

Maintenance Under Section 125 Of Cr.P.C Vis A Vis Rights Of Divorced Muslim Women

Shruti Singh¹, Shreya Jantwal², Prof. (Dr.) Poonam Rawat³, Dr. Radhey Shyam Jha⁴, Manish Badoni⁵, Hitesh Bhatt⁶, Ambar Srivastava⁷

¹Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

²Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

³Head, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

⁴Associate Professor, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India

⁵Director, University School of Hotel & Hospitality Management, faculty of Uttarakhand University, Dehradun – 248007, Uttarakhand, India, manish.anusha11@gmail.com

⁶Assistant Professor, Law College Dehradun, faculty of Uttarakhand University, Dehradun – 248007, Uttarakhand, India

⁷Assistant Professor, Law College Dehradun, faculty of Uttarakhand University, Dehradun – 248007, Uttarakhand, India

ABSTRACT

It is rightly said that if one needs to know the development of society of a particular place at a particular time, he should observe the equality status of women in that society. Rights and liberties given to women and how much of them she is able to enjoy are some of the major factors that tell us about the moral development of people in a society. It is necessary for an ideal society to protect a woman and to give her the rights she deserves. One of the major constituents to study about women's status is to study the customs which provide her rights, be it personal rights or proprietary rights. Personal laws play a major role in providing different rights to men and women. But unfortunately, Muslim law does not suffice in protecting women in every condition. It gives the right to maintenance to all the divorced women and not those who are separated in any other way. If a woman suffers cruelty and she is not divorced or her divorce is not valid, she cannot claim maintenance. However, section 125 Code of Criminal Procedure acts as the saviour and provides maintenance rights to women in need whether divorced or not. When all the ceremonies are done in consonance with personal laws but if at the time of need a woman has to seek remedy from s. 125 CrPC then it goes without saying that women need stronger support from her personal laws. Being a progressive society, still women are not a well liberated part of society and in cases of family matters only a few women manage to escape from the judgmental claws of the society to file suit against her in-laws. In today's time men and women should be kept on equal pedestal. They should have equal rights and also the liberty to claim those rights. It is high time for us now to recognize the significance of the role of women in our society and give her the right she deserves.

KEYWORDS: Maintenance, Muslim, Code of Criminal Procedure, Marriage, Divorce.

I. INTRODUCTION

According to Manu a woman is a never ending minor as she has to spend her different phases of life under the guardianship of her father, husband

or her son. A woman in her whole lifetime plays different characters in any man's life, be it being a mother, sister, daughter or a wife. It has been a common occurrence and general perception that unmarried girls rely on their fathers and married

ones on their husbands. A woman has to leave her own family and sometimes even her job settlement in order to start her own family and look after them. To understand the status of women in a given society in a given time period one should understand different customs by which women's rights are recognized and protected. Succession and maintenance rights are one of the few empowering rights for their strong stand in a society. Although Prophet regarded divorce to be the most hateful, perhaps the first religion in the world to expressly recognize divorce as a means of dissolving a marriage was Islam. The reason for being regarded as hateful amongst all permitted things is because of its interference with the proper bringing up of children and conjugal harmony. He took it as an act to undermine the foundation of society. There are various legislations to regulate various rights and duties in marriage, divorce, dower or maintenance under Muslim Laws. Such as:

- **The Muslim Personal Law (Shariat) Application Act, 1937:** The Act's purpose, as stated in the Preamble, is to present for the purpose of Muslim Personal Law (Shariat) to Muslims in India. Marriage, divorce, inheritance, and family ties are all governed by it.
- **The Dissolution of Muslim Marriage Act, 1939:** gives women 9 grounds to claim divorce and this Act also states that when a wedded woman repudiates Islam or converts to another faith, her marriage does not end automatically. Assuming that the lady converts to Islam from another faith and then reverts to it.
- **Muslim Women (Protection of Rights on Divorce) Act, 1986:** According to this Act, if women are not able to maintain themselves then they are supposed to inherit maintenance after iddat period from her relatives who would be at liberty to accede to her property on her death and if no such relative is present to inherit then the wakf shall maintain her.

2. TYPES OF MARRIAGES AND DIVORCES IN MUSLIM LAW

"Among His signs is that He created for you companions from yourself so that you would find relaxation with them," the Quran says about marriage. And He has put a barrier between you and kindness. There are definitely signals for those who think, "The most complete in faith among believers is he who is finest in manners and nicest to his wife," says the Prophet Muhammad. Unlike Hindus, in Muslim law marriage is characteristically a contract rather than a sacrament. Being more of a contractual nature there are various characteristics of a contract that are to be fulfilled in Muslim marriage for it to be valid (sahih marriage). For example, a valid marriage should have proposal (ijab) and acceptance (kabal) in the same transaction, in the presence of witnesses (not in case of shias) and with the promised consideration. Free consent is required for valid marriage; it should not be under the influence of coercion or undue influence.

There are various legal consequences of a valid (sahih) marriage such as:

- The cohabitation between man and woman becomes lawful and their children are legitimate with the right to inheritance.
- Women have the right in husband's property in case of his death and vice versa. Also, she has the right to dower and maintenance.
- A period of iddat has to be undertaken by women in case of divorce and husband's death.

There are various cases in which a Muslim marriage is void-ab-initio (batil) such as:

- when marriage is forbidden in blood relationships
- When marriage takes place during the iddat period is observed.

In consequence of absence or irregularities of some essentials of valid marriage, the marriage becomes an irregular marriage and on fulfillment of those formalities or eradication of those irregularities the marriage becomes valid. There are various instances of irregular marriages:

- Marriage without guardian's consent when his approval is required

- Marriage with the fifth wife when all the other four are living.
- Marriage with pregnant women, when that pregnancy was not the result of adultery or fornication.
- Marriage while a woman is in her period of iddat.
- Marriage in absence of required number of witnesses
- Marriage prohibited on account of differences of religion

There is another kind of marriage known as 'Mutah marriage' also known as marriage for pleasure. This marriage is a mutual agreement of marriage for a specific period of time and there is no maximum or minimum limit of this period. However, if no period is mentioned then this marriage becomes permanent in nature. Mutah marriage dissolves after the said period ends and the women has to perform abstinence for up to two menstrual cycles.

3. DISSOLUTION OF MARRIAGE

Dissolution of marriage in Muslim law is either by divorce or death of husband or wife. After the death of the wife the husband can remarry immediately but on the other hand in case of death of husband, wife has to observe iddat period of four months and ten days and if she is pregnant then until the delivery of the child she has to observe the period of iddat.

There are four kinds of divorce:

1. Divorce by husband: talaq (further categorized as talaq-i-sunnat and talaq-ul-biddat), ila, zihar
2. Divorce by wife: talaq-i-tafweez and lian
3. Divorce by mutual agreement: khula, mubarat
4. Divorce by judicial decree under Dissolution of Muslim Marriage Act, 1939 : lian, fask

1. Talaq-i-sunnat

- a) Talaq-i-ahsan: This divorce is considered good in law. In this kind the divorce is made by single pronouncement during the purity period (tuhr) i.e. in between the two menstrual cycles . This divorce is good in law as it gives time to abstain from divorce and save marriage therefore, preventing

unreasonable and grave and sudden provoked divorces.

- b) Talaq-i-hasan: A husband is required to pronounce "Talaq" three times, during three successive tuhrs. It should be made sure that pronouncements are made when no intercourse takes place during any period of tuhr. The marriage is dissolved irrevocably, regardless of the period of iddat.

2. Talaq -i- biddat: Talaq-i-biddat or triple talaq is a kind of irrevocable and instant divorce in which a man divorces his wife by pronouncing the word 'talaq' three times. In this kind, the physical presence of wife is not required nor is a valid reason required to divorce. It is considered executed when these words are pronounced, not when the wife knows about it. It can be done even on a phone call, text message or mail. It is only recognized in Sunnis.

In Dissolution of Marriage Act, 1939, married women are given the right to terminate marriage if any one or more of the following conditions are fulfilled:

- i. If her husband's whereabouts are not known for period of four years. Provided that no such decree shall take effect for the period of six months and if her husband either physically presents himself before the court or through an agent and if the court is satisfied that conjugal rights can be performed by him, the court shall set aside such decree,
- ii. If her husband fails or neglects to provide her maintenance for period of two years,
- iii. If her husband is sentenced imprisonment of seven or more years. Provided that the sentence should be final,
- iv. If her husband fails to fulfill his matrimonial obligations for a period of three years without any reasonable cause,
- v. If her husband was incapable of procreating at the time of marriage and continues to be so. Provided that the court shall not pass any decree if the husband submits an application that within one year from the date of such order that he shall satisfy the court that he

- has ceased to be impotent within such period.
- vi. If her husband has been proven insane for a period of two years and is a victim of leprosy or any virulent venereal disease,
 - vii. If the woman got married before attaining age of 16 years by her father or guardian and she repudiated the wedding prior to attaining 18 years of age. Provided marriage has not been consummated.
 - viii. If husband treats her with cruelty i.e.
 - a. She is assaulted frequently or her life is made miserable by cruelty in which physical ill treatment is not a necessary factor to be present.
 - b. has acquaintances with woman of cheap virtue or does not live famous life, or
 - c. by coercion makes her to live immoral life;
 - d. Obstructs in exercising legal rights over her property or disposes her property (e) Obstructs her in the observance of her religious profession or practice, or
 - e. If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran,
 - ix. On any other ground which is recognized as valid for the dissolution of marriages under Muslim Law.

5. MAINTENANCE

Marriage in Muslim law is no less than a contract which gives rise to various rights and liabilities, maintenance is one of them. Under Muslim law, in a valid marriage, husband is bound to maintain his wife, to provide her with food shelter and other necessities. However, in void or irregular marriage he is not bound. Muslim women can claim her right to maintenance through the following legislations:

1. Muslim personal law
2. The Muslim Women (Protection of Rights on Divorce) Act, 1986
3. Criminal Procedure Code, 1973

According to Muslim personal laws, after dissolution of marriage a wife has to be taken care of by her husband during the period of iddat and not beyond that. Women have absolute right over

the maintenance and are also at liberty to receive a special allowance known as kharcha-e-pandan. This right of women cannot be waived by any agreement as it could lead to abuse and exploitation of women. There are certain circumstances in which women can be denied right to her maintenance and they are as follows:

1. If right to maintenance got suspended during marriage
2. No maintenance to apostate wife
3. If it was due to wife's defect that the marriage dissolved

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

The Muslim Women (Protection of Rights on Divorce) Act, 1986 was created after the Shah Bano case in order to avoid the disturbance. A Muslim divorced woman has the right to reasonable and equitable support throughout her iddat period, according to section 3 of this Act. She is entitled to an amount equal to the sum of mahr or dower agreed upon at the time of marriage or at any time thereafter, to be paid, as well as all the properties given to her by her relatives, friends, or husband or relatives and friends of her husband before, at the time of, or after her marriage. If the foregoing criterion is not met, and the entitled property or money is not handed to the wife, she may file a complaint with the Magistrate. If the Magistrate is convinced that the husband has failed or neglected to preserve or give her the property she is entitled to despite having sufficient means, the Magistrate may make an order to pay her the same within one month of the filing of her application.

The court may bring charges to levy maintenance, dower, or mahr due in the manner specified in the Code of Criminal Procedure, 1973 for the levying of fine if indeed the person against whom the order is made continues to disobey the order. Following the execution of the warrant, he may also impose a sentence of confinement that may last up to a year or until the full sum owed, or a portion of it, is paid (The Muslim Women (Protection of Rights on Divorce) Act, 1986).

This Act states that a man is solely responsible for supporting his spouse during her iddat period and not after. Following her iddat period, the woman's relatives whom she seems to have the right to inherit from are obligated to support her; if she

has no such relatives, the wakf board will support her. Further interpretation of this provision was done by Supreme Court in the case of (Danial Latifi v. Union of India, 2001).

Maintenance under the Criminal Procedure Code, 1973

Initially under section 488 of old Code, it was mentioned that only a wife was entitled to maintenance by husband. Therefore, once the dissolution takes place, the woman ceases to be his wife and hence no longer has the right to maintenance. To block this loophole the amendment of 1973 was introduced wherein section 125 gave the right of maintenance till the time she remarries.

Criminal procedure code has undoubtedly proven itself as the savior to the restrictive rights of the Muslim women as they were only entitled to be maintained during their iddat period and not beyond. And then s.125 CrPC came to the rescue. In the case of Daniel Latifi the Supreme Court held that maintenance to women should be given considering her life after the iddat period also and not just during iddat. Although that maintenance should be given during her iddat period only but should be given in accordance with maintaining her life even after the iddat period. (Danial Latifi v. Union Of India, 2001). Being gender and religion neutral is one of the finest qualities of this Code. According to section 125, along with other dependants, a 'wife' is entitled to maintenance if she is unable to maintain herself. If the Magistrate First Class is satisfied or husband's refusal and neglect to maintain then he may order such husband to maintain his wife at a monthly rate which deems fit. Such maintenance shall be payable from the date of order or if the Magistrate decides from the date of application. In (Bai Tahira v. Ali Hussain FIssalli Chothia, 1978) it was held by the court that payment of 'illusory sums' by husbands to wives in Muslim law under some customs does not suffice the payment of maintenance claim of wife. That payment does not acquit him of maintenance liabilities.

There have been various cases in which the Supreme Court has significantly superseded section 125 over the Muslim personal laws. The Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum and Ors., 1985, dismissed the

appeal saying that even if there is a conflict still the provision of section 125 CrPC will prevail and as it is a gender neutral code therefore will apply to Muslim women as well. After this case the legislation came up with The Muslim Women (Protection of Rights on Divorce) Act, 1986. However, section 125 CrPC never backed off from coming to the rescue for women while claiming maintenance.

One of the major factors that distinguish section 125 from any other maintenance provision of personal laws is that according to this section, a wife (even a divorced wife unless she does not remarry) can claim maintenance if she is unable to support herself. In (Shayara Bano v. Union of India, 2017), Triple talaq, also known as talaq-e-bidat, was ruled to be unlawful by a vote of 3:2. Only divorced women are eligible for maintenance under The Muslim Women (Protection of Rights on Divorce) Act of 1986. Because it is no longer a genuine divorce, no woman who has been granted a talaq-e-bidat divorce by her husband may file for support under the aforementioned Act. However, she may do so under section 125 of the Criminal Procedure Code.

In (Shabana Bano v. Imran Khan, 2009) According to the Supreme Court, regardless of whether a woman applies under Section 5 of the Muslim Women (Protection of Rights On Divorce) Act, 1986, she may still seek support under Section 125 of the Criminal Procedure Code as long as she does not remarry. Under section 125 CrPC, women who are not divorced may also request maintenance. Additionally, a wife's eligibility for maintenance under section 125 of the Criminal Procedure Code cannot be limited to the iddat term.

If any person without any reasonable or sufficient cause fails to obey with the order of maintenance Magistrate and application is made to the Court within one year from the date it became due, Magistrate may issue warrant to levy the due amount and may sentence imprisonment to levy each month's allowance after execution of warrant which may extend to one month or as soon as the payment is made, whichever is earlier. According to this section if the husband agrees to support his wife on the condition that she resides with him, and the woman cites reasons why she cannot, if the Magistrate considers those reasons

to be acceptable, she will be paid maintenance even if she does not comply with the husband's terms. It has been stated explicitly that a husband having a mistress is a completely legitimate cause for a wife's unwillingness to return to live with him. In (*Begum Subanu Alias Saira Banu v. A.M Abdul Gafoor*, 1987) the apex Court held that although men in Muslim law have got the right to practice second marriage but still women is entitled to claim maintenance if she feels neglected due to second marriage under section 125 of CrPc.

However, if a woman is living in adultery or refuses to live with the husband with no reasonable cause or husband and wife are living separately with mutual consent, she is not entitled to maintenance. Moreover, if the above factors are proved even after the order of maintenance is made, Magistrate shall cancel the order.

Second proviso of section 125 also provides for interim maintenance i.e. in pendency of proceedings the magistrate may order as he deems fit to provide monthly allowance as interim maintenance and expenses of proceedings. However, such an application shall be disposed of within 60 days from the date of the service of notice of the application to such person.

4. CONCLUSION

Different religions have different values. Every custom emerges from a thought and necessity of its time. Every tradition has a history of its own and hence the different personal laws. In a state where secularism is one of the objectives of the constitution, having different personal laws is nothing but a wider implication of it. Welfare of the public is the supreme law of the state and no welfare can be done in its true sense until equal rights are given to all the citizens. Law is dynamic, it changes with the changing time and society and undoubtedly it has but women have till date not been given the equal pedestal. If even in the presence of personal laws, a woman still has to go out of her radius of religion and seek remedy in the substantive or other procedural laws then clearly the personal laws are not fulfilling her purpose.

While considering women's rights in Muslim law it provides that, the women shall only be permitted for maintenance during her iddat period and not beyond. However, by various judicial

interpretations it was concluded that all the provision of maintenance of divorced women for the iddat period and beyond, during her iddat period itself. Although now she is entitled to extended maintenance but it should be kept in mind that it is not the protection provided by the personal laws but by the court's interpretation. Undoubtedly Muslim personal laws give women numerous rights but suddenly she is deprived of every bit of it if she is not a divorced women. All the remedies provided in different legislations are just for the divorced women and this is where section 125 of CrPC comes to the rescue. It fills up the loop hole in The Muslim Women (Protection of Rights on Divorce) Act, 1986 and provides the right of maintenance to women who are separated from their husband in conditions other than divorce also. Calling of judicial interpretations and seeking help from other provisions than personal laws shows the incompleteness of the personal laws. However, it is a relief that no matter from where the remedy or rights are claimed, women are protected throughout and are given the right she deserves. Justice and equality overcame religion.

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