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Balancing Personal and Secular Law: An Analysis of the Right to Maintenance for Muslim Women in India

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The legal position about a Muslim woman's right to claim maintenance has always been complex in India. Under the Muslim personal laws or the Sharia laws, a Muslim woman is only entitled to claim maintenance during the 'Iddat' period (period of three menstrual cycles or three lunar cycles) post the dissolution of marriage. However, secular laws in India grant the right to divorced women to claim maintenance post the dissolution of marriage without any period limitation on it. The Supreme Court of India has addressed this contradictory view presented by the Muslim personal and secular laws in several landmark judgements. The Indian Parliament has also enacted the Muslim Women (Protection of Rights on Divorce) Act of 1986 to address this issue. This paper analyses how the Indian judiciary has aimed to establish a balance between the application of Muslim personal laws and secular laws and has ensured that Muslim women are not deprived of their Fundamental Rights while at the same time not encroaching too deeply into the domain of the Muslim personal laws.

Keywords: *iddat, maintenance, Muslim personal law, section 125 crpc.*

INTRODUCTION

In India, the contrast displayed between Muslim personal laws and Secular laws results in a unique legal challenge, particularly when it comes to the right of a Muslim Woman to claim maintenance post the dissolution of marriage. Under Muslim personal laws, the obligation placed upon the husband is to provide maintenance only until the completion of the *Iddat* period, which is a duration of three menstrual cycles or three lunar cycles if menstruation does not apply. This position of the Muslim personal laws was also enumerated in the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was enacted in response to the Shah Bano judgement. However, on the contrary, Section 125 of the Code of Criminal Procedure grants the right to a divorced woman to claim maintenance with no period limitations, and this section applies to everyone, irrespective of the religion or faith practised by them. This represents two contrary views about the right of maintenance of a divorced Muslim woman.

To address this legal problem, the Supreme Court of India has passed several landmark judgements, such as the *Shah Bano*, *Danial Latifi & Abdul Samad* judgements, where they have upheld the right of Muslim women to claim maintenance under the provisions of the Code of Criminal Procedure while respecting Muslim personal laws to the best possible extent. The Supreme Court has best tried to harmonise the application of Muslim personal and secular laws, which this paper will analyse. This paper will examine how the Supreme Court has attempted to harmonise the application of Muslim Personal and secular laws.

MAINTENANCE UNDER MUSLIM PERSONAL LAW

Much of the Muslim Personal Law is derived from ancient Muslim sources such as the Quran, the Sunnah, the Ijmas, and the Qiyas. These ancient sources define maintenance as '*Nafaqah*', which refers to financial support that the husband provides to the wife so that the wife can meet the expenses of her daily needs, even after the dissolution of the marriage.¹ However, the obligations of providing maintenance under Muslim Personal laws are minimal as the husband

¹ Nisha, 'An Analysis of Maintenance under the Muslim Law' (2022) 4(4) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_bae1af8d51134bd2933a0c7250c62025.pdf> accessed 11 October 2024

is only obligated to provide maintenance during the *Iddat* period of the wife.² *Iddat* refers to a period of three menstrual cycles or three lunar cycles, as the case may apply.³ The *Iddat* period refers to a period in which the divorced Muslim woman is prohibited from remarrying during the said period, which is primarily observed in order to confirm or make sure of the status of parentage of the divorced couple.⁴ Under Muslim personal laws, only in very rare and particular circumstances does the obligation of maintenance upon the husband continue even post the *Iddat* period, such as the pregnancy of the divorced woman, and even in such cases, the obligation of maintenance ceases upon the birth of the child. Such a limited right of maintenance granted to Muslim women often results in hardships for these women, and many of them have nowhere else to turn.

Despite the general notion that the obligation of maintenance of a Muslim husband is only limited to the *Iddat* period, a contrasting view regarding the same has also been observed under Muslim personal laws.⁵ Specific interpretations of the Quran advocate that the divorced woman is entitled to receive maintenance from the husband for the entirety of her life until she is remarried, provided that she is unable to sustain herself. This concept of maintenance for a lifetime until remarriage is termed *mutat-ul-talaq*.⁶ However, this concept has minimal acceptance within the majority of Muslim communities.

MAINTENANCE UNDER THE CODE OF CRIMINAL PROCEDURE

Section 125 of the Code of Criminal Procedure, 1973 is a provision that grants a legal remedy for a divorced woman to claim maintenance from her ex-husband due to the inability of the wife to sustain the expenses of her daily living requirements on her own.⁷ Thus, Section 125 provides that a husband, after divorce, is required to pay maintenance to the divorced wife. The key

² *Ibid*

³ Priyanka Kumawat and Sapna Maurya, 'Rights of Muslim Women in India' (2021) 4(1) International Journal of Law Management & Humanities <<https://articles.manupatra.com/article-details/Rights-of-Muslim-Women-in-India>> accessed 11 October 2024

⁴ *Ibid*

⁵ Sharmin Aktar, 'Protecting Divorced Muslim Women's Rights through Maintenance: A Comparative Analysis based on the Present Legislative Reforms among the Muslim Community' (2012) 3 Northern University Journal of Law <<https://doi.org/10.3329/nujl.v3i0.18393>> accessed 11 October 2024

⁶ *Ibid*

⁷ Code of Criminal Procedure 1973, s 125

feature of the right to maintenance granted under this provision is that it applies to all individuals, irrespective of their religion or faith and the personal law that applies to them. This right is also, however, subject to certain limitations. This right would not be enforceable if the wife is in a position to maintain herself or has remarried. Additionally, this right would not be enforceable in the cases of adultery by the woman or if the wife has voluntarily abandoned the husband without sufficient cause. Similarly, this provision would also not apply in the event of separation by mutual consent.⁸

JUDICIAL AND LEGISLATIVE DEVELOPMENTS

Due to the highly evident contrast regarding the rights of maintenance available to divorced Muslim women under the Muslim personal laws and the provisions of the Code of Criminal Procedure, this issue has been addressed by the Indian judiciary and the Indian parliament to clarify the legal status of the right to maintenance for Muslim Women.

The first landmark judgement to that effect was the case of *Shah Bano Begum v Mohammed Ahmad Khan* before the Supreme Court of India.⁹ In this case, a 62-year-old Muslim woman who was divorced by her husband by *triple talaq* filed a petition claiming a right of maintenance even after the *iddat* period under Section 125 of the CrPC in order to sustain the expenses of her daily needs. The husband claimed a defence under the Muslim personal laws, stating that he was only obligated to pay for maintenance of the wife for the duration of the *iddat* period and not post that period. The Supreme Court, in this case, held that the divorced Muslim wife had a right to claim maintenance under Sec. 125 of the Code of Criminal Procedure to meet the expenses for her survival and welfare held that Muslim personal laws could not override the effect of Sec. 125 of the CrPC, which applied to all individuals regardless of religion.

However, the progressive step taken by the Supreme Court in the Shah Bano case was undone by the Indian Parliament when it enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act was enacted in response to the backlash received by traditional Muslim individuals for the Shah Bano judgement, as it was stated that this judgement had the effect of

⁸ Code of Criminal Procedure 1973, s 125(4)

⁹ *Shah Bano Begum v Mohammed Ahmad Khan* (1985) 2 SCC 556

encroaching within the domain of Muslim personal law. Section 3(1)(a) of the Act had the effect of reversing the position given in the Shah Bano case and required that a Muslim husband be obligated to pay a fair and reasonable amount of maintenance to the divorced wife only during the period of *iddat*, and not beyond the same. This Act, even though it offered alternative remedies in the form of Section 4, which allowed the Muslim woman to claim maintenance from her relatives or from the State Wakf Board post the *iddat* period if she was unable to sustain herself, the Act was seen as a regressive step as the remedies offered were of an insufficient and impractical nature.

Post the enactment of this Act, it was in the case of *Danial Latifi & Anr. v Union of India*, where there was a challenge to the constitutionality of the Muslim Women (Protection of Rights on Divorce) Act, 1986.¹⁰ The petition was filed by Danial Latifi, who was Shah Bano's lawyer, stating that the impugned act violated the Fundamental Rights of Shah Bano & of that of Muslim women granted under Art. 14 (Right to Equality), Art. 15 (Right against Discrimination) & Art. 21 (Right to Life and Personal Liberty) of the Constitution of India. The Supreme Court, in this case, did not hold the Muslim Women (Protection of Rights on Divorce) Act 1986 to be unconstitutional. However, the Court did interpret the statute in a manner that ensured that the rights of Muslim women were not infringed. The Court reasoned that the reference to 'fair and reasonable maintenance' under the provisions of the impugned statute signified that the quantum of maintenance to be provided must be sufficient for the sustenance and welfare of the entirety of the woman's lifetime and that the husband was obligated to make this payment during the period of *iddat* itself. Another reason that the Court refused to hold the impugned Act as unconstitutional was due to Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided the option to the Muslim woman to be governed by Section 125 of the Code of Criminal Procedure, rather than by Muslim personal laws.

Recently, in the case of *Abdul Samad v State of Telangana*, the Supreme Court reiterated the position put forth in the Shah Bano and the Danial Latifi cases.¹¹ In this case, the Appellant argued that the option to exercise the right of maintenance under the provisions of the CrPC

¹⁰ *Danial Latifi & Anr. v Union of India* (2001) 7 SCC 740

¹¹ *Abdul Samad v State of Telangana* (2024) SCC OnLine 1686

could only be done through an application under Sec. 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. However, the Court rejected the arguments of the Appellant and stated that the procedure prescribed under Sec. 5 of the Muslim Women Act, 1986 is not a mandatory procedure but rather one left to the option of the parties. The Supreme Court held that divorced Muslim women certainly have a right to claim maintenance under Sec. 125 of the CrPC, with or without an application under Sec. 5 of the Muslim Women Act, 1986 and also stated that a denial of this right would equate to a violation of Art. 14 of the Constitution as the rights granted by Sec. 125 of CrPC applied to every individual. Additionally, the Court also held that a denial of such a right would also violate their Right against Discrimination under Art. 15 & their Right to Life and Personal Liberty under Art. 21 of the Constitution of India.

CRITICISMS AGAINST THE JUDICIARY'S APPROACH

While the progressive step taken by the Indian judiciary on the matter of the right of maintenance of Muslim women has been lauded by many, it has also faced severe criticism. Many feel that the liberal interpretation of provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, along with the application of Sec. 125 of the Code of Criminal Procedure, is a highly excessive step taken by the judiciary by encroaching into the domain of adjudicating on the Muslim personal laws.

The All-India Muslim Personal Law Board is a non-governmental organisation that has often entrusted itself with the responsibility of safeguarding Muslim personal laws, encouraging the practice of traditional Muslim practices, and protesting against any form of interference with their personal laws. Post the Shah Bano judgement, the All India Muslim Personal Law Board strongly opposed the judgement given by the Supreme Court.¹² They argued that the application of the provisions of the Code of Criminal Procedure, Section 125 of the same particular, which is a secular law, is an apparent attempt at undermining the Muslim personal laws, i.e., the Sharia laws, which was contradictory to the Muslim Personal Law (Shariat) Application Act, 1937, which states that Islamic Shariat Law will govern Muslim personal laws in India.¹³ It was also

¹² 'What is Shah Bano case?', *The Indian Express* (17 August 2017) <<https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/>> accessed 11 October 2024

¹³ Muslim Personal Law (Shariat) Application Act 1937, s 2

argued that this ultimately negatively impacts the religious autonomy and freedoms guaranteed by Art. 25 of the Constitution of India. Similarly, the Board also protested against and put up several arguments against the Danial Latifi judgement of the Supreme Court of India as violative of Islamic law principles. They view the above judgements as clear cases of judicial overreach and an attempt to strike away at the religious autonomy of the Muslims and have strongly advocated against the same.

The general notion of law has been that the judiciary does not intervene in the domain of the personal laws of any religion. This position has also been emphasised in the Supreme Court judgement of *Maharshi Avadhesh v Union of India*, which stated that the judiciary cannot legislate policy matters of personal laws. Additionally, in the case of *Shayara Bano v Union of India*, the Supreme Court emphasised the necessity of courts not encroaching too deeply into personal laws and stated that judicial restraint must be exercised unless the situation necessarily calls for intervention.¹⁴

CONCLUSION

Despite the criticisms that have been levelled against the Judiciary, the approach taken by the Supreme Court of India in dealing with the issue of the right of maintenance for Muslim women is one that has to be highly appreciated. The *Danial Latifi* judgement is a prime example of how to deal with such issues and best harmonise the application of secular and personal laws. The Supreme Court didn't encroach too much into the domain of Muslim Personal laws when they refused to hold the Muslim Women (Protection of Rights on Divorce) Act, 1986 as unconstitutional, but rather interpreted the provisions in a manner that ensures that divorced Muslim women are not denied their Fundamental Rights. To that effect, this situation can certainly not be considered a case of judicial overreach; instead, it has to be looked at as another scenario in which the judiciary has come to the necessary aid of its citizens.

¹⁴ *Shayara Bano v Union of India* (2017) 9 SCC 1