

MAINTENANCE OF MUSLIM WOMEN.

AUTHOR:

SWADHA SINGH

LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY

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Author- Swadha Singh

INTRODUCTION

The best way to judge any nation's progress is to find out the status of women in that nation. In India, both Hindu and Muslims reside and they are governed by their laws. Muslim laws are generally based on Quran and Hadith and anything which contravenes the Quran is not accepted in the Muslim law. 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 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. "In the word of Schacht: The maintenance of the wife comprises food, clothing and lodging, that is a separate house or a separate room which can be locked for a well to do also a servant. She is not obliged to bear any part of expenses of the matrimonial establishment"¹

The Muslim husband's obligation to maintain his wife arises in the two following circumstances:

1. Status arising out of valid marriage
2. Prenuptial agreement entered into, by the parties of a marriage.
3. The husband has a duty to support his wife as long as she is loyal to him and follows all of his fair orders.

During the marriage, both parties sign an agreement in which certain stipulated conditions are stated regarding the circumstances that may arise during the marriage. When the marriage is finalized both parties sign the document. If the wife has stipulated the condition in the marriage contract that in a specific situation she will be permitted to live independently and sue her husband for maintenance if the arrangement and term set out in it were followed.

The requirements could include that the husband does not mistreat her, that he does not take a second wife, and that he does not hold a concubine, and so on.

If a pre nuptial agreement specifies it, the wife is also entitled to a special payment known as *kharch-i-pandan*.

¹ Dr Paras Diwan, *Muslim law in modern India* 147 (Allahabad Law Agency, Faridabad, Haryana, 2016).

In this article, we look at the quantum of maintenance and what are the law regarding about maintenance for Muslims and what is the judicial precedent for the maintenance of Muslim women.

CONCEPT OF MAINTENANCE UNDER MUSLIM LAW

The Muslim rule of maintenance differs from most other religious laws on a variety of grounds. One of the cases can be that in most of the instances, the duty of a Muslim husband to maintain his wife arises only in a case where the wife does not have adequate means to sustain herself. It is right that obligation to maintain his or her, own children are personal obligation but under Muslim law it is not an absolute obligation.

Liability of maintenance. - A person become liable for maintenance or Nafaqah on account of a person;

1. Being his wife,
2. Being his relative, that is children, grand children, aged parents and other relatives
3. His servant.”²

But only in case of wife the obligation of maintenance is absolute means this is duty of husband to maintain his wife no matter she is rich or not or she is in the position to maintain her, it's a duty of husband to maintain her even if he has no means to maintain her.

Quantum of Maintenance: The amount of maintenance a wife is entitled to from her husband is a point of contention among Muslim authorities. The *Hedaya* lays down that quantum of maintenance depend upon the financial condition of the husband and wife. the Shia's lays down that the amount of maintenance is to be determined on the basis of wife requirements of condiments, food, clothing, residence, service and implements of anointing, due regard being also had to the custom of her equals among her own people on the own city. It appears that the wife (and when there are more wives, each wife) is also entitled to a separate apartment for herself, free from intrusion of any person other than her husband.³

Duration of Maintenance: When the husband dies, the wife's right to maintenance expires, and her right to inherit supersedes. As a result, the widow is not entitled to support during the death of Iddat. But under Muslim law a divorced wife is entitled to be maintained by her former husband during the period of Iddat.

Even after the iddat duration has expired, if the divorce is not conveyed to the women, she is entitled to retain. As a result, she is entitled to maintenance before it is conveyed to her. But if the marriage is dissolved due to the wife's apostasy or for any other criminal reason, she is not entitled to maintenance except during the iddat period. According to Islamic law, after the time of Iddat has expired, the wife is not entitled to any maintenance in any condition. Islamic law does not recognize any duty on the part of the husband to support his divorced wife.

² Aquil Ahmad, *Mohammedan Law* 232(Central Law Agency, Allahabad, 2013).

³ *Supra* note 1.

OLD MUSLIM PERSONAL LAWS

In the past, only the wife was entitled to maintenance under the old Muslim laws, and if the husband gives a divorce, the wife loses her right to maintenance. The wife's right to be upheld by her husband is absolute under Muslim law. Even if there is no compromise, a Muslim husband is obligated to keep his wife in a legitimate marriage. A Muslim husband was not obligated to support the wife of an invalid or irregular marriage due to lack of witnesses.

Maintenance is a debt owed by the wife to the husband. It is a self-contained privilege. The husband is only obligated to preserve his wife as long as she is obedient and follows all of his fair instructions, that is performs 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 matrimonial duties to the husband and may legally seek maintenance from him.

In the instances of ill-treatment, the wife may also demand future maintenance under the pre-nuptial agreement that shall be deemed as 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.

MAINTENANCE UNDER SECTION 125 OF CRPC

The failure of the wife to meet her matrimonial obligation owed to her husband and her demand for maintenance must be investigated under both Muslim personal law and the criminal procedure code. The wife's application for maintenance under this act is a separate legislative right that is unaffected by her personal law.

“Under section 125 of Code of Criminal Procedure given the provision of maintenance to wife, children, and parents. Here given if any person leaving sufficient means or refuses to maintain his wife (unable to maintain herself) A magistrate of first class may upon proof order such person to allot a monthly allowance for the maintenance of his wife”.⁴

Under the criminal procedure code, a Muslim wife who lives separately from her husband due to his second marriage is entitled to allowances. Here wife means divorced wife. A divorced Muslim wife is also covered by section 125. The order of maintenance in favor of a divorced wife shall be revoked, and such women shall not be entitled to maintenance under the following conditions, according to section 127(3).

- In the case of a divorced women who has remarried.
- In the case of a women who has earned the entire amount due to her on divorced under some customary and personal rule, and

⁴ Code of criminal procedure, 1973 (act 2 of 1974).

- After receiving a divorce from her husband, the woman has voluntarily waived her right to maintenance.

In case of *Md. Muhammad Azizullah v. Abdul Halim*⁵

Section 488 of the criminal procedure code is said to include a constitutional right that is unaffected by personal law. The right imposed on the wife by section 488 of the criminal Procedure Code is independent of personal law, and it is not appropriate to invoke Mohammedan law in lieu of the statutory law. The current version of the section allows the wife more autonomy than the previous version, but that does not mean that personal law will override it.

The most controversial case for maintenance of Muslim women is *Mohd Ahmed Khan v. Shah Bano Begum*⁶, In this case section 125 of the code of criminal procedure became the subject matter of the discussion.

In this case, a 62-year-old woman was divorced and was denied custody as a result. She hadn't married again. She went to the Judicial Magistrate's court in Indore and demanded 500 rupees per month in maintenance. Despite the fact that the decision was in her favor, she was only awarded Rs. 25 per month. She appealed to the High Court of Madhya Pradesh, which awarded her Rs. 179.20 per month.

Following the husband's appeal, the apex court recognized the secular essence of section 125, stating that all muslim women are entitled to maintenance beyond iddat as a civil right, and that in the event of a dispute between the criminal procedure code and personal law, the criminal procedure code will prevail.

A five judge bench of the Supreme Court;

The prosecutions in such cases are governed by Section 125 of the Criminal Procedure Code, which takes precedence over the parties' personal rules. In addition, if the husband pays maintenance, section 127(3) of the CrPC does not absolve the husband's responsibility for maintenance. She has the right to go to court under Section 125, if she is unable to maintain herself after the expiry of iddat period.⁷

After this case the conflict arises between the code of criminal procedure and the personal law because in personal law the maintenance given only in period of iddat means three menstrual cycle but in criminal procedure code there is no such provision. Here maintenance given beyond iddat period. Now the question arises that which should prevail if conflict arises between the code of criminal procedure and personal law. Finally it is resolved in the case of *Mohammad Haneefa v. Mariam bi*⁸ that if conflict arises between the code of criminal

⁵ AIR 1935 Oudh 285.

⁶ AIR 1985 SC 945.

⁷ Dr Hari Dev Kohli, *Muslim Law Cases and Materials* 105(Universal law publication, New Delhi, 2012).

⁸ AIR 1969 Mad 414.

procedure and personal law then the personal law should prevail. And this decision of the court was supported in case of *Saira Bano v. A.M Abdul Gafoor*⁹.

This generated a great deal of consternation in the legislature. To address this issue, Section 127(3) (b) was added in code of criminal procedure, which states that if a divorced woman receives a sum due to community customary or personal rules, the magistrate may cancel any maintenance order in her favor.

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

Under pressure from Islamist parties, the Rajeev Gandhi government decided to overturn the Judgement, and in order to do so, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed. This act is one of the most divisive pieces of legislation ever passed. Sections 3(1)(a) and 4(1) of the act are important, as they state that the former husband must provide adequate and equal provision and maintenance during the iddat period, and that if she is unable to maintain herself after the iddat period, she can seek maintenance from her relatives. If they are unable to pay, she will file a claim with the Wakf Board under S.4 (2).

The act provides that;

1. A divorced woman has the right to fair and equitable provision and maintenance from her former spouse, and the husband must do so during the time of iddat, though his duty is not limited to that period.
2. If the parties so wish, a divorced wife can file an application under sections 125 to 128 CrPC.
3. There is no clause in the act that nullifies orders made under section 125 of the Cr.PC or takes away a Muslim woman's vested rights.
4. She will seek maintenance from her relatives and the Waft Board if she is unable to obtain it from her husband.
5. The act ensures that a divorced Muslim woman has adequate means of subsistence so that she does not become destitute and is not thrown out on the street without a roof over her head or any other means of support.

The concern now is whether there is any inconsistency between sections 125 to 128 and this Act. So, under section 5 of this act, any party (wife or husband) has the option of being regulated by the act or by the code of criminal procedure when they first appear before the magistrate on the wife's application under section 3. This would appear to rule out any contradictions between the two provisions. If there was inconsistency then the parliament would not have given an option to the parties. Further, if we try to find out the purpose of parliament in enacting the act, and read even cursorily the whole statute, the cardinal rule of construction is that the legislature's intention must be gathered by reading the statute as a whole. It is clear that the law was passed to safeguard divorced women. When we look at the

⁹ 1987 SCC (2) 285.

various phrases used in sections 3(1) (a), 3(1) (b), 3(3), 4, and 5, it's obvious that parliament wanted the divorced woman to have complete security.¹⁰

CONSTITUTIONAL VALIDITY OF THE ACT

In the case of “*Danial Latifi v. Union of India*”¹¹, The Supreme Court agreed with the views expressed by the Gujarat, Bombay and Kerala High Court and upheld the constitutional validity of the act by saying that it is not anti-women”.

In this case, the wife's application to set aside the Talaknama and for a decree of restoration of conjugal rights was approved by the learned judge, prompting the wife to file an appeal, claiming that the order was unjust. Although upholding the act's legality, the Supreme Court stated that;

- A. A Muslim husband is obligated to provide for the future of his divorced wife practically and equitably, which obviously includes her maintenance. In accordance with section 3(1)(a) of the act, the husband shall make such a rational and equitable provision extending beyond the iddat duration during the iddat period.
- B. The Muslim husband's obligation to pay maintenance to his divorced wife under section 3(1)(a) of the act is not limited to the Iddat time.
- C. A divorced woman who has not remarried and is unable to support herself after the iddat era can take action against her family, including her children and parents, under section 4 of the act, who are liable to support her in relation to the assets that they inherit on her death under Muslim law from such divorced women. If any of the relatives are unable to pay maintenance, the magistrate may order that it be paid by the Waft Board appointed under the act.
- D. Since the act's provisions do not violate Articles 14, 15, or 21 of the Indian Constitution, it is constitutionally valid.

The act only applies to divorced women; it does not apply to women who have never been married. Furthermore, the criminal procedure code section 125 proceedings are civil. Even if the court found a divorced Muslim woman who had filed an application under section 125 of the Cr. P. C., it was the court's decision to treat the case as a petition under the 1986 act, given the legislation's beneficial existence.

CONCLUSION

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[https://en.wikipedia.org/wiki/Muslim_Women_\(Protection_of_Rights_on_Divorce\)_Act_1986](https://en.wikipedia.org/wiki/Muslim_Women_(Protection_of_Rights_on_Divorce)_Act_1986).

¹¹ 2001 S.C.3958

Muslims are governed by their personal laws and the provision of maintenance are given in the Muslim Personal Law. Generally, maintenance means food clothing and lodging. In Muslim law the wife children and parents are entitled to maintenance. Here we study about the maintenance of Muslim women's, in Muslim personal law women's are entitled to maintenance if she is divorced women. If her husband does not give a divorce then before the divorce is completed she cannot claim for maintenance. In Muslim law the maintenance is given only for the period of iddat beyond that the maintenance is not provided to the Muslim women's. But in the Criminal Procedure Code the provision for maintenance is different and it is secular in nature. In Cr. P C the maintenance is provided beyond the iddat period.

Then in the landmark case of shah bano begum the apex court said that the rule of criminal procedure code applicable to Muslim women also and the maintenance is provided beyond the iddat period. And held that it is a civil right of the Muslim women's. Now the controversy arises that in case of conflicts which one prevails. So in many other cases the court held that if the conflict arises then personal law should be prevail. After the judgement of shah bano case. The then government under the pressure of Islamic parties introduce a new act to overturn the judgement that was Muslim Women(Protection of Rights on Divorce Act)1986. Under this act provisions are given regarding Muslim women's maintenance, that maintenance is provided to Muslim women's only if she is divorced. And maintenance is provided to only iddat period and if she is enabled to maintain herself then maintenance is provided beyond the iddat period. If her husband and relatives are unable to give her maintenance then she can claim maintenance from Waft Broad. Then the question arises about the constitutional validity of the act, the contention was that it is not in the favor of Muslim women's and also it infringe article 14, 15, and 21, but court said that this act is valid and it is not the violation of article 14, 15, and 21 of the constitution. And also it is not against the right of the Muslim women.

The act is only passed to overrule the provision of Criminal Procedure Code. This is a secular country and the provision of Cr. P C are also secular and it is not right to discriminate the women's right only on basis of religion. If the husband has done something wrong then why the wife suffers from her husband act. So according to my point of view the husband is liable for maintenance to his wife beyond the iddat period. Because she is dependent upon her husband and if she is a divorcee then who can maintain her. So it's her husband duty to maintain her after divorce.