

# Maintenance Rights of Divorced Muslim Women after the 2019 Act: Judicial Trends and Gender Justice

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## **Abstract:**

The issue of the right of divorced Muslim women to maintenance has been a debatable matter in the Indian personal law, which has generated intricate intersections between religious autonomy, statutory law, and constitutional gender justice. Traditionally, Muslim personal law restricted a husband to the iddat period after divorce to provide maintenance, whereas the secular law, especially Section 125 of the Code of Criminal Procedure, 1973, provided maintenance protection to divorced women regardless of their religion. The judicial interpretation has been instrumental in resolving these conflicting legal systems especially following the passage of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and subsequent constitutional tests.

The paper will discuss how the rights of divorced Muslim women have changed over time with a particular focus on the revolutionary effect of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which outlawed instant triple talaq (talaq-e-biddat) and added subsistence allowance provisions. The study uses a doctrinal and analytical research methodology to examine statutory provisions, landmark judicial rulings and changing constitutional interpretations to determine whether the 2019 Act has enhanced gender justice among Muslim women. The case study is concerned with the major decisions of the Supreme Court of India, such as *Mohd. Ahmed Khan v. Daniel Latifi v. Shah Bano Begum*. Union of India, *Shamim Ara v. Iqbal Bano v. State of Uttar Pradesh*. *Shayara Bano v. State of Uttar Pradesh*. Union of India, which broadened the legal status of the maintenance claims of Muslim women in general and underlined the constitutional principles of equality and dignity.

The research concludes that the judicial interpretation has always tried to reconcile personal law with secular values of social justice by confirming that divorced Muslim women cannot be deprived of maintenance on religious basis only. The 2019 Act is a significant legislative move as it nullifies instant triple talaq and offers a subsistence allowance mechanism to the Magistrate. The statute however, focuses more on short term monetary assistance rather than long term economic stability, and thus divorced women rely on the current remedies under the Criminal Procedure Code and the 1986 Act to maintain them over the long term.

The paper proposes that despite the fact that the legal framework that was enacted after 2019 enhances the procedural protection against arbitrary divorce, there still exist important loopholes in the provision of full financial protection to divorced Muslim women. To attain substantive gender justice, there is a need to enforce maintenance orders, provide more effective guidelines on how to determine subsistence allowance, and more comprehensive reforms on property rights and long-term financial support. The paper concludes that judicial activism and legislative reform have gradually enhanced the status of Muslim women in India, but to achieve gender equality in the real sense, more institutional solutions are needed that will provide divorced women with a steady and binding economic assistance.

**Keywords:** Muslim Women Maintenance; Triple Talaq Law; Gender Justice in Personal Law; Criminal Procedure Code Section 125; Muslim Women (Protection of Rights on Marriage) Act 2019.

## INTRODUCTION

The Indian Muslims are subject to uncodified personal laws that are safeguarded by the Muslim Personal Law (Shariat) Act, 1937, which protects the traditional Islamic family laws (marriage, divorce, and maintenance) against state interference.<sup>1</sup> According to early Muslim law (as in the Quran), a divorced wife was entitled to maintenance by her husband during her period of waiting (iddat) and, in case she is unable to support herself, afterwards. Colonial and modern laws were constructed on this: the Dissolution of Muslim Marriages Act, 1939 gave wives a reason to divorce (including cruelty, which may include non-maintenance), but made no explicit determination on maintenance. Rather, the maintenance issues were mostly left to general law: Criminal Procedure Code 125 (1973) permits any wife (even a divorced wife who has not remarried) to take maintenance in case she cannot support herself.<sup>2</sup> To Muslims, the Muslim Women (Protection of Rights on Divorce) Act, 1986 (which was enacted following Shah Bano (1985)) restricted the state assistance by stating that the wife had to have her future made and paid by her former husband within the iddat period in a reasonable and fair manner.

Statutory Framework: The primary laws prior to 2019 were:

- Shariat Act 1937: Guaranteed Muslim personal laws (inheritance, marriage, divorce) in their entirety (except adoption).
- Dissolution of Muslim Marriage Act 1939: Provided Muslim wives with some reasons to obtain judicial divorce (e.g. cruelty, failure to maintain), but did not itself provide maintenance outside of iddat.<sup>3</sup>
- CrPC 125 (1973): Offers a secular, summary remedy: any wife (even divorced wives) who cannot support herself may receive monthly maintenance by her husband (the only exceptions are remarriage or conviction). This is a Section that is common to all religions.<sup>4</sup>
- Muslim Women (Divorce) Act 1986: Restricts a Muslim divorcee to a reasonable and fair provision and maintenance to be paid by her former husband during the iddat period (without any express rights after iddat). It also intentionally overruled the broader reading of Shah Bano (1985) by courts later reading it down (see below).<sup>5</sup>
- Muslim Women (Protection on Marriage) Act 2019: Makes instant triple talaq a crime and expressly annuls the pronouncement of talaq. Most importantly, it also states that a married Muslim woman on whom talaq is uttered shall have a right to receive, at the hands of her husband, such subsistence allowance as she and dependent children may have as the Magistrate may decide. The Act became effective as of 19 September 2018.<sup>6</sup>

Judicial Trends before 2019: The Supreme Court has already on numerous occasions upheld the maintenance rights of divorced Muslim women:

- *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)<sup>7</sup> -The Court (through Y. V. Chandrachud CJ) stated that Muslim divorcees are entitled to maintenance under CrPC §125 as any other wife, and the husband is required to pay more than the iddat in case the wife is needy. The 1986 Act subsequently disagreed with this.

<sup>1</sup> Muslim Personal Law (Shariat) Application Act, 1937.

<sup>2</sup> Tahir Mahmood, *Muslim Law in India and Abroad* (Universal Law Publishing).

<sup>3</sup> Muslim Personal Law (Shariat) Application Act, 1937.

<sup>4</sup> Dissolution of Muslim Marriages Act, 1939, s. 2.

<sup>5</sup> Code of Criminal Procedure, 1973, s. 125.

<sup>6</sup> Muslim Women (Protection of Rights on Divorce) Act, 1986, s. 3.

<sup>7</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

- *Imtiaz Ahmad v. Union of India* (Daniel Latifi, 2001)<sup>8</sup> -A constitution bench overturned the 1986 Act with the Constitution by interpreting it to imply that the husband should make reasonable and fair provision at or before the end of iddat to meet the future needs of the divorced wife. It pointed out that the Quran obliges a husband to support his divorced wife (at least to avoid poverty), and that the saving grace interpretation of the 1986 Act is not limited to iddat as required. (Therefore, even in the 1986 Act, a divorced woman was allowed to seek long-term maintenance under Sec.125 in case her paltry iddat payments fell short)
- *Shamim Ara v. State of U.P.* (2002)<sup>9</sup> -The Court invalidated the idea that an unratified triple talaq can have any impact. The marriage was not dissolved because the husband had not given the Talaq-E-Biddat pronouncement to his wife in the proper way. In this regard, her rights (including maintenance) were maintained as in a married woman. The Court decided that the maintenance liability of a wife is not terminated upon the utterance of talaq; unless the marriage is properly terminated by giving notice. Therefore, the wife was not deprived of any of her rights (including maintenance claims) until any legitimate divorce process was finalized.
- *Iqbal Bano v. State of U.P.* (2007)<sup>10</sup> -The Court held that the remedies provided under CrPC 125 apply to all Muslim women who have not validly divorced (married or divorced), and that the 1986 Act does not replace the remedies provided under Sec.125 to a divorced wife. It clearly provided that a married Muslim woman (not divorced) can continue with a petition under Sec.125; the 1986 Act does not prohibit her claim. Further, the Court upheld the principle of *Shamim Ara*: a simple plea in court documents that talaq was pronounced, without any evidence of pronouncing it to the wife, cannot be considered to have effected talaq on its own. In this case, the payment of dower by the husband and the unproven claim of a talaq of decades ago did not put out the maintenance award to the wife; the SC ordered the case to be retried. This ruling solidified the fact that Muslim women have concomitant remedies: they can invoke both Sec.125 (civil maintenance) and the provision of the 1986 Act, and either of them can produce sufficient support.
- *Shayara Bano v. UOI* (2017)<sup>11</sup> -A 5-judge bench ruled that talaq-e-biddat (instant triple talaq) is unconstitutional because it contravened Article 14 (equality) and Article 21 (life and dignity). Even though the primary ruling did not rule outright on the maintenance claim of Mrs. Bano, the outcome criminalized the practice, which led to the 2019 Act. (After *Shayara Bano*, Parliament made triple talaq criminal under Ordinance and then the 2019 Act.)

**Table 1: Key Judicial Decisions on Maintenance**

<i>Case (Court)</i>	<i>Year</i>	<i>Facts</i>	<i>Holding</i>	<i>Reasoning</i>
<b>Mohd. Ahmed Khan v. Shah Bano Begum</b> (SC)	1985	Muslim husband divorced wife by talaq; wife sought maintenance under CrPC §125.	A divorced Muslim wife is entitled to maintenance beyond iddat under Sec.125.	Section 125 is secular; Quran obligates husband to maintain divorced wife.
<b>Imtiaz Ahmad (Daniel Latifi) v. Union of India</b> (SC)	2001	Challenge to the 1986 Act's curtailment of <i>Shah Bano</i> relief.	1986 Act is constitutionally valid when read to require husbands to make fair maintenance provision for divorced wives beyond iddat.	Quranic verses and Sec.125 principles require ongoing support; "fair provision" obligation extends for wife's life unless remarriage.

<sup>8</sup> *Daniel Latifi v. Union of India*, (2001) 7 SCC 740.

<sup>9</sup> *Shamim Ara v. State of Uttar Pradesh*, (2002) 7 SCC 518.

<sup>10</sup> *Iqbal Bano v. State of Uttar Pradesh*, (2007) 6 SCC 785.

<sup>11</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<b>Shamim Ara v. State of U.P. (SC)</b>	2002	Alleged extrajudicial talaq not communicated; wife appealed maintenance order.	Talaq not effected (marriage stands); husband's maintenance duty continues.	Talaq must be pronounced to and received by wife. Without valid notice, husband remains legally married and bound to support.
<b>Iqbal Bano v. State of U.P. (SC)</b>	2007	Wife petitioned Sec.125; husband claimed triple talaq and iddat over.	Sec.125 applies to Muslim women; talaq must be proved before divorce effects.	1986 Act applies only post-divorce; mere unsubstantiated claim of divorce is insufficient. Muslim wife can seek maintenance even if husband paid dower.
<b>Shayara Bano v. Union of India (SC)</b>	2017	Constitutional challenge to triple talaq, polygamy, nikah-halala.	Instant triple talaq (talaq-e-bid'at) is void; (maintenance issue unresolved).	Talaq-e-bid'at is "manifestly arbitrary", violates Article 14; gender justice demands its ban.

Effects of the 2019 Act: The Act nullifies extrajudicial triple talaq in one stroke, which means that women no longer lose their maintenance claims in an unlawful divorce. It also establishes a new parallel remedy: Section 5 gives the married Muslim woman on whom talaq has been pronounced a right to receive of her husband such subsistence allowance as the Magistrate may decide. This would entail: the wife may go to the Magistrate before any formal divorce decree is made, and seek interim financial assistance (not called maintenance, but in effect so). Other laws remain in place under the Act (without prejudice to other law): so a woman may still invoke CrPC §125 where necessary. The retrospective clause of the Act (which will be in force since 19 Sept 2018) provides that any triple talaq said after 19 Sept 2018 is void and the husband is liable to penalties and to maintain the wife.<sup>12</sup>

The 2019 Act however has limitations as far as maintenance is concerned. It is not used to substitute or prolong the traditional maintenance regime. It only binds subsistence at the will of the Magistrate in divorce-by-talaq cases.<sup>13</sup> It does not say anything about long-term maintenance after iddat, property division or alimony which are covered by the laws of Sec.125 and civil divorce. Critics have observed that the Act has failed to cover other peripheral issues such as maintenance, property rights, and child custody other than giving short-term financial relief. That is, the Act provides a safety net against destitution at the time of talaq, but does not provide life-long maintenance, divorced women continue to rely on Sec.125. (Therefore, as of 2019, divorced Muslim women are practically in three sources: subsistence allowance in Section 5 of the 2019 Act; fair provision and maintenance in Section 3 of the 1986 Act; and maintenance in Sec.125 CrPC.)<sup>14</sup>

Gender-Justice Critique: The events indicate a conflict between secular equality and religious autonomy. On the one hand, the courts have consistently reiterated the right of Muslim women to secular maintenance, which is in line with the principles of gender-justice. In particular, Danial Latifi and Iqbal Bano have specifically acknowledged that a husband cannot use personal law to evade maintenance payments. Indian personal laws have been subject to criticism by feminist scholars (e.g. Agnes, Parashar)

<sup>12</sup> Muslim Women (Protection of Rights on Marriage) Act, 2019, s. 3.

<sup>13</sup> Muslim Women (Protection of Rights on Marriage) Act, 2019, s. 5.

<sup>14</sup> Code of Criminal Procedure, 1973, s. 125.

since long ago, due to their dependence on women as economically dependent. The talaq prohibition of the 2019 Act is hailed as a way of empowering Muslim wives because it criminalized a misogynistic act. Conversely, others believe that making talaq a criminal offense (where it can be addressed by alternative means) would stigmatize vulnerable women and would not help them to secure their economic well-being unless maintenance is enforced more vigorously. As an example, the women-rights activists mention that, unless the state takes an active role in ensuring that the orders of Section 5, Subsistence, and the claims of Section 125 are enforced, divorced women can be left vulnerable economically. Top pundits have pointed out that gender justice must be not only symbolically prohibited, but actually nourished, e.g. when Parliament declared in 1986 that it was committed to fair provision, it was intended to be life-long. In general, the critical opinion is that the Act 2019 is a move towards gender equality (by harmonising legal implications of talaq with gender-neutral law), but should be accompanied by careful enforcement and possibly further reform (e.g. improved maintenance laws and property rights).<sup>15</sup>

Comparative Perspectives: Maintenance of divorced women is widely regarded internationally as a spousal obligation: most Muslim dominated nations have enacted family legislation (e.g. in Middle East/Asia) that obligates husbands to make maintenance payments to divorced wives. The strategy of India, which is a combination of Islamic norms and secular law, is rather peculiar. In contrast to certain jurisdictions, India does not accept extrajudicial divorces at all (after Shayara Bani), and does not provide separate alimony systems. In comparison, some countries such as Egypt, Indonesia or most South Asian and Middle Eastern countries have elaborate civil codes on marriage/divorce which contain maintenance schedules (in many cases, replacing religious arbitration). In secular democracies, there is a movement to treat divorced women equally irrespective of religion; e.g. a Muslim woman in the UK, despite the fact that she is subject to the Islamic rites in the community, may claim maintenance under English family law after divorce. This trend of egalitarianism is reflected in the insistence of the Indian Supreme Court that CrPC §125 is a secular safety-net. Nevertheless, the ban on talaq of the 2019 Act (although in line with Shayara Bano) has been controversial in comparative terms: some Muslim communities claim that it violates religious freedom. Most international comparisons would cheer the outlawing of instant triple talaq and the enactment of spousal support in gender-justice terms.<sup>16</sup>

Policy Recommendations: According to the analysis, the law would be more gender just in case it guaranteed complete economic security to divorced Muslim women. Reforms might involve: (a) introducing rules on calculating subsistence allowance (e.g. proportional to income of husband, as in motor-accident multipliers) and active granting of maintenance outside iddat by courts as Danial Latifi envisaged. (b) Capacity-building to sensitize women about their rights under the 2019 Act and the 125 CrPC to make sure that the subsistence allowance remedy is not wasted. (c) Data collection: The government needs to begin to monitor disaggregated by religion and gender maintenance applications and orders; at present, there is no official data on the number of maintenance petitions (and the number of grants) that include divorced Muslim women. Such data, should it be available, may inform policy. (d) Legal assistance and enforcement: Destitution would be reduced by strengthening the mechanisms of enforcing maintenance orders (e.g. by establishing special tribunals or connections with welfare schemes). Lastly, (e) Dialogue on personal law reform: Longer term, a gender-just uniform civil code or personal law amendments (with input of Muslim women) would provide a systematic way of ensuring the well-being of divorced women without relying on ad hoc litigation.

Ruling: Indian courts have always believed that divorced Muslim women should not be deprived of maintenance on the mere ground of religion, but rather, the secular principles of social justice (CrPC §125, constitutional equality) should prevail over the restrictive traditions. Danial Latifi, Shamim Ara, and Iqbal

<sup>15</sup> Muslim Women (Protection of Rights on Marriage) Act, 2019.

<sup>16</sup> Tahir Mahmood, *Muslim Law in India and Abroad* (Universal Law Publishing).

Bano are a judicial trend of establishing the right of Muslim women to support following divorce. This trend is strengthened by the 2019 Act, which criminalizes instantaneous talaq and provides a subsistence allowance, but does not go further to ensure life-long maintenance. Effective enforcement will be the real test of gender justice: whether Muslim women can and will take advantage of the support to which these laws are entitled.