

MAINTENANCE OF A MUSLIM WIFE UNDER SECTION 125 CrPC: AN OVERVIEW OF SUPREME COURT CASES

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ABSTRACT

Muslim law in its pristine purity was an admirable system of jurisprudence providing, as it did, many rational and revolutionary concepts which could not be conceived by the other systems of law then in force at that distant date. It provided, for example, for the right of inheritance to the females even when there were male heirs and also the modern concept of divorce by mutual consent, while the other systems of law took so many centuries to do so. Although it evolved over years it still has some lacunae, especially regarding the maintenance of wife after divorce and which law should guide the issues concerning this concept. Muslim law provides for the maintenance of wife and her rights over the claim of maintenance during marriage as well as after the dissolution of the marriage. There are many progressive legislations which came up for protection of Muslim women rights after divorce. One such important legislation which will be discussed in this paper is Muslim women protection of rights on divorce, 1986. This paper tries to throw light on the circumstances which are essential to provide for maintenance after divorce. Also discusses those situations where husband is not liable to maintain his wife, what is the time period for providing maintenance and the conflict between personal law and criminal procedure code. This paper also gives an insight into the cases dealt by the Supreme Court of India over decades which tried to resolve the conflict and emergence of uniform civil code regarding applicability of Sec. 125 of CrPC. Some of the case laws like Shah Bano, Danial Latifi which are a breakthrough in the concerned law are discussed briefly.

Keywords: *Danial Latifi caseⁱ, Divorce, Iddat Period, Maintenance, Muslim Women Protection Act, Sec 125 Crpc, Shah Bano Caseⁱⁱ.*

INTRODUCTION

Under Muslim law women are considered weak to men and men have the obligation to maintain their wife at all situations. This was a source to the concept of maintenance after divorce. The concept of Maintenance was introduced to provide support to those people who are not capable to maintain themselves. It is basically provided to the spouse who is not independent and is dependent on the other spouse. The principle of maintenance includes financial support, means of livelihood and educational facilities. The whole concept of maintenance is to protect the rights of the wife and to provide her a dignified life and even after the dissolution of marriage, the husband is in the liability to provide maintenance to his wife if she is not able to maintain herself. Various laws and rules have been made on the principle of maintenance. The concept of maintenance has also been added to personal laws. The Muslim Law also provides for maintenance. The whole law with regard to maintenance of Muslim divorced woman finds its source in some Quranic verses, which give a clear-cut picture that a divorced woman is entitled to maintenance till the expiry of iddat period or in case she is pregnant this period extends up to the delivery. It is believed that women are not able to maintain themselves on their own so it is the liability of the husband to provide maintenance to her wife in all conditions even if she is capable of maintaining herself. Maintenance is known as “Nafqah” which literally translates to “what a man spends on his family”. Nafqah basically includes food, clothing, and lodging. Under Muslim Law, maintenance is provided to wife even if she is capable of maintaining herself which differs it from other laws and gives her more rights than her counterparts in other religions.ⁱⁱⁱ It is the liability of husband under Muslim law to maintain his wife even after divorce irrespective of his financial condition. A divorced wife is entitled to be maintained by her former husband during the period of iddat which is a period of three menstrual courses or three lunar months according to Muslim law. On the expiration of the period of iddat, the wife is not entitled to maintenance as Muslim law does not recognize any obligation on part of the husband to maintain his wife after this period. The quantum of maintenance is not prescribed under any matrimonial statute. It is decided at the discretion of the court upon the existing circumstances. Under the Shia Law, the quantum of maintenance is decided by taking into consideration the requirements of the wife. Under Shafei Law, the quantum of maintenance is determined by the post of the husband. Under Muslim Law the rights of the wife to get maintenance during the marriage is absolute but after the dissolution of marriage, her rights are

limited. Muslim wife does not have any proper means for herself in Muslim Law. If after the expiry of iddat period, she has no means to maintain herself then in that case husband has no liability for her and she is left with nothing. Which paves way to section 125 of CrPC, provides for maintenance to divorced wife of all religion. It stated that after divorce if the wife is not able to maintain herself, she is entitled to maintenance from her husband until she gets married. The act applies this provision to Muslim women also who are not entitled to the maintenance after the period of Iddat. This act creates liability over husband to provide maintenance to wife even after the period of Iddat. But the provisions of this act are in conflict with the provisions of Muslim Law and a debate was going on as which law should be applied. This matter was seen by the Supreme Court in many notable cases. One such notable case is Shah Bano case, in which the court propounded that a divorced Muslim woman was entitled to maintenance under section 125 CrPC, if she was not able to support herself created stir among the traditionalists. Consequently, the government had to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which resolved the conflict up to certain extent and diluted the effect of the judgement.

LEGAL FRAMEWORK

There was no code as such for Muslim law due to many reasons. One of reasons was they were inclined towards conservative thought process and never were acceptable towards change. Muslim law as it stands today needs a lot of changes, but orthodox Islamic thinking and different practices in among different sects make it difficult to bring about any change in the law unlike Hindu law which was codified. However, two legislations are widely used whenever there is an issue regarding maintenance of wife in Muslim law. They are:

1. Criminal Procedure Code:

Before the enactment of this Muslim Women (Protection of Rights on Divorce) Act, a Muslim woman, who was divorced by or from her husband, was granted a right to livelihood from her husband in the shape of maintenance under the provisions of Chapter IX of the Code of Criminal Procedure until she remarried. Section 125 to 128 of CrPC lay provisions for

maintenance of wives, children and parents. Section 125 of the Code gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. This provision is a measure for social justice and specially enacted to protect women. The applicability of this section to Muslim women was questioned in the landmark case of *Mohammad Ahmed Khan v. Shah Bano Begum*^{iv}. The court upheld the applicability of criminal procedure code to every woman irrespective of their religion.

2. Muslim Women (Protection of Rights on Divorce) Act, 1986:

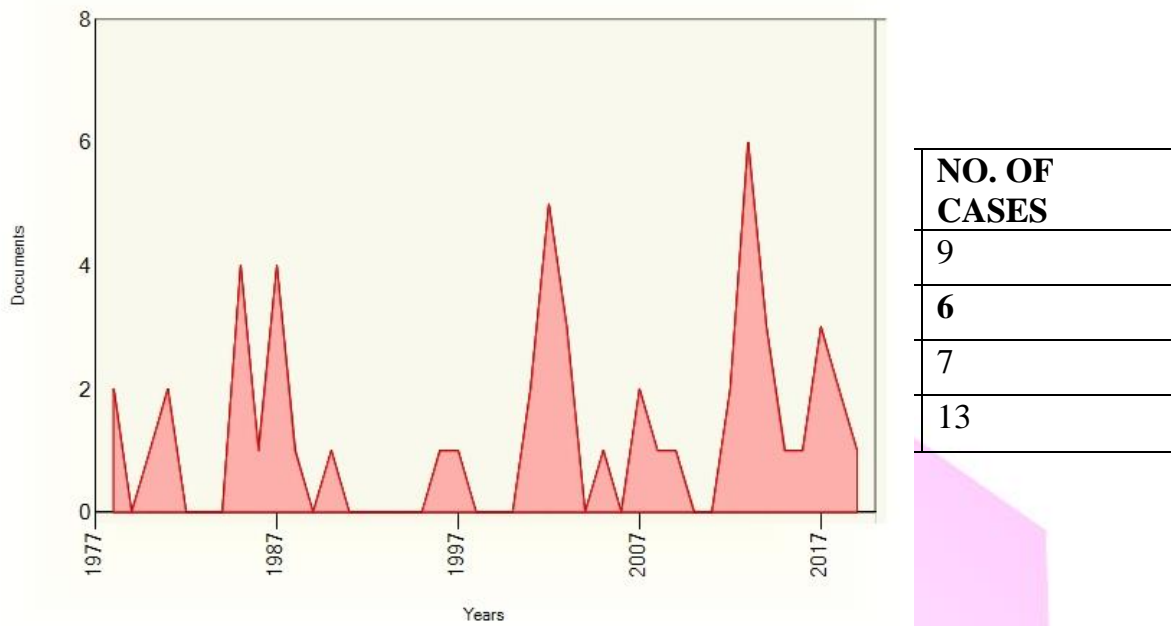
The deprivation of the Muslim divorced woman of her right to maintenance under the beneficial provisions of Chapter IX of the Code of Criminal Procedure, which are otherwise available to all other women in India, has been effected by a reasonable, right, just and a fair piece of law was enacted in the Muslim Women (Protection of rights on divorce) act, 1986. And if these provisions are much less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, then a Muslim divorced woman has obviously been unreasonably discriminated and driven out from the protection of the benign provisions of the general law as enacted in Chapter IX of the Code of Criminal Procedure, which are available to a Hindu, Buddhist, Jain, Parsi or Christian woman or a woman belonging to any other community. The constitutional validity of this act was questioned in the case of *Danial Latifi v. Union of India*^v. As a result of this judgement a Muslim divorced wife has more rights than her counterparts at present. The aim of this Act is to protect the rights of Muslim women who have been divorced and to provide for matters connected therewith or incidental thereto.

MAINTENANCE

A great deal of public concern has been expressed in recent years about the consequences of the passage of the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act made divorced muslim women ineligible to file a suit for maintenance against their former husbands under section 125 of the CrPC. One of the questions that remains unanswered is whether and to what extent has the passage of MWA has created new hardships for divorced Muslim women. Clearly, fewer destitute women resort to section 125 of the CrPC today than they did

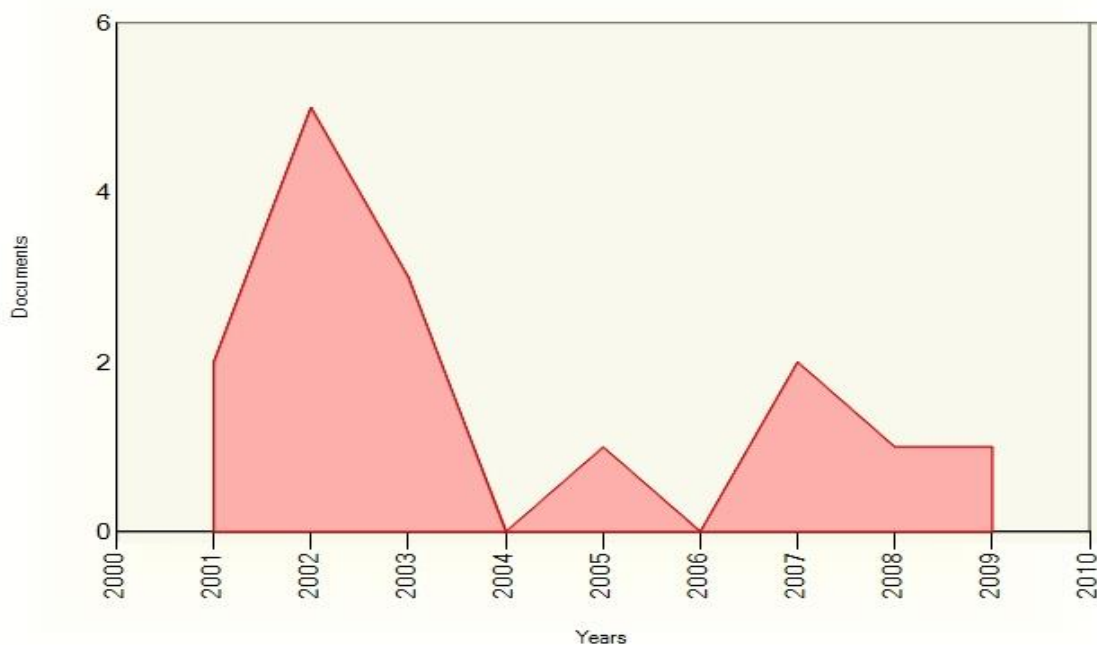
in the past. Those who would formerly have been eligible to do so must now seek support elsewhere one option being to file suit under the MWA. In recent decades there has been a good deal of controversy over this issue in Muslim Personal law that is whether and for how long a Muslim man is responsible for the support of a wife whom he has divorced. Disputes over this question go back to the 1898 Criminal Procedure code, which is applicable to all citizens irrespective of their religion. This provision met strong opposition from the Muslim clerical establishment which insisted that Muslim men should be exempted from its provisions since it contravened Islamic law. Their contention was that under Islamic law a Muslim man's financial responsibility for a divorced wife ends once she has completed the religiously prescribed post-divorce waiting period of approximately three months which is also known as the iddat period. The Supreme Court judgement of Shah Bano was widely publicized and not only because of its substance but also because of the way it was phrased created a furore within the Muslim religion. Mass demonstrations were organized all over the country, petitions were circulated and the issue was extensively publicized and debated in media. The outcome of this prolonged agitation was the passage of the Muslim Women (Protection of Rights On Divorce) Act, 1986 (MWA) by Parliament. It provided that once a divorced Muslim woman's iddat expenses have been paid and she has received her mehr and any money or other property that at the time of their marriage had been gifted to her his financial responsibility ends there. She can no longer turn to section 125 for a maintenance order against him as she could have in the past. The trend has been followed after this act but on the ground is slightly different. This paper tries to analyse the trends followed through case analysis of Supreme Court judgements and one of the most important case of Shah Bano. The period of analysis is 2001 to 2009. The graph below represents the number of cases that reached Supreme Court under section 125 of CrPC over the years, as you can observe it has drastically fallen down after introduction of the MWA, 1986. But showed a sudden rise after 2000 which signifies that there was some lacunae in the law and difficulty in implementing it, which gives the reason for the time period this paper analyses.

Graph depicts how your search results are spread over the years



Research Period in Particular

Graph depicts how your search results are spread over the years



CASE ANALYSIS

1. *Mohd. Ahmad Khan V. Shah Bano Begum*^{vi} - Triple Talaq and maintenance Landmark Case.

Bench of Judges: Y.V Chandrachud, D.A Desai, O.Chinnappa Reddy, E.S Venkataramiah, Rangnath Misra.

Facts: The facts of this case are in 1932, Shah Bano was married to Mohd. Ahmad Khan, who was a renowned lawyer in Indore. They were the parents of 3 sons and 2 daughters i.e. in total they have 5 children. After 14 yrs. Of their marriage Shah Bano's husband married another woman who was younger than him. In 1975, when Shah Bano age was of 62 yrs , she was disowned by her husband and was thrown out from her matrimonial home along with her children. In April 1978, she brought an appeal under Sec. 125 of code of criminal procedure, 1973 (CrPC) in the presence of judicial magistrate of Indore after when she was thrown away from her matrimonial home by her husband. Shah Bano filed this suit in 1978 because her husband has abandoned her from the maintenance of Rs. 200 per month which he guaranteed to give. A wife who is without any income and is neglected by her husband is entitled to maintenance, which includes a divorced wife who is not remarried. In Nov. 1978, he gave divorce to his wife Shah Bano by articulating or uttering "Triple Talaq" and it was irrevocable. The argument or conflict between Shah Bano's children and her husband's other wife were vital reason or grounds on which divorce was relinquished and furnished. After he pronounce irrevocable Triple Talaq, he took a safeguard that since because of this divorce she has been terminated to be her legal wife and due to which he was not accountable to furnish her with maintenance or alimony. The local court (magistrate) court directed Mohd. Ahmad to furnish her Rs. 25 per month to Shah Bano in a form of maintenance. Shah Bano in July 1978, apart from this, made a plea to High Court of M.P, to alter the amount of maintenance to Rs. 179 every month. Shah Bano's precedent went to Supreme Court and filed a petition against the verdict of High Court of Madhya Pradesh. Her husband essential argument after divorce he cannot keep any form of alliance or connection with his divorce wife because it is not allowed by Islamic laws/Islam and is "Haram" & hence he is not legally responsible to maintain her wife.

Issues:

- i. Whether Section 125 of the Code of Criminal Procedure is concerned with Muslims or not?
- ii. Whether the amount of Mehr given by the husband on divorce is adequate to get the husband rid of maintaining his wife?
- iii. Whether Uniform Civil Code applies to all religions or not?

Judgement:

The verdict of Shah Bano case was conveyed by C.J, CHANDRACHUD. All India Muslim Personal Law Board and Jamiat ulema-e-Hind were the two Muslim Bodies accompanied the lawsuit as an intervenor. On 3rdFeb. 1981, Supreme Court gave a like-minded conclusion in this case and banished the plea of Mohd. Ahmad Khan and validated the verdict of High Court. The court held that Section 125 of Code Of Criminal Procedure solicited to Muslims too, without any sort of discrimination. Supreme Court in this case duly held that, since responsibility of Muslim husband towards her divorced wife is limited to the extent of " Iddat" period, even though this situation does not contemplate the rule of law that is mentioned in Section 125 of CrPc.,1973

According to Supreme Court this rule according to Muslim Law was against humanity or was wrong because here a divorced wife was not in a condition to maintain herself. Thus, at the end, after very long procedure court finally concluded that the husband's legal liability will come to an end if divorced wife is competent to maintain herself. But this situation will be reversed in the case when wife is not able in a condition to finance or maintain herself after the Iddat period, she will be entitling to receive maintenance or alimony under Section 125 of CrPc.

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

The judgement given in Shah Bano Case was criticized among Muslims and according to them this decision was in conflict with the rules of "Quran" and "Islamic Laws/ Islam". So, Parliament of India in 1986, (Congress govt.) decided to enact the Muslim women (Protection of Rights Of Divorce) Act, 1986. The main objective of this act was

to protect the right of the divorced Muslim women and or to those who have got divorce from their husband's. According to this act, Muslim divorced women should be entitled to adequate and reasonable amount of maintenance till the Iddat period. When a divorced woman maintains a child born by her any time before or after the divorce, the husband is under legal obligation to provide a certain amount of maintenance for the child to a period of 2 yrs. From the birth date of a child. The women are also authorized to obtain "Mahr" or "dower" and receive back all the properties or estate which is provided to her by her parents, friends, relatives, husband or husband's friends. If such advantages are not received by the divorced Muslim women from her former husband, she can apply to magistrate for ordering him to provide her with maintenance/alimony or amount of "Mahr" or dower or her estate or properties.

Critical Analysis: In this case the Supreme Court specifically underlined the that Triple Talaq cannot take away the maintenance right of a divorced Muslim women who is not in a condition to maintain herself or her children when she is disowned or divorced by her husband. The period when the verdict of Shah Bano Case was delivered by the Supreme Court it faced a lot of criticism. At that point of time Muslim women weather married or unmarried were not given freedom even they were debarred from their basic freedom, which is against humanity and it basically violates the basic or fundamental rights of humans. Muslim women were backward in their status as compared to other women of the world. They were not educated and self-reliant as compared to other women. Shah Bano case was a normal case just like other cases of maintenance which has taken place and also the verdict that was concluded by Supreme Court was also similar to the previous lawsuits but the two naked truth that was witnessed in this case made this case a landmark judgement case and the two naked truth was- firstly, spirituality of religious personal laws was criticized and then it was questioned whether Uniform Civil Code is applied to all religion and their followers and secondly, whether CrPc is applied to personal religious laws. Even though the verdict of Shah Bano case given by the Supreme Court was invalidate by the endorsement of Muslim Women Act, the court held in further verdicts that divorced Muslim women, under Section 125 of CrPc can affirm maintenance or alimony from their former husband, or apart from this

divorced Muslim women can assert or claim for round some money or amount under Muslim Women Act. ^{vii}

Total number of times this case has been cited:	199
Cited by Supreme Court cases:	17
Cited by High Court cases:	182
Decision date of most recent cite:	Jul 16, 2019 (Punjab And Haryana)

2. *Danial Latifi V. Union of India*^{viii}

Bench: G.B. Pattanaik, S. Rajendra Babu, D.P. Mohapatra, Doraiswamy Raju, Shivaraj V. Patil
Decided on September 28, 2001

Introduction:

After the landmark judgment of Shah Bano's case, there was a chaos condition in the Muslim Personal Law. Also, there was many political issues and protest. The Parliament to undo the effect of the judgment, passed and implemented Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided that under section 3 (1) a, a divorced woman is entitled to reasonable and fair provision and maintenance within the iddat period.

The one of the counsels of Shah Bano's Danial Latifi challenged the above Act on the basis of its constitutional validity as violation of Art 14 and 15.

Facts:

1. *Mohd. Ahmed Khan v. Shah Bano Begum*, commonly referred to as the Shah Bano case, was a controversial maintenance lawsuit in India. She filed a criminal suit under Section 125 of the CrPC, ultimately in the Supreme Court of India, she won the right to alimony from her husband. However, she was subsequently denied the alimony when the Indian Parliament reversed the judgment under pressure from Islamic orthodoxy.
2. This case caused the government, with its absolute majority, to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgment of the Supreme Court and, in reality, denied even utterly destitute Muslim divorcées the right to alimony from their former husbands.

3. The constitutional validity of The Muslim Women (Protection of Rights on Divorce) Act 1986 was challenged before the Supreme Court in this case through filing a writ petition.

Issue: Whether the Muslim Women (Protection of Rights on Divorce) Act, 1986 is constitutionally valid.

Arguments:

The Petitioner (represented by Counsel Smt. Kapila Hingorani and Smt. Indira Jaisingh) submitted:

- i. Section 125 CrPC is part of the Code of Criminal Procedure and not a civil law, which defines and governs rights and obligations of the parties belonging to a particular religion. The basis there being, neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves, these provisions have been made and the moral edict of the law and morality cannot be clubbed with religion.
- ii. The argument is that the purpose of Section 125 CrPC is to off-set or to meet any particular situation where a divorced wife is likely to be led into destitution. Section 125 CrPC is enacted to prevent the same in furtherance of the concept of social justice embodied in Article 21 of the Constitution.
- iii. The Act is an un-Islamic, unconstitutional and it has the potential of suffocating the Muslim women and it undermines the secular character, which is the basic feature of the Constitution; that excluding the application of Section 125 CrPC is violation of Articles 14 and 21 of the Constitution.

The Respondent (represented by Counsel Shri Y.H.Muchhala and Solicitor General) submitted:

- i. Under Section 3 of the Act, it is provided that a reasonable and fair provision and maintenance to be made and paid by her former husband within the iddat period would make it clear that it cannot be for life but would only be for a period of iddat and when that fact has clearly been stated in the provision, the question of interpretation as to whether it is for life or for the period of iddat would not arise.

- ii. Personal law is a legitimate basis for discrimination, if at all, and, therefore, does not offend Article 14 of the Constitution. If the legislature, as a matter of policy, wants to apply Section 125 CrPC to Muslims, it could also be stated that the same legislature can, by implication, withdraw such application and make some other provision in that regard. He further submitted that in Shah Bano's case, it has been held that a divorced woman is entitled to maintenance even after the iddat period from the husband and that is how Parliament also understood the ratio of that decision. To overcome the ratio of the said decision, the present Act has been enacted and Section 3(1)(a) is not in discord with the personal law.
- iii. The Parliament enacted the impugned Act, respecting the personal law of Muslims and that itself is a legitimate basis for making a differentiation; that a separate law for a community on the basis of personal law applicable to such community, cannot be held to be discriminatory; that the object of the Act itself was to preserve the personal law and prevent inroad into the same. The impugned Act resolves all issues, bearing in mind the personal law of muslim community and the fact that the benefits of Section 125 CrPC have not been extended to muslim women, would not necessarily lead to a conclusion that there is no provision to protect the muslim women from vagaries and from being a destitute; that therefore, the Act is not invalid or unconstitutional.

Judgment:

Daniel Latifi judgment basically revived the principles settled in Shah Bano case that, the husband's liability to maintain his wife doesn't end with the iddat period. However, it explained this principle, not as contravening the Act which was enacted as a result of the Shah Bano case, as a commentary on that Act. Also, the Act is consistent with section 125 of the CrPC and hence, there is no scope for conflict. Hence, the position of law is that, the provisions of the Act basically emanate from principles set forth in the Shah Bano case.

The same has not been changed till now, and continues to govern matters related to maintenance of Muslim women after dissolution of marriage. The principle has been seconded by the Supreme Court once again in *Iqbal Bano v. State of U.P.*^{ix}. In the case the court reiterated the position that divorced women are entitled for maintenance beyond the Iddat period and stated that provisions of the Act do not contravene Article 14, 15 & 21 of the Indian

Constitution. The court further observed that “right under Section 125 of Cr. P.C. extinguishes only when she receives “fair or reasonable” settlement u/Sec. 3 of the Muslim Women Act. The wife will be entitled to receive maintenance u/Sec. 125 of Cr.P.C. until the husband fulfils his obligation u/Sec. 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986. This was once again reiterated in the recent judgment in *Shabana Bano v. Imran Khan*^x that after the expiry of iddat, a divorced Muslim woman can seek maintenance under S.125CrPc as long as she doesn’t re-marry. Hence, the position as laid down in the Danial Latifi case is the settled position and has not undergone any change.

Conclusion

Prior to both cases, of Shah Bano’s and the present case, there was bedlam with respect to the provision of maintenance. But, after the Shah bano’s Case, the MWA, 1986 prescribed some more guidelines for the application of maintenance. Also, if we see from other point of angle it could be seen that the act was further approved and supported by the Indian Constitution, from the supreme law of the India as non-violative and constitutionally valid.

The controversy still remains. The interpretation provided by the judiciary in the Danial Latifi case fails to satisfy the minds of the reasonable people, as there are glaring defects on the face of it. But we should also keep in mind the social perspective. On one hand where it upholds the Constitutional validity of the Act, it also interprets the provisions of the Act in favour of the divorced Muslim women.

The Muslim women had feared that the 1986 Act had taken away their right to maintenance beyond the iddat period. But these court judgments have given them hope. The Muslim leaders are not likely to protest against these judgments as they did in the Shah Bano case and even if they do, they will not get the kind of response from Muslims as they did in the mid-1980s.^{xi}

3. *Bilkis Begum v. Majid Ali Gazi And Ors*^{xiii}

Hon’ble Judges: D.P. Mohapatra and Brijesh Kumar, JJ. Decided On: 13.03.2002

Facts: The appellant Ms. Bilkis Begum, was the wife of respondent No. 1 Majid Ali Gazi. She filed an application under Section 125 of the Criminal Procedure Code (Cr. P.C.) claiming maintenance for herself and for her two minor daughters @ Rs. 500/- per month each. During

pendency of the proceeding, the respondent divorced the appellant on 7.2.92. Thereafter, she filed an application under Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, stating, inter alia that she prefers to be governed by the provisions of Sections 125 to 128 of the Cr. P.C. instead of the provisions of 1986 Act and sought permission of the magistrate for the purpose. The said application was rejected by the learned magistrate by order dated 27.4.94 on the ground that an application under Section 5 of the 1986 Act, has to be made either jointly or separately by both the parties and an application filed by one of the parties without consent of the other could not be entertained. She carried the matter to the High Court in revision wherein the order passed by the magistrate was confirmed and the revision petition was dismissed. Hence, the grievance of the appellant came to Supreme Court.

Issue: Whether the application filed by the appellant under Section 125 Cr. P.C. claiming maintenance for self and for minor children could be considered by the magistrate or she had to seek relief under the 1986 Act?

Judgement: The right of the appellant to claim maintenance for her children from her former husband under Section 125 of the Cr. P.C. is recognised even after the enactment of the 1986 Act. The position is also settled that liability of the father to maintain his minor children and unmarried daughters is absolute and in case he defaults, the divorced wife can file an application under Section 125 of Cr. P.C. claiming maintenance for the children who are living with her. The application filed under Section 125 of the Cr. P.C. claiming maintenance for the two children is to be proceeded with by the Magistrate and disposed of applying the provisions of the Code of Criminal Procedure. So far as the claim of maintenance for the divorced wife is concerned, the proceedings under Section 125 cannot be proceeded with. She is entitled to receive her dues according to the 1986 Act, and if she has not yet received the same, she has to take recourse of the proceedings under that Act, and realise the amount in accordance with law.

Conclusion: In paragraphs 10 and 11 of the judgment, this Court summed up its conclusions in the following words: "Thus, both under the personal law and statutory law (Section 125 Cr. P.C.) the obligation of a Muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with divorced wife. Thus, our answer to the question posed in the earlier part of the opinion is that, the

children of muslim parents are entitled to claim maintenance under Section 125 Cr. P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married, and this right is not restricted, affected or controlled by the divorcee wife's right to claim maintenance for maintaining the infant child/ children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(b) of the 1986 Act. In other words, Section 3(1)(b) of the 1986 Act, does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125 Cr. P.C. till they attain majority or are able to maintain themselves, or in the case of females, till they are married."^{xiii}

4. *Iqbal Bano V. State of U.P. And Ors.*^{xiv}:

Hon'ble Judge: Dr. Arijit Pasayat and D.K. Jain, JJ. Decided On: 05.06.2007

Facts: The appellant had married respondent in the year 1959 and a child was born to them in 1966. Unfortunately, the son died in the year 1991. He was living separately from the appellant stopped coming to the house of the appellant where she was staying and also did not pay anything for her subsistence. Therefore, an application under Section 125 Cr.P.C. was filed on 21.2.1992. Before that she had sent notice demanding payment of maintenance. Respondent No. 2 replied to the notice and denied his liability to pay maintenance. As noted above, on 21.2.1992 application was filed claiming maintenance of Rs. 500/- p.m. It was stated that that the income of the husband was Rs. 4,000/- per month. On 28.5.1992 written statement was filed wherein it was stated that long back he had divorced his wife by utterance the word "Talaq" "Talaq" "Talaq". It was further stated that there was severance of marital ties between them for years as the divorce was over by the utterance of the word "Talaq" thrice and he had also paid Mehr and the Iddat period was over the claim was not acceptable. He also stated he had contacted the second marriage.

Judgement and Ratio: Even if court notices that there was a Muslim divorced woman it was open to court to treat application as petition under the Act 1986 A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance. Liability of Muslim husband to his divorced wife arising under Section 3(i)(c)

of Act 1986 to pay maintenance is not confined to the iddat period. Set aside the order. While upholding the validity of the Act, we may sum up our conclusions:

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(i)(a) of the Act.

(2) Liability of the Muslim husband to his divorced wife arising under Section 3(i)(a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced Muslim woman who is not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relative who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law for such divorced woman including her children and parents. If any of her relative being unable to pay maintenance, the Magistrate may direct the State Waqf Board established under the Act to pay maintenance.

(4) The provisions of the Act do not offend Article 14, 15 and 21 of the Indian Constitution.^{xv}

5. *Shabana Bano V. Imran Khan*.^{xvi}

Hon'ble Judges: B. Sudershan Reddy and Deepak Verma, JJ. Decided On: 04.12.2009

Facts: Appellant Shabana Bano was married to the respondent Imran Khan according to Muslim rites at Gwalior on 26.11.2001. According to the appellant, at the time of marriage, necessary household goods to be used by the couple were given. However, despite this, the respondent-husband and his family members treated the appellant with cruelty and continued to demand more dowry. After some time, the appellant became pregnant and was taken to her parents' house by the respondent. The respondent threatened the appellant that in case his demand of dowry is not met by the appellant's parents, then she would not be taken back to her matrimonial home even after delivery. Appellant delivered a child in her parental home. Since even after delivery, respondent did not think it proper to discharge his responsibility by taking her back, she was constrained to file a petition under Section 125 of the Code of Criminal

Procedure (for short, 'Cr.P.C.') against the respondent in the Court of Family Judge, Gwalior. It was averred by the appellant that respondent has been earning a sum of Rs. 12,000/- per month by doing some private work and she had no money to maintain herself and her newborn child. Thus, she claimed a sum of Rs. 3000/- per month from the respondent towards maintenance.

Issue: Whether a Muslim divorced wife would be entitled to receive the amount of maintenance from her divorced husband under Section 125 of the Cr.P.C. and, if yes, then through which forum?

Laws Applied: Section 4 of Muslim Act reads as under: Order for payment of maintenance: (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order: Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her: Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in Sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the mean to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such

other relatives under the second proviso to Sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under Section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under Sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

Section 5 thereof deals with the option to be governed by the provisions of Section 125 to 128 of the Cr.P.C. It appears that parties had not given any joint or separate application for being considered by the Court. Section 7 thereof deals with transitional provisions. Family Act, was enacted 14th September, 1984 with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

Judgement: Whether Muslim divorced woman entitled to claim maintenance from her husband under Section 125, Cr. P.C. after expiry of period of iddat also? Held, "yes" as long as she does not remarry. Matter remitted to Family court for disposal on merits. *Danial Latifi v. Union of India*, and *Iqbal Bano v. State of U. P. and another*, applied. (2) Code of Criminal Procedure, 1973 - Section 125-Family Courts Act, 1984 - Section 20-Family Court-Jurisdiction-It has exclusive jurisdiction over matters relating to maintenance including proceedings under Section 125, Cr. P.C.

CONCLUSION

From the analysis of above judgments pronounced by the Supreme Court it is evident that the concept of maintenance is conflicting issue within the purview of various acts. The trends followed in the judgements gives only one inference that being, justice should be done to each and every section of the society and women are an important part of that society. Although the legislation passed has some lacunae especially with regard to section 3 which states that, maintenance should be given by the husband only for the period of iddat has created all these problems and helped in pronouncing these judgements. The Supreme Court took its stance without any bias irrespective of many social and political pressures. It upheld the rights of

women and guarded the constitutional principles through these various judgements. Although all of the judgements talk about maintenance the frequency of these case creates the larger picture and something very big is at stake which is the right to equality. All the times the trend followed was same and Supreme Court being the final arbiter of Constitution protected the fundamental rights of women. The frequency of cases regarding maintenance filed in supreme court has seen huge increase and this implies that the laws regulated have shown some effect on the ground reality.

The research answers almost all the questions, the very first one being the aftermath of the legislation. Many cases were filed under this act but the provisions were used against the victim and for the benefit of the husband, contrary to the name of the act. This leads to the second question which talks about the conflict between the act and CrPC. As already established in the above case analyses there is no conflict between the two and both of them do not cross their paths and strive towards upliftment of women. One more noteworthy point is that women can claim maintenance under both the acts subsequently but not simultaneously and the acts supplement each other.

Before these judgements came into place maintenance post-divorce was a controversial topic under Muslim law. Fortunately, the judiciary has decisively shown benevolence towards Muslim women and these women have evidently been empowered, especially divorced women whose position was even worse. Also, laws which hamper the application of general laws with reference to the basic livelihood of a divorced woman as is assured under Article 21 of the Indian Constitution should be struck down. To avoid any future derogation of law and conflict, the State must try to implement a uniform civil code under Article 44 of the Indian Constitution in some measure with respect to the essential and basic aspects of personal laws.

REFERENCES

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- ⁱ AIR 2001 SC 958
ⁱⁱ AIR 1985 SC 945
ⁱⁱⁱ AQIL AHMAD, MOHAMMEDAN LAW, 26TH EDITION.
^{iv} *Supra* note 2.
^v *Supra* note 1.
^{vi} *Supra* note 2.
^{vii} MANU/SC/0194/1985
^{viii} (2001) 7 SCC 740
^{ix} AIR 2007 SC 2215
^x AIR 2010 SC 305
^{xi} MANU/SC/1639/2001
^{xii} Criminal Appeal No. 466 of 2002 (Arising out of SLP (Cri.) No. 2162 of 2001)
^{xiii} MANU/SC/0492/2002
^{xiv} *Supra* note 9.
^{xv} MANU/SC/2545/2007
^{xvi} *Supra* note 10.