

MAINTENANCE OF MUSLIM WOMEN UNDER VARIOUS LAWS

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Abstract

Today, the topic of women's rights in Muslim personal law is particularly contentious. Muslim women's rights to upkeep, in particular, are receiving a lot of attention these days. Despite the fact that the Indian Constitution guarantees equality and freedom from discrimination based on gender or religion, there are several customs that are founded in callous traditional culture. As is well known, a major portion of Muslim personal law remains uncodified, with most legal decisions made by courts based on the standards outlined in the Quran and hadith. The major argument between the interpretation of Muslim personal rules and Indian laws has both good and bad implications. According to certain scholars, Muslim personal laws have granted Muslim women significant rights connected to maintenance. Some, on the other hand, believe that these behaviours violate the spirit of the Indian Constitution.

In this vein, this research study seeks to analyse the ongoing discussion in India about the consequences of Muslim Personal Law and other legislation, as well as to propose alternative solutions to empower Muslim women. As a result, certain abnormalities must be eliminated by providing the genuine substance of the Holy Quran for the sake of Muslim women's rights. Furthermore, the focus of this research article will be on certain aspects of the study of Muslim women's maintenance under Indian law and Muslim personal law. Many Muslim women in India are unaware of their rights under Muslim personal law and Indian law. This study will explain and clarify Muslim women's maintenance under Indian law and Muslim personal law in order to get a critical understanding of the position of Muslim women's maintenance.

Keywords: Fundamental Rights, Religious Belief, Secularism, Legal Protection

INTRODUCTION

The dictionary definition of maintenance is "support or subsistence." The term "maintenance" is not articulated in any of the religious communities' marriage regulations. However, the right to claim maintenance is unquestionably based on the notion that the claimant lacks adequate resources to maintain herself. The expenditures for necessities or requirements for the substance of life are often covered by the upkeep. However, it is more than just the claimant's right to live. This is obvious from the provisions of the statutes, which provide instructions to the court by indicating the variables to be considered when determining the amount of maintenance. The Muslim Law alike of English Law tries to treat property as primary and

natural individual. The Muslim system is not alike after Hindu system, the Muslim system does not like the Hindu system contemplate like that of the normal state of things, or the existence of the family mass property that is kept together by several generations through common fund or it does not lend itself easily with artificial limitations of the English system by the way of entail and family segment. Under Mohammedan law, the Maintenance is being provided under several regulations and rules. Only the wife who is being possessed of property having sufficient for her maintenance will be able to clean for the maintenance at the expense of husband as she has the right to maintenance which is one of the natural consideration of the woman's marriage contract. Under the Muslim law, the man is being bound for maintaining their prospective wife respective of his means and the minor children. The husbands are obliged to maintain his other relatives from whom he is able to inherit if he has the means to do so which is indigent. The rights and responsibilities of maintenance were outlined by the following verse of the Holy Quran¹: "Let the men of means spend according to his means, and the men with limited resources spend according to what God has given him."² "Let the women live" (in iddat) in the same manner that you live, within your means." "However, he shall cover the cost of their food and lodging garments on fair terms"³.

What exactly is maintenance? In general, it comprises food, clothes, shelter, and other necessities for a woman's livelihood and comfort. Marriage is the foundation for maintenance responsibility. According to Shariah, a wife cannot be forced to cook or sew her own clothes; the husband must provide her with a servant for such labour. The spouse is also obligated to furnish her with a separate dwelling or section of a house with a separate entrance or exit. If the wife stays at her parents' residence for a legitimate cause, her claim to maintenance is unaffected. It is the husband's responsibility to support his wife, to treat her fairly, and to take adequate care of her. If he has more than one wife, he must pay maintenance to all of them and treat them fairly; he must not discriminate between them in giving support and must not favour one over the other. It is the husband's responsibility to support the wife in a lawful marriage. There is no maintenance duty in the case of an irregular marriage if the irregularity is due to the lack of witnesses at the time of the nikah ceremony. The wife's claim to maintenance is not harmed if she refuses to remain with the husband owing to non-payment of prompt dower, or if she refuses to reside with the husband or return to his house for any reasonable cause, such as his cruelty. Family Laws in India have always worked to reform Muslim Laws in order to empower women and acknowledge their rights. The major reference in this study is to bring forth the maintenance rules for Muslim women with reference to the Indian Family laws as well as those linked to the Muslim Women Law in India. The Indian Maintenance legislation, referred to under Section 125 of the Code of Criminal Procedure 1973, has been the most secular portrayal of the Indian Constitution, mirroring Article 21 regardless of divorce. Aside from this Muslim Personal Law, it also mentions the upkeep of Muslim women in India.

¹ Al- Quran Surah, Al-Talaq, LXV: 7.

² Al- Quran Surah, Al-Talaq, LXV: 6

³ Al- Quran Surah, Al- Baqara, 11:233 Volume-II, Issue-III

From beginning of time, women have been denied the right to an education and a decent social position, and have had to live in deplorable conditions, deprived of basic requirements and resources that should have been equitably distributed to them. It became difficult for women and their children to subsist when their marriages were dissolved.

Apart from marriage rules of land, maintenance was made an essential criteria in India, which is a country of great religious inequalities and many cultures, traditions, and customs, under the Procedural Regulations of Criminal Law. In light of the discrepancies in the laws, the court system has established the provision of right to maintenance, a legal consequence that is applicable to all sects of society.

Concept of Maintenance (Nafaqah)

India is a secular country with numerous legal systems that govern family law. In situations related to maintenance, for example, Muslims are regulated by their own laws, but general law of the country prevails in all other areas, i.e. in civil and criminal affairs. It was the same situation throughout the British period and afterwards in India, where marriage issues were resolved using customary laws based on modern Quranic interpretations. The situation began to alter in the late nineteenth century. Legislation supplanted Islamic law in civil and criminal proceedings, as well as in almost every other subject save personal law. Even certain parts of Muslim personal law, such as divorce, Waqf, and support, have been influenced by legislation. Furthermore, under British rule, legislation was adopted in 1898 that gave universal maintenance to women. Section 488 of the Criminal Procedure Code of 1898 applied to all spouses of any faith. It was not based on the parties' personal laws. However, the protections were not extended to 'divorced wives.' The purpose of maintenance laws in both personal law and the Criminal Procedure Code is to avoid poverty and keep destitute spouses or divorced women from seeking refuge on the streets. Maintenance is defined as assistance provided by one person to another on whom the latter relies for survival.

The phrase maintenance mostly refers to financial assistance, means of subsistence, and educational funding. Marriage is a civil contract in Islamic law that gives rise to certain rights and the fulfilment of certain responsibilities, such as maintenance, which the husband is obligated to provide to his wife. The major purpose of the maintenance legislation is to accomplish a social and welfare state goal and to discourage vagrancy. The notion of maintenance in India is governed by personal laws, however the provisions of the Code of Criminal Procedure, 1973 relating to maintenance are secular in character. According to Muslim law, maintenance is known as "Nafaqah," which refers to what a man spends on his family. These many groups of women are entitled to support under Muslim law. The provisions of the Maintenance Act are designed to serve a social function. The goal of all of these provisions is to compel a man to fulfil the moral commitments he owes to society in regard to his wife, children, and parents. These regulations strive to guarantee that the abandoned wife and children are not left beggared and penniless on the scrapheap of society and so pushed to a life of vagrancy, immorality, and crime for their survival. The inability of the wife, child, and father or mother to maintain themselves could lead to social problems of great magnitude;

therefore, it became the concern of the state not to allow such inability to grow into social problems of great magnitude unless the consequences of such inability were checked by providing appropriate measures; large scale vagrancy could be the likely result. As a result, in order to find a solution to this dilemma, the parliament devised a method, which is detailed in Chapter IX of the Criminal Procedure Code 1973.

The right to maintenance is limited by various circumstances, such as:

- the husband and wife's connection must be shown,
- she must be unable to support herself,
- the husband must have adequate resources, and
- it must be proven that the husband has ignored or refused to support the woman.

To understand the maintenance laws that is provided to Muslim women in India, it is important to conduct the critical study on different Indian laws that provide the provision of maintenance to Muslim women.

MAINTENANCE UNDER VARIOUS INDIAN LAWS

- A. Maintenance of Muslim Women under Indian Constitution
- B. Maintenance of Muslim Women under Code of Criminal Procedure 1973.
- C. Maintenance of Muslim women under Muslim Personal Law.
- D. Maintenance under an Agreement
- E. Maintenance under Muslim Women (Protection of Rights on Divorce) Act 1986

A. Maintenance of Muslim Women under Indian Constitution

In Indian Constitution Part III (Fundamental Rights) article 21 states that no one shall be deprived of his life or personal liberty. The term "life" has a very broad meaning in this context, as interpreted by the Hon'ble Supreme Court in the case of Maneka Gandhi v. Union of India⁴, that the right to live is more than just a physical right, but also includes the right to live with dignity. As we all know, India is a welfare state, and any rule established by the state regarding maintenance for spouses, children, or parents imposes a duty on the individual to give appropriate and fair maintenance in order for them to live a decent and dignified life.

Part IV (Directive principles of state policy) of the Indian constitution, Article 38⁵, requires the state to establish policies in order to guarantee a social order that promotes the welfare of the people. Furthermore, the state must try to promote the welfare of the people by guaranteeing and safeguarding as efficiently as possible a social order in which social, economic, and political justice shall guide all institutions of national life. The goal of all of these provisions is to compel a man to fulfil the moral commitments he owes to society in regard to his wife, children, and parents.

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⁴ AIR 1978 SC 597

⁵ Indian Constitution

the abandoned wife and children are not left beggared and penniless on the scrapheap of society and so pushed to a life of vagrancy, immorality, and crime for their survival. The inability of the wife, child, and father or mother to maintain themselves could lead to social problems of great magnitude; therefore, it became the concern of the state not to allow such inability to grow into social problems of great magnitude unless the consequences of such inability were checked by providing appropriate measures; large scale vagrancy could be the likely result.

As a result, in order to find a solution to this difficulty, the parliament devised a method that is now enshrined in the Indian Constitution. This statute is totally compliant with ARTICLE 15 (3) of the Indian Constitution, which specifies that the restriction included in the article must not preclude the state from making any particular provision for women and children⁶. ARTICLE 39 of the constitution also states, among other things, that the state shall, in particular, direct its policies toward ensuring that citizens, men and women alike, have the right to an adequate means of livelihood, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment⁷.

B. Maintenance of Muslim Women under Code of Criminal Procedure 1973.

Section 125 gave the Magistrates the authority to require the husband to furnish maintenance to the women. The clause was expanded to include 'divorced wives' as well. Under Section 125, a divorced Muslim wife who has not remarried can apply to the Magistrate for a maintenance order against her former husband if she is unable to support herself and her former spouse, although having ample resources, neglects or refuses to support her. The Magistrate can order her ex-husband to pay her a monthly stipend based on her application. If the order is not followed, the Magistrate may issue warrants in the same way as fines are levied. Further noncompliance leads in jail for up to one month, or until payment is completed, whichever comes first. It should be noted that the provision for maintenance under any personal law is unique and separate. The two provisions do not contradict one other. A person may claim for maintenance under CrPC s.125. If a person has already acquired a maintenance order under his or her personal law, the magistrate may take it into account while determining the quantum of maintenance under the Code. However, he cannot be deposed of his authority. The unwillingness or failure to maintain his wife, children, father, or mother by a person who has the resources to do so is the ground of the relief under the relevant clause. The man bears the burden of proving that he lacks the funds to maintain and provide maintenance.

Section 125 codifies a man's moral, legal, and basic obligation to support his wife, children, and elderly parents. Although this part can help a worried father, the major focus of this section is to help women and children. According to Article 15(3) of the Indian constitution, the state has the authority to create specific provisions for women and children. Section 125 is also consistent with Article 39 of the Indian Constitution, which states that the state shall direct its policy toward ensuring that all citizens, both men and women, have equal access to means of

⁶ Article 15 (3).

⁷ Article 39 of Indian Constitution

livelihood and that children and youths are provided with opportunities in conditions of freedom and dignity.

Although maintenance is a Civil remedy, it has been made a part of this Code to have a speedy remedy and processes and S.125 is not a trail since non-payment of maintenance is not a criminal crime at the time of creation of this code. The term "any person" under section 125 includes a person who is a member of an undivided family, notwithstanding the fact that the proceedings are purely against the individual and not the undivided family. However, while establishing the amount of maintenance that should be paid by such person, the Magistrate may take into account the joint family property; it also includes a person, a father, an adult son, and a married daughter. The refusal of the woman to discharge her marriage commitment to her husband and her claim for support will be investigated under both Muslim personal law and the Criminal Procedure Code. The wife's claim for maintenance under this act is a separate statutory entitlement that is unaffected by her personal law.

Under the terms of the Criminal Procedure Code, 1973, a Muslim woman who lives apart as a result of her husband's second marriage is entitled to maintenance payment. Under Section 125 of CrPC, A 'divorced wife' is included in the definition of 'wife.' Section 125 applies to a divorced Muslim woman as well. Section 127(3) states that a maintenance ruling in favour of a divorced wife is null and void, and that such woman is not entitled to support under the following circumstances,

Where the divorced woman has remarried, where she has received the entire sum entitled to her on divorce under any customary or personal law, and where the woman has voluntarily abandoned the right to maintenance after receiving a divorce from her husband. The Supreme Court repeated its position in *Mohd. Ahmad Khan v. Shah Bano Begum*⁸, holding that a divorced Muslim woman, as long as she has not remarried, is a wife for the purposes of section 125 and is entitled to support from her former husband.

REFUSAL ON THE BASIS OF NEGLIGENCE TO MAINTAIN:

It has been recognised that the reluctance or failure to maintain can be declared or implied, via words or by behaviour and action. Sometimes, greater failure and omission than failure and omission constitutes refusal or neglect. However, in the event of a person who lacks volition, such as a child, mere failure or omission shall constitute refusal or neglect to maintain.

The phrase "maintenance" has been broadly defined to cover food, clothes, and accommodation. However, it has recently been ruled that any other criteria, i.e., those required for a person to be fit, healthy, and living, are likewise to be included within the peripheral of the term 'maintenance.' In *Gulam Rashid Ali vs. Kanshar Praveen and others*⁹

That even a divorced Muslim woman has the right to maintenance from a Muslim husband till she remarries. Because Section 125 is a beneficent piece of law, the benefit must go to the divorced Muslim woman. Furthermore, Section 125 of the Criminal Procedure Code of 1973 authorises the Magistrate to impose maintenance in favour of Muslim women whose marriage

⁸ AIR 1985 SC 945.

⁹ (2010) DMC 371 Delhi High Court)

is legally valid. The Magistrate has the authority to impose maintenance in favour of women under Section 125 of the Criminal Procedure Code of 1973. If the husband neglects or refuses to support his wife for no legal reason, the woman may sue him for maintenance. She may seek a maintenance order under Section 125 of the Criminal Procedure Code, and the court may order the spouse to pay support.

1. The individual must have ignored the claimant or refused to pay maintenance.
2. Claimants for maintenance must be unable to support themselves. If a person is healthy, well-educated, and capable of working, no upkeep is provided. Wives and elderly parents are usually supported.

Section 125 of the Code of Criminal Procedure guarantees the right to maintenance to all women, regardless of caste, religion, or faith. As Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 does not impact such entitlement under Section 125 CrPC, a Muslim woman and her children are entitled to maintenance under Section 125 CrPC. The advantage of Section 125 CrPC is available to all children regardless of religion, and it would be irrational, unjust, and inequitable to deny this benefit to children only because they were born to Muslim parents. As a result, only a woman who is unable to support herself after divorce is entitled to maintenance under this provision of the CrPC¹⁰. However, according to Muslim personal law, the woman is entitled to support regardless of her wealth. This clause appears to be in conflict with the Shariat Act of 1937. The question in *Ishak Chandra V. Myamatbi & Ors*¹¹. was whether section 125 is contradictory with the Shariat Act and if the Shariat Act should take precedence over the general provisions of the new code. It was determined that the benefits conferred under Section 125 of the CrPC provide divorced Muslim women with extra rights. These rights are not in contradiction with the rights provided by the Muslim Personal Laws. In addition, in the landmark case of *Mohd. Ahmad Khan v. Shah Bano Begum*¹², Justice Y.Y Chandrachud clarified the ambit of section 125 CrPC. He repeated that, according to the clause, a Muslim woman who divorces comes within the category of "wife" and is thus entitled to support.

C. Maintenance of Muslim women under Muslim Personal Law

The wife's right to be supported by her husband is absolute in Muslim law. Even if there is no agreement in this regard, a Muslim husband is obligated to keep his wife of a legitimate marriage. A Muslim husband is not obligated to support the wife of an invalid or irregular marriage, unless the marriage is void due to a lack of witnesses. The wife's entitlement to maintenance is an obligation owed to the husband. It is a distinct right. The husband is only obligated to support his wife as long as she remains faithful and obeys all of his reasonable directions, i.e. discharges her own marriage obligations. If the consummation is not feasible owing to the wife's own bad health, old age, or a malfunctioning organ, she is not in breach of her spousal responsibilities to the husband and may legitimately seek support from him.

¹⁰ Section 125 of Criminal Procedure Code, 1973.

¹¹ 1980 Cr.L.J 1180 (Bombay).

¹² 1985 AIR 945, 1985 SCR (3) 844.

In addition, according to the pre-nuptial agreement, the wife might demand future support, i.e., sustainable maintenance in the case of ill-treatment. Maintenance arrears cannot be sought by anybody other than a wife. Despite the fact that she can support herself with her own property, the wife has a claim to maintenance. All those items that are required to sustain life, such as food, clothing, and housing; primarily, food. Nafaqa literally means "what a father spends over his offspring." In law, it refers to feeding, clothing, and housing; in everyday parlance, it refers to food. Maintenance includes food, clothing, and accommodation, however in common language it is restricted to the first two.

The essential principles of maintenance are as follows: (i) A person is entitled to maintenance if he has no property, (ii) is related to the obligor in forbidden degrees, or is the wife or child of the obligor, and (iii) the obligor is in a position to maintain him. The element of their economic situation also mitigates their need to maintain.

According to Muslim law, a woman is only entitled to support following divorce during the time of Iddat and not thereafter. If the parties to the marriage enter into an antenuptial agreement, the woman is also entitled to the special stipend known as **Kharcha-i-pandan**. It is a type of personal allowance granted to the wife by her husband and is the woman's own property. In *Ali Akbar vs. Mst. Fatima*¹³, an allowance of Rs. 25.00 per month was set aside for Kharachi-Pandan in addition to the amount of support she is entitled to from her husband. It was decided that the woman is entitled to the allowance even if she refuses to live with her husband. The Kharcha-i-pandan is the duty of the husband for maintaining the wife and children. The wife comes under the duty of being obedient for her husband and allowing the husband in free accessing at all reasonable times. Moreover, the spouses can come in an agreement that the husband will pay special allowances to the wife. These special allowances are known as **Kharcha-i-pandan guzara**. According to Mulla¹⁴, this **kharcha-i-pandan**, means to be the betel box and it is the personal allowance of the wives in Muslim families. In *Khwaja Mohammad Khan v. Nawab Begum*, the marriage taken place at time of infancy and it was agreed by the guardian of groom to pay Rs. 500 per month to the son wife as perpetuity. This payment is known as **Kharcha-i-pandan**. Later the wife started living with her husband and then after some years left matrimonial home due to difference between husband and wife. And she was entitled to receive the Kharcha-i-pandan notwithstanding the fact that the wife can recover whole kharcha-i-pandan amount whether she is not the party of the agreement¹⁵. This special allowance is another form of Maintenance provided under the Muslim personal law to the Muslim women which cannot be transferred¹⁶.

Maintenance Quantum

The amount of maintenance is not specified under any personal legislation. The court determines the amount based on the financial situation of the husband and wife, as well as any other relevant considerations. The Shia Law determines the amount of maintenance by taking

¹³ (1929) ILR II Lah.85.

¹⁴ See *Mulla*: Mohammedan Law; p. 292.

¹⁵ *Altaf v. Brij Narain* (1929) ILR 51 612.

¹⁶ See also *Mydeen Beevi v. Rowther* AIR 1951 Mad 992.

into account the wife's needs. The Shafei Law establishes the amount of maintenance based on the husband's position. As a result, the foundation for determining the level of maintenance differs for various Muslim sub-castes.

The husband is responsible for the wife's maintenance since, following marriage, the woman is required to bear new obligations, and as a result, some additional rights become vested in her, which she can exercise at any moment as and when the occasion arises. Regardless of his financial situation, the husband is obligated to support his wife. Even if she has the resources to support herself, the woman is entitled to maintenance from her husband. To have a better grasp of Muslim women's maintenance rights under personal law, look into the following topics:

(a) During the Marriage's Continuance

A Muslim husband is legally obligated to support his wife. "It is incumbent on the man to support his wife, says the fatawa-i-kazi Khan, whether she is Muslim or non-Muslim, poor or affluent, whether there has been copula or not; whether grown-up (adult) or young, so that intercourse with her is feasible," Syed Ameer Ali states. It is the husband's responsibility to support his wife. The responsibility stems from a properly formed marriage. If the marriage is null and invalid, the husband is under no responsibility to support his wife. However, if the marriage is deemed invalid due to the absence of witnesses, she is entitled to support. It is not required that the wife be Muslim. She might be of any religion. According to Fatawa-i-Kazi Khan, a wife's entitlement to maintenance is the same whether she is Muslim or non-Muslim, free or bound. The husband's obligation to maintain begins only when the wife reaches puberty and not earlier. A wife has no right to maintenance if she is too young for sexual intercourse and lives with her parents. Although a Muslim wife's right to be supported by her husband is unlimited, she must be devoted and submissive to him in marriage matters. Similarly, if she refuses to obey her husband's reasonable demands or lives apart without a valid excuse, she forfeits her claim to maintenance against him. If a Muslim wife's behaviour violates her marriage responsibility, she cannot seek support from her husband. According to Tyabji, a wife's claim to maintenance is not lost in the following circumstances:

- Where she rejects access to her spouse on legal grounds;
- Where the marriage cannot be completed due to,
(1) the husband's minority; (2) her absence from him with his permission; (3) her sickness; or (4) deformity.

A wife whose marriage has not been consummated may lawfully leave the husband's house or refuse cohabitation with him if her prompt dower is not paid by the husband on demand as nonpayment of the prompt dower is a lawful ground to live separate from the husband's society and in such situations her right of maintenance is not lost and the husband is bound to maintain her. Similarly, if a wife lives apart from her husband due to his harsh behaviour, she is entitled to be supported by him. One of a wife's essential responsibilities is to enable her husband to cohabit with her. Her reluctance to pay maintenance without a sufficient cause deprives her of her claim to it. A wife is only entitled to support for the duration of

her marriage. Muslim law does not recognise any responsibility on the part of a man to support a wife once the marriage has been dissolved by death or divorce.

(b) During the Marriage's Dissolution

Dissolution by Death of Marriage: The woman is only entitled to support throughout the duration of the marriage, not after it has ended. In Muslim law, a marriage can be terminated by death or divorce. Marriage Dissolution Due to Death When a marriage is dissolved by the death of the husband, both under Hanafi Law as enunciated in the Hedaya and Baillie's Digest and Shia Law as enunciated in the Imamia, the widow has no right to maintenance, even if she is pregnant at the time of her husband's death. Even throughout her Iddat period, the widow is not entitled to maintenance after her husband's death. The husband's duty to support his wife is a personal liability that terminates with his death. Because Section 125 of the Code of Criminal Procedure does not include widow in the definition of wife, a widow has no entitlement to maintenance under the Criminal Procedure Code, 1973. The current stance of personal law does not adhere to the Quran's requirement that a widow be supported for one year.

Dissolution of Marriage by divorce: Under Muslim Personal Law, a wife's right to collect maintenance from her husband during the term of marriage is absolute. In terms of maintenance after divorce, Muslim personal law imposed a minimal responsibility on the husband to support her. It is said that the woman is only entitled to support throughout the duration of the marriage and not after it. A Muslim husband is only obligated to support his divorced wife until the end of the Iddat period, after which his duty ends. After a divorce, the period of Iddat is three menstrual cycles or three lunar months. A widow's Iddat is four months and ten days. Furthermore, not only does the kind of Iddat period impact the wife's claim to maintenance, but so does the form of repudiation. A wife who has been divorced, whether by reversible or irrevocable talaq, is only entitled to support during the term of Iddat, according to the Hanafi School of Muslim law. A woman who has been permanently divorced has no recourse to maintenance, according to the Shafei school of Muslim law. If the wife is pregnant, the term will extend until the time of birth or abortion, even if it exceeds the Iddat period of three months. If, however, the woman gives birth before that time, Iddat will come to an end. After the Iddat period has ended, the wife is no longer entitled to maintenance under any circumstances. Both the Hanafi and Shafei schools of thought hold that a pregnant divorcee is entitled to maintenance.

The right of women to maintenance begins with marriage, and the woman takes precedence over the children in the order of priority. So long as she is a wife, her husband is obligated to support her. Once divorced, she is only entitled to support during the time of Iddat, which is determined by Sharia Law.

D. Maintenance under an Agreement

Under an agreement signed by the spouses or their guardians, a wife may also collect support from her husband. As a result, a provision by the husband to provide separate maintenance to his wife in the event of dispute, discord, ill will, or separation between the couples is not contrary to public interest and is legally enforceable. The wife may even obtain from her

husband an agreement to pay her separate maintenance if the husband mistreats her, disagrees with her, or marries another woman, as well as an agreement that the wife is entitled to maintenance for the rest of her life and that such right cannot be defeated by divorce. In *Mohammad Moinnuddin v. Jamal Fatima*¹⁷, Mehndi Hassan and his father entered into an anti-nuptial agreement with Jamal Fatima, the prospective bride, providing that in the event of disunion or dissension between the couple, Mehndi Hassan would be bound to pay the woman an allowance of Rs. 15/- per month for her life and certain properties hypothecated to ensure payment of such allowance. The couple had disagreements, and the husband divorced the woman. Wife filed a lawsuit to recover the allowance. The court determined that the contract was legitimate and that the divorced wife was entitled to the allowances specified in the contract. Every husband has a legal obligation to support his wife and children. The woman must likewise be submissive to her husband and grant him unfettered access at all authorised times. Aside from this need, the couples might agree that the husband would provide a specific allowance to his wife. A Muslim marriage is viewed as a contract, an agreement established between the parties to the marriage (nikah) that specifies the rights and responsibilities of both husband and wife. In this agreement, the woman can specify specific criteria for the husband, and if those terms are not met, she has the right to live apart and is also entitled to support. The amount of maintenance and the terms must be agreed upon and fixed at the time of marriage. In the event that the husband mistreats her, gets a second wife, or has a concubine, the woman might stipulate the marriage contract. In such a circumstance, she has the right to live separately from her husband and may also seek maintenance from him. However, it should be emphasised that the husband's responsibility is restricted only to the iddat term, and the wife can only claim maintenance during the iddat time and not afterwards.

E. Maintenance under Muslim Women (Protection of Rights on Divorce) Act 1986

To water down the stringent principles enunciated by the Supreme Court in the Shah Bano judgement, which was passed against the Muslim husband in contravention of the established Personal laws with regard to maintenance of a divorced wife, legislators enacted a new law to govern Muslim divorce provisions, namely the Muslim Women (Protection of Rights on Divorce) Act 1986.

This legislation was passed in the aftermath of the Shah Bano case, and it aimed to limit the application of Section 125 of the Crpc to the support of a divorced Muslim wife.

Maintenance and protection for divorced Muslim Women

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This legislation was passed in the aftermath of the Shah Bano case, and it aimed to limit the application of Section 125 of the Crpc to the support of a divorced Muslim wife. If, upon divorce, the husband fails to secure any of the foregoing, the wife or her authorised agent may

¹⁷ 63 Ind Cas 883. Bench: Lindsay, K Lal.

sue the husband by requesting required orders from the Magistrate.

If the Magistrate is satisfied that the husband has not complied with the aforementioned, he will issue an order within one month of the date of filing of the application directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of her life enjoyed by her during her marriage and the means of her former husband, or as the case may be.

A Muslim husband is obligated to provide adequate and fair provision for the future of the divorced wife under Section (3) (a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. This includes her upkeep as well. As a result, the husband is required by Section 3 (1) (a) of the Act to provide a fair and reasonable provision for the wife's support beyond the iddat period. A divorced Muslim woman who has not remarried and is unable to support herself after the iddat period may seek maintenance from her relatives who are entitled to her property after her death under Section 4 of this statute. Muslim women now have more rights as a result of this.

Maintenance During the Period of Iddat: Iddat can be of two types, one for the husband's death and the other for the husband's divorce. In the event of iddat on the death of the husband, the woman is not entitled to maintenance unless she is pregnant at the time of the husband's death, in which case she is entitled to maintenance until the pregnancy is completed. In the event of iddat on divorce, the wife is solely entitled to support for the duration of the iddat.

Fixing the Maintenance Amount: According to the Hanafi school of thinking, the position of the wife is taken into account while determining the amount of maintenance under Shariah. According to the Shafei School, the husband's rank and capacity are the deciding factors. Other jurists believe that the position and capacity of both the husband and wife should be considered when determining the amount of maintenance.

Past Maintenance: According to the Hanafi school of thought, the woman cannot claim past support from her husband unless there is an agreement between them or a court ruling entitling her to maintenance from her husband, however the wife is entitled to past maintenance according to the Shafeis. This is because, according to Hanafis, maintenance is a gift, but maintenance is a debt according to Shafeis. If the husband consistently neglects or fails to provide maintenance to his wife, the wife has the right to move to court. If the Court is satisfied with the wife's claim, it will issue an order against the husband for maintenance allowance. If the husband continues to fail to pay the maintenance amount, the Court has the authority to impose the husband's incarceration for a certain length of time.

An agreement between the husband and wife, whether anti-nuptial or post-nuptial, in which the husband promises to provide maintenance to the woman is lawful under Shariah and enforceable in law. Whereas an agreement between the husband and wife that no maintenance is owed on the husband or an undertaking by the wife that she would not demand maintenance allowance from the husband is null and invalid. Such a contract is prohibited by Shariah law.

RELEVANT CASE LAWS

Mohd Ahmad Khan v. Shah Bano Begum¹⁸, also known as the **Shah Bano Case**¹⁹, included a 62-year-old widow who was divorced and then refused support. She'd never remarried.

She filed a claim for support of Rs 500 per month in the court of the Judicial Magistrate in Indore under Section 125 of the Code of Criminal Procedure and was awarded maintenance of Rs 25 per month from the spouse. Dissatisfied with the judicial magistrate's decision, she filed a revision case with the Madhya Pradesh High Court, which granted her maintenance of Rs 179.20 per month. It further stated that the code shall prevail over Muslim Personal Law in case of a conflict. After this case in the year 1986 the union government passed a law i.e. the Muslim women (protection of rights on divorce) act, 1986 to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto. According to Section 3 of this Act, a divorced Muslim woman is entitled to

- A) reasonable maintenance to be paid to her by her former husband during the Iddat period,
- B) reasonable maintenance to be paid by her former husband for a period of two years from the respective dates of birth of such children,
- C) an amount equal to the sum of mahr or dower agreed to be paid.
- D) all the property granted to her before, during, or after her marriage by her family or friends, or by the husband or any relative of the husband or his friends.

In **Daniel Latifi v. Union of India**²⁰ The Supreme Court ruled that reasonable and equitable provision and maintenance under Section 3(i) (a) are not limited to the iddat period, but instead last for the divorced wife's whole life, until she marries. The Court also held that the right to a reasonable and fair provision referred to in Section 3 is an enforceable right and that the right to a reasonable and fair provision referred to in Section 3 is a right enforceable only against the divorced women's former husband and is in addition to what he is obligated to pay as maintenance. Reasonable and equitable provisions would be devised in light of the requirements of divorced women, the husband's finances, and the level of living experienced during married sustenance.

In **Aga Mohamed Jaffar Bindaneen vs. Koolsum Beebee**²¹, it was determined that a Muslim widow had no entitlement to maintenance from her deceased husband's assets in addition to what she received through inheritance or bequest.

The Supreme Court ruled in **Sabra Shamim vs. Maqsood Ansari**²² that under Section 3(1)(a) and Section 4 of the Muslim Women (Protection of Rights on Divorce) Act 1986, a divorced woman is entitled to maintenance not just until the iddat period but for the rest of her life until she remarries.

In **Tamil Nadu Waqf Board vs. Syed Fatima Nochi**²³, the Court held that it is futile for a

¹⁸ AIR 1985, SC, 945.

¹⁹ AIR 1985, SC, 945.

²⁰ AIR 2001, SC, 3958.

²¹ 5 (1897)24 IA, 196.

²² (2004)9, SCC,616.

²³ (2004)9, SCC,616.

divorced woman seeking maintenance to seek maintenance from relatives who do not have the means to provide it and to fight litigation in succession against them in order to obtain a negative order justifying her last resort of moving against the state Waqf Board. She can argue and show such important facts as her family' incapacity to support her in one process and direct her claim towards the State Waqf Board in the first instance.

In the case of **Muhammad Moinuddin vs. Jamal Fatima**²⁴, the parties had engaged into a pre-nuptial agreement that provided for the payment of an allowance in the event of disunion or dispute between the marriage. The husband divorced her after a disagreement, and the wife claimed the allowance. The Court upheld the contract's validity and determined that the divorced wife was entitled to the amount specified in the contract.

In **Mydeen Beevi Ammal vs. T.N. Mydeen Rowthe**²⁵, the husband agreed to give his first wife certain things in exchange for her life support (after he married for the second time without her consent).

Following that, he divorced the first wife and filed a petition for ownership of the properties left to her. The Court ruled that the wife was entitled to the income from the properties for the rest of her life, whether she was divorced or not.

Siraj Mohd. Khan's case In **Jan Mohd. Khan vs. Hafizunnissa yasin Khan**²⁶, the Court concluded that the husband's impotency constitutes both mental and legal cruelty, and so is a justification for the wife's refusal to remain with the husband and seek support from him.

The court ruled in **Noor Saba Khatoon v. Mohd. Quasim**²⁷ that the benefit under Section 125 CrPC is applicable to all children, regardless of faith. The right of the mother to claim maintenance for children for two years from the date of birth under the Muslim Women (Protection of Rights on Divorce) Act, 1986 is distinct and independent of the right to maintenance under the Code of Criminal Procedure to minor children who are unable to maintain themselves.

In the case of **Bai Tahira v. Ali Hussein**²⁸, the Supreme Court ruled that paying small sums of mehr to a divorced Muslim lady is not a replacement for maintenance²⁹.

In **Rashida Khatun v. SK Islam**³⁰ is a case in which The parties to the process are Mohammedans of the Islamic faith, and their personal law governs them. In the current case, it was contended that no rituals or functions are required in a Muslim marriage, and that the muslim marriage being a civil contract, the permission of the respondent to marry the petitioner and subsequent living with her was sufficient to show her status as his wife. As a result, the court determined that there was no acceptance of the offer to marry, just an assurance to marry in the future, and that simple cohabitation with such an assurance does not establish the factum

²⁴ (1921)ILR 43 AII 650.

²⁵ AIR, 1951 MAD 992.

²⁶ AIR 1981, SC, 1972

²⁷ (1997) 6 SCC 233.

²⁸ AIR 1979 SC 362.

²⁹ Kusum, Cases and Material on Family law, page 413 & 414. Universal Law publishing co. 3rd ed. 2013.

³⁰ AIR 2005 Ori 56

of marriage³¹.

CONCLUSION

Furthermore, as Zoya Hasan has argued, at key points in the twentieth century, religious and political leaders initiated state codification of Muslim personal law in the interest of community unity and identity. The landmark acts are the Muslim Personal Law (Shariat) Application Act of 1937, the Muslim Dissolution of Marriage Act of 1939, and, most recently, the Muslim Women's (Protection of Rights on Divorce) Act of 1986. Despite its name, this last provision precluded Muslim women (who had been married under Muslim personal law and afterwards divorced) from submitting to the criminal process code, as women of other religions can do to obtain basic support from their former spouse. As a result of the examination of all of the foregoing issues, it is possible to infer that public opinion should be steered toward favouring such liberal judgements and some uniform codified rules, which assist to mitigate the disparities in current personal Muslim laws to some extent. As a result, there is a need to start an awareness campaign against the exploitation of certain Muslim women's rights pertaining to maintenance. The maintenance of the women is the mandatory duty of the husband in Islamic law, which makes legal provision for the maintenance of wives, dependent children, and other relatives who are unable to maintain themselves, but regardless of his minority, illness, imprisonment, or any other disablement of his wife's wealth.

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³¹ Kusum, cases and Materail on Family law, page 413 & 414. Universal Law publishing co. 3rd ed. 2013