

## **DISSENT, BACKLASH, AND REFORM: The Ongoing Fight for Maintenance Rights of Muslim Women In India**

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### **ABSTRACT**

This paper examines the complex issue of maintenance rights for divorced Muslim women in India. It explores the tension between religious traditions and evolving legal frameworks that shape these rights. The paper begins by highlighting the landmark case of Shah Bano, which established a woman's right to maintenance under a universally applicable law (Section 125 of the CrPC). However, it also discusses the subsequent Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act), which limited these rights and created a conflict with Section 125. Further analysis delves into the grounds for claiming maintenance, including reasonable cause for leaving the marital home, cruelty, and the father's responsibility for children. The paper then explores the recent Shamim Bano case, which offered a more expansive interpretation of maintenance rights for Muslim women. This case, along with *Danial Latifi v. Union of India*, demonstrates the courts' attempts to reconcile the 1986 Act with broader legal principles. Despite these efforts, challenges remain. The requirement for spousal consent under the 1986 Act significantly restricts access to Section 125.

### **INTRODUCTION**

Indian society has a long history of grappling with the tension between gender equality and deeply entrenched religious traditions. Often, religious norms take precedence, leading to the marginalization of efforts to address gender injustice, particularly for women. This marginalization occurs in the name of upholding the dominant religious views.<sup>1</sup>

To counter this trend, a crucial step lies in implementing progressive and universal legal principles. These principles should transcend boundaries of class, religion, and gender, ensuring equal application for all citizens. Only through such a uniform approach can laws effectively promote gender equality and achieve positive outcomes. One example of a progressive law is Section 125 of the Code of Criminal Procedure (CrPC). This universally applicable provision provides civil remedies to enforce the fundamental obligation of a person to financially support their spouse, children, or parents who cannot maintain themselves. Ordinarily, Section 125 takes precedence over personal laws.

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<sup>1</sup> Siobhan Mullally, "Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case", 24 (4) OJLP 671 (2004).

However, a complication arises with the Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act). This self-contained Act outlines the obligations of a Muslim husband and other relatives towards a divorced Muslim woman. It also defines the remedies available to enforce her rights. Notably, the 1986 Act upholds the Islamic law principle limiting a husband's maintenance obligation to his wife only during the iddat period (waiting period after divorce).<sup>2</sup> Additionally, Section 125 of the CrPC cannot be applied to Muslim women unless both spouses agree under Section 5 of the 1986 Act.<sup>3</sup>

In this paper we will discuss the issue of maintenance rights for Muslim women. In India the issue of maintenance rights for Muslim women is a complex one, intricately linked to both religious tradition and evolving legal frameworks. Ensuring financial security after divorce becomes a critical concern for many Muslim women, navigating a landscape shaped by historical precedents and contemporary legal provisions.

Further this research paper delves into the key provisions governing maintenance rights for Muslim women in India. We will explore how these rights have evolved over time, examining both the limitations imposed by specific laws and the avenues for securing support offered by others. By understanding the interplay between these provisions, we can gain a clearer picture of the challenges and opportunities Muslim women face in securing their financial well-being.

### **CONDITIONS FOR GRANTING MAINTENANCE:**

For women of all religions (except Muslim) section 125 of the Code of Criminal Procedure provides for claiming maintenance. It allows any woman, irrespective of religion, to claim maintenance from their Husband or Children (if they are adults and capable of earning but are not maintaining the woman) or Parents (if they are unable to maintain themselves) and the condition should be that the woman must be unable to maintain herself financially and the person from whom maintenance is sought (husband, child, parent) must have the capacity to pay.

Notably for Muslim Women the situation is more complex due to the interplay of Section 125 of the CrPC and the Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act). Muslim Women (Protection of Rights on Divorce) Act, 1986 outlines the obligations of a Muslim husband towards his divorced wife. It limits a husband's maintenance obligation to the iddat period (waiting period after divorce) following a divorce. This duration provides limited financial security for women, especially those with children or without immediate prospects of remarriage. This controversial clause restricts a Muslim woman from seeking maintenance under Section 125 of the CrPC unless both spouses agree (Section 5). This essentially forces a woman to choose between limited maintenance under the 1986 Act or

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<sup>2</sup> Umar Hayat Khan v. Mahboobunisa, 1976 CrLJ 395 (Kant).

<sup>3</sup> J. Y. V. Chandrachud, V. R. Manohar, *The Code of Criminal Procedure* 253 (Wadhwa, Nagpur, 18<sup>th</sup> Enlarged Ed., 2006).

forgoing any under Section 125, often putting her in a vulnerable position during negotiations.

But now the judicial position has been cleared by the case of *Shamim Bano v Ashraf Khan*. The case is one such milestone as it interprets Section 125 of the Code of Criminal Procedure to be universally applicable to women regardless of personal laws' dicta on the matter.<sup>4</sup> Taking the lead from the popular *Shah Bano* case, the Supreme Court of India held that Section 125 would apply to Muslim women, and they would be entitled to maintenance irrespective of Mahomedan law's views on the matter

## **THE SHAH BANO CASE AND ITS COMPLEX LEGACY**

The landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)<sup>5</sup> marked a turning point in the debate surrounding maintenance rights for divorced Muslim women in India. In this case, a 62-year-old woman, Shah Bano, was divorced by her husband. The Supreme Court ruled that she was entitled to receive maintenance under Section 125 of the CrPC, a universally applicable law. The court's reasoning relied on interpretations of Islamic texts and Quranic principles. It further clarified that a husband's obligation to maintain his wife could not be negated by simply paying the "mehr" (dowry) or providing maintenance during the iddat period.

### **Backlash and The Muslim Women (Protection of Rights on Divorce) Act, 1986**

This judgment sparked significant protests from orthodox sections of the Muslim community who viewed it as an infringement on their personal laws.<sup>6</sup> In response to this pressure, the government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act took precedence over Section 125 of the CrPC, a law with wider applicability. The 1986 Act limited a Muslim woman's right to maintenance from her husband only to the iddat period. After that, the responsibility shifted to her relatives or the District Waqf Board. This effectively restricted Muslim women's access to Section 125 and raised concerns about the law becoming "anti-secular" and "anti-feminist" due to political and religious influences.<sup>7</sup>

### **The Ongoing Struggle for a Clear Path**

The 1986 Act continues to be the primary legal framework for maintenance rights of divorced Muslim women. However, courts have attempted to interpret the provisions of both the CrPC and the Act more broadly in order to provide greater relief to Muslim women. Analyzing

<sup>4</sup> *Abdul Rashid v. Farida*, 1994 CrLJ 2336 (MP).

<sup>5</sup> (1985) 2 SCC 556

<sup>6</sup> A.M., "The Shah Bano Legacy", *The Hindu*, Aug. 10, 2003, available at: <http://www.thehindu.com/2003/08/10/stories/2003081000221500.htm>

<sup>7</sup> Rajashri Dasgupta, "Historic Judgment and After", 22 (17) EPW 748- 749 (1987).

these judicial interpretations is crucial for understanding the current, complex situation regarding maintenance rights for Muslim women in India. This revised version clarifies the timeline of events and the reasoning behind the controversy. It also emphasizes the ongoing efforts to interpret the laws in a way that benefits Muslim women.

## **GROUND FOR MAINTENANCE FOR SEPARATED MUSLIM WOMEN AND CHILDREN**

This section explores the grounds under which a separated Muslim woman can claim maintenance for herself and her children in India.

### **Reasonable Cause for Leaving the Matrimonial Home**

The courts acknowledge that a young wife with a child may have a "reasonable cause" to leave the marital home due to unbearable circumstances. Indian women are generally known for their tolerance, enduring "normal quarrels" as part of married life. However, when situations become intolerable, a wife can leave and still claim maintenance.

### **Cruelty as a Ground for Maintenance**

Cruelty inflicted by the husband is a well-established ground for a wife to claim separate residence and maintenance. To succeed in such a claim, the wife must prove two elements:

1. Ill-treatment: This refers to specific behaviours inflicted by the husband.
2. Reasonable Apprehension of Harm: This refers to the wife's fear of future harm if she continues to live with the husband.

The courts have recognized that cruelty can be both physical and mental, with mental suffering potentially being even more severe. Several landmark cases have established how courts assess the nature of cruelty and its impact on the wife.

In *Shobha Rani v. Madhukar Reddi*, while dealing with 'cruelty' under Section 13(1)(a) of the Act, this Court observed that the said provision does not define 'cruelty' and the same could not be defined. *The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents the difficulty.* Thereafter, the Bench proceeded to state as follows: –

*“First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused a reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough*

*and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”*

### **Father's Responsibility for Infant Children**

Under Islamic law, father is liable to maintain his sons till they attain puberty and *daughters till they are married* and such obligation cannot be denied on the ground of his pecuniary incapacity or indigence so long as he has the ability to earn and no one shares such obligation. He is bound to maintain even if he is indigent or the children are in the custody of the mother. In *Ms. Akhtari Begum v. Abdul Rashid*, where the rights of a four-year-old child was upheld despite the fact the child was in the custody of the mother.

The Supreme Court has consistently upheld the child's right to demand maintenance from the father, even when residing with the mother or another caregiver. Financial inability of the father does not negate this obligation, as long as he has some earning capacity.

### **THE CHALLENGE OF RECONCILING LAWS**

The landmark *Shah Bano* case highlighted the complexities surrounding maintenance rights for divorced Muslim women. A subsequent case, *Danial Latifi v. Union of India*<sup>8</sup>, attempted to address the ensuing confusion. In *Danial Latifi*, the Supreme Court aimed to achieve a balance. While upholding the Muslim Women (Protection of Rights on Divorce) Act, 1986, they interpreted it more generously. They ruled that Muslim women deserved "reasonable and sufficient provision" for livelihood beyond the iddat period, potentially extending for life or until remarriage. This interpretation aimed to capture the spirit of Section 125 of the CrPC, a universally applicable law offering broader maintenance rights.

The court emphasized the need for consistent legal principles to prevent discrimination. However, a crucial limitation remained. The 1986 Act requires a Muslim woman's consent to invoke Section 125. This creates a significant hurdle. Given the potential for higher maintenance obligations under Section 125, it's unlikely a husband would agree to its application. Therefore, despite the court's attempt to broaden maintenance rights in *Danial Latifi*, many Muslim women struggle to access adequate support. The requirement for spousal consent under the 1986 Act significantly undermines the potential benefits of Section 125.

### **POSITION SETTLED AFTER SHAMIM BANO CASE**

The landmark *Shamim Bano* case in 2018 marked a turning point for divorced Muslim women in India seeking maintenance rights. The Supreme Court's decision skillfully

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<sup>8</sup> (2001) 7 SCC 740



combined the interpretations from earlier cases like Shah Bano and Danial Latifi. This resulted in a significant expansion of rights for Shamim Bano. Not only did she receive mehr, ornaments, and maintenance under the existing Act, but she was also awarded maintenance beyond the iddat period, a crucial step forward. The court further recognized the limitations of the previous order and ensured Shamim Bano's access to Section 125 of the CrPC. This section, with its broader applicability, allowed her to claim post-iddah maintenance even without her husband's consent. This decision significantly broadened the legal options available to divorced Muslim women.

However, the path forward remains complex. While the Shamim Bano verdict strengthens the secular character of Section 125 and offers greater protection to Muslim women, the Muslim Women (Protection of Rights on Divorce) Act of 1986 still presents a hurdle. Ideally, the Act's scope should be refined to focus solely on ensuring fair mehr and maintenance during the iddat period. Additionally, legislative reforms are needed to restrict the Act's application to obtaining mehr and eliminate the requirement for spousal consent under Section 125.

Such a solution would achieve a harmonious balance. It acknowledges religious differences while prioritizing the well-being of divorced women. By removing legislative and procedural roadblocks and ensuring a clear pathway to maintenance under Section 125, these reforms would empower Muslim women and significantly reduce their dependence on potentially discriminatory interpretations of religious laws.

## **CONCLUSION WITH RECOMMENDATIONS**

Despite recent advancements, securing adequate maintenance remains a complex challenge for divorced Muslim women in India. The conflict between the Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act) and Section 125 of the Code of Criminal Procedure (CrPC) creates a situation where religious traditions and secular legal principles collide. The landmark Shamim Bano case in 2018 marked a significant step forward, granting broader maintenance rights and access to Section 125. However, the 1986 Act with its limitations and the spousal consent requirement continue to be hurdles.

To achieve a balanced and just solution, this paper proposes legislative reforms:

- **Refine the scope of the 1986 Act:** Limit its focus to ensuring fair mehr and maintenance during the iddat period.
- **Restrict the Act's application:** Allow it to function solely for obtaining mehr, eliminating its influence beyond the iddat period.
- **Eliminate spousal consent under Section 125:** Empower Muslim women to directly claim post-iddah maintenance without depending on their ex-husband's agreement.

By implementing these reforms, India can achieve a legal framework that respects religious sensitivities while prioritizing the financial security and well-being of divorced Muslim

women. This would remove discriminatory interpretations of religious laws and empower them to navigate their lives with greater independence and dignity.