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MAINTENANCE OF MUSLIM WOMEN UNDER THE MUSLIM LAW

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ABSTRACT

The Muslim personal law makes the husband liable for the essential care of his former wife after a divorce. This essential care comprises of clothing, shelter, food, and any other as deemed essential. Previously, this care was to be provided for only the period of iddat. This was very contentious and in a ruling in the Shah Bano case, Supreme court had held that the care must be provided beyond this period as well. The judgement was sort of overthrown with a legislation passed a year later in 1986, it was the Muslim Women (Protection of Right on Divorce) Act, 1986 (thereby referred to as the Act)¹. This legislation restored the limitation of liability on the husband to maintain only for the period of iddat. It also required a joint affidavit for the case to be pursued under any non-Muslim law. While the Act remains in force today, more recent judgements by high courts and Supreme courts have interpreted the Act rather liberally to allow for the liability to continue beyond the period of iddat and for the application of secular laws such as sec. 125 of the Code of Criminal Procedure (CrPC).

Keywords: Maintenance, Iddat, The Muslim Protection Act, 1986

INTRODUCTION

As per the Muslim personal law², the husband is liable to take care of his former wife's clothing, shelter, food, and other essential needs for a limited period of time, *iddat*, after divorce. Maintenance, or *nafaqa* as it is called under the Muslim personal law, imposes this liability on the husband only for the period of *iddat*. In the Arabic language, *iddat* or *iddat* means 'period of waiting'. In Islam, *iddat* refers to the period after divorce or death of her husband during which a woman is not allowed to marry another man. This waiting period lasts for four months and ten days. Therefore, it is only for four months and ten days following a divorce that a Muslim man must provide fooding, shelter, clothes, and other essential needs to her former (Muslim) spouse.

¹ The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).

² Dissolution of Muslim Marriages Act, 1939, No. 8.

In India, provisions for such cases is administered under the said Act. In theory, the Act is supposed to benefit Muslim women. In practice, it does otherwise.

According to the Act, a Muslim woman has the right to claim maintenance by her former spouse following a divorce up to the period of *iddat* as well as beyond this period. However, if the need arise for maintenance beyond the period of *iddat* (that is, the wife is unable to support herself), a sum of money is to be provided by the husband within this period of four months and ten days. It should also be noted that the obligation extends only up to the means of the husband. In practice, this means that, beyond the period of *iddat*, Muslim women cannot approach the magistrate for compensation and/or maintenance after the period of *iddat* is over. Also, the husband provides only enough as is supposed to be within his means.

The Act further makes it a responsibility for the woman's children or parents to take care of her needs when she cannot make a livelihood for herself³. In case she has no such relatives, or should they be not able to provide for her, the legislation has the provision under which the magistrate may ask the State Waqf Board to provide a recurring sum for the maintenance of a Muslim woman following a divorce.

BACKGROUND: AHMED KHAN V. SHAH BANO

The Act was passed at a time when there were nationwide protests by the Muslim orthodoxy against the Supreme Court's judgement in the rulings on Ahmed Khan v. Shah Bano Begum (thereby referred to as the Case)⁴. The Act itself was controversial and was seen as the Indian National Congress' attempt to win the Muslim vote at a time when the Bhartiya Janata Party was on rise.

The landmark judgment by the hon'ble Supreme court in the Case had stirred nationwide protests by the Muslim orthodoxy. The case involved a 62-year-old Muslim woman, who was divorced by her (former) husband, Ahmed Khan. Shah Bano was unable to maintain herself and her five kids, for which she went to the judiciary to claim the same from her former husband under sec. 125 of

³ Section 3(1)(a) of the Act was interpreted to cover for the woman's maintenance beyond the period of *iddat*, though to be paid within this period, in the ruling on Danial Latifi v. Union of India, (2001) 7 S.C.C. 740, 744.

⁴ Ahmed Khan v. Shah Bano Begum, (1985) AIR 945, SCR (3) 844.

the CrPC⁵. Sec. 125 of CrPC imposes the duty of maintenance of former wife on the husband after divorce and is applicable to all women irrespective of her religion. Ahmed Khan, Shah Bano's husband, argued that the case fell under the Muslim personal law, under which he was liable for her maintenance only up to the period of *iddat*.

The Hon'ble Supreme Court, however, ruled the judgement in favour of Shah Bano. The judgement ruled that the section in the subject applied to all women irrespective of religion and personal laws. The case, however, did not do well for the Muslim orthodoxy that protested the judgement. With the active involvement of the then Prime Minister, Rajeev Gandhi, it led to a political controversy talked about till this date.

In the mid-1980s, the Bharatiya Janata Party (BJP) was gaining nationwide support. With BJP's rise and incumbency, the Indian National Congress, the then ruling party at the centre, was afraid of losing out in the coming general elections. In 1986, the Rajeev Gandhi government passed the landmark legislation that was the Act supposed apparently to strengthen their voter base among the Muslim orthodoxy.

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE)

ACT, 1986

The Act legislates on cases of maintenance of Muslim women by their former husbands after divorce. It was discussed in the introduction section that the Muslim personal law makes it a responsibility of the husband to provide for his former spouse for the period of *iddat*. Under the last section, it was seen that this was ruled over by the Supreme court which had ruled that Muslim women could also claim her rights on divorce under secular laws sec. 125 of CrPC. The Act sort of overruled the judgement. The Act became the sole legislation to administer in cases of divorce of Muslim couples and claims for maintenance of Muslim women after divorce. That is, the legislation had provisions stating that, in such cases of maintenance of Muslim women after divorce, this legislation would overrule any other legislation or code.

In theory, the Act may seem as if it was administered to favour Muslim women, however, that was not the case. By nullifying Muslim women's claim to maintenance under secular laws while

⁵ Code of Criminal Procedure, sec. 125.

limiting the liability on their husbands, the Act only weakened the position of Muslim women. Before we discuss this, let's first have a look at the provisions of the Act.

- The Act legislates on matters of claims of maintenance of Muslim women after divorce.
- It puts the liability for maintenance on the (former) husband for the period of *iddat* and beyond.
- The liability is restricted as the following.
 - The husband is required to provide for maintenance only within his means (as long and as far as he may afford to).
 - For maintenance beyond the period of *iddat*, the claim is to be made within the period of *iddat* where the magistrate would rule the amount to be paid for maintenance beyond this period.
 - The payment is made within the *iddat* period.
- Beyond this, it was the responsibility of the woman's children or parents to maintain for her if she were to be unable to provide for herself.
- If the woman has no such relatives and she is yet unable to maintain herself, the State Waqf Board would be ordered by the magistrate to pay for her maintenance.
- The Act mandated a joint affidavit in case the couple wanted to pursue the case under section 125 to 128 of CrPC.⁶

AFTERMATH AND RECENT INTERPRETATIONS OF THE ACT?

The Act continues to administer in cases of maintenance of Muslim women after divorce. However, there has been several landmark judgements that have attempted to reinterpret the legislation rather liberally. The Act was first challenged by the lawyer in the Shah Bano case with a writ petition under Article 32.⁷ It was argued that the Act was unconstitutional, however, the Supreme court upheld the constitutional stand of the Act.

⁶ The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Act of Parliament, 1986 (India), sec. 5.

⁷ INDIAN CONSTITUTION, art. 32. It affirms the right of a person to move the Supreme Court for the enforcement of the rights conferred in Part III of the Indian Constitution.

In a later case of *Danial Latifi v. Union of India*, the Supreme court interpreted sec. 3(1)(a) of the Act stating “a reasonable and fair provision and maintenance to be made and paid to her within the iddah period by her husband” to mean that the maintenance was not limited for the period of *iddat*, though the maintenance was to be paid within this period only. The judgement further ruled that the maintenance was to be provided by the woman’s relative beyond the period of *iddat* and the means of the husband. It also ruled that in cases where this wasn’t possible, the State Waqf board would pay for the woman’s maintenance.

In later cases, several High courts have interpreted this judgement to mandate the husband to pay sums of up to several lakhs of rupees to the woman. In a more recent case of *Shamim Bano v. Asraf Khan*⁸, the Hon’ble Supreme Court ruled that sec. 125 of CrPC was applicable to all women irrespective of religion and personal laws. The judgement recognised that the mandate for joint petition was unreasonable and unpractical and made nullified its need.

CONCLUSION

While the Act was a setback for the rights of Muslim women, more recent interpretations of the Act and the judgement in the case of *Shamim Bano v. Asraf Khan* has reversed the Act without actually nullifying it. Thus, the Act remains in administration, however, at the same time, Muslim women can also claim for her maintenance rights under sec. 125 of the CrPC.

The present government at centre has been aggressively pushing for certain agendas including the nullification of Article 370 and there has been talks of uniform civil code. If uniform civil is indeed brought about, it will be interesting to see how it accommodates the rights of women as well as religious rights. Besides, religions have always been led by men scholars and so has skewed been the interpretations. More liberal interpretations of *shariat* as well as other religious texts across all religious is the need of the hour.

⁸ *Shamim Bano v. Asraf Khan*, (2014) CR. LJ 4818.

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- [5] Code of Criminal Procedure, sec. 125.
- [6] The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Act of Parliament, 1986 (India), sec. 5.
- [7] INDIAN CONSTITUTION, art. 32.
- [8] Shamim Bano v. Asraf Khan, (2014) CR. LJ 4818.