

A Muslim woman's right to maintenance

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In a multicultural country like India, there have been conflicts between gender equality and claims of religious minority rights .The Indian Constitutional history has struggled with this conflict for

a long time. The name Shah Bano has become synonymous with this struggle. A 62 year old Muslim mother of five children, Shah Bano was divorced by her husband in 1978. Unable to support herself and her five children, she moved to courts to be granted maintenance from her ex-husband. Seven years and several judgments later, the Supreme Court ruled in favour of granting Shah Bano alimony. Largely seen as a threat to Sharia law by some Muslims, what followed was a debate over the constitutionality of different marriage and personal laws for different religion, and resulted in the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986, by the government.

In the Shah Bano case, the Supreme Court departed from traditional interpretations of Muslim personal law, appealing to a more egalitarian Islam. The case highlights the tensions that arise when the pursuit of gender equality comes

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into conflicts with the religious claims of a minority. The case brought into limelight the need for a secular Uniform Civil Code.

The Supreme Court considered the question whether under the Muslim Personal law, there is any obligation on the part of a Muslim husband to provide for maintenance to his divorced wife beyond the period of Iddat. It was held that a Muslim woman is entitled to maintenance from her former husband till the time she gets remarried. The apex court rejected the plea that maintenance is payable only till the period of Iddat. The other question taken into consideration in this case was whether an order of maintenance cannot be made, or if already made, is liable to be cancelled if the amount of Dower or Mahr has already been paid by the husband to the wife. The Supreme Court held that Mahr is not the amount payable by husband to wife "on divorce" and a divorced wife is entitled to claim maintenance even though she had received the entire amount due to her by way of Mahr.

Most importantly, it was held that the religion professed by a spouse or the spouses has no place in the scheme of Section 125 of the Criminal Procedure Code, which is a measure of social justice founded on an individual's obligation to the society to prevent vagrancy and destitution. Whether the spouses are Hindus, Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant to the application of Section 125 Cr. P.C.

The case thus remains a ground-breaking one in Indian divorce law and is often used as a benchmark by the courts.

Maintenance of divorced woman under Muslim Personal Law:

Under the Muslim personal law, the wife's right to maintenance is not an absolute right and depends upon certain conditions. She is entitled to receive maintenance, only if she has been obedient to her husband and allows him free access to herself at all lawful times. A wife will not be entitled to maintenance, if she is too young for sexual intercourse or refuses to live along with her husband.



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Rudd-ul-Muhtar provides that maintenance is due only to wife who has been regularly married, so that if marriage is found to be irregular, then the man may demand back the allowance of maintenance.

Under the Muslim personal law as applied in India, a divorced wife can claim maintenance from the former husband only for that period during which she is observing her Iddat.

Iddat is a period of waiting that Islam has imposed upon a woman who has been divorced or whose husband has died, after which a new marriage is permissible. The woman is forbidden to remarry during the Iddat period. The duration of Iddat on divorce is three menstruation periods or, if pregnant, till delivery of the child. The former husband's liability extends only upto the period of Iddat, not beyond that. For the claim of maintenance under Muslim Personal Law, the wife has to file a civil suit against her former husband.

Muslim Law does not prescribe any maximum or minimum amount to be given during Iddat of the divorced wife. The court is competent to fix any amount keeping in view the socio-economic status of the husband and wife.

The maintenance of a divorced Muslim woman is now governed by the Muslim Women (Protection of Rights on Divorce) Act, 1986. The law relating to Muslim woman's claim of maintenance from her former husband under pure Muslim Law has now become a statutory Muslim Law.

Maintenance of Divorced Muslim Woman under Criminal Procedure Code:

A wife, whether Muslim or non-Muslim is entitled to claim maintenance against the husband under section 125 (section 488 old) of the Cr. P.C., 1973. Under section 488 of the old Act, the Muslim husband could defeat wife's claim of maintenance by pronouncing Talaq on her. On the happening of this, the wife could claim maintenance under the order of the court only till the expiry of the period of Iddat but not beyond that.

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After the amendment in the Code, section 125 of the new Code defines 'wife' and includes 'a woman who has been divorced by or has obtained a divorce from her husband and she has not remarried.' So, now, a Muslim husband cannot defeat the claim of his wife by pronouncing Talaq on her.

In the case of H. Syed Ahmed v. N.P. Taj Begum, it was held that the Criminal Procedure Code is the law of the land and not of any community. If there is conflict between the law enacted by the legislature and the personal law, then the former prevails. The legislative will is supreme in this land unless controlled by the Constitution.

Circumstances Before Shah Bano Case:

Till the decision of Shah Bano Begum's case, whole of sum which under customary and personal law is applicable to the parties, was payable on such divorce in Clause (b) of section 127 (3) were thought to indicate dower under Muslim Law and fundamentalists thought that once a Muslim husband has divorced his wife and paid her dower (irrespective of its quantum, even if it was very less), no maintenance order could be passed under section 125 of the Cr. P.C.

In Bai Tahira v. Ali Hussain Fissalli Chothia, the main contention before the Supreme Court was that since there was a compromise in 1962 under which Mahr was paid to the wife and all claims adjusted, no claim of maintenance, in view of section 127(3)(b) of the Cr. P.C. could survive. It would appear that in this case Supreme Court accepted that section 127(3)(b) relates to the payment of dower under Muslim law.

The Supreme Court laid down the proposition that:

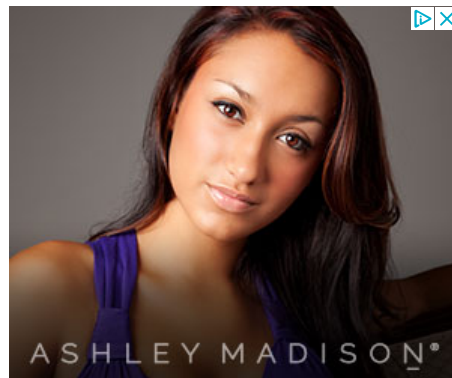
No husband can claim under section 127(3)(b) absolution from his obligation under section 125 towards a divorced wife except on proof of payment of sum stipulated by customary or personal law, whose quantum is more or less

sufficient to do duty for maintenance allowance. In short, purpose of section 127(3)(b) is simply this that a wife cannot be allowed double benefit, one of the customary or personal law payment and the other of payment under section 125. But, if the former is inadequate the court has power to award maintenance under section 125 of the Cr. P.C.

The above observation clearly reveals that the dower amount became the part of maintenance amount. In *Fuzhudi v. Khader Vali*, the Supreme Court decision seems to lay down that 'dower is included in section 127(3)(b) and is a sum payable on divorce under any customary or personal law, if the dower amount is sufficient to enable her to maintain herself, no order of maintenance can be made.

But if, on the other hand, it is not sufficient, the court has power to fix the amount of maintenance as it considers just and proper, though the fixing of the quantum of Mahr paid to her, it will be considered for the reduction of the amount of maintenance.

The Decision in Shah Bano:



The Supreme Court held that clause (b) of Expl. To section 125(1) of the Cr. P.C. which defines 'wife' as including a divorced wife, does not, in any way, imply the exclusion of Muslim women from its scope. The court observed that if there be any conflict between the right available under Section 125 and any personal law,

the former overrides the provisions of personal law. However, the court observed that there is no conflict between Section 125 and rules of Muslim Law as regards the husband's liability to maintain his divorced wife. Muslim personal law talks about providing maintenance within the period of Iddat. Section 125 considers whether the wife is able to maintain herself or not. Thus, if the wife is able to maintain herself, the husband's liability is limited to the period of iddat, if not, she can take recourse to Section 125 of Cr. P. C. The court concluded that, thus, there exists no conflict here.

As regards Section 127(3)(b) under which the divorced wife cannot claim maintenance if she had received the whole sum due to her under her personal law 'on divorce', the court held that Mahr is not the amount payable on divorce. Mahr is given by husband to wife as a mark of respect towards her and he can never divorce her as a mark of respect for her. So the court held that the wife can claim maintenance on divorce even if she was paid the whole sum of Mahr.

The case had become a much debated verdict in the recent time. A section of the Muslim community in India opposed this verdict as being against the Shariat and alleged that maintenance to a divorced wife beyond the period of Iddat is un-Islamic.

The demands of a section of Muslim community were conceded to and the Parliament enacted Muslim Women (Protection of Rights on Divorce) Act, 1986.

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

The Act is the outcome of the controversy that usurped the attention of the Muslim community all over India after the landmark Shah Bano case. The Act is applicable to every such divorced woman who was married according to Muslim Law and has been divorced by, or has obtained divorce from her husband under the provisions of Muslim law.

The Constitutional validity of the Muslim Women Act, 1986 has been challenged in the Supreme Court under several writ petitions and the fate of this Act had been hanging in uncertainty for more than a decade.

However, in the case of Danial Latifi and others v. Union of India, the Supreme Court upheld the validity of the Act and held that the provisions of the Act do not offend the validity of Articles 14, 15 and 21 of the Constitution of India.

In the Shah Bano case, we see the Supreme Court appealing to an egalitarian Islam, recognizing the diversity within Islam and rejecting the dominating voices of the Islamic Shariats and All India Muslim Personal Law Boards. Instead, the Supreme Court chose to listen to sub-altern voices, voices that were seeking equality within and between religious communities. Those voices, though often appealing to background cultural justifications to support their claims, accepted Muslim women's right to be accepted as equal citizens. In this case, we see an attempt to combine legal regulation with an expanded moral-political dialogue on the meaning and scope of constitutional essentials and religion-based personal laws.

In the Shah Bano case, the Supreme Court appealed to the universal legitimacy of human rights principles to support its reading of the Shariah. The court refused to exempt cultural traditions from scrutiny and challenge. This case illustrated the role that universal norms can, and must, play in resolving conflicting claims.

The Shah Bano Begum's Case thus remains a historic case that very properly highlighted how women remain vulnerable to the claims of nation, religion and community and tried to bring reforms in the condition of women who, prior to this case, were bound by the narrow interpretations of personal laws.




Navin Kumar Jaggi
on 04 December 2018







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 Maheshwarudu Mahesh  19 January 2019
in this case a husband has divorced his wife under Muslim law but section section of law is not mention. plz mention section section of law Muslim law.

 vishal jha  15 December 2018
yes under 125 cr women can claim for maintenance... but court will see is she is incapable of maintain themselves

 Abu Bakkar2015  10 December 2018
sharia. is best. but. Muslims are. worst. followers

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