

“Journey of Muslim Woman's Maintenance in India from Past to Present”

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Abstract

This article looked out for the assistance of Muslim women. Recently, this topic has generated discussion, and from there, an exceptional arrangement has developed. Keeping up with the evolution of the law as a result of acts and judicial decisions is a laborious task. Moreover, to become accustomed to this guideline's existing state. This project starts with an upkeep that categorically establishes M.W. The Shah Bahe case, which surfaced and made a decision in relation to that, is used to analyse what is happening with M.W.M. under the attentive focus of Islamic guidelines and the conflict with Section 125 of the CRC. S. C. made an effort to resolve the conflict between CrPC 125 Muslim Individual Guideline and the Culmination Court by treating CrPC Other Individual Muslim Guideline with respect.

In any event, a different objective known as the Muslim Women Security of Right on Detachment Show of 1986 was considered to aid in the effects of the court's ruling because the Muslim social class did not support S.125 of the CrPC. However, the high court found in the Daniel Latiffi case that there is no distinction between the CRPCC and Muslim individual guidelines and that this act is undoubtedly legitimate. The revelations in the paper will be thoroughly examined.

One or more of the terms that are related are Muslim individual guidelines, solitary, upkeep, Pinnacle court, and judgement.

Introduction**The general meaning of the term maintenance:**

All demands implied to help or support life are referred to as maintenance. In basic English, it could be stated as what is necessary to get by, such as what is needed for food, clothing, and housing. There are no references to the maxim "support" in any confidential rules because it is not defined by Islamic law. Whether the child is a boy or a girl, Hindu law expects that the young person's family will pay for all expenses associated with fulfilling the young person's primary requirements up until marriage.

The Halsbury law of England states that "the name given to the many weeks or regularly scheduled segments which may be referenced on a proclamation of division, or nullity to be made for the upkeep and sponsorship of the companion during the joint presences of the perfect partners to maintain the relationship of a couple by giving financial assistance as help so the o

Meaning of the Term according to Muslim personal Law

It was more difficult to determine what a man should ethically do or stop doing because there was no distinction drawn between his moral obligation under Mohammedan law and his actual, moral, or moral obligation.

In Muslim personal guidelines, "support" is referred to as "nafaqa." A man's strict requirements for food, clothing, housing, preparation, clinical thought, etc. are seen as nafaqa as a result of having children. Simply expressed, it is the amount of money spent on young people to provide the basics that are absolutely necessary for their administrative support. According to the Quran, the life partner has a duty to support his soul mate, children, and family. Because the lady is completely dependent on her partner, he is devoted to provide all necessary assistance so she can't rely on anyone. He also owes a similar sum of money, according to his financial obligations. The argument that she currently has enough money to support herself is also unimportant. Thus, in accordance with the terms of the marriage contract, the spouse should exchange specific gifts at predetermined intervals. These distinctions encompass items like church-e-pandan, guara, meva enterprises, and several others. These incredibly real benefits are received by the mate from her life companion. The buddy is required to provide the woman with the settlements that she is qualified for and has the option to request. In any case, these agreements reject the going with the flow approach:¹

- A woman cannot ensure maintenance if she disobeys.
- If a woman limits her partner, she is not prepared to receive assistance.
- A woman who has been abandoned by her life partner has no right to receive financial assistance.

When his soul mate passes away, the life partner is unconditionally and entirely responsible for her maintenance, regardless of whether he has a compelling reason to do so. She has exhausted all of her maintenance options, therefore she is unprepared to handle any of the decedent's belongings.

We just looked at the importance of the companion and the woman's obligation to maintain it. However, these opportunities are made possible by the hidden facts.¹ Marriage should unquestionably take place. distinct from Understanding of prenuptial agreements.

¹ Khan Ephroz, "Women and Law: Muslim personal Law Perspective

We should investigate the sources of these honours; most likely, the most important ones are as follows:

1. Bedouin Individual Guidelines
2. are found in Region 125 of the Criminal Code.
3. A 1986 directive examined the opportunities available to Muslim women undergoing divorce

The main focus of the audit is on helping Muslim women who have experienced discrimination. The differences between Muslim personal law and the penal code, as well as the High Court's stance in the pending Shah Banocase, are the focus of a significant amount of the poll.

The requirements of Islamic law for keeping separated individuals together - support under the CrPC, before and after 1973

However, the CrPC specified (previously under fragment 488) that a companion has the vital choice to assist his soul mate. Divorce results in the loss of the life partner's position as a spouse, the honour of keeping some of her soul mate, and the husband's duty to support his better half. Since Islamic law is a little easier to comprehend than other religious norms, issues like these can arise when a woman is mistreated by her companion. We can see that section 125 of the CrPC was modified in 1973 to give a companion the right to hold claims until she marries another guy, as we had anticipated when we noticed this opportunity. This law is applicable to all women in India because it is a typical nation, regardless of whether they are Hindu or Muslim.²

A clash between Muslim Personal law with section 125 of CrPC

In contrast to Section 125 of the CRC Individual, Islamic law specifies that women may help up until the iddat period. A Muslim woman is obligated to observe the iddat period, also known as the period of quiet, after the death of her soul mate or after a detachment. The life mate will come into focus on its own after the iddat period manifests according to its course of events. The length of the iddat may extend if a woman gets pregnant up until delivery, although it may not go above three lunar months or periods.

How? Read on. Given that it omits the iddat period, section 125 of the CrPC is clearly at odds with Islamic law.

Mohammedan law permits polygamy instead of the CrPC, which forbids second marriages, and whenever it is practised, the primary partner has the honour to seek her better half for

² G.Chakraborty,"Law Maintenance" Sodhi Publication, 2003.

assistance as a basis for independence. Due to *Mohammed Haneefa v. Mariam Bi*,³⁴ the Supreme Court determined that when the CrPC and Muslim personal rules conflict, the earlier of the two regulations shall be used. The just High Court had a similar stance in the case of *SairaBano v. A.M. Abdul Gafoor*.⁴

As a result, the regulating body will run into a big problem. Region 127 was changed and explanation (3) was written to address this problem. The designated authority may refuse assistance from someone who is not connected to them but has money because of society or personal norms.

Judiciary interpreting the ambit of section 127

However, the dispute has persisted due to Indian courts' attention to women's honour and requests for maintenance.

It has not been demonstrated beyond a reasonable doubt in the case of *BaiTahira v. Ali*

*HussainFissalliChothia*⁵⁶ that the percentage of a "misleading aggregate" that complies with Mohammedan personal law should be interpreted as reducing the amount of support provided by the soul mate. However, this does not relieve partners of their duties because, in his religion, every woman is legally entitled to support. It also applies to people who have recently been widowed or divorced.

In *Fuzlunbi v. K. Khader Vali*⁶, the Great High Court established a rule stating that the amount should be calculated in accordance with Muslim law and will be equal to the monthly maintenance paid to the abandoned woman, depending on whether she marries again or passes away, with the express purpose of replacing the upkeep.

According to *ZoharaKhatoon v. Mohd*⁶, the term "companion" as used in sections 125 and 127 of the CrPC applies to Muslim women who were exiled as a result of the Talaq method or the Deterioration of Muslim Marriage Showing of 1939.

Muslim scholars assert that section 127 was not appropriately written to meet the needs of Muslim women and that section 125 has a negative influence on Mohammedan personal principles due to the continued inconsistency between Mohammedan personal standards and the hooligan cycle code.

³ AIR 1987 SC 1103

⁴ AIR SC 362

⁵ AIR 1980 SC 1730

⁶ AIR SC1243

Widespread discontentment among the Mohammedan social class had been caused by the ongoing disagreement between the two laws, but everything was resolved when the Shah Bano option, a crucial ruling, was made public.

Mohd Ahmad Khan v. Shah Bano Begum⁷ or the Shah Bano Case:-

The case's main contributing factors are basically as follows:

In 1932, Shah Bano married Mohd Ahmad Khan. The five children of the family were split between three boys and two girls. Fourteen years after their secret union, Mohd Ahmad Khan remarried. When her life partner and their kids left the house in 1975, she was about 62 years old and returned to live with her people. When Mrs. Bano's boyfriend promised her that he would always pay 200 Rupees, she filed a lawsuit with the Indore equity court in 1978. She didn't marry anybody else, and her life partner wouldn't look after them without her, so she needed the money to survive. He agrees to help her in this way. Mrs. Bano received the triple talaq from Mohd Khan in 1978, rendering it irreversible. The fundamental point of argument or dispute between Mrs. Bano and Ahmad Khan was that the actual marriage was the main source of the strife. The partner made sure that since he had just given Mrs. Bano triple talaq, there wouldn't be a marriage between them and that he would thus be unable to support her. This pledge was nullified when the talaq materialised. The lower court ruled in Mrs. Bano's favour and ordered Ahmad Khan to give her maintenance payments of 25 Rupees each month. She made reference to the Madhya Pradesh High Court's fabrication of fictitious maintenance costs ranging from Rs 25 to 179. In defiance of the Madhya Pradesh High Court's decision, the Delhi High Court chose to hear the matter. The acquaintance claims that Mrs. Bano cannot be reached or linked to the partition since it is considered "Haram" by Islamic law, but I'm not committed to helping Mrs. Bano.

Issues pointed out in this case

Does Section 125 of the Criminal System Code apply to Muslim women?

3. Whether or whether the partner needs to help. 2. The amount of Mehr that the life partner was allowed to have at the time of the separation is enough to trash. if the United Smart Code safeguards all religions.

Executive Value The members of the seat are Mishra Ranganath, Y.V. Chandrachud, Desai, D.A., Reddy, O.Chinnappa (J), and Venkataramiah, E.S. (J).

Among the respondents are Mohd Ahmad Khan, Shah Bano, an attorney, and others.

⁷ AIR 1985 SC 945

Judgment of the Court:-

The decision was made by CJ Chandrachud, and the High Court rejected Mr. Ahmad Khan's appeal. The court ruled that Article 125(3) applies to all citizens of independent India, including Muslims and Hindus. The court went on to rule that Section 125 violates Muslim personal law because it mandates that a Muslim life partner assist a separated spouse who is unable to care for herself. Despite the fact that section 125 of the CrPC specifies that this condition cannot be conceived, the court concludes that the mate is only in danger for the iddat time in the current situation. When the life partner is unable to take care of herself throughout the iddat time, the spouse has a duty to help. The court further ruled that this requirement disregards the basic liberties guaranteed by Islamic law because the life partner in this particular situation was unable to comply. The companion's enrichment of Mahar to his better half after the appearance of talaq was insufficient to relieve her of the obligation to lend support. As stated by the High Court,

If the spouse is competent of doing so or in a position to do so, she should not be allowed to assist the divorced person after the iddat period has gone. The failure of a spouse to accumulate sufficient assets to sustain herself after the iddat period, at which time she may claim remuneration under Section 125 of the CrPC, should be treated seriously in any case.

A Muslim woman who had divorced her significant other but had not remarried was qualified to make a support guarantee under section 125 of the CrPC, according to the High Court, which upheld the judgment and provided the legal backdrop in order to put a stop to any political intervention.⁸.

Reaction to the decision of the apex court

The majority of Muslims have harshly criticized this choice, and it has had a considerable political influence. Muslims have thus been ardently looking for a particular code of behavior, which has caused controversy and a controversial discussion among lawmakers. The two primary competitors that founded the All India Individual Regulation Board in 1973 were Obaidullah Khan Azmi and Syed Kazi. He was able to communicate his disapproval of the choice via this connection since the dissidents thought the board was addressing Muslim personal regulation.

Developments Post Shah Bano Case:-

10 Enhancements Following the Shah Bano Case, Rajeev Gandhi complied with pressure from Islamic groups to reverse the decision. The Muslim Lady Security of Freedoms on Separation Act, which was perhaps the most vehement statute, was passed by the government in 1986 as

⁸ Main text of ShahiBanojudgement.

a result of these circumstances. According to Sections 3(1)(a) and 4(1) of the Declaration, the lady is entitled to assistance from her family. If her family is unable to do so, she may submit a claim under Section 4(2) of the Wakf Board. The length of support was not specified in this resolution. Those who have been married with children are eligible for help.

Reaction to the Act and controversies surrounding the same:-

Since it refuses to provide separated Muslim women the support they need, this conduct is seen as manipulative. The BhartiyaJanta party voiced its opposition to this action, claiming it was wholly anti-non-Muslim and designed to placate marginalized groups in the public discourse. A minority rights NGO with a presence in the UK condemned this policy, claiming that it discriminates against persons based on their sexual orientation, protected characteristics, or other classifications.

The Constitutional validity of the Act

Since this regulation opposes articles 14, 15, and 21 of the Indian Constitution, the legitimacy of the demonstration was questioned. The fundamental argument made in court was whether it was necessary to establish a rule that excludes a sizable segment of the population in an environment where mainstream regulation was already in place. Two major manufactures served as the driving forces for this activity's analysis. The word "with" alludes to the lack in this statute of a provision that would have allowed women to receive maintenance after their iddat period had finished. Since Muslims have options, this action decreases the application of the CrPC's useless provision 125.⁹

The legal executive's adjudicators were seen to be in a precarious situation.

The words used in the protest, such as "fair," "sensible," and "arrangement," among others, give the legislation the appearance of helping Muslim women at first look, but it disregards any show of support that lasts longer than the iddat time.

The issue arose when the Arb Bail Rathimunnissa Begum case was considered by the high courts of Gujarat and Andhra Pradesh. The statute was interpreted differently by each court, leading to a confusing conclusion.

Position Post Enactment of The Muslim Women (Protection Of Rights On Divorce) Act, 1986- Daniel Latifi v. Union of India:-

As was previously stated, the regulation had given rise to several misconceptions, and the courts had started to interpret it. This point of view was further stressed by the Andhra Pradesh High Court, which claimed that the term's essence implies that aid cannot continue beyond the

⁹ The ShahiBano Legacy“ .The Hindu 2003-08-10.

hour of iddat. The Gujarat High Court once again offered a different interpretation of what is meant by "fair and sensible," this time taking into consideration the fact that the assistance supplied to the separated wife is about the same amount. The arbitrator known as Daniel Latifi upheld this similar viewpoint.

Daniel Latifi v Union of India¹⁰

Shah Bano prompted Ahmad Khan's spouse to file a case with the High Court of Madhya Pradesh; the court ordered Mr. Khan to provide Rs 179 in support for his spouse. The Muslim woman's protected validity was disputed in line with section 32 of the Indian Constitution under the watchful eye of the Respectable High Court. The couple in the aforementioned instance had been wed for over 43 years. The children's khan and Mrs. Bano then reached an agreement that he would pay Rs. 200 each month in child support; but, when he declined, the husband petitioned the court of first instance under Section 125 of the CrPC. Mrs. Ahmad Khan was ejected from his home after that. She further contended in court that her spouse's delivery of the triple talaq, which is against Muslim personal law, rendered their marriage null and void. He handed her Rs. 3000 as Mehr at the time of the marriage, and the court dismissed her claim for interest since she had already received the money. Her better half was a prominent supporter in Madhya Pradesh who made over 5000 per month but gave just 200Rs each month, which wasn't enough to take care of the requirements of their kids and her estranged spouse. This was a crucial mathematical issue since the spouse lived with her better half and children and was near to 43 years old. It was quite tough to maintain a second marriage. The next choice available to the spouse was to choose a new career. This was the only genuine possibility.

Arguments of petitioner

Women's segregation was considered when Section 125 of the CrPC was created since Article 21 of the Indian Constitution guarantees everyone in India the right to life and personal freedom. The partner is forbidden from needlessly exploiting women by mistreating or harassing them under Area 125. If the requirements of section 125 of the CrPC are not applied to Muslim women, it may be considered against the secular character of India and it would negate articles 14 and 21.

Defendant

Since Area 125 of the CrPC was not meant to be retained, the Indian parliament has the authority to change its current policies. A Muslim individual regulation might take the place of this statute.

¹⁰ AIR 2001 SC3958

Judgment

In its rulings on the following issues, the High Court maintained the constitutionality of the regulations:

Section 3(1)A of the Act on Separated from Ladies states that a Muslim companion must also make just and reasonable arrangements for the separated lady's final fate. The separated spouse shall submit a claim against her ex-husband's family in line with Section 4 and request assistance from the portion of his inheritance that was left to his family upon his death if she discovers that she is unable to sustain herself after the iddat period. The State Wakf Board may be requested by the court to support the widow of a dead husband when the woman's family is unable to do so.

The Indian Constitution's Articles 14, 15, and 21 were not violated by this conduct.

Effects of Daniel Latifi Judgment:

Because to Daniel Latifi, the Shah Bano case's guiding principles—according to which a spouse's responsibilities do not end at the point of iddat—were upheld by the court. This choice, however, is not taken in defiance of the problems that were settled in the Shah Bano case. Additionally, Section 125 of the CrPC does not pose a conflict risk, hence Shah Bano norms are used to identify the site of regulation. *IqbalBano v. Province of UP* hasn't totally overturned the law of Muslim disintegration, but it has restored control over issues involving the support of Muslim women. In a related case, the High Court upheld this ruling but modified the requirement that the separated woman had a claim to maintenance even after the iddat. The Indian Constitution's Articles 14, 15, and 21 were not violated, the High Court further found. added that the right might be rejected in line with section 125 of the CRPC if she gets reasonable and sensible maintenance. A wife is qualified for help under section 125 of the CrPC and section 3 of the Muslim Woman Security of Privileges on Separate From Act.¹¹

In the recent *Shah Bano v. Imran Khan* judgement, the excellent High Court emphasized that a separated Muslim lady has the right to ask for support from her significant other up to the point when she wouldn't remarry. Daniel Latifi and Shah Bano essentially hold the same stance in this respect.

Conclusion

As we've seen, there are conflicting opinions in Muslim law on the subject of support upon divorce. Section 125 of the CrPC and Muslim personal law were the two first sources that determined that men and women should be granted separate rights to maintenance. The two laws vary in that the husband is only permitted to help their partner up to the iddat term under

¹¹ Ibid.

Muslim individual law, but the lady's petition for support under the CrPC goes beyond the iddat period. This dispute was raised in respect to Section 127 of the CrPC, but it remained unresolved despite efforts to maintain order and put an end to the Muslim woman's battle. The conditional good Shah Bano case administration under this rule is discussed in this section. In addition, the famous top court ruled that Islamic personal law will be replaced by the CRC.

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