



Maintenance Right Of Muslim Wife: The Muslim Women (Protection Of Rights On Divorce) Act, 1986

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Abstract:

The Research Paper deals with the obstacles and triumphs of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act has numerous legal ramifications as it has encountered numerous difficulties during its enactment, despite its accomplishment of enabling Muslim women to seek maintenance. Every section of the Act has been critically analysed in this article, along with any legal ramifications. Its reach extends to the protection of Muslim women, and the key inquiry that runs through the research project is whether or not this specific statute will apply to maintenance claims. This paper has discussed arbitrary legislative control and bigotry in democracies. This article aims to explain the scope of maintenance under this act and maintenance under the criminal procedure, and it offers recommendations for improving the provisions of the legislation addressing "Divorced Muslim wife is not entitled to get maintenance beyond Iddat Period."³

INTRODUCTION

In this article, we tend to discuss about the maintenance of Muslim women. Generally, maintenance means food, clothing, lodging etc. in Arabic maintenance is called "Nafqah" which means what are the things person spend in his family. But in a legal sense, it means food clothing and lodging. Women are always considered as a vulnerable part of society and it is the duty of her husband to maintain her because she doesn't have any means

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³ Section-3{1} of Muslim women (protection of rights on divorce) Act, 1986 (25 of 1986).

to survive. Under Muslim law, husband is bound to maintain his wife even when she is rich and it's a right of every Muslim women. "She is not obliged to bear any part of expenses of the matrimonial establishment"⁴

Meaning of maintenance

Muslim law does not properly defines maintenance, It meaning has been imported from Hindu law which provides that- "in all cases, provisions for food, clothing, residence education and medical treatment; in the cases of unmarried daughter, Also the reasonable expense of her marriage. Under Muslim law the term "maintenance" is called *nafaqa* and it comprehends food, raiment and lodging, though in common parlance it is limited to the first. There are three causes for which it is incumbent on one person to maintain another in Marriage, Relationship and Property. The highest obligation arises on marriage; the maintenance of the wife and children is a primary obligation. The second class of obligations arises when a certain person has „means“ and another is „indigent.“

MAINTENANCE UNDER THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT 1986

The Act was enacted to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands. It provides for matters connected with or incidental to the protection of these rights. A Muslim woman who is divorced by her husband can seek maintenance allowance under the Muslim Women (Protection of Rights on Marriage) Act 1986. The Muslim Women (Protection of Rights on Divorce) Act, 1986 is a statutory enactment of the Muslim personal law on divorce. It codifies certain important laws on maintenance. It provides for the maintenance which the wife is entitled to receive during her iddat period. It also enables a Muslim wife to enforce her claim to her unpaid mehr or dower and other exclusive properties. This act clearly states that a husbands liability to provide for his wife is existing as till the period of iddat. If after the lapse of the period of iddat, if the wife is unable to maintain herself then she can seek a reasonable and fair maintenance from her relatives who would be entitled to inherit her property after her death. If no relative is able to provide for the maintenance then the duty to maintain such a Muslim lady becomes that of the State Waqf Board.

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 v. Shah Bano Begum⁵ In instant case court went into the details of various authorities and translation of the verses of the holy Quran in support of the view that a Muslim Woman who has been divorced by her husband has all right to be maintained even after the period of Iddat. Further court upheld that provision of the maintenance under section 125 of the Cr.P.C is not dependent on the

⁴ Dr Paras Diwan, Muslim law in modern India 147 (Allahabad Law Agency, Faridabad, Haryana, 2016).

⁵ Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

religion of the spouses. It is a secular law applicable to all irrespective of the religion. Therefore, the judgment evoked unprecedented debate and controversy on the Muslim woman's rights to claim maintenance from the husband after divorce. It ultimately led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986. The judgement delivered in this case was seen as an attack on Muslim personal law. The SC held that section 125 of the CrPC (now is sec. 144 of Bharatiya Nagrik Suraksha Sanhita 2023) is a secular provision applicable to all, irrespective of religion.

Section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986

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:

- i. A reasonable and fair amount of maintenance must be paid to her by the former husband within the period of iddat.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.

Even if they don't agree on this, a husband in a Muslim marriage is required to support his wife. If the marriage is null and invalid or otherwise irregular, a Muslim husband is not required to support his wife. But a Muslim husband's duty to support his wife is only relevant if she stays faithful and complies with all of his reasonable commands, such as carrying out her marital responsibilities. Muslim law states that a wife's husband must provide for her regardless of her income or ability to support herself; this is in stark contrast to other religious laws and actions that exclusively provide for the right to maintenance for dependent women.

Maintenance during the Iddat: The divorced woman is entitled to a reasonable and fair amount of maintenance for herself during the 'Iddat' period from her former husband.

Maintenance after the Iddat: The divorced woman who remains unmarried after the Iddat, and is unable to maintain herself, is entitled to get maintenance from her such relatives who would inherit her properties upon her death. In the absence of any such relatives or, where they have no sufficient means, then ultimately the liability to maintain her is cast upon the Waqf Board of the state in which she resides.

Muslim wife is not entitled to maintenance in following circumstances:

- a. If she abandons the conjugal home and her husband without any reasonable causes
- b. If she elopes with some other man.
- c. If she has been Imprisoned.
- d. If she is a minor and because of that the marriage cannot be consummated.
- e. If she disobeys the reasonable commands of her husband.
- f. If she makes an agreement of dissolution on the second marriage of her husband.

INTERPRETATION OF THE SUPREME COURT

The Supreme Court while interpreting the constitutional validity of the act has summed up with some ratios which are as follows. If the women is living a life alone and she doesn't have her family or relatives around to look after her needs and requirements also she doesn't have any means to earn her livelihood or any way through which she could earn or look after herself then she shall be paid money by the state Waqf board. Thus, the major reason and objective of this act was also one of its drawback that this act limited the settlement of subsistence living amount by her spouse un till Iddah period and after that either by herself or her relatives or the state Waqf board but later in *K Zunnaiddin v. Ameena Begam*⁶, in this case the court adhered that the word within in Section 3(1)(a) did not mean that the husband will have to pay only for the time between the time in iddah but what it really means is that he is liable to pay the wife un till she marries again. So, if wife does not marry for her whole life again so husband will have to pay maintenance to her for the rest of her life.

CASE LAWS

In *Danial latifi v. Union of India*⁷ The constitutional validity of the Muslim Women Act, 1986 has been challenged under this case, that it is against the Article 14 and 21 of the Indian Constitution and the maintenance should be given to muslim women beyond the iddat period and this act should be declared as unconstitutional. Supreme Court upholding the validity of the act, decided as follows "Muslim Husband is liable to pay maintenance which might be extended beyond the Iddat Period in terms of Section 3(1)(a) and also make reasonable and fair provisions for divorced wife for her future." "If divorced Muslim women who has not

⁶ (1997)2MLJ464

⁷ *Danial latifi v. Union of India*, (AIR 2001 SC 3958).

remarried and who is not able to maintain herself after Iddat period can proceed under Section (4) of the act, which says that she should be maintained by relatives in proportion of her property which her relatives inherit after her death.” “If relatives are not able to maintain her, Magistrate may direct the State Wakf Board stabilize under the act to pay such Maintenance.”“Article 14,15 and 21 of Constitution of India is not offended by the provision of the act.”

In the judgments such as **Arshiya Rizvi v. State of U.P**⁸. and **Razia v. State of U.P**⁹. and **Shakila Khatun v. State of U.P**¹⁰, in all cases the Allahabad High Court has reaffirmed a divorced Muslim woman’s right to claim maintenance under Section 125 of the CrPC even after the completion of the iddat period as long as she does not marry.

In **Mujeeb Rahiman v. Thasleena Case**¹¹, a single judge of the Kerala High Court observed that a divorced Muslim woman can seek maintenance under Section 125 of the CrPC until she obtains relief under Section 3 of the 1986 Act. Such an order will remain in force until the amount payable under Section 3 is paid.

In **Noushad Flourish v. Akhila Noushad, Case**¹² the Kerala High Court ruled that a Muslim wife who effected her divorce by the pronouncement of khula (divorce at the instance of, and with the consent of the wife) cannot claim maintenance from her husband under Section 125 of the CrPC. When the wife affects divorce by khula to get her released from the husband, the same, in fact, is akin to the refusal of the wife to live with her husband, as provided under Section 125(4) of CrPC

CHALLENGES IN THE ACT AND THEIR LEGAL IMPLICATION

i. Abandonment of Constitutional and Sovereign Power

The Indian Constitution governs and derives the authority of delegation in India. The aforementioned authority must be exercised by the Parliament in a responsible manner. This power cannot be used by the ruling party as a vote-bank or for entrenched political interests. The Act's Section 5 gave the person controlling subject itself the authority to apply the legislation. As a result, the Act has the fault of over-delegation.

ii. Democracy's Biogeography

The idea that the "will of the people" is supreme and should rule in a democratic government is false. Fundamentally, arbitrary majoritarianism is a collection of voter preferences or ideologies. This seems to

⁸ CRIMINAL REVISION No. - 763 of 2018

⁹ 2023:AHC:175195

¹⁰ CRIMINAL REVISION No. - 3573 of 2021

¹¹ (2010 (2) KHC 63).

¹² 2024 Latest Caselaw 6773 Ker

provide a significant challenge, one that has historically been referred to as "the problem of inclusion," or the inclusion of those who are marginalised, repressed, or undesired by the representatives of a majority of voters. Section 5 of the Act is not only against common right or reason but also a clear example of prejudicial preferences¹³ without any rational basis.

SUGGESTIONS FOR THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

i. Reasonable and fair provisions of maintenance

The first and foremost positive part of this act is that they are providing maintenance to the women in every phase until she remarries, either by the husband or relatives or, at the end, by the State Wakf Board, which is a very huge development in comparison to the old personal laws, and by including this part, they have given protection to the life and dignity of the divorced women and given a medium to lead a better life in the future with her financial security provided by the legislature. The second face of this clause is a bit humiliating since they are eliminating the accountability of the husband, who is the principal perpetrator of this because it is his primary responsibility to take care. The second face of this provision is slightly embarrassing because it excludes the liability of the husband, who is the primary perpetrator of this because it is his primary responsibility to care for her wife and provide her with a proper lifestyle, and failing to do so is also against the Quran. If the husband, who is considered the better half of the wife, is unable to support her after divorce, it is not appropriate to place blame on relatives or the Wakf Board. So, in my view, we must limit this duty to keep the wife to just the husband and his family relatives since they have direct interest in women after marriage not the women's relative she became the legal family member after marriage.

ii. Section 125 to 128 of Criminal procedure

This is the negative part of this Act because in section-5 of the Muslims Women Act, 1986, it was inculcated that if both spouses agree by affidavit that they will be governed through criminal procedure, then only it will apply, which is very wrong because the husband will never give affidavit to this kind of procedure where he has to give maintenance until she remarries, and the legislature by incorporating this clause shows his intention to favour the Muslim husband by In my idea, it is made optional for the wife to either go via the criminal procedure or through personal laws by restraining divorced women by going through procedural law or through personal laws by restraining the Divorced women by going through procedural law is effecting the beauty of democracy and Rule of law and section-5 of the Act be struck down forthwith.

¹³ "Prejudicial Preferences" are unreasonable classifications and therefore against right of equality granted and protected under Article 14 and other Articles of the Constitution of India.

iii. Provide Speedy Justice

This Act is effective in providing speedy justice because, under the Civil Procedure Code's Section 3(2)(3) and (4), the wife would have to file a civil suit before receiving her property. In contrast, the court's process under this Act is known as "Criminal Procedure," which is quick and provides Muslim women who have been wronged with faster relief. These parts of the legislation, in my opinion, are quite successful at granting the wife's dower and other exclusive possessions, thus they need to be appropriately applied.

iv. Accurate interpretation of the Quran

The Quran appoints males to be their women's guardians and requires them to provide for them. The Quran commands women to be virtuous and to show their husbands unwavering obedience, even while he is not around, in order to be eligible for his support. "Verse" 34 gives the husband the authority to chastise his wife for being unfaithful or acting badly. One way to chastise her is to not share her bed and, in extreme cases, to give her a little beating. The husband is urged not to utilise coercive tactics against the lady if she does not return to compliance after that. "Verse" 35 lays down the process for resolving family conflicts. It assumes the selection of two arbitrators, one to represent the husband's family and the other the wife's family. It is required of the arbitrators to look into the possibility of reconciliation. Dissolution without publicity, mudslinging, or using deceit or trickery is advocated if reconciliation is not feasible. The social isolation of wives or women and "Talaq-e-biddat" were never advocated by the Quran. In my suggestion the Quran be appropriately understood, and that certain of the Act's provisions are in conflict with the Quran.

CONCLUSION

The provision in question is Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which states that "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband". The Court held this provision means that reasonable and fair provision and maintenance is not limited for the iddah period (as evidenced by the use of word "within" and not "for"). It extends for the entire life of the divorced wife until she remarries.

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