

Maintenance of Wife Under Muslim Law: Problems and Solutions

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Abstract

In India, the Muslim community constitutes the largest religious minority. Despite of the significant legal developments, many Muslim women remain unaware of their rights under Muslim Personal Law, especially in respect of maintenance. This paper explores the legal framework governing maintenance for Muslim women, with reference to the Quranic provisions, traditional Islamic jurisprudence, and landmark judicial decisions, particularly the Shah Bano case. The study highlights the relationship between religious doctrines and statutory law, emphasizing the need for greater awareness and legal clarity to protect the rights of Muslim women. By examining both historical foundations and contemporary interpretations, the paper aims to provide a comprehensive understanding of the concept of maintenance (*nafaqah*) under Muslim law in India.

Keywords: Muslim Personal Law, Maintenance, Nafaqah, Muslim Women's Rights, Shah Bano Case, Islamic Jurisprudence, Family Law, Gender Justice, India

1. INTRODUCTION

This article examines the legal perspective of the issue of maintenance in India which is specially focusing towards wives, children and parents. Maintenance refers to the financial support provided to precise person who are entitled to claim maintenance either from husband, father, parents etc. Maintenance is not only a constitutional right but also an element of universal human rights.¹ Which is governed by many acts such as Hindu adoption and maintenance act 1956, Hindu marriage act, 1955, protection of women from domestic violence act, 2005 and the maintenance and welfare of parents and senior citizen act, 2007.

MAINTAINENCE UNDER VARIOUS LAWS

1. Maintenance under Christian law
2. Maintenance and welfare of parents and senior citizen act 2007
3. Maintenance under Hindu law
4. Maintenance under Muslim law
5. Maintenance under Bhartiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S).

In case **Mohd. Ahmed Khan v. Shah Bano Begum**¹ five-judge bench of supreme court held that in case of conflict between the terms of code and rights and obligation of individual under personal law, the code would prevail.

¹ AIR 1985 SC 945

2. Meaning Of the Maintenance:

The dictionary meaning of the word “nafah” (maintenance) is the money someone given to a person that they are legally responsible for, in order to pay for their food, clothes, and other necessary things. The implied meaning here is the money given by the husband to maintain his wife and children. The following verses of the Holy Quran gave rise to the rights and obligations of maintenance: “Let the men of means spend according to his means, and the men whose resources are limited, let him spend according to what God has given him.”² “Let the women live (in iddat) in the same style as ye live, according to your means”.³ “But he shall bear the cost of their food and clothing on equitable terms”.⁴ What is “nafah” (maintenance)? Generally, it includes food, clothing, dwelling and other necessary articles, which are necessary for the livelihood and comfort of a woman. The basis for the liability of maintenance is marriage. Under the Shariah, a wife cannot be compelled to cook and stitch her clothes; it is the husband who has to provide her with a servant for that work. The husband is also bound to provide her with a separate house or a separate portion of a house with a separate entrance or exit. If the wife resides at her parent’s house for a valid reason, her right of maintenance is not affected. It is obligatory on the part of the husband to maintain his wife, behave with her on equitable terms and take proper care of the wife. If he has more than one wife, he should provide maintenance to all of them and treat them equitable, should not discriminate between them in providing maintenance and should not prefer one against the other. The valid marriage, it is the liability of the husband to maintain the wife. There is no liability of maintenance in case of an irregular marriage where irregularity is due to absence of witnesses at the time of nikah ceremony. Where the wife refuses to live with the husband due to non-payment of prompt dower, her refusal to live with the husband or return to his house due to some valid reason e.g. his cruelty, the right of maintenance is not affected.

3. Historical background that led to evolution of maintenance Under Muslim Law: -

Under Muslim law the people show their belief in the divine God named Allah, his teachings and scripture are mentioned in the holy book Quran, which is majorly followed by the peoples of the Islamic religion. The concept of the maintenance has been raised from the various sources of Muslim law, which are as follows-

Holy Quran: - The primary source of the Muslim law is the holy book known as Quran. This book contains the teachings (which are for the benefit of humans and mankind) of God given to the prophet Mohammed, that are communicated to him by Gabriel (the archangel who acts as an intermediate between God and humans).

Ijma: - Ijma under Muslim law is considered a legal decision that was given at the time when there were no laws present. The person who used to make decisions at that particular time is known to be mujahids, who used to act as jurists to make decisions on any issue.

Sunnat: - The tradition, procedure and practices of the Prophet Muhammad are known to be Sunnat. All these sources of Muslim law form the basis through which the concept of maintenance has been aroused. These promote and preach the teachings of Allah and all these teachings and various sources led to the foundation on the basis of which the law of maintenance has developed.

² Al- Quran Surah, Al-Talaq, LXV: 7.

³ Al- Quran Surah, Al-Talaq, LXV: 6

⁴ Al- Quran Surah, Al- Baqara, 11:233

4. Beneficiaries of maintenance under Muslim law: -

Under Muslim law, the following persons can claim maintenance –

1. **Wife** - The men liable to maintain their wife during the duration of marriage and even after the dissolution of the marriage. Therefore, it is the obligation of the husband to provide maintenance to his wife, irrespective of whether the financial condition of the husband is good or bad.
2. **Children** - The father is under obligation to maintain his children until they attain the age of majority, under Muslim law. However, once a male child attains the age of majority, the obligation to maintain him ends. In the case of a female child, the father is under an obligation to maintain her until the date of her marriage. However, it is pertinent to note that the father has no obligation to maintain a legitimate child.
3. **Under Hanafi law**, if the father is poor and the mother is rich then it is the obligation of the mother to maintain the child. However, the mother can recover the amount when the husband is able to pay.
4. **Under Shafai law**, if the father is poor and the mother is rich then there is no obligation on the mother to maintain the child. In such a situation, the grandfather is obliged to maintain the child.
5. **Parents and grandparents:** - If there exist circumstances in which the parents or grandparents of a person are unable to maintain themselves, then it is the obligation of that person to maintain his/her parents and grandparents. The parents occupy the next position in the right to be maintained, after the child. Among parents, the mother is given preference over the father with respect to the payment of maintenance. It is immaterial whether the child is male or female, adult or minor. If they have sufficient property, they are responsible for supplying maintenance to their parents and grandparents.
6. **Other relatives:** - Under certain conditions if the other relatives are unable to maintain themselves, they may be entitled to maintenance if they do not have sufficient means of income and are in need of it.

5. The wife can claim maintenance under section 144 of B.N.S.S⁵ (earlier section 125 Cr.P.C): -

The Indian Constitution guarantees equal rights to all citizens irrespective of their gender, religion, or caste. However, the reality is different for Muslim women in India. They have been subjected to numerous discriminatory practices that have deprived them of their basic rights. In recent years, several landmark judgments by Indian courts have recognized the rights of Muslim women. One such judgment was the Shah Bano case, which led to the introduction of Section 144 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S). This article will discuss the rights of Muslim women along with relevant judgements under the ambit of Section 144 of the B.N.S.S.

Provision under Section 144 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S)?

Section 144 of B.N.S.S (earlier section 125 Cr.P.C) is a provision that provides maintenance to wives, children, and parents who are unable to maintain themselves. It applies to all religions and is not specific to any particular religion. The section was introduced after the Shah Bano case, where the Supreme Court held that a divorced Muslim woman was entitled to maintenance from her former husband under Section 144 of the B.N.S.S. This decision was met with widespread protests from Muslim organizations, and the government of the day responded by passing the Muslim Women (Protection of Rights on Divorce) Act, 1986.

⁵ Act No. 46 of 2023

The Muslim Women (Protection of Rights on Divorce) Act, 1986, restricted the rights of Muslim women and was criticized for being discriminatory. It provided that a divorced Muslim woman was entitled to maintenance only for the period of iddat (three months after the divorce) and that the amount of maintenance could not exceed the amount paid during the iddat period. This act was widely criticized for being discriminatory towards Muslim women, and the Supreme Court struck it down in 2017 in the Shayara Bano case.

Section 125 of the Cr.P.C, 1973 is therefore, the only provision that provides for maintenance to Muslim women who are divorced or separated from their husbands. It is important to note that Section 125 is applicable to all women, irrespective of their religion, and is not specific to Muslim women. However, since Muslim women have been subjected to several discriminatory practices, the provision assumes special significance in their case.

Who is entitled to maintenance under Section 144 of the B.N.S.S?

Section 144 provides maintenance to wives, children, and parents who are unable to maintain themselves. The term 'wife' includes a divorced wife, and the term 'children' includes legitimate or illegitimate children. The section also provides for maintenance to parents who are unable to maintain themselves.

Maintenance under Section 144 is not restricted to the husband's income alone. The courts have held that the husband's income, as well as his assets and properties, can be taken into consideration while determining the maintenance amount. The courts have also held that maintenance can be granted to the wife even if she is living separately from her husband due to his ill-treatment or other reasons.

Rights of Muslim wife under Section 144?

Muslim women have the same rights as women belonging to any other religion under Section 144 of the B.N.S.S. They are entitled to maintenance from their husbands if they are unable to maintain themselves. This includes divorced Muslim women who are unable to support themselves.

In addition to maintenance, Muslim women also have the right to claim interim maintenance during the pendency of the case. This ensures that they have enough funds to support themselves until the final order is passed.

Muslim women also have the right to approach the Magistrate's court for maintenance. They can file an application before the Magistrate of the first class, and the Magistrate will pass an order after hearing both parties.

Challenges faced by Muslim women in claiming their rights under Section 144?

Despite the existence of Section 144, Muslim women in India face several challenges in claiming their rights. One of the biggest challenges is the lack of awareness about their rights. Many Muslim women are not aware of the provision and do not know that they are entitled to maintenance from their husbands.

Another challenge is the social stigma attached to divorce in the Muslim community. Muslim women who seek divorce or claim maintenance from their husbands are often ostracized by their families and communities. This makes it difficult for them to pursue their legal rights.

The lack of support from the state and the legal system is another challenge faced by Muslim women. The state has been slow in implementing measures to protect the rights of Muslim women, and the legal system is often biased against them. Muslim women often face discrimination in the courts and are not given the same rights as women belonging to other religions.

Section 144 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S) is a crucial provision in Indian law that aims to provide maintenance to dependent family members who are unable to maintain themselves. This includes wives, children, and parents. The provision is gender-neutral and applies to both men and women, but Muslim women's rights under this section have been a subject of significant debate and controversy.

The main issue at hand is the question of whether Muslim women can claim maintenance under Section 125 CrPC, given that Muslim personal law recognizes a different system of maintenance. While the Muslim personal law recognizes the concept of 'mahr' or dowry, which is payable by the husband to the wife at the time of marriage, it does not provide for the concept of maintenance in the same way that it is understood in secular law. This has led to confusion and conflicting judgments regarding the applicability of Section 144 B.N.S.S to Muslim women.

Maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986⁶

The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted with the main purpose of safeguarding the rights of Muslim women, particularly those who have been divorced or have been separated from their husbands. The Act provides a mechanism for the payment of maintenance to such Muslim women. Furthermore, the Act makes sure that the amount of maintenance paid is fair and reasonable.

Origin of the Muslim Women (Protection of Rights on Divorce) Act, 1986

The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted because of the controversy related to the case of Mohammed Ahmed Khan vs. Shah Bano Begum (1985). The judgement delivered in this case was seen as an attack on Muslim personal law. A detailed analysis of the Shah Bano case would let us understand the need behind enacting this legislation.

Mohammed Ahmed Khan vs. Shah Bano Begum (1985)⁷

Facts of the case

In the present case, Mohammad Ahmed Khan married Shah Bano and the amount of Mehar (amount payable by the husband to wife, which she would receive in case of divorce or his death) was fixed at Rs. 3000. Subsequently, 3 sons and 2 daughters were born out of wedlock. In the year 1978, the husband unilaterally divorced his wife by pronouncing "triple talaq," known as talaq-ul-biddat. In accordance with Islamic law, the husband pays the decided amount of mehar to the wife, during the period of iddat (a period of three months after the divorce, in which Muslim women are not allowed to remarry).

Having been trashed out of her matrimonial home, the wife filed a petition under Section 125 of the CrPC (at present – Section 144 of the BNSS), seeking maintenance. The Judicial Magistrate ordered a maintenance of Rs. 25 per month. Dissatisfied with the amount of maintenance issued by the magistrate, the wife appealed to the Madhya Pradesh High Court in 1979. As a result, the amount of maintenance was increased to Rs. 179.20 per month.

Aggrieved by the decision of the Madhya Pradesh High Court, the husband filed a petition before the Supreme Court of India. It was contended by him that according to the provisions of Muslim personal law, the amount of maintenance should extend till the period of iddat only and not beyond that. Therefore,

⁶ Act No. 25 of 1986

⁷ 1985 AIR 945, 1985 SCR(3)844

Section 125 of the CrPC (at present – Section 144 of the BNSS) must not be applicable in the present case. The two-judge bench, in this case, was of the opinion that the present judgments on this particular issue have not been accurately pronounced. Therefore, to decide on the matter, a five-judge bench of the Supreme Court was constituted.

Issues of the case

The various issues that were considered by the court were as follows –

- Whether Section 125 of the CrPC (at present – Section 144 of BNSS) is a secular provision?
- Whether there is any conflict between the payment of maintenance under Section 125 of the CrPC (at present – Section 144 of BNSS) and the Muslim personal law?
- Can maintenance be paid to a Muslim wife beyond the period of iddat?

Judgement of the case

It was observed by the Supreme Court of India that Section 125 of the CrPC (at present – Section 144 of BNSS) is a secular provision and is applicable to the spouse, whether they are Hindu, Muslim, Christian, Parsi, or of any other religion. It was ruled that this provision is applicable to every person belonging to all religions and has no connection with the personal law of any religion. It was further stated by the Court that the obligation of the husband, under Muslim personal law, to support his divorced wife remains only till the period of iddat. However, under Section 125 of the CrPC (at present – Section 144 of the BNSS), there is no scenario as such in which the responsibility of the husband ceases to exist after a particular period. It was added by the Court that if the divorced wife is not capable of maintaining herself, the duty of the husband to provide maintenance is concluded after the period of iddat ends. However, it was clarified by the court that if the divorced Muslim wife lacks the means to sustain and maintain herself, she has the complete right to seek relief under Section 125 of the CrPC (at present – Section 144 of BNSS). Therefore, the major point that was delivered by the court in this case was that the husband is obligated to maintain his divorced Muslim wife even after the period of iddat.

Consequences of the judgement delivered in the Shah Bano case

After the judgement that was delivered in the case of Mohammed Ahmed Khan vs. Shah Bano Begum (1985), there was an uproar amongst the people. There was scandalous media coverage, and apart from that, a huge protest and counter-protest from different religious groups were seen. The judgement not only created differences among the different religions, but along with that, the division also arose among the different sects of Muslims. There were a few groups that supported the decision, such as liberal Muslims, Hindus, and feminists. However, there were some groups, such as conservative Muslims, who vehemently opposed the decision. They saw the judgement as an attack on their religion since their personal laws directed the payment of maintenance till the period of iddat, but the judgement directed the payment of maintenance beyond the period of iddat.

Due to huge political pressure and the ongoing protest regarding the judgement that was delivered, the Government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. It actually seemed to reduce the protection granted to the women by the Shah Bano case. The Muslim Women (Protection of Rights on Divorce) Act, 1986 stated that the liability of the husband to pay maintenance should subsist only till the period of iddat, and if after that period she is not able to maintain herself, then the relatives who have inherited any property from her would pay the maintenance. Finally, the different issues and difficulties pertaining to the legislation were resolved in the case of Danial Latifi vs. Union of India (2001), as discussed later on in this article.

Provisions related to maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986⁸

Different provisions, such as Section 3, Section 4, and Section 5 of this Act, deal with the maintenance of the Muslim wife and children.

Section 3

This Section discusses the mehar and other property of Muslim women to be given to her at the time of divorce. Under this Section, a divorced Muslim woman shall be entitled to the following –

- A reasonable and fair amount of maintenance must be paid to her by the former husband within the period of iddat.
- If a woman herself maintains the children that are born either before or after the marriage, then a reasonable and fair amount of maintenance must be paid by the former husband for the child. The maintenance must be paid for a period of two years from the date on which the child was born.
- The amount of mehar that was discussed previously must be paid to the wife at the time of marriage or any time after the marriage, in accordance with Muslim law.
- The properties that were given to her, either before or after the marriage, by relatives, the husband, friends, or any relative of the husband or his friends.

If there exists any situation wherein a reasonable and fair amount of maintenance or the amount of mehar, has not been paid or any other property that she is entitled to under this Section has not been delivered to her, she or any other person duly authorised by her can file an application before the Magistrate for an order of maintenance, mehar, or delivery of any other property, as the case may be. When an application is made by the divorced woman and the Magistrate is satisfied that –

- The husband has sufficient means of earning and has failed or neglected to make a reasonable and fair payment of maintenance towards the divorced wife and the children.
- The amount that was required to be paid as mehar and the other property that the divorced woman was entitled to receive were not transferred to her.

Then, under such conditions, the Magistrate may make an order, within one month of the date of filing of the application, directing the former husband to pay a reasonable and fair amount of maintenance to the divorced woman. If any person against whom the order has been made, fails to comply with the order without any reasonable cause, then the Magistrate may issue a warrant for levying the amount of maintenance in accordance with the provisions of the CrPC (at present – BNSS). The person can even be sentenced to imprisonment for a term that may extend to one year or until payment of the amount.

Section 4

Section 4 discusses the order for the payment of maintenance. It has been stated under this Section, that once a Magistrate is satisfied that the divorced woman has not remarried and is unable to maintain herself after the period of iddat, an order can be made directing relatives to pay maintenance. A relative can be a person who would be entitled to receive her property on her death in accordance with Muslim law. The amount of maintenance to be paid by the relatives must be fair and reasonable, catering to the needs of a divorced woman and the standard of life enjoyed by her before the marriage. However, the financial means of the relatives must also be taken into consideration. The maintenance would be paid by the relative, in the proportion to which they are entitled to inherit the property.

⁸ Act No. 25 of 1986

In case the divorced Muslim woman is unable to maintain herself and has no such relatives, or the relatives do not have enough means to pay maintenance, the Magistrate may, through an order, direct the State Wakf Board that is established under the Wakf Act, 1954 or any other law for the time being in force, to pay maintenance as determined by him.

Section 5

Section 5 of the Act discusses the amount of maintenance. This Section states that the determination of the amount of maintenance is at the discretion of the court. However, while doing so, the court shall consider various factors, such as the following –

- The status and position of the parties.
- Reasonable amount of maintenance that the claimant wants.
- If the claimant is living separately, then there must exist reasonable grounds for living separately.
- The value of the claimant's property and the amount of income derived from such property, along with the claimant's own earnings, must be taken into consideration.

Any other factors that affect the amount of maintenance

Landmark cases on maintenance of Muslim wives under the Muslim Women (Protection of Rights on Divorce) Act, 1986

1. All India Muslim Advocate Forum vs. Osman Khan (1990)⁹

Facts of the case

In the present case, the Andhra Pradesh High Court examined the right of Muslim women to claim maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986, and under Section 125 of the Code of Criminal Procedure, 1973. The case was brought before the full Judges Bench to consider some of the vital questions that were raised just after the case of Shah Bano, which led to widespread controversy.

Issues

The major issues that were considered by the Full Judge Bench of the Andhra Pradesh High Court were as follows-

- Whether the divorced Muslim woman is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973, even after the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986?
- Whether the maintenance as stated under Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, is restricted to the period of iddat or extends to future needs after the iddat period?
- To what extent are Sections 125 to 128 of the Code of Criminal Procedure, 1973, applicable after passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 and what would the mode of disposal of cases pending before the court under these Sections be?

Judgement of the case

It was held by the Andhra Pradesh High Court that the obligation of the Muslim husband to pay maintenance is limited till the period of iddat only. The amount paid during the period should be sufficient for her to maintain herself for the rest of the period. It was further stated by the Court that even after the maintenance is paid by the husband and the wife is unable to maintain herself, then she can claim

⁹ II (1990) DMC 541

maintenance from the relative who would inherit her property, and ultimately, from the Wakf Board, if nothing works.

The Court also ruled that Sections 125 to 128 of the Code of Criminal Procedure, 1973, do not apply to divorced Muslim women unless the parties opt for their applicability under Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

2. Sayed Fazal Pookoya Thangal vs. Union of India (1993)¹⁰

Facts of the case

In this case, a divorced Muslim woman from Kerala, named Jameela, was awarded a maintenance amount of Rs. 15,400/- by the Judicial Magistrate. However, she was only able to recover an amount of Rs. 6,000/- and her husband was sent to jail for the unpaid amount of maintenance.

Jameela, unable to maintain herself and her three children, sought maintenance from the Kerala Wakf Board under Section 4(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Judicial Magistrate ordered the Wakf Board to pay the monthly maintenance of Rs. 250/-. The Wakf Board did not challenge the order made by the Judicial Magistrate, but the chairman of the Wakf Board, named Syed Fazal Pookoya Thangal, filed a petition questioning the constitutional validity of Section 4(2) of the Act. It was contended on behalf of the Wakf Board that the obligation of the Board to pay maintenance to divorced Muslim women by diverting their funds violates Article 25 (freedom of conscience and free profession, practice and propagation of religion) and Article 26 (freedom to manage religious affairs) of the Indian Constitution.

Issues

The Kerala High Court considered various issues, which were as follows –

- Is Section 4(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which directs the Wakf Board to pay maintenance, constitutionally valid?
- Whether the payment of maintenance under Section 4(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, violates Article 25 and Article 26 of the Indian Constitution?

Judgement of the case

The Kerala High Court dismissed the petition. It was ruled that the Wakf Board is a statutory body and is not a religious denomination and therefore, the Wakf Board does not fall under Article 26 of the Indian Constitution. The Kerala High Court further stated that the maintenance to be paid under Section 4(2) comes from the funds of the Wakf Board and not directly from the properties of Wakf. Therefore, the Court dismissed the petition and held that Section 4(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, does not infringe Articles 25 and 26 of the Indian Constitution.

3. Danial Latifi & Anr vs. Union of India (2001)¹¹

Facts of the case

The present case arose after the judgement passed in the case of Shah Bano and the consequences associated with it. After the Shah Bano judgement, the government came up with an Act, known as the Muslim Women (Protection of Rights on Divorce) Act, 1986. The main objective behind the enactment of this Act was to protect the rights of Muslim divorced women. Danial Latifi, who had been the counsel of Shah Bano, challenged the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, on the ground that the Act is inconsistent with the various provisions of the Indian

¹⁰ AIR 1973 SC 2313; (1973) 1 SCC146

¹¹ (2001) 7 SCC 740; AIR 2001 SC 3958

Constitution, in particular, Article 14 (equality before law), Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth), and Article 21 (protection of life and personal liberty).

It was contended by the petitioner that Section 125 of the CrPC (at present – Section 144 of BNSS) has been enacted to provide relief to divorced women and hence, it falls within the ambit of Article 21, which guarantees the right to life and personal liberty. It was also added that denial of remedies under Section 125 of the CrPC (at present – Section 144 of BNSS) to Muslim women would amount to infringement of Articles 14, 15, and 21. It was further contended by the petitioner that the Muslim Women (Protection of Rights on Divorce) Act, 1986, undermined the secular character of Section 125 of the CrPC (at present – Section 144 of BNSS) if it were not applicable to Muslim women.

Issues of the case

Whether the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, are inconsistent with Articles 14, 15, and 21 of the Indian Constitution?

Whether the Muslim Women (Protection of Rights on Divorce) Act, 1986, is constitutionally valid?

Judgement of the case

The Supreme Court of India held that the husband is liable to pay reasonable and fair maintenance for the livelihood of the divorced wife. The Court said that the reasonable amount that is required for sustenance by the women, beyond the period of iddat, must also be paid by the husband within the iddat period, in accordance with Section 3(1) of the Act.

The Court further added that a Muslim divorced woman who has not remarried and is unable to maintain herself after the period of iddat, can proceed in accordance with Section 4 of the Act. The provision states that she should be supported by her relatives in proportion to their inheritance from her property after her death. If the relatives are not able to pay maintenance, the Magistrate may direct the State Wakf Board to pay the same.

Therefore, the court finally concluded by stating that the provisions of the Act do not violate Articles 14, 15, and 21 of the Indian Constitution and that the Act is constitutionally valid.

4. Iqbal Bano vs. State of UP (2007)¹²

Facts of the case

In the present case, the husband and wife got married to each other in the year 1959, and a son was born out of wedlock, who died in the year 1991. The husband and wife were living separately after the death of their son. The husband stopped visiting the wife as well as paying money for her sustenance. In 1992, the wife approached the Court of Judicial Magistrate and filed a petition under Section 125 of CrPC (at present – Section 144 of BNSS) claiming the amount of maintenance of Rs. 500 per month. The husband contended that he already divorced his wife by uttering triple talaq a long time ago and along with that, the amount of mehar was also paid by him. It was further stated by the husband that in accordance with the Muslim personal law and also under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, he is not obliged to pay maintenance beyond the period of iddat and therefore, the claim of maintenance by the wife must not be allowed.

However, the submissions of the husband were rejected and the wife was allowed maintenance of Rs. 450 per month. Aggrieved by the decision of the Trial Court, the husband filed a revisional petition against such an order before the Additional Session Judge. The Additional Session Judge allowed the appeal and

¹² (2007) 6 SCC 785

held that the petition for maintenance under Section 125 of CrPC (at present – Section 144 of BNSS) is not maintainable for Muslim women after the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and the application must be filed under Section 3 of the said Act. It was further added by the Additional Session Court that, after the payment of mehar and the expiry of the iddat period, the marriage between husband and wife is considered dissolved. The wife, aggrieved by the order of the Additional Session Judge, filed a petition before the Allahabad High Court, which was dismissed, and therefore, the case finally reached the Hon'ble Supreme Court of India by way of appeal.

Issues of the case

The Hon'ble Supreme Court of India considered various issues, which are as follows –

- Whether the divorced Muslim woman is entitled to file a petition under Section 125 of CrPC (at present – Section 144 of BNSS)?
- Whether the liability of the Muslim husband to pay maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986, is confined only till the iddat period?

Judgement of the case

The Hon'ble Supreme Court of India rejected the decision made by the Additional Session Judge that Muslim women are not entitled to claim maintenance under Section 125 of the CrPC (at present – Section 144 of the BNSS). It was clarified by the court that the Muslim Women (Protection of Rights on Divorce) Act, 1986, is limited only to divorced Muslim women and not to married Muslim women. Therefore, the court on this particular issue held that married Muslim women are allowed to claim maintenance under the CrPC (at present, the BNSS). The Supreme Court of India referred to the case of *Danial Latifi vs. Union of India* (2001) and interpreted Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It was ruled that the husband is bound to make the payment of maintenance before the expiry of the iddat period. However, it was further clarified by the court that the amount paid during the period of iddat must be such that it would be sufficient for a Muslim woman to sustain herself even after this period (until she remarries or does not, as the case may be).

Therefore, after considering the facts and issues associated with the case, the Hon'ble Supreme Court of India set aside the order made by the High Court and remitted the matter for a fresh consideration.

Recent ruling of the Hon'ble Supreme Court of India on this issue of maintenance

1. Mohd. Abdul Samad vs. State of Telangana & Anr. (2024)¹³

Facts of the case

In the present case, the husband and wife got married on 15th November 2012. Subsequently, after the marriage, on account of differences among the spouses, their relationship deteriorated and the wife left the matrimonial home on 9th April 2016. Eventually, the wife initiated a criminal proceeding against the husband for the offence which is punishable under Section 498A and Section 406 of the Indian Penal Code, 1860 (at present – Section 85 and Section 316(2) of the Bhartiya Nyaya Sanhita, 2023, respectively). As a result, the husband pronounced triple talaq and moved before the office of Quzath to seek the decree of divorce. The decree of divorce was granted ex-parte and the certificate of divorce was issued on 28th September 2017. The husband claimed that he attempted to make the payment of approximately Rs. 15,000/- to the wife during the iddat period, which was refused by the wife. Apart from that, the wife filed a petition for interim maintenance under Section 125 of the CrPC (at present – Section 144 of BNSS)

¹³ 2024 INSC 506; (2024) SCR 1236

before the family court, which was allowed via order dated 9th May 2023. Aggrieved by such an order, the husband filed an appeal before the High Court of Telangana to quash the present order regarding the interim maintenance, eventually leading to the passing of the instant impugned order dated 13th December 2023. Ultimately, an appeal was filed before the Hon'ble Supreme Court of India, challenging the order passed by the High Court.

Arguments on behalf of the appellant

The learned counsel appearing on behalf of the appellant contended that –

- Section 125 of CrPC (at present – Section 144 of BNSS) does not prevail over the Muslim Women (Protection of Rights on Divorce) Act, 1986. As the Muslim Women (Protection of Rights on Divorce) Act, 1986, is a special law; therefore, it prevails over the provisions of CrPC.
- Even if a divorced Muslim woman seeks to move to the court of law under the secular provision of Section 125 of CrPC (at present – Section 144 of BNSS), it is not maintainable and the correct procedure would be to file an application under Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- To substantiate the contentions, it was argued that, since the Muslim Women (Protection of Rights on Divorce) Act, 1986 is a beneficial and efficacious remedy for Muslim women in contradiction to Section 125 of CrPC, and therefore the resort exclusively lies under the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- It was further argued by the learned counsel that Section 3 and Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, commence with the non-obstante clause and hence, it shall have an overriding effect on the other statutes that are operating in the same field.
- Based on the above contentions, the learned counsel relied on legal precedents such as M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India and Another (1980), wherein it was held by the court that the special law prevails over the general law. However, if a conflicting statute is passed by the same legislature, then the rule of harmonious construction is to be applied while interpreting the statute. The case of Chennupati Kranthi Kumar vs. State of Andhra Pradesh and Others (2023), reiterated a similar position.

Issue of the case

The major issue before the Court was whether, after the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, Muslim women were prevented from filing an application under Section 125 of CrPC (at present – Section 144 of BNSS)?

Judgement of the case

The Hon'ble Supreme Court of India, after considering the facts and issues associated with it, dismissed the appeal filed by the husband and allowed his ex-wife to seek maintenance under Section 125 of the CrPC (at present – Section 144 of the BNSS). The Court ruled that Muslim women are allowed to seek maintenance under Section 125 of the CrPC as it is a secular provision, despite the fact that their marriage was dissolved under religious personal law. It was further clarified by the court that if a Muslim woman is married and divorced under Muslim law, then under that situation, both Section 125 of the CrPC as well as the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, would be applicable. The option lies with the Muslim divorced women to seek remedy either under any of the two laws or both. The reason for this was that the Muslim Women (Protection of Rights on Divorce) Act, 1986, is not in derogation to Section 125 of the CrPC; instead, it is in addition to the said provision.

The court was of the opinion that Section 125 of CrPC (at present – Section 144 of BNSS) is embedded into the text as a social justice measure, and the remedy of maintenance is a crucial source of support for the impoverished, deserted, and deprived sections of women. It was noted by Justice BV Nagarathna that Muslim women who have been divorced through illegal means such as triple talaq (which is declared void) can also claim maintenance under Section 125 of the CrPC. The court further clarified that the right to maintenance is in addition to the remedy which is being provided under the Muslim Women (Protection of Rights on Divorce) Act, 1986, which specifies that Muslim women who have been subjected to triple talaq will be entitled to claim subsistence allowance from her husband. Therefore, it can be concluded that in the case of Mohd. Abdul Samad vs. State of Telangana & Anr. (2024), it was clarified by the court that the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 provide remedies in addition to and not in derogation of Section 125 of the CrPC (at present – Section 144 of the BNSS).

Contemporary issues and challenges regarding maintenance under Muslim law

In the contemporary age, there are various challenges regarding the maintenance of Muslim women that are surging at a rapid rate. Some of these issues and challenges are as follows-

Lack of uniformity – The first and foremost challenge that is faced by Muslim women in India is the lack of standardised law regarding maintenance. The Muslim personal laws are majorly uncodified, as opposed to the laws of other religions, such as Hindu, Christian, Parsi, etc. As a result of the lack of uniformity, many challenges arise while applying maintenance principles, and thereby difficulties are caused to Muslim women seeking maintenance.

Insufficient accessibility of legal awareness – The lack of legal knowledge and complexities in the legal process act as an impediment to women's right to achieve maintenance. Many Muslim women in India face the challenge of receiving just a reasonable amount of maintenance, merely because of a lack of awareness.

Gender inequality – The interpretation of Muslim personal law gives us a clear idea regarding the inequalities that exist among men and women. Some of the provisions tend to favour men, which leads to inadequate amounts of maintenance for women. This inequality can have a deterrent effect on the financial independence of divorced Muslim women.

Social stigma and coercion – The current cultural norms of society are such that the family prioritises harmony amongst the members and other relatives over going ahead with an open dispute. As a result, this social stigma and pressure from the family and community deter Muslim women from asserting their legitimate claims of maintenance.

Economic barriers – Many Muslim women, especially those who do not possess the means to maintain themselves, might lack the proper financial resources to hire counsel or go ahead with a prolonged legal battle and because of this, they might not be able to assert their right to claim maintenance.

Ineffective enforcement and execution of court's order – There exist situations wherein an order regarding maintenance has been made by the court but is not adequately enforced or complied with. As a result, many women are left with a prolonged legal battle full of emotional distress.

Influence of socio-economic factors – Many socio-economic factors, such as poverty, unemployment, discrimination, etc., further enhance the problems faced while obtaining maintenance.

These issues and challenges that act as an impediment to the right of Muslim women to claim maintenance, must be eradicated. A comprehensive approach is required to achieve the goal. To curb these challenges, there is a need for legal reform and therefore, making changes and updating subsisting laws can better

protect the rights of Muslim women. They should be made aware of their rights pertaining to maintenance and this can be achieved through campaigns that can raise awareness regarding the available remedies. Development of programs and other initiatives to empower Muslim women must also be undertaken, to provide them an avenue to fight the battle for the rights that they deserve. Additionally, to provide practical support and justice to Muslim women, proper implementation of the order and decisions passed by the courts must be ensured. Adhering to these solutions can curb some of the challenges faced by Muslim women, with respect to receiving maintenance.

CONCLUSION AND SUGGESTION

It is the fundamental duty of husband to maintain his wife, children or elder parents if they are not able maintain themselves or they cannot fulfil their basic necessities and need any kind of financial support. It is suggested that executing a regular review mechanism for maintenance orders can be beneficial or profitable for long-term maintenance. It should be ensured that the maintenance amount remain fair and appropriate and court should consider all the relevant factors or circumstances while providing maintenance and encouraging mediation or alternative dispute resolutions methods can help both the parties to reach mutually acceptable maintenance agreement which further reduces the stress and coast associated with litigation.

Although it is concluded that Maintenance laws should not be gender bias to prevent injustice in the proceeding and court should impose heavy cost or penalty if any false case is filled or false claim is made by the wife or husband for grant of maintenance pendente lite.