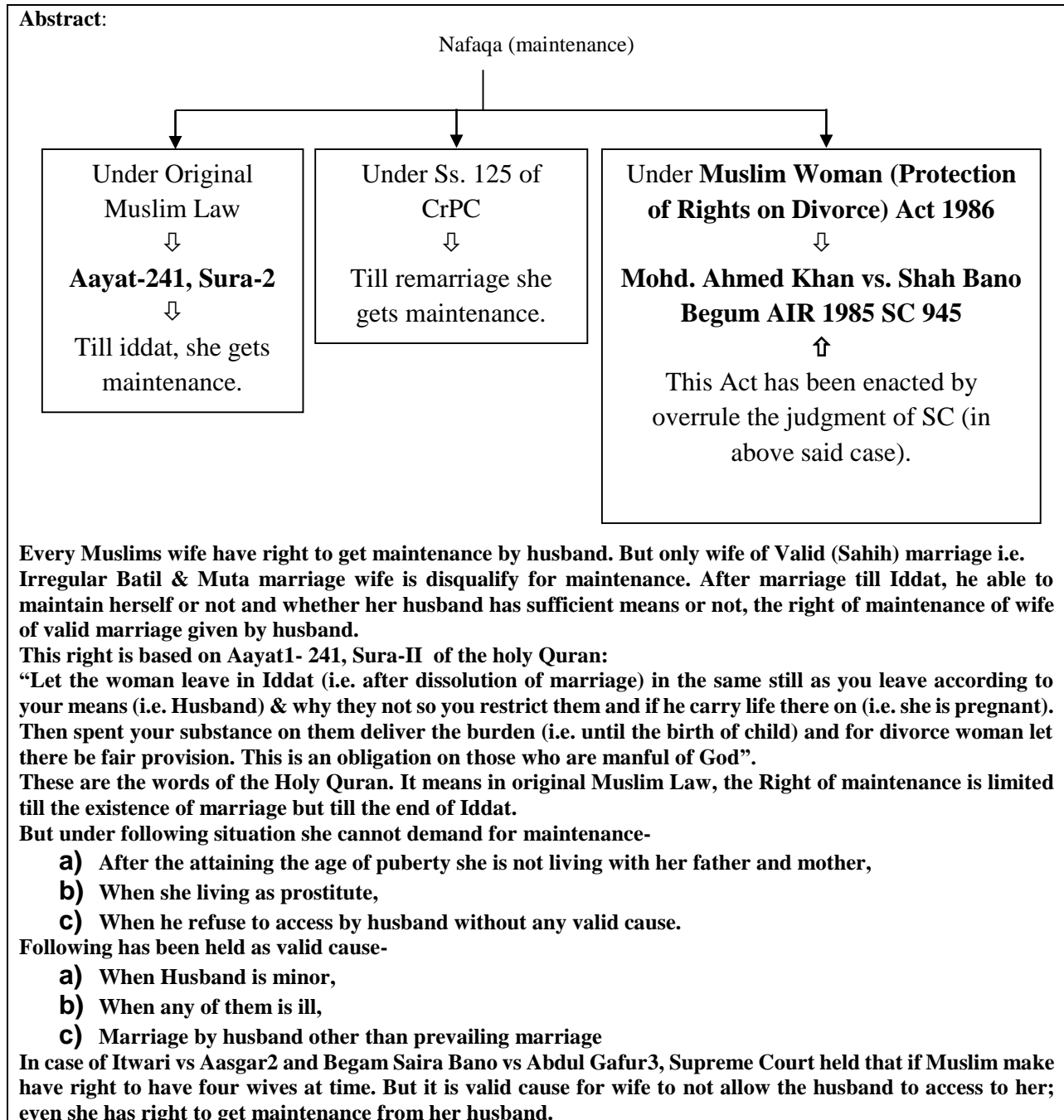


# Analytical study of Maintenance under Muslim Law

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## 1. Introduction-

In Islam, it is a man’s moral obligation to care for his wife and also every one dependent on him. He, like his wife, has a responsibility to care for his children until they are able to support themselves. He also owes it to his brother, sister, parents, and other relatives to look after them if they are in need. It’s also important to consider the circumstances of the person performing the upkeep. If a person is not financially stable, there is no need to prove maintenance.

## 2. The concept of “maintenance”-

The word “maintenance” in Arabic is the same as the term “Nafaqah”, which literally means “a sum spent by a person over his family”. Many Muslim legal scholars define maintenance as all items necessary for one’s survival, such as food, clothing, and a

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<sup>1</sup> Holy ‘Quran’.

<sup>2</sup> 1960 Allahabad HC.

<sup>3</sup> 1987 SC.

place to live. They come at this conclusion by appealing to the concept of kinship. A person owes it to his family to provide them with the fundamental needs of existence.

According to Islam, there are three grounds for claiming someone's maintenance. Marriage, children, and slave ownership are among these justifications.

Regardless of whether or not his wife is competent of taking care of herself, the husband is obligated to provide support to her. However, he is not obligated to support his children and parents if they are financially stable enough to care for themselves.

On the premise of maintenance, various laws and norms have been enacted. Personal laws have also been amended to include the concept of maintenance. The Muslim legislation also includes provisions for upkeep. Though Muslim law does not explicitly define maintenance, Hindu law says that it includes "in all situations, provisions for food, clothes, residence, education, and medical care and treatment; in the case of an unmarried daughter, also the reasonable emoluments".

Women are deemed weak under Muslim law when contrasted to men. It is assumed that they are unable to support themselves on their own, so it is the husband's responsibility to pay maintenance to her wife in all circumstances, even if she is capable of doing so.

Under the Muslim Law, one is entitled to claim 'nafaqah' or 'maintenance' if he or she is a person's:

- a) Wife,
- b) Children,
- c) Relatives such as parents, grandparents and others,
- d) Slave.

### 3. The era of Shah Bano Begum

The classic case of **Ahmed Khan vs. Shah Bano Begum** demonstrates the difficulties faced by Muslim woman in maintenance disputes. Shah Bano, a 62-year old Muslim woman, was married to Ahmad Khan, who had issued her a talaq, or divorce order. She had sought the court under section 1254 of the CrPC because she was unable to support herself and her five children. This law puts an obligation on the husband to provide for his divorced wife if she is unable to support herself. Her spouse argued that the matter will be dealt with under Muslim personal law.

The case, however, was decided in favor of Shah Bano and it was held that Muslims were not excluded from exercising their rights accruing from secular laws. In this case, the Supreme Court attempted to ensure continuing respect for Muslim women's claim to equal treatment, regardless of their membership into a particular religion. The Muslim orthodoxy, on the other hand, harshly opposed it. They considered this case, which had given Muslim women a voice in addressing their problems, as an intrusion on the Muslim Shariat Law to which they were obligated.

### 4. The Muslim Women Act (Protection of Rights on Divorce), 1986

During this time, the Bharatiya Janata Party, a right-wing Hindu-dominated party, was gaining popularity, causing concern among India's Muslim minority. Even before the Shah Bano case, there had been an increase in communal tensions over the subject of the Babri Masjid in Agra, and the passing of the judgment further added to the overall air of suspicion amongst religious groups.

Furthermore, the Congress Party, which was in power at the time, had a rising sense of unease about the upcoming elections, fearing a power shift to the BJP. In an increasingly hostile political context, the then Rajiv Gandhi government "understood their worry" at this judgment and enacted the Muslim Women Act (Protection of Rights on Divorce), 1986 to garner Muslim voter support. The Act is a declaration that codifies fundamental pre-existing Muslim Law rules.

The Act makes provision for:

- a) Maintenance of a divorced Muslim wife during and after the period of Iddat.
- b) For enforcing her claim to unpaid dower and other exclusive properties.
- c) It was binding on the ex-husband, his relatives, and the Waqf Board.

The Act had clauses that, in essence, contradicted the court's decision in Shah Bano. The bill exempted Muslim women from the benefits of section 125 of the CrPC, which had previously been used to overrule Muslim women's rights.

If the woman is unable to support herself after the iddat period has expired, the court will order her relatives (who would inherit her property on her death or otherwise) to pay her reasonable and fair maintenance, and if she does not have any relatives, the State Waqf Board will be liable to pay her maintenance.

In the context of the challenged section, the term 'provision' referred to the act of providing something in advance in order to ensure that the divorced wife's requirements are met (these might include food, clothing and apparel, and other things contingent on the husband's means). This may appear to be for the benefit of women, giving the impression that the Act benefits women, but this is not the case. There were many other components of this masquerade that were arbitrary and discriminatory to women.

For example, because there are terms like "within", the Act does not allow a woman to get maintenance after the Iddat period has expired. Second, the Act supports the limited applicability of Section 125 of the CrPC provision to divorced Muslim women. Due to the vagueness and ambiguity of various clauses and terms of the Act, including the preamble, the judiciary began to adopt multiple lines of interpretation for this purpose. In the Shah Bano case, the lawyer filed a petition under Article 325, contesting the Act's constitutional legitimacy. Daniel Latifi vs Union of India was a case like this. The case made Section 3 of the Act the pivotal point due to its restrictive application. After reaching an agreement, the Supreme Court recognized the Act's constitutionality, but determined that the secular provision for upkeep would apply equally to both the Muslim and non-Muslim communities.

Sections 3 and 4 were liberally read, with the result that a divorced Muslim woman is entitled to fair and sufficient means of subsistence as well as support. However, it was determined that this maintenance is not restricted to the Iddat period, and that a

<sup>4</sup> Code of Criminal Procedure, 1973.

<sup>5</sup> Constitution of India by J.N Panday.

Muslim wife is entitled to maintenance for the rest of her life until she remarries.

The case examined the Act's preamble, as well as the Shah Bano case, before concluding that the Act was lawful. According to Section 3(1)(a)6 of the Act, the 'reasonable' and 'fair' provisions for the future included maintenance that stretched beyond the iddat period but had to be paid by the husband within the iddat period.

Further more, under Section 47 of the Act, a divorced wife may sue her relatives who are obligated to support her in proportion to the assets they inherit from her after her death. Her children and parents are included in this.

If none of her family are able to support her, the responsibility will fall on the State's Waqf Board, which the court may order to pay her such a sum.

The court had held that the Act does not contravene Article 14, 15 and 21 of the Indian Constitution. The court found that the legislature does not intend to pass unconstitutional laws, and that "an appropriate" reading of the act is required to understand that the reasonable and fair provision for maintenance is not limited to the iddat period, but rather extends to the divorced wife's entire life until she marries for the second time.

This provision is troublesome because the vagueness of the phrases allows courts to pass regressive rulings. In Haseena vs. Abdul Jaleel<sup>8</sup>, for example, the question of whether provision for school expenditures is a 'reasonable and fair' criterion for determining the amount of maintenance was raised.

In this instance, the court decided that, given the circumstances, the divorced wife might claim a payment on these grounds. However, the justification used was that she was pursuing her education prior to marriage, which is also a relevant consideration in determining "reasonable and fair provision and maintenance".

## 5. Quantum of Maintenance

There is no statute that specifies the amount of maintenance to be paid. The amount of maintenance is determined by the court based on the father's financial situation and the wife and children's requirements.

The Hanafi Law states that the condition of both the husband and wife should be taken into account while determining the amount of maintenance. But under the Shafei Law, only the position of husband should be considered. However, Section 1259 of CrPC mandates a reasonable and equitable sum for the children's upkeep.

### 4.1 Maintenance to wife

The right of the wife to get maintenance is an absolute right in Muslim law and in almost all personal laws.

A husband is obligated to sustain his wife in a legitimate marriage by providing food, shelter, and clothing. In the case of a void or irregular marriage, however, this is not the case. As previously stated, the rights and obligations in a Muslim marriage are mutual. If a wife is unfaithful or refuses to obey her husband, the husband is relieved of his responsibility to support her through maintenance.

A wife is entitled to maintenance even in the following cases:

- a) If she is rich or capable of earning.
- b) If the husband is impotent or too ill.
- c) If the husband has more than one wife.

In case a husband is a minor, then he will maintain his wife by the realization of his property. Maintenance is an independent right of the wife, which she loses if she is unchaste or in obedient. The wife's right to be maintained by her husband is absolute in Muslim law. Even if there is no agreement in this regard, a Muslim husband is obligated to keep his validly married wife. A Muslim husband is not obligated to support the wife of an invalid or irregular marriage, unless the marriage is void due to a lack of witnesses.

Wife's right of maintenance is a debt against the husband. It is an independent right. The husband's obligation to maintain his wife exists only so long as the wife remains faithful and obeys all his reasonable orders i.e. discharge her own matrimonial duties. If the consummation is impossible due to the wife's own illness, old age, or a malfunctioning organ, she is not in breach of her spousal obligations to the husband and may lawfully seek maintenance from him. In the event of ill treatment, the wife could potentially demand future maintenance under the pre-nuptial agreement, i.e. sustainable maintenance. Any relative other than a wife cannot claim maintenance arrears. Despite the fact that she can support herself from her own assets, the wife has a right to maintenance.

### 4.2 Maintenance of the Divorced Woman

**Section 125 Criminal Procedure Code 1973 and The Muslim Women (Protection of Rights on Divorce) Act, 1986, both give the provision for maintenance of women. A divorced wife can only claim support from her ex-husband during the time she is following her Iddat. On divorce, Iddat lasts three menstrual cycles or, if pregnant, until the child is delivered. The former husband's liability is limited to the time of iddat and not thereafter.**

**Muslim personal law states that a wife is only entitled to maintenance from her husband for the time of Iddat following the dissolution of marriage. After Talaq, a Muslim woman observes the Iddat period. A husband is only obligated to provide support for the duration of Iddat and not beyond. After the Iddat period, a Muslim woman is entitled to maintenance from her relatives who are eligible to inherit her property.**

**There are circumstances under Muslim law when a wife is not entitled to maintenance following the dissolution of her marriage. It includes:**

- a) **If the marriage is dissolved because of the wife's defects.**

<sup>6</sup> "The Muslim Women (Protection of Rights on Divorce) Act, 1986, Bare Act of Universal Publication,

<sup>7</sup> Shariat Application Act 1937.

<sup>8</sup> Cri. Revn. Petn. No. 575 of 2003

<sup>9</sup> Criminal Procedure Code of 1973

**b) An apostate wife.**

**c) When the right to maintenance got suspended during marriage for some reasons.**

A wife can enter into a lawful arrangement to get separate maintenance in specific conditions. These situations could include mistreatment, discord, the woman's inability to adjust to a new wife, or any arrangement that is contrary to public opinion. An agreement that the wife would not be entitled to maintenance after the divorce is null and void.

**Danial Latifi and another vs. Union of India<sup>10</sup> is a momentous decision after Shah Bano's case, Muslim personal law was in disarray. The Muslim Women (Protection of Rights on Divorce) Act, 1986, provides that a divorced woman is entitled to reasonable and fair provisions, as well as maintenance throughout the 'iddat' period, under section 3(1)(a). Danial Latifi, a member of the council, contested the act, arguing it was illegal and in breach of Articles 14 and 21.**

In this case, the petitioner argued that the Act is unconstitutional, has the potential to suffocate Muslim women, and contradicts the Constitution's secular character, which is a fundamental characteristic. There is no justification to deny Muslim women the protection of section 125 of the CrPC, and the current act violates articles 14 and 21. Personal laws are a permissible foundation for discrimination, according to the respondent, and hence do not contradict Article 14 of the Constitution. As a result, the Court determined that the Act did not violate Articles 14 and 21 of the Indian Constitution.

#### 4.3 Maintenance of children

Children are god's blessings that come to earth in the form of children. They are unable to support themselves during their early years. They are a family's future generation. As a result, parents must invest in their children in order to achieve a positive outcome. It is not only a legal but also a moral obligation for parents to assist their children till they reach maturity.

According to Muslim law, parents have a responsibility to look for their children and provide them with the needs of life. Their primary responsibility is to assist their children financially.

#### 4.4 Father's Duty to Maintain his Children

The father's responsibility to support his children is fixed under Muslim law. A father has a responsibility to support the following people:

- a) His son, until he reaches adolescence,
- b) His daughter, who is still not married;
- c) If his married daughter's husband is unable to provide for her;
- d) If his major child is crippled, insane, or incapable of supporting himself.

According to Muslim law, a father has no obligation to care for his children if they refuse to live with him for no rational reason. A daughter's right to claim support from her father is limited; she can only do so in exceptional situations.

Varied schools of Muslim law have different views on a mother's responsibility to support her children. According to Hanafi Law, if the father is unable to financially support his children, the responsibility for their upkeep is given to the mother.

However, according to Shafai Law, if the father is unable to care for his children, the responsibility for their upkeep is shifted to the grandfather, even if the mother is financially sound and capable of caring for her children. If a child lives with his mother, the mother is entitled to maintenance from the father until her boy reaches adolescence and her daughter legally marries.

In the case of Akhtari Begum vs. Abdul Rashid<sup>11</sup>, when a four-year-old kid was living with his mother, the same result was reached. His father was ordered by the court to pay for his upkeep. A Muslim woman can claim a reasonable

maintenance amount from her husband if she maintains children born to her before or after divorce for two years from the date of birth of such children, according to Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Regardless of whether the children were born before or after the divorce, the wife can compel her ex-husband to provide support for them. A divorced wife's (mother's) right to maintenance is distinct from a child's entitlement to maintenance from their father.

In the case of Hazi Farzand Ali vs. Noorjahan<sup>12</sup> the same result was reached. The circumstances of the case are as follows: Noorjahan filed an application for support for herself and her three children under Section 125 CrPC. The maintenance was set at Rs 300 per month by the learned magistrate. The husband challenged the ruling in court, claiming that the right of children to seek support is subservient to the mother's right, and that she has no right to seek support under Section 125 of the Code. He also cited

Section 7 of the 1986 Act, which states that the magistrate must adopt the 1986 Act's requirements while dealing with matters filed under Section 125 of the Code. The court ruled that the rights of children and their mothers to seek maintenance under Section

125 of the Code are separate and distinct from one another. The Magistrate has authority to enforce such rights under Section 3(3) of the 1986 Act. If the husband fails to pay the sum due to his divorced wife for child support, the magistrate may issue an order

under this provision. The court may order the husband to pay his divorced wife a fair and reasonable amount based on her needs or the life she has lived.

In Abdul Azeem vs. Fahimunnisa Begum<sup>13</sup>, the wife filed for divorce from her husband after he failed to support her for two years. In 1952, she married. She moved in with her parents in 1955. The second marriage was then performed by the spouse. The lawsuit was dismissed. Polygamy was allowed under Mohommaden Law, but the wife cannot per se use it as a basis for living

apart and claiming support in the absence of other grounds.

**6. Maintenance under Pre-nuptial Agreement**

Throughout the marriage, both spouses sign an agreement in which some defined terms or limitations are indicated on the events that may arise during the marriage. When the marriage is finalized, both parties sign this agreement. If the wife has stipulated in

<sup>10</sup> (2001) 7 SCC 740

<sup>11</sup> AIR 1937 Lah. 236.

<sup>12</sup> 1988 CriLJ 1421, 1987 WLN UC 588

<sup>13</sup> AIR 1969 Kant 226, AIR 1969 Mys 226

the contract of marriage that she will be entitled to live separately and claim support from her husband in specific circumstances, then she will be able to claim maintenance based on the agreement and the terms set forth in it. The requirements could include that the husband not mistreat her, that he not take a second wife, that he not have a concubine, and so on. If a pre-nuptial agreement specifies it, the woman is also entitled to a special allowance known as *kharch-i- pandan*.

#### 7. Section 125 of Criminal Procedure Code, 1973

Wife, children, and parents have the right to maintenance under Section 125 of the Criminal Procedure Code of 1973. The statute covers the entire country of India, regardless of faith. A wife is entitled to support from her husband under the following conditions, according to this section:

- a) If the wife is unable to maintain herself.
- b) The husband must have sufficient means to pay for the maintenance.
- c) If the husband has refused to maintain her.
- d) The wife has not refused to live with her husband except for a reasonable cause.
- e) The wife not living in adultery.
- f) The husband and wife not living separately by mutual consent.
- g) The wife has not remarried after the divorce.

Only a woman who is unable to support herself after divorce is eligible for maintenance under this clause. Muslim personal law, on the other hand, argues that the woman is entitled to maintenance regardless of her wealth. This section appears to be in violation of the 1937 Shariat Act. The issue of whether section 125 is contradictory with the Shariat Act and whether the Shariat Act should prevail over the general provisions of the new code was addressed in *Ishak Chandra vs. Myamatbi & Ors*. The protections conferred under Section 125 of the CrPC were deemed to be additional rights for divorced Muslim women. These rights do not conflict with rights that are conferred by the Muslim Personal Laws.

In addition, Justice Y.V Chandrachud clarified the ambit of section 125 CrPC in the landmark case of *Mohd. Ahmad Khan vs. Shah Bano Begum*<sup>14</sup>. He emphasized that, according to the provision, a Muslim woman who is divorced comes under the category of “wife” and is thus entitled to support. He went on to say that it would be unreasonable to say that a Muslim husband is not obligated to support his former wife after the *iddat* time has passed. As a result, the scope of section 125 was expanded.

The unwillingness of the wife to fulfill her matrimonial obligations to her husband and her claim for support must be investigated under both Muslim personal law and the Criminal Procedure Code. The wife's claim for maintenance under this act is statutory entitlement that is unaffected by her personal law. Under the rules of the Criminal Procedure Code, 1973, a Muslim wife who lives away from her husband due to his second marriage is entitled to maintenance payments.

The Supreme Court ruled in *Begum Subanu alias Saira Banu vs. A.M Abdool Gafoor*<sup>15</sup> that regardless of a Muslim husband's ability to contract a second marriage, his first wife is entitled to support. Under her own law a Muslim wife whose husband neglects to maintain her for no legal reason is entitled to initiate a maintenance complaint in a civil court. Under her own law, a Muslim wife whose husband neglects to maintain her for no legal reason is entitled to initiate a maintenance complaint in a civil court. She can also use the CrPC, 1973 to enforce her rights.

If a Muslim woman is in desperate need, she can seek a maintenance order under section 125 of the Criminal Procedure Code of 1973. A magistrate of the first class may then order the husband to provide monthly allowance not exceeding five hundred rupees, for the maintenance of his wife. Interim maintenance can also be allotted by the Magistrate. He also has the authority and power to change the amount of monthly amount of maintenance.

In *Noor Saba Khatoon vs. Mohd. Quasim*<sup>16</sup>, The husband allegedly threw his wife and children out of his residence due to disagreements and also refused to pay them maintenance. The wife was unable to care for her children and herself. As a result, she filed an application with the judicial magistrate under Section 125 of the CrPC. She said that her husband's business provides him with sufficient income. As a result, she claimed Rs 400 for herself and Rs 300 for each of her three children each month. Despite having adequate means, the husband failed to provide maintenance to his wife and children, according to the Trial Court. The court ordered him to pay his wife Rs. 200 per month and his children Rs. 150 per month till they reach the age of majority.

Following this, the husband divorced the wife and petitioned the trial court to alter the previous ruling in light of the 1986 Act's provisions. The court ruled that no aspect of the 1986 Act affects children's rights to maintenance under Section 125 of the CrPC. However, the wife is only entitled to support for three months, i.e. the *Iddat* period, according to it. In a subsequent revisional petition, the High Court ruled that divorced women's rights to maintenance under Ss.3(1) of the 1986 act were limited to the *Iddat* term. The 1986 Act was designed to defend the rights of divorced Muslim women, not their children. The Supreme Court disagreed, ruling that a divorced Muslim woman has the right to seek maintenance from her ex-husband until their children reach the age of majority. The Court decided that a father's obligation to support his children when they live with their mother is established by both Muslim law and Ss.125 of the CrPC. The divorcee's right to demand support under Section 3(1) of the 1986 Act had no bearing on the right. Both are self-contained entities.

#### 8. Conclusion-

Ss.125(1) wife irrespective of her religion has right to maintained by her husband, if she is unable to maintain herself i.e. she has less means. Husband has sufficient means to maintain her. But no such kinds of condition mention in Original Muslim Law. Here

<sup>14</sup> (1985) AIR 945, 1985 SCR (3) 844

<sup>15</sup> (1987) AIR 1103, 1987 SCR (2) 773

<sup>16</sup> AIR (1997) SC3280

only obligation of husband to maintained his wife. Under CrPC Section 125 if husband have sufficient means only he maintained her wife but original Muslim Law, even husband have no sufficient means to maintained wife, even he has obligation to maintain. According to Aayat- 241, Sura- 2 Muslim Husband is liable to maintain his Wife after Divorce only till Iddat. While under CrPC under Sec. 125 the Divorcee wife is included in the term of wife. In Muslim law, the right of maintenance Ceases with the cease of iddat, whereas in CrPC , this right remains until remarriage.

On this basis M.A. Khan vs Shah Bano Begum<sup>17</sup>, the court held that the husband is liable to give maintenance even after Iddat, if she does not remarriage. But voice was raise by Muslim leader and said that it is encroachment over Muslim personal law. So parliament passed Muslim Woman (Protection Right on Divorce) Act 1986. Muslim leader argued that Divorce and Maintenance is a matter of Shariat Application Act 1937. But this new Act is very small. It has only 7-sections. It came into force in 19th May, 1986 and applicable to whole of India Excluding J&K. According to Sec. 7 of the Act, all the cases pending under CrPC Sec. 125, on this day, will also be governed by this Act. Sec. 3(1)(a) Husband is only responsible for providing maintenance till iddat period, which is same as original Muslim law. Sec. 3(1)(b) If the wife is child then period of 2-years from the date of birth of the children. If the maintenance is not give for above mentioned condition and wife can give application to the magistrate in which he have jurisdiction and he can take action within 2-months.

After Iddat- According to Sec. 4 of this Act, the maintenance of Divorce woman upon the any of the following order-

- a) Children of woman, if not,
- b) Parents of woman, if not,
- c) In case woman has no relative and they have no any means to pay the maintenance them, then the Magistrate give the order of Waqf Board to pay the Maintenance.

It means after Iddat the husband have no liabilities of maintenance, if children and having Income it would be his liabilities, if they have no Income then it would be liabilities of her parents. If they are not able then relative who succeed her property after death. If no relative, then it is up to the Magistrate, to order the Waqf Board of the state to provide the Maintenance to her. But no situation husband would be liable for maintenance. It means to save husband, the liabilities imposed on several persons.

Those who have raised their voice against the verdict of M.A. Khan vs Shah Bano Begum 1985. Where in old Muslim Law (Kuran and Sunnat) that Children of Divorce Woman, parents of Divorce Woman and relative of Divorce Woman is liable to give maintenance. If it is not given in Kuran that after Iddat, husband is not liable to maintenance for her wife. So, it is also encroachment Muslim personal law.

It is also not written that the maintenance will be done by his children or his parents or relatives. So by enacting Muslim Woman (Protection of Right on Divorce) Act the Muslim women, personal law was not interfered?

During the time of Prophet Mohammad, provision of maintenance for maximum time could be done for women. But in today's context, what was the harm if new Act (Muslim Woman (Protection of Right on Divorce) Act) made more provision than that?

Sec. 4 of Muslim Woman (Protection of Right on Divorce) Act will be applicable only-

- a) Iddat time is spent,
- b) She has not remarried, and
- c) She is unable to maintain herself.

And if their children, parents or relatives are not there for maintenance, then the Waqf Board will provides maintenance. It seems that legislature is not serious for the welfare of Muslim woman.

The Muslim Woman (Protection of Rights on Divorce) 1986 is challenge through several cases on the basis of Art. 14, 15 and 21 of the Constitution.

In the case of Maharshee Awadesh vs UOI<sup>18</sup> and requested that Union government should declared unconstitutional because it is against Art. 14, 15, 21, 38, 39A and 44 and make a uniform civil code. But court rejected the requisite and said that it is encroachment of the powers of legislature.

But in the case of Danial Lattifi vs UOI<sup>19</sup> the court collected the all the petitions and examine the Act i.e. Muslim Woman (Protection of Rights on Divorce) Act. And after examine the Act and find it is constitutional. The court express following views-

- a) A Muslim husband is liable to make reasonable and fair provision for Divorced wife. Such provision must be within the Iddat period under the provision of Sec. 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986.
- b) Sec. 3(1)(a) the liabilities to maintain his wife do not finish with the expiry of Iddat period. Rather, it is for whole life till she gets remarriage.
- c) Divorced woman, who has not maintained from herself, can proceed under Sec. 4 of this Act.

The court held the Act is constitutional under following reason-

- a) The court should avoid, any law which is passed by parliament from its unconstitutional.
- b) Such law should be interpreting on the basis of its object; it cannot be interpret on his words.
- c) While interpreting an Act, if it has two meanings, then it should be properly interpreted.

In case of Syed Fazal Pookoya Thangal vs UOI, the Kerala High Court orders the Waqf Board to pay maintenance of divorce wife and it is not violation of Art. 26 of the constitution along with that Waqf Board is not only "religious denomination" for Art. 26. But in the case of Shabana Bano vs Imran Khan<sup>20</sup> held that even in a Muslim woman has been divorced, she would be entitled to get maintenance for husband under Ss.125 of CrPC after the expiry of Iddat as long as she is not remarry. This means it is not yet clear that maintenance will be available from section125 of CrPC only. So wait & watch.

<sup>17</sup> 1985 SC.

<sup>18</sup> 1994 SC.

<sup>19</sup> AIR 2001 SC 218.

<sup>20</sup> AIR 2011 SC 305.