

# RIGHT TO MAINTENANCE OF MUSLIM WOMEN: AN ANALYSIS OF VARIOUS LEGISLATION

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## ABSTRACT

In this research paper, an attempt has been made to analyze the nature and extent of the right to maintenance for Muslim women under various Indian laws. Under common law, the right to claim maintenance refers to the right of any person in a relationship who is unable to support themselves and is dependent on someone to obtain resources for sustenance from that person. However, the nature and breadth of maintenance or *nafaqa*, especially for Muslim women, varies from regulations.

**Keyword:** *Muslim Law, Women, Maintenance, Criminal Procedure Code, Uniform Civil Code*

## 1. INTRODUCTION

Women's standing in India has changed dramatically throughout the years, from equality with men in ancient times to a dramatic shift in the medieval period. As the Medieval period of history started to emerge, the position of Indian women began to decline for a number of reasons. Important scriptures began to promote the concept that women were physically and mentally inferior to males and should not be allowed to have their own independence. Foreign invasions and conflicts altered the setback of women by introducing new beliefs about women's status. Following India's independence, there was a new sense of optimism throughout women's society. Indian constitutional founders drafted a written constitution in 1948, one year since India was awarded independence. This Constitution was primarily concerned with the rights of all citizens, and it also granted women equal rights and opportunities. However, looking at the data on the gender ratio in India, there is a clear indication that something is not right. In India, which has a population of over one billion people, women outnumber men by a wide margin. Many potential contributing elements contribute to this inconsistency. Unfortunately, women continue to face challenges such as malnutrition, poverty, and insufficient healthcare. Women are frequently required to care for large families on a consistent basis. Many women in India, particularly in rural regions, are just concerned with day-to-day survival. Despite all of these obstacles for Indian women, there has been significant progress in recent years. The women's movement began in the 1970s, raising public awareness of the need for fair, equal, and humane

treatment of women. Many laws were enacted and enforced as a result of the fight to protect women.

Under general law, the right to claim maintenance refers to the right of any person in a relationship who is incapable of supporting themselves and is reliant on someone to obtain resources for sustenance from that person. However, the nature and breadth of maintenance, or *nafaqa*, for Muslim women in particular differs according to different regulations.

It is believed to be covered simultaneously by—Older Muslim Personal Laws Criminal Procedure Code, Section 125 the New Muslim Women (Protection of Rights on Divorce) Act, 1986.

The lines between such often contradictory and contentious clauses are determined by the courts in certain major decisions that will be examined in the essay. The main focus of the ancient personal laws is that the husband was only compelled to support the woman during the period of *iddat* that followed the dissolution of marriage. *Iddat* is the period during which a woman is not permitted to remarry. The goal is to protect the parenthood of any kid she may be carrying at the time of dissolution. As a result, it lasts for three menstrual cycles or until the child is delivered if she is pregnant.

The controversy emerged when it was argued that Muslim women deserved maintenance even after the three-month period because that alone is insufficient to keep her. Maintenance was sought under the secular Section 125 of the Criminal Procedure Code, arguing that it governed Muslim women and extended beyond the term of *iddat*. Some of the most important instances and

contentious legislation in Muslim maintenance law are based on this.

## **2. THE MUSLIM WOMEN (PROTECTION OF DIVORCE RIGHTS) ACT, 1986**

The Rajiv Gandhi Government introduced the landmark law, namely the Muslim Women (Protection of Rights on Divorce) Act 1986, on May 19, 1986, to protect the rights of Muslim women in regard to divorce after the ruling in Shah Bano's case was challenged before the Apex Court. This passage was labelled a major setback for Muslim women by progressive Muslims and outsiders. The essential provisions of the Act are as follows:

- the right to maintenance during the period of iddat;
- the right to fair and reasonable provisions for her entire life;
- the right to receive alimony for the child until two years after divorce; and
- the right to receive maintenance from the State Wakf Board in some exceptional circumstances.

The Act stipulates a reasonable and fair payment of maintenance by her former spouse throughout the iddat period, and if she maintains the children born to her before or after the divorce, the time is extended to two years from the date of the children's birth. She will also be entitled to mahr and all properties left to her by relatives, friends, her husband, and his relatives. If she does not receive all of these benefits at the time of divorce, she may petition the magistrate for an order directing her former husband to provide such support, payment of mahr, or surrender of the properties. Second, if a Muslim-divorced woman is unable to support herself after the iddat period, the Magistrate has the authority to order the payment of maintenance by her relatives who would be entitled to inherit her property on her death under the Muslim Law in the proportions in which they would inherit her property. If any of these relatives is unable to pay his or her share due to a lack of funds, the Magistrate will direct the other relatives who have sufficient funds to pay the shares of these relatives as well. However, if a divorcee has no relatives or such relatives, or any one of them who does not have enough means to pay the maintenance, or other relatives who have been asked to pay the shares of the defaulting relatives, they do not have the means to pay the maintenance ordered by him or the shares of the relatives who are unable to pay. In

the case of A.A. Abdulla v. A.B. Mohmuna Saiyadbhai, the Court ruled that a divorced Muslim woman is entitled to support, which is not restricted to the iddat term. The ruling was made in accordance with Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It construed this Section to mean that the husband is obligated to make and pay a reasonable and fair provision and maintenance to the wife on or before the expiration of the iddat period, not that the maintenance is only to be given during the iddat time. It concluded that to interpret the Article otherwise would be to deny Muslim women's rights under other laws.

## **3. MAINTENANCE UNDER SECTION 125 OF THE CRIMINAL PROCEDURE CODE**

First, it is necessary to comprehend briefly the law of maintenance under the Criminal Procedure Code general law. This Section is about upkeep. This provision does not only apply to the wife, but also to any legitimate or illegitimate kid, unmarried daughter, and elderly parents. This part arose from the dependent's incapacity to support himself or herself under any conditions.

Section 125 of the Criminal Procedure Code provides that if a person has ample money but chooses to neglect his/her wife/husband, children, or parents, he/she must pay a sum to keep them. The wife should be unable to care for herself financially or maintain herself in this situation. Several rulings under this legislation require the amount of maintenance to be such that it allows the person to 'keep' the standard of living they had in their marriage, rather than basic survival.

The crux of this issue is that neither this section restricts itself to a specific religion nor does it impose a time limit for paying maintenance. Now we'll look at the case that brought the topic to the forefront of public consciousness:

### **Shah Bano Begum v. Mohd. Ahmad Khan (The controversial judgment)**

In this case, a 62-year-old lady divorced and was then denied maintenance. She had not married again. She went to the Judicial Magistrate's Court in Indore, requesting support of `500 every month. Despite the fact that the judgement was in her favour, she was only given `25 per month. She appealed to the Madhya Pradesh High Court, which gave her `179.20 per month.

The Supreme Court issued its decision in response to the husband's appeal, recognizing the secular nature of Section 125 and granting all Muslim women the right to

maintenance beyond iddat as a legal entitlement, and holding that when the CrPC and personal law disagree, the Criminal Procedure Code takes precedence. As a result, the Muslim husband's appeal was denied.

### **Aftermath of Political Upheaval**

The Shah Bano case decision plainly pricked the patriarchal and religious Muslim community. The All-India Muslim Personal Law Board interpreted the court's action as an interference with the personal laws and customs of Muslims, causing indignation in the Muslim community.

To quell the outcry and avert violence, Rajiv Gandhi government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, which allowed for the husband's maintenance of the wife, and particularly prohibited the application of any other legislation (i.e., Criminal Procedure Code) on the same subject matter.

### **Maintenance under the 1986 Act (The Controversial Legislation)**

Section 3 of the Muslim Women (Protection of Rights on Divorce) Act specifies the amount of maintenance to be given by the husband during the couples' divorce.

Clause (a) stipulates that the wife is entitled to fair and reasonable maintenance during the iddat period. As a result, this section limits the time during which the husband must pay support. Furthermore, the second clause states that the husband is obligated to pay maintenance for children born before or after the divorce, regardless of whether she is raising them alone. This sum is to be paid in upkeep for two years.

Aside from that, she is to be paid (if she has not already been paid) the dower or Mahar agreed upon at the time of the marriage ceremony as compensation for the marriage contract. Finally, she is entitled to all property given to her before, during, or after marriage by her relatives, friends, husband's relatives, or friends.

If any of the above is not given to the woman or is not paid to her as promised or within a reasonable time after the divorce, an application can be filed with the magistrate to recover the same.

Clearly, the statute only permitted for maintenance throughout the iddat time. After that period, it stipulates that she may seek maintenance from her relatives who would acquire her property upon her death, and in the absence of such relatives, she may seek maintenance from the State Waqf board. The Section, through the non-

obstante clause, trumps the Criminal Procedure Code, and therefore, following the Act, the uproar and violence subsided, and the people were reassured that the government is on the side of Muslims.

The Act was nothing more than a pathetic attempt to appease some protestors. The Act only provided for support during the iddat period, which is three months following divorce, but this is insufficient to keep her alive after the iddat. Furthermore, the Act does not specify a monetary sum, either minimum or maximum, other than the phrases 'fair and reasonable'. The Act makes no provision for the woman's maintenance for the rest of her life, and only her property gifted to her during or after marriage is to be returned, which cannot be proven with certainty in any court of law.

### **Union of India v. Daniel Latifi (Back to the Future)**

The case, which arose in the aftermath of the contentious vote-banking legislation, called into question the constitutionality of Section 3 of the 1986 Act, citing the Shah Bano case decision and Articles 14 and 21 of the Indian Constitution. It intended to address the discrepancy between Section 125 of the Criminal Procedure Code and Section 3 of the Act, with the former enabling maintenance till after the term of iddat and the latter limiting it too within.

The Court used judicial interpretation to grant Muslim women their rights while relieving the legislature of the added burden of unconstitutionality. It stated that in order for maintenance to be 'fair and reasonable' within the terms of the contested Act, it must be sufficient to sustain the woman for the rest of her life or until remarriage, not simply during the period of iddat. It stressed the amount of maintenance rather than the time period, so that it only needed to be paid within the iddat period as defined by the Act, but should be sufficient in quantity to support her well beyond it.

As a result, it preserved the law from being in conflict with Part III while also correcting any inconsistencies between the statute and Section 125 of the Code.

### **Some Final Decisions (Reiterations)**

Following Latifi case, the Court went on to reaffirm its findings on the law of maintenance in several subsequent cases, one of which being Iqbal Bano v. State of Uttar Pradesh. In this case, it was observed that the right under Section 125 only expires if and when the terms of the 1986 Act are followed. That instance, if a woman is denied

support under Section 3 of the Act and the prescribed method fails, she may still bring a claim under Section 125.

The similar conclusion was reached in *Shamim Bano v. Ashraf Ahmed* and *Shabana Bano v. Imran Khan*, Muslim women cannot be denied protection under the Section 125 only because of their faith.

#### **4. CONCLUSION**

“It appears that man has put the autograph in the theater of life, and there is no space for a woman even to put her signature.” In a literal sense, the individuality of a Muslim woman is regarded to be the soul of Muslim men, who is linked to the purse strings of the norms imposed by patriarchy. The Rajiv Gandhi government did create legislation to regulate the pattern and provide rationality to Muslim divorcees, but the strings were still in the hands of the effective former husband because the Act stated that if they refused to allow the petition to be filed in Section 125 of the Criminal Procedure Code, the women’s rights could be revoked. It is entirely up to the Magistrate to interpret the aforementioned Act in order for the divorcee to live a secure life. The entire scenario indicates that religious traditions are more important than gender equality, and the only way to avoid this is to have unified law. Uniform Civil Code vibrations would have a favourable impact on Muslim personal law. It would allow Muslim divorcees to claim lifetime maintenance. However, Muslims are very opposed to the matter, claiming that it would infringe on their personal law and that Hindu law would take precedence over their personal law. Despite the fact that it has already been stated that the Uniform Civil Code is secular legislation.

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