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E.MBA, LL.M, Ph.D, PGDSAPM

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**LEGAL DISCOURSE FOR RIGHT TO MAINTENANCE BY
MUSLIM WOMEN – COMPARATIVE ANALYSIS BETWEEN
SEC. 3 OF THE MUSLIM WOMEN (PROTECTION OF RIGHTS
ON DIVORCE) ACT, 1986 AND SEC. 144 OF BNSS, 2023.**

AUTHORED BY - V ANUSH ESWAR*

A] INTRODUCTION

The marital rights of a divorced Muslim woman are founded on the Quranic law, the holy book of Islam that regulates the personal lives of its believers. In this article, we shall particularly analyse the legal discourse of maintenance available to Muslim women. The word "maintenance" in Muslim law is nafaqah, which means "what a man spends on his family." A person is considered to be providing maintenance when they are legally required to provide for a family member's basic needs, including food, clothing, housing, and other necessary for their livelihood. According to Muslim law, a husband's duty to provide maintenance, contingent on his financial capacity, extends to his wife, children, parents, grandparents, and other near blood relations.¹ Islamic laws outline principles for determining maintenance, which can be enforced through court intervention. Failure to provide maintenance may lead to legal consequences. Changes in circumstances, such as the payer's or the dependents' financial situation, may require an adjustment to the maintenance amount.

According to the verses of Quran and Sunnah, Let the woman live (in iddat) in the same manner that you do, according to your means, and do not bother them in order to limit them. And if they are carrying (life in their womb), spend (your wealth) on them until they birth their child, and if they nurse your (offspring), pay them their remuneration.² Let there be a fair provision for divorced women as well. This is a responsibility for people who are aware of God. These statements deduce that a divorced wife is only entitled to be maintained, a) While she is pregnant and b) During Iddat.³

Maintenance under Muslim law is primarily governed by Muslim personal laws and the Muslim Women (Protection of Rights on Divorce) Act, 1986.⁴ Additionally, Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 125 of the Criminal Procedure Code, 1973) is also applicable to Muslim women seeking maintenance. The landmark Shah

Bano case initiated the key conflict between Muslim personal law and Section 125 of the CrPC.⁵ This case drew attention to the rights of divorced Muslim women, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. These provisions ensure financial support for dependents, such as wives and children. While Islamic law offers guidelines for maintenance, controversies have arisen, especially in divorce cases.

BJ RIGHT TO MAINTENANCE FOR MUSLIM WOMEN AND LEGAL

DEVELOPMENTS

1. Muslim Personal and Legislative Provisions

In Islamic law, a husband's obligation to provide maintenance (Nafaqa) to his wife extends throughout the marriage and during the Iddat period following divorce, which lasts for three menstrual cycles or until childbirth. During this period, the husband must provide financial support, covering basic needs like food and shelter. However, once the Iddat ends, the husband's duty to maintain the wife ceases, leaving the woman without further legal recourse under traditional Islamic law.⁶

Even if the wife refuses to live with her husband on valid grounds, her right to maintenance remains intact. Special allowances like kharch-e-pandan (personal expenses) are also recognized, but if the wife deserts her husband without valid reasons, her right to maintenance is forfeited. The Muslim Women (Protection of Rights on Divorce) Act, 1986, modified this traditional framework. Section 3 mandates “reasonable and fair provision and maintenance” during the Iddat period. Section 4 allows a divorced woman to seek support from her relatives or, failing that, from the State Wakf Board if she cannot maintain herself post-Iddat. This structure differs from secular laws like Section 125 CrPC, which ensures maintenance beyond religious limits.

2. Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023(Previously Section 125 of CrPc).

Section 125 of the CrPC was designed to provide a remedy for destitute wives, children, and parents by ensuring financial support from those legally bound to maintain them. It is a secular law, applicable across all religious communities in India.⁷ Under this provision, even divorced wives, including Muslim women, can claim maintenance if they are unable to support themselves.

The provision was seen as a progressive move to empower women, especially those trapped in oppressive marriages. However, its application to Muslim women sparked controversy, as it

conflicted with the limitations on post-divorce maintenance in Islamic law. The conflict between Section 125 and Muslim personal law came to the forefront in the landmark case of Mohd. Ahmed Khan v. Shah Bano Begum.⁸

3. The Shah Bano Case and Its Impact

The Shah Bano case is one of the most significant legal milestones in the history of maintenance laws for Muslim women in India. In 1978, Shah Bano, a 62-year-old woman, was divorced by her husband through talaq and left without means to support herself. She filed a petition under Section 125 of the CrPC, seeking maintenance from her husband. The court awarded her a meagre sum of Rs. 25 per month, which she challenged, leading to an increase in the maintenance amount by the Madhya Pradesh High Court. In his appeal to the Supreme Court, her husband claimed that he was exempt from ongoing support obligations under Muslim personal law, which terminated after the Iddat period.

Nonetheless, the Supreme Court maintained the High Court's ruling, declaring that Section 125 of the CrPC is a secular statute that covers all women, regardless of their religious beliefs. The Court argued that there was no inherent conflict between Section 125 and Muslim personal law, as the Quran obligates husbands to provide for their wives even after divorce.⁹ The judgment also emphasized that if a divorced Muslim woman is unable to support herself, her husband is obliged to pay maintenance beyond the Iddat period under Section 125.

This ruling caused a significant backlash from Muslim groups, who viewed it as an infringement on their personal law. In response to the political pressure from these groups, the Indian government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986.

4. The Codification of Muslim Women (Protection of Rights on Divorce) Act, 1986

The 1986 Act was passed to quell the unrest following the Shah Bano judgment. Its provisions sought to limit the liability of Muslim husbands by specifying that maintenance is to be paid only during the Iddat period. After that, the responsibility for supporting the divorced woman would shift to her relatives, and if they were unable to provide, the Wakf Board would be required to pay.

The Act was highly controversial, with critics arguing that it deprived Muslim women of the rights available to women of other religions under Section 125 of the CrPC. The law was seen as regressive and discriminatory, as it effectively overturned the Shah Bano ruling and limited the financial protection available to divorced Muslim women.

5. Judicial Interpretation of the Act

The ambiguity surrounding the 1986 Act, and its perceived inadequacies led to further judicial scrutiny. In *Daniel Latifi v. Union of India* (2001)¹⁰, the Supreme Court upheld the constitutional validity of the Act but interpreted its provisions in a way that restored some of the rights that Muslim women had gained under the Shah Bano case. The Court ruled that the requirement for the husband to make a “reasonable and fair provision” for his divorced wife must be fulfilled during the Iddat period, but the provision should cover the woman’s needs for her entire life, not just the period of Iddat.¹¹ This interpretation effectively aligned the Act with the principles of Section 125 of the CrPC, ensuring that Muslim women would not be left without support after divorce.

The evolution of maintenance laws for Muslim women in India reflects the complex interplay between religious personal laws and secular legal provisions. While Muslim personal law provides for maintenance only during the Iddat period, Section 125 of the CrPC offers broader protection to women who are unable to support themselves, regardless of their religion. The conflict between these two legal systems was brought to light by the Shah Bano case, which prompted the Muslim Women (Protection of Rights on Divorce) Act, 1986. However, subsequent judicial interpretations, particularly in the *Daniel Latifi* case, have ensured that Muslim women can still claim fair and reasonable maintenance beyond the Iddat period, thereby bridging the gap between personal and secular law.

C] MOHD. ABDUL SAMAD VS. STATE OF TELANGANA & ANR - RECENT JUDICIAL PRONOUNCEMENTS

The recent legal development of *Mohd. Abdul Samad vs. State of Telangana & Anr.* (2024)¹² delves into the legal rights of divorced Muslim women regarding maintenance claims under Section 125 of the Criminal Procedure Code (CrPC). In this case, the husband and wife married in 2012, but due to differences, the wife left her matrimonial home in 2016. Following this, she lodged criminal charges against her husband under Sections 498-A and 406 of the Indian Penal Code (IPC). Subsequently, the husband pronounced a triple talaq and obtained an ex-parte divorce from the office of Quzath. The wife later claimed interim maintenance under Section 125 of the CrPC, which was accepted by the Family Court. The spouse, however, objected to the judgment, claiming that since the 1986 Act is a unique statute created only for Muslim women who have divorced, it should control the maintenance.

1. Legal Contentions

The crux of the husband's argument was that the Muslim Women (Protection of Rights on Divorce) Act, 1986, being a special law, should override Section 125 of the CrPC, a general provision. He contended that the 1986 Act offers a more beneficial and efficacious remedy for divorced Muslim women and hence should be the exclusive recourse. This position was supported by legal precedents that emphasized the application of special laws over general ones. Courts across India have offered differing interpretations of this issue. One view suggests that once the 1986 Act is invoked, it extinguishes the right to seek maintenance under Section 125 CrPC. However, a more prominent view, reflected in recent cases, allows Muslim women to file for maintenance under Section 125 of CrPC despite the existence of the 1986 Act.

2. Judicial Analysis

Justice Augustine George Masih emphasized that Section 125 CrPC is a secular, welfare-oriented provision aimed at providing quick relief for women, including divorced Muslim women. He cited the landmark case of *Fuzlunbi v. Khader Vali* (1980) and *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)¹³, in which it was held that Section 125 CrPC applies to all women regardless of personal laws. The Shah Bano case, in particular, solidified the stance that a divorced Muslim woman can seek maintenance under Section 125, leading to the eventual enactment of the 1986 Act. Despite this, the Supreme Court in the present case ruled that both Section 125 of the CrPC and the Muslim Women (Protection of Rights on Divorce) Act, 1986, are complementary rather than conflicting.¹⁴ The court held that a divorced Muslim woman has the right to choose between the two legal frameworks for claiming maintenance or even pursue both.

D] COMPARATIVE ANALYSIS OF HINDU AND MUSLIM MAINTENANCE LAWS

The Muslim Women (Protection of Rights on Divorce) Act, 1986 and customary norms control maintenance under Muslim law. For Hindus, maintenance is regulated by the Hindu Marriage Act, 1955, and the Hindu Adoption and Maintenance Act, 1956, offering both temporary and permanent maintenance.

1. Beneficiaries

According to Muslim law, the wife, children, and, in some situations, parents and other close relatives are the principal recipients of maintenance. But a wife can only receive maintenance

during the Iddat phase following a divorce. On the other hand, Hindu law grants lifelong maintenance under the Hindu Marriage Act to the wife, children, daughter-in-law, and other dependents.

2. Gender Inclusivity

Muslim law requires only husbands to provide maintenance, whereas Hindu law allows both spouses to claim it. Courts have upheld this, as seen in *Rani Sethi vs. Sunil Sethi* (2011)¹⁵, where a wife was ordered to provide maintenance to her husband.

3. Duration

Muslim law limits maintenance to the Iddat period, with potential support from relatives or the State Wakf Board if necessary. Under Hindu law, maintenance can be lifelong and adjusted based on changing circumstances, as per Section 25 of the Hindu Marriage Act.¹⁶

E] UNIFORM CIVIL CODE (UCC) AND ITS IMPACT

The Uniform Civil Code (UCC) aims to establish a single set of laws governing personal matters like marriage, divorce, and maintenance, irrespective of religion. It promotes social harmony, gender equality, and secularism by eliminating discrepancies between religious laws. The recent implementation of the UCC in Uttarakhand has brought significant changes. Under its provisions, both spouses can claim maintenance, ensuring gender parity. Sections 33 and 34 of the Uttarakhand UCC address temporary and permanent maintenance, considering the income and estate of both parties.¹⁷ Additionally, the UCC respects religious traditions by ensuring that dowry, Mahar, and other customary gifts are separate from maintenance claims. The UCC's emphasis on gender equality and standardized legal procedures marks a departure from the limitations of religious laws like those in Muslim personal law. By offering a uniform approach, the UCC mitigates disparities in maintenance rights and aims to ensure fair treatment for all, regardless of religious background. Therefore, the UCC, particularly in Uttarakhand, has the potential to address the challenges faced by Muslim women under personal laws. By prioritizing uniformity and equality, it could serve as a model for reform in maintenance laws across India.

F] CONCLUSION

The right to maintenance for Muslim women embodies essential legal protections, emphasizing their dignity and security post-divorce. The comparative analysis between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and the BNSS, 2023, reveals significant strides towards ensuring just and equitable support. Despite challenges like ambiguity in provisions and traditional resistance, judicial interventions have reinforced women's rights. Upholding these principles is crucial for fostering gender equality and social justice within the evolving legal landscape.

¹ Tahir Mahmood & Saif Mahmood, *Introduction to Muslim Law* 151 para. 3 (Universal Law Publishing, Reprint 2014).

² Bhirgu Raj Maurya, *Maintenance under Muslims' Personal Law*, Assistant Professor, Department of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India (2022).

³ See, Al- Quran, Surah Al-Baqarah; verse 2:233.

⁴ Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, § 1, Acts of Parliament, 1986 (India).

⁵ Code of Criminal Procedure, No. 2 of 1974, § 125, Acts of Parliament, 1974 (India).

⁶ Prof. Ashok Wadje, "Maintenance Right of Muslim Wife: Perspective, Issues & Need for Reformation" National Law University, Jodhpur Law Journal.

⁷ Khan Ephroz, "Women and Law : Muslim Personal Law Perspective" Rawat Publications, 2003⁸ Mohd. Ahmed Khan v. Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844 (India 1985)

⁹ The Shah Bano Legacy, The Hindu, Aug. 10, 2003.

¹⁰ Danial Latifi & Anr. v. Union of India, (2001) 7 S.C.C. 740 (India).

¹¹ 18 Paras Diwan, "Law of Marriage & Divorce" S.Jain, P.Diwan, Universal Law Publishing Co, 6th Edition 2011

¹² Mohd. Abdul Samad v. State of Telangana & Anr., 2024 INSC 506 (India).

¹³ Fuzlunbi v. Khader Vali, (1980) 4 S.C.C. 125 (India); Mohd. Ahmed Khan v. Shah Bano Begum, A.I.R. 1985 S.C. 945 (India).

¹⁴ SCC Online, Divorced Muslim Woman Can Seek Maintenance Under Section 125 CrPC: Supreme Court, SCC Blog (July 11, 2024, 11:17 PM), <https://www.scconline.com/blog/post/2024/07/11/divorced-muslim-woman-can-seek-maintenance-under-section-125-crpc-supreme-court-2/>.

¹⁵ Rani Sethi v. Sunil Sethi, 179 (2011) D.L.T. 414 (India).

¹⁶ Hindu Marriage Act, No. 25 of 1955, § 25, Acts of Parliament, 1955 (India).

¹⁷ Uttarakhand Uniform Civil Code, No. 1 of 2024, § 33, Acts of Uttarakhand State Legislature, 2024 (India).