is bound to provide and is entitled to receive

maintenance from his ascendants and descendants except under certain circumstances.

- II. According to Muslim law only those persons are entitled to maintenance who are indigent and necessitous and are unable to earn their livelihood.

**Liability for maintenance** – a person becomes liable for Nafaqa or maintenance on account of a person:

- I. Being his wife
- II. Being his relative. i.e., children, grandchildren, aged parents and other relatives.
- III. Being his servant.

**Requisites for a claim- General Rule** – Such person is entitled to maintenance (1) that has no property of his own. (2) Who is related within prohibited degrees to the persons, and (3) The person from whom he claims in 'easy circumstances.

**The Meaning of easy circumstances** – according to Muslim Lawyers, 'easy circumstances' means such an amount of wealth as would render the processor liable according to their religion to pay the Zakat (poor rate) and would prevent him from being a proper recipient of alms out of the proceeds of Zakat.

Except when the claimant is wife and when the claimants are minor sons or unmarried daughters.

**Persons entitled to maintenance-** a Muslim is under an obligation to maintain the following persons:

- i. His descendants;
- ii. His ascendants;
- iii. His collaterals;
- iv. And his wife.

**Descendants – Father’s liability** - The father’s liability to maintain his children are absolute and is not affected by his indigence so long as he can earn. He is bound to maintain them even if they are in their mother’s custody.

## 2. MAINTENANCE OF CHILDREN AFTER DISSOLUTION OF MARRIAGE

Under section 3 (1) (b) of the 1986 act contemplates the divorcee wife right to claim maintenance in respect of her children and thus has nothing to do with the independent right of the children (as held in *Haji Farzand Ali v. Noorjahan*<sup>1</sup>). To be maintained by the father under the Muslim law. The right of the children is separate and independent of the divorcee wife’s (their mother’s) right to claim maintenance. Naturally therefore, such a right cannot certainly be affected by the provision of section 3 (1) (b) of the new act.

When the father has no means and is indigent the mother is liable to maintain the children But, when both father and mother are unable to maintain their children the liability of Grandparents paternal or maternal arises.

There is no obligation on father-in-law to maintain the widow of his son:

- Ascendants – Children’s Liability – as the parents are under an obligation to maintain their children, so are children liable
- If there are; (i) no children, or (ii) the children are indigent, it is liability of the grandchildren to provide maintenance to their grandparents.

Wife (a) during subsistence of marriage- according to the ordinary sequence of natural events the wife comes first. Her right of maintenance in this case is absolute. Her right remains unprejudiced even if she has property or income of her own and the husband is poor. A husband is bound to maintain his wife, irrespective, of being a Muslim, non-Muslim, poor or rich, young or old. Such allowance is called *kharch-i-pandan*, *guzara*, *mawa-khori*. Etc. the husband is bound to maintain if she fulfills the following conditions:

- (1) She has attained puberty i.e. an age at which she can render to the husband his conjugal rights.
- (2) She places and offers to place herself in his power so as to allow free access to herself at all lawful times and obeys all his lawful commands.

## Duration of Maintenance-

The wife’s right to maintenance ceases on the death of her husband, for her right of inheritance supervenes. The widow is therefore, not entitled to maintenance during the *iddat* of death.

But under Muslim law, a divorced wife is entitled to be maintained by her former husband during the period of *iddat*.

Quaranic verses give clear cut picture that a divorced is entitled for maintenance till the expiry of *iddat* period. In case she is pregnant this period extends up to the delivery.

## Claim for maintenance under CrPC-

Under section 125 of the criminal procedure code 1973, the term, ‘wife’ includes a divorced wife or a wife who has obtained a divorce from her husband and has not remarried. Under the Muslim law, the husband is liable to maintain his divorced wife till the period of *iddat* only and his liability to maintain the divorced wife terminates after this period. But, under the CrPC 1973, a divorced wife is entitled to be maintained by her former husband beyond the period of *iddat* provided she remains unmarried. But a divorced wife’s right to maintenance is subject to section 127 (3) of the act which lays down that the order for the maintenance in favor of a divorced wife shall be cancelled, and such woman shall not be entitled to maintenance:

- (1) Where she has remarried
- (2) Where she has received the whole sum due to her under any customary or personnel law, and
- (3) Where she has voluntarily surrendered her rights to maintenance after her divorce.

In *Zohra Khatoon V Mohd Ibrahim*, the Supreme Court had held that the word ‘wife’ in section 125 (1) explanation (b) of CrPC includes a woman who has obtained a decree of dissolution of her marriage under any of the provisions of dissolution of Muslim marriage act 1939.

## 3. RIGHT OF MUSLIM DIVORCED WOMAN TO MAINTENANCE

In *Shah Bano Begum v. Mohd. Ahmad Khan*, the five judges bench of the SC held that a Muslim husband having

<sup>1</sup> 1988 Cr. LJ 1421 (Rai.)

sufficient means must provide maintenance to his divorced wife who is unable to maintain herself. whether the spouses are Hindus, Muslims, Christians .etc. is wholly irrelevant to the application of section 125 of CrPC . It was held that a Muslim Divorced woman who cannot maintain herself is entitled to maintenance from her former husband till the time she gets remarried.

The contention that deferred mahr (Dower) is a payment on the divorce of a wife and hence such payment under the personnel law excludes the payment of any maintenance by the husband to the wife was also rejected. It was said that under section 127 (3) (b) CrPC Mahr is an amount which the wife is entitled to receive from the husband in consideration of the marriage.

**Suit for maintenance** - if the husband neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for maintenance either under the Muslim law or under section 125 and S.126 of CrPC, 1973 .

Now the law relating maintenance of Muslim divorced woman is governed by the Muslim woman (Protection of Rights on Divorce) Act, 1986, Section 125 Cr P C has no application so far as Muslims are concerned.

**The Statement of Objects and Reasons to the bill, which resulted in the Act, reads as follows:**

The decision of the Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum and Ors. has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests. The Bill accordingly provides for the following among other things, namely:

(a) A Muslim divorced woman shall be entitled to a reasonable and fair provision and maintenance within the period of iddat by her former husband and in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to mahr or dower and all the properties given to her by her relatives, friends, husband and the husband's relatives. If the above benefits are not given to her at the time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance, the payment of mahr or dower or the delivery of the properties.

(b) Where a Muslim divorced woman is unable to maintain herself after the period of iddat, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law in the proportions in which they would inherit her property. 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. But where, a divorced woman has no relatives or such relatives or any one of them has not enough means to pay the maintenance or the other relatives who have been asked to pay the shares of the defaulting relatives also do not have the means to pay the shares of the defaulting relatives the Magistrate would order the State Wakf Board to pay the maintenance ordered by him or the shares of the relatives who are unable to pay.

#### **4. SHAH BANO BEGUM CASE HISTORY**

The appellant, who is an advocate by profession, was married to the respondent in 1932. Three sons and two daughters were born of that marriage. In 1975 the appellant drove the respondent out of the matrimonial home, in April 1978; the respondent filed a petition against the appellant under Section 125 of the Code in the court of the learned Judicial Magistrate (First Class), Indore asking for maintenance at the rate of Rs. 500 per month. On November 6, 1978 the appellant divorced the respondent by an irrevocable talaq. His defense to the respondent's petition for maintenance was that she had ceased to be his wife by reason of the divorce granted by him, to provide that he was therefore under no obligation maintenance for her, that he had already paid maintenance to her at the rate of Rs. 200 per month for about two years and that, he had deposited a sum of Rs. 3000 in the court by way of dower during the period the of iddat. In August, 1979 the learned Magistrate directed appellant to pay a princely sum of Rs. 25 per month to the respondent by way of maintenance. It may be mentioned that the respondent had alleged that the appellant earns a professional income of about Rs. 60,000 per year. In July, 1980 in a revisional application filed by the respondent, the High court of Madhya Pradesh enhanced the amount of maintenance to Rs. 179.20 per month. Indian Muslim women, especially those who shall be left destitute, are by justice and by right, deserve financial support from their ex-husbands, even beyond the iddat period. This was the position of the Supreme Court in the Shah Bano case.

This position shall be justified by showing that this is in agreement with India's constitution and the criminal code with the Universal Declaration of Human Rights and the Islam faith itself. The criminal code, specifically article 125-127, does provide that husbands should give financial support to divorced, destitute women. It should be noted that in India, the criminal code applies to everyone, irrelevant of religion, because of the large number of minorities 'allows for different personal laws to govern the Muslims, the Hindus, and the Christians, which somehow gives certain autonomy among these groups of people. The Supreme Court eventually decided in 1985 that the husband should give financial support to Shah Bano, a decision which used a good number of the Muslim population in India to protest. The Indian Muslims supported by their leaders claimed that according to their personal laws, wives can only be supported by their husbands for up to three months, i.e., within the period of the iddat. Beyond this it is not anymore, the responsibility of the husband. Instead, responsibility is now vested on the female's relatives or in cases of financial incapacity of the female's relatives, to the State Wakf Board. They claimed that the decision of the Supreme Court is in transgression of their personal laws and therefore not to be upheld. Muslim groups in turn proposed the Muslim Women Bill (Protection of Rights on Divorce) act 1986 which states that a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period.

## **5. IN THE SUPREME COURT OF INDIA:**

**Appellants: Danial Latiff and Anr. Vs. Respondent: Union of India (UOI)**

**Decided On: 21.09.2001**

The constitutional and legal validity of the Act has been challenged in the petitions. The Supreme Court in Mohd. Ahmed v. Shah Bano Begum and Ors. (1985) 2 S.G.G. 556 after referring to various textbooks in Muslim Law held that the divorced wife's right to maintenance ceased on expiration of Iddat period but proceeded to observe that the general proposition reflected in these statements did not deal with the special situation when the divorced wife was unable to maintain herself. In such cases it was stated that it would be not only be incorrect but unjust to extend the scope of the statements referred to in those textbooks in which a divorced wife is unable to maintain herself and opined that that application of their statements of law must be restricted to that class of cases in which there is no possibility of vagrancy or destitution arising out of the

indigence of the divorced wife. The Court concluded that these Ayat leave no doubt that the Holy Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife and that the contrary argument does less than justice to the teaching of the Holy Quran. There was a big up-roar thereafter and the Parliament enacted the Act with the intention of making the decision in Shah Bano's case ineffective. Various arguments were raised for and against the validity of the Act. It was contended, inter alia, that the Act is discriminatory as the more advantageous provisions of the Code of Criminal Procedure in Sections 125 to 128 has been excluded, that liability created to provide maintenance beyond the Iddat period is against the Muslim personal law and against religious texts. Overruling the contentions of the Petitioners.

## **6. HELD**

A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the Iddat period must be made by the husband within the Iddat period in terms of Section 3(1)(a) of the Act Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to Iddat period.

A divorced Muslim woman who has not remarried and who is not able to maintain herself after Iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such-maintenance.

Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986) -- By Exclusion of the application of Sections 125 to 128 of the Code of Criminal Procedure, the Act is not violative of Articles 14, 15 and 21 of the Constitution of India.

**Held:** A comparison of these provisions with Section 125 Code Of Criminal Procedure will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support is satisfied.



Even under the Act, the parties agreed that the provisions of Section 125 Code of Criminal Procedure would still be attracted and even otherwise, the Magistrate has been conferred with the power to make appropriate provision for maintenance and, therefore, what would be earlier granted by a Magistrate under Section 125 Code of Criminal Procedure would not be granted under the very Act itself. This being the position, the Act cannot be held to be unconstitutional

Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986) --Sections 3(1)(a) and 4-- Muslim husband is liable to ' make reasonable and fair provision for the future of the divorced wife which includes her maintenance even beyond the Iddat period-- Such provision has to be made within the period of Iddat itself.

**While upholding the validity of the Act, the court concluded that:**

1. A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.
2. Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.
3. A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.
4. The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

**REFERENCE**

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2. 1988 Cr. LJ 1421 (Rai.)
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4. Fyze: Outlines of mohammedan law 3rd edn p202
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6. AIR 1985 SC 945
7. Mst. Zohara Khatoon v. M. Ibrahim , AIR 1986 SC 587
8. Bai Tahirav. Ali Hasan fasali , AIR 1979 SC 362; Fazlunbi vs. Khaddar Ali AIR 1980 SC 1730.