

Maintenance under Muslims' Personal Law

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ABSTRACT: *The process by which the courts interpret and apply the law in a certain circumstance is known as interpretation. While adjudicating on a case, a certain amount of interpretation is required. When it comes to personal legislation, however, the judiciary's ability to interpret the law is limited. Muslim law is a type of personal law based on the Quran and Sunnat as its major sources. This legislation has been in effect for over a thousand years, and its adherents hold it in high regard. The fact that the Quran has remained unaltered to this day demonstrates this. The Supreme Court is unable to freely interpret it. The SC must accept the interpretation of well-known Muslim jurists when interpreting it, and they cannot provide their own view of Muslim law. However, depending on the sort of society and the age in which it is employed, each rule has a varied utility. As a result, the court develops laws and shapes them into effective weapons for advancing justice. This is done by the use of legal interpretation. So, what powers does the judiciary have when it comes to interpreting Muslim law? In what conditions is it permissible for the judges to interpret Muslim law in their own way? Using primary and secondary sources, we examine the conditions in which the judiciary can apply its power of interpretation over Muslim laws in this article.*

KEYWORDS: *Interpretation, Maintenance, Muslims, Quran, Rights.*

1. INTRODUCTION

The holy book of Quran is a one-of-a-kind and incomparable text that serves two purposes: it regulates the personal lives of its believers and it provides spiritual understanding. The Quran is thought to contain the revelations from God to the Prophet through his angel. Muslims' personal rules are derived from both the Quran and Sunnat. Sunnat refers to what the Prophet said, did, or maintained in silence. The Quran is so adored by the people that it has remained unchanged for over a thousand years. These facts make changing Muslim personal laws extremely difficult. The legislation established by the Holy Quran, on the other hand, required to be updated to reflect the changing times. Various jurists came in and interpreted the law at this point. These interpretations are likewise a legitimate source of law. Interpretation, according to Salmond, is the process by which courts attempt to determine the meaning of legislation via the use of authoritative forms in which it is stated. So, what should the court do when a legal matter necessitates the application of Muslim Laws? It must adhere to the following guidelines: -

When it comes to interpreting the Quran, the judiciary is unable to do so on its own. It is unable to understand the words and sentences using its legal thinking. The court has no power to impose its own interpretation of the Quran, contrary to the clear decision of interpreters of great antiquity and authority. As a result, when the text of the Quran has to be translated, the court must consider the jurists' views [1].

In the case of Ahadis, it can be said that in the event of a disagreement among Muslim jurists, the point in question should not be decided by the court, but rather on the opinion of recognized jurists, who alone could have taken on the task of shifting traditions, and in the event of divergence, on their comparative superiority.

Hanafi Law Interpretation - Abu Yusuf and Imam Mohammed were two of Abu Hanifa's followers. These are Hanafi's highest authority. In the event of a disagreement, the judiciary

is unable to make its own interpretation. It will have to choose between two opinions based on the following criteria:

- In the event of a disagreement between Abu Hanifa and his two disciples, the disciples' view will prevail.
- In the event of a disagreement between Abu Hanifa and Imam Mohammad, the view of Abu Yusuf is recognized.
- If all three have differing viewpoints, Abu Yusuf's viewpoint is accepted.
- When there is a disagreement and no precedent, the court must make a conclusion that is based on fairness, justice, and moral conscience.

Jurists' perspectives are extremely important when it comes to understanding Muslim law. When a great Muslim jurist interprets a certain percept of Muslim Law in a specific way, the interpretation should be adopted without referring back to original sources, since this is the only way to ensure that Muslim Laws are upheld by Indian courts. As a result, it may be concluded that the court's ability to interpret Muslim law is severely constrained. Simply said, it is quite difficult to depart from the established law. Certain Arabic terms, for example, have taken on new meaning in India; nonetheless, while interpreting those words, the court will have to interpret the word in its original sense [2].

Every law, however, must change through time, and one method to do so is through judicial interpretation. Interpretation provides a new dimension to the already established law that is necessary for justice to be served. The breadth of judicial interpretation under Muslim Laws is clearly limited, as seen by the preceding debate. Although it is restricted, it is not non-existent. The law of maintenance, also known as Nafaq, is one of the Muslim laws that has evolved via judicial interpretation [3].

Problem Description

Every legislation change throughout time as a result of interpretation or other factors. Judicial interpretation ensures that laws are read in a way that is advantageous to the entire community. Personal laws, such as Muslim Laws, are more rigorous since they are based on the Holy Book of Quran, which limits the scope of judicial interpretation. How can the judiciary overcome the immovable hurdles erected by Muslim Laws and give it a societally useful interpretation[4]?

Research Objectives

The study's goal is to look into the conditions in which the judiciary can use its power of interpretation to interpret Muslim laws.

Hypotheses

- If the Muslim Legislation is in contradiction with secular law that protects people's rights, it can be construed independently.
- The Muslim Law can be construed independently if it violates citizens' Fundamental Rights or the Constitution's Basic Structure.
- If it is in the best interests of society as a whole, the Muslim Law can be construed unilaterally.

2. DISCUSSION

On The Basis of The Quran, A Divorced Wife's Right to Maintenance

The right of a divorced Muslim woman is founded on the Quranic law: Let the woman live (in iddat) in the same manner that you do, according to your means, and do not bother them in order to limit them. And if they are carrying (life in their womb), spend (your wealth) on them until they birth their child, and if they nurse your (offspring), pay them their remuneration.

Let there be a fair provision for divorced women as well. This is a responsibility for people who are aware of God. (2:241)

As a result of these statements, it may be deduced that a divorced wife is only entitled to be maintained.

- a. While she is pregnant.
- b. During iddat.

The Shah Bano Case - Muslim Women's Maintenance Rights

After the Iddat time has passed, Muslim law does not compel the male to be accountable for the lady. In the landmark case of Shah Bano Begum, an issue emerged. Is a Muslim man's obligation to support his wife limited to the period of Iddat, according to Mohammad Ahmed Khan?

The Case's Details

In 1932, the respondent (wife) married the appellant (husband), who was a lawyer by profession. In 1975, she was forced to leave the house. Her spouse supported her for two years at a monthly rate of Rs. 500 because the appellant's annual salary was Rs. 60,000. Her spouse divorced the respondent in 1978. He made a deposit of Rs 3000 with the court to cover the Mahr or dower payment. The magistrate ordered the appellant to pay Rs. 25 per month in maintenance in August 1979, which was then increased to Rs. 179.20 per month in a revisional motion by the M.P. High Court. As a result, an appeal was filed with the Supreme Court. The appellant argued that because they were divorced and the Iddat period had passed, he was no longer obligated to maintain the appellant [5].

Reasons for the Decision

A divorced wife who is unable to support herself might seek maintenance under Section 125 of the Criminal Procedure Code. The following is the text of the provision [6]:

Section 125(1) – If a person with sufficient means neglects or refuses to maintain- (a)his wife, who is unable to support herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in total, as such Magistrate may determine.

The definition of "wife" is given in the Explanation: "wife" refers to a woman who has been divorced by her husband or has gotten a divorce from him and has not remarried. A disagreement developed because, according to Shariat, the husband is required to pay Maintenance to the divorced wife after the Iddat period has expired [7].

Another portion of Section 125 that conflicts with Muslim personal law is the Explanation under Subsection 3: "If a husband has contracted marriage with another woman or keeps a mistress, it shall be regarded to be a fair basis for his wife's reluctance to live with him." 13 However, it is obvious that a husband is entitled to have numerous marriages under Muslim law, and a wife's unwillingness to live away from her husband because he exercised his freedom to have several marriages should not be a valid reason. As a result, the question of whether Section 125 will take precedence over Muslim personal rules emerges.

This section is clearly SECULAR in nature. It is intended to apply to all citizens of the country, regardless of religion, because it is part of the Criminal Procedure Code, rather than personal rules that apply solely to individuals of a certain faith. It benefits all women, whether Hindu, Muslim, Christian, Jain, Parsi, or others. The reason for making this secular rule equally applicable to everyone is because it reduces vagrancy and poverty in society. Every citizen in the country is required to obey it, and it is the government's responsibility to enforce it. Furthermore, it demonstrates unequivocally that, in the event of a disagreement, section 125 takes precedence over personal law [8].

As a result, the court determined that the real position is that, if the divorced wife is competent to support herself, the husband's obligation to provide maintenance for her ends after the Iddat period expires. She has the right to use Section 125 of the Code if she is unable to support herself. Furthermore, because Section 125 overrides personal law, a Muslim woman can claim maintenance even if she is living apart from her husband because he has contracted another marriage, as indicated above. This justification will be accepted [9].

The appellant also argued that under section 127(3)(b), a Magistrate shall cancel an order made by him under section 125 in favor of a woman who has been divorced by, or has obtained a divorce from her husband, if the woman who has been divorced by her husband has received, whether before or after the date of the said order, the entire sum, which, under any custody, The appellant paid the Mahr and claimed that he had covered all of her Maintenance obligations.

On this issue, the court decided that it needed to evaluate life's reality. Certainly, the Mahr is a sum that demonstrates respect for women, but its goal is to avoid vagrancy and poverty. The goal is to keep the woman from becoming a homeless person. Mahr, on the other hand, does not achieve the goal. Mahr is not the sum owed by the husband to the wife on divorce, according to the court, and thus does not fall within the scope of Section 127 (3) (b) of the Code [10].

3. CONCLUSION

In order to advance the law's goal, Justice Krishna Iyre, who spoke for the Court in this case, relied heavily on the teleological (purpose-related) and schematic methods of interpretation. These constructional approaches have their own significance in the interpretation of legislation intended to improve the lives of those who are marginalized in society. There are an unimaginable amount of traditions and personal laws, and these personal rules are inflexible, making it difficult to evolve them. The court does not have complete freedom to interpret and evolve them as it sees fit. However, based on the foregoing case law, there are some circumstances in which the judiciary is permitted to interpret personal laws. The first theory, according to which the Muslim law can be construed independently by the court if it

conflicts with secular law, is correct. Because Section 125 of the CPC is a secular law that conflicts with personal laws, the court decided that if a woman is capable of supporting herself, the husband's responsibility to support her ends after Iddat is completed. If the woman is unable to support herself, she may petition the court for a maintenance order under S.125 Cr.P.C.

As a result, secular law always wins over personal law, and the court can interpret the secular law to give it effect. Similarly, the second hypothesis is correct, and personal laws may be interpreted to guarantee that citizens' fundamental rights are protected and the constitution's essential framework is preserved. This is due to the fact that basic rights are secular human rights that apply to everyone equally, and so personal laws cannot infringe on their sanctity. This rationale was reinforced by the ruling, which declared triple Talaq unconstitutional since it infringed on Muslim women's fundamental rights.

The third hypothesis is correct as well. The third hypothesis stated that the judiciary has the power to interpret Muslim law if it is in the public interest. This is demonstrated in the current scenario. The purpose of Section 125 of the Criminal Procedure Code is to avoid poverty and misery in society. Due to her lack of financial security, a divorced woman frequently becomes a poor and defenceless pauper. Maintenance is a technique for preventing social poverty. The Muslim rule that freed the husband of the need to pay maintenance to his wife after the Iddat period encouraged poverty and destitution in society, and it is the court's responsibility to give it an interpretation that is in the best interests of society as a whole. As a result, the court granted the Muslim women's request for support under Section 125. As a result of the preceding debate, it is evident that, while the judiciary's ability to interpret personal laws is restricted, it is not non-existent. The court is entitled to interpret the Muslim Law in order to promote the objectives of justice, preserve basic rights, fulfil its function as the protector of the constitution, and protect the interests of society as a whole.

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