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Statutory Acts or Procedural Law in Muslim Woman's Right to Maintenance?

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ABSTRACT

Among the persons entitled to maintenance under Muslim law, unlike the English Law, an obligation of the Muslim man to maintain his descendants, ascendants, collaterals, and wife. This arises from three 'causes' of marriage, relationship and property. Thereupon, it is the only wife possessed of the property sufficient for her maintenance in a legal sense; it is food, clothes and lodging. She "can claim to be maintained at the expense of her husband as her right to maintenance" as in the nature of consideration for her "marriage" in this case or situation contract. Regardless of the husband is indigent. Besides, as a general rule, there is no relation as above-mentioned causes "except a wife, who is in easy circumstances, has any claim for maintenance."

I. MAIN BODY

Preliminary to the arising of the right of maintenance² as aforementioned are in the 'normal circumstances,' not particularly under "the Muslim Women (Protection of Rights on Divorce) Act, 1986."³ Here notwithstanding with the provisions of Section 125⁴ and 126 C.r.P.C.⁵ on the construction of the law observed in the leading case of *Shah Bano Begum v. Mohammed Ahmed Khan*.⁶ The Statutory law⁷ legislated by the parliament of India to protect the rights⁸ of Muslim women who have been divorced, i.e., as already written above the Muslim Women (Protection of Rights on Divorce) Act, 1986. Though after, the *Shah Bano Case*⁹ (supra) led to

¹ Author is a student at Hidayatullah National Law University, Raipur, India.

² Ahmad A and Khan IA, *Chapter - 12 Maintenance (Nafaqa)*, in Text book of Mohammedan law (Twenty-seventh ed. Central Law Agency 2009).

³ The Muslim Women (Protection of Rights on Divorce) Act, 1986, Legislative Government India, https://www.sba.gov/sites/default/files/files/Legislative_Priorities_2013.pdf (last visited Mar 1, 2022).

⁴ Ashok Kini, From Shah Bano to Shabana Bano: Divorced Muslim women and right to claim maintenance under section 125 CRPC Live Law (2019), <https://www.livewlaw.in/know-the-law/divorced-muslim-woman-can-claim-maintenance-section-125-crpc-146568> (last visited Mar 1, 2022).

⁵ Shivanshu Goswami, Analysis on order for maintenance of wives, children and parents under the Code of Criminal Procedure The Daily Guardian (2020), <https://thedailyguardian.com/analysis-on-order-for-maintenance-of-wives-children-and-parents-under-the-code-of-criminal-procedure/> (last visited Mar 1, 2022).

⁶ "[1985 (1) SCALE 767 = 1985 (3) SCR 844 = 1985 (2) SCC 556 = AIR 1985 SC 945]."

⁷ Prachi Bhardwaj, Editor & Devika Sharma, Interpretation of Statute Archives SCC Blog (2022), <https://www.scconline.com/blog/post/tag/interpretation-of-statute/> (last visited Mar 1, 2022).

⁸ Editor, Devika Sharma & Prachi Bhardwaj, Iddat Archives SCC Blog (2021), <https://www.scconline.com/blog/post/tag/iddat/> (last visited Mar 2, 2022).

⁹ Lucy Carroll, Shah Bano, the Muslim women (protection of rights on divorce) Act JSTOR,

the passing of the Act of 1986. For the objectives as mentioned and also to protect the matters connected therewith or incidental thereto.

In the same, Section 3¹⁰ provides that a Muslim divorced woman shall be entitled to reasonable and fair provisions and maintenance within the period of *iddat* by her former husband. Besides, in case she maintains children born to her before or after divorce. Such reasonable “provisions” and “maintenance” would be extended to a period of two years from the date of birth of the children. Subsequently, if it is “not given to her at the time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance.”

Moreover, Section 4¹¹ of the Act contains provisions to empower the Magistrate “to make an order for the payment of maintenance by her relatives as they would be entitled to inherit her property¹² on her death stated in Muslim law.¹³ Hence, they will be paying in the proportions in which they would inherit her property. Yet, if any of them is unable to pay, then the Magistrate would direct other relatives to pay the shares on the part of these relatives as well.

Nevertheless, if the “divorced woman has no relative, or such relatives or any of them has not enough means to pay the maintenance or the other relative who has been asked to pay the shares of the defaulting relatives. “In such a case, the Magistrate would direct “the State Wakf Board¹⁴ to pay the maintenance ordered by him or the shares of the relative who are unable to pay.”

However, “in such circumstances, the Magistrate has to ‘record the finding’ that relatives as mentioned in Section 4(2)¹⁵ of Act of 1986” do not have sufficient means to pay the maintenance to her. Also, even if the Wakf Board did not take any plea that there were “other relatives who could provide the maintenance to the divorced woman. “The decision was upheld in *Tripura Board of Wakf v. Tahera Khatoon*.¹⁶

Contrarily, in the preceding judgment, the Kerala High Court in *Syed Fazal P.T. v. Union of*

<https://www.jstor.org/stable/43951680> (last visited Mar 2, 2022).

¹⁰ Devika Sharma et al., Maintenance - wife SCC Blog (2021), <https://www.scconline.com/blog/post/2019/01/04/maintenance-wife/> (last visited Mar 2, 2022).

¹¹ Muslim women (Protection of Rights on Divorce) act, 1986, India Code (1986), https://www.indiacode.nic.in/handle/123456789/1873?sam_handle= (last visited Mar 2, 2022).

¹² Notice and order – COVID-19 – electronic filing in eCourts, <https://proddrupal.njcourts.gov/sites/default/files/notices/2020/05/n200511a.pdf> (last visited Mar 2, 2022).

¹³ Wael B. Hallaq, An introduction to islamic law Higher Education from Cambridge University Press (2012), <https://www.cambridge.org/highereducation/books/an-introduction-to-islamic-law/EFE6192467D2302522998BA33C34233D#overview> (last visited Mar 2, 2022).

¹⁴ Livia Holden More Posts, Livia Holden & Livia Holden, Maintenance by the Wakf Board after the iddat period Women's Rights in Muslim Contexts, <https://womenproperty.hypotheses.org/275> (last visited Mar 2, 2022).

¹⁵ Muslim women (Protection of Rights on Divorce) act: Maintenance for wife & children: Hello counsel, Hello Counsel | The Indian Law Helpline (2021), <https://www.hellocounsel.com/maintenance-for-wife-children-muslim-women-protection-of-rights-on-divorce-act/> (last visited Mar 2, 2022).

¹⁶ AIR 2001 Gau. 104.

*India*¹⁷ held that S.4(2) of the Act does “not direct the Wakf to contribute for making payment of maintenance to any destitute woman. “Though the Wakf has got its own finance, the maintenance has to be paid out of those funds. Still and all, the current *Tripura case* (supra) ruling is followed as lately pronounced.

Persisting to the right to maintenance, in the Bombay High Court judgment in *Hafijabi Suleman v. Suleman Mohammad Darwajkar*.¹⁸ Perhaps the very interesting question was raised whether a maintenance application pending before the Court on “the commencement of the Act, 1986” would be governed by the provision of the new Act or by S.125 of C.r.P.C.

The fact of the case was (in my own words):

“A Muslim woman married to the respondent about 17 years ago to the filing of the application for maintenance against her husband under S.125 C.r.P.C. in 1983. There was ownership of the agricultural land dispute between the husband and wife, due to which the husband had been harassing her and had ill-treated on several occasions. Subsequently, the wife now had been residing in a separate room of her husband’s house as she had been driven out of the house. Contrarily, the husband claimed that the land had been sold to him by his father-in-law, and because of it, the petitioner (wife) had an increased quarrel with him. Moreover, as per the husband, the present application has been filed by his wife only with an intention to harass him. Further, the husband also refused ill-treatment or beating or drove her out of the house. His argument was that he was paying Rs 60/- per month as decided by the village community as a maintenance allowance.”

However, in the trial, the Court found the husband guilty of not providing maintenance even after having enough means done after scrutinizing from both sides. Further, ordered that the husband should pay Rs 100/-per month as a maintenance allowance in 1984.

Consequently, aggrieved by this decision, the husband filed a revised application before the Appellate Court contending in view of the “Muslim Woman (Protection of Rights on Divorce) Act, 1986.” That the present application is not maintainable and it was further argued that the provisions of S.125 C.r.P.C.¹⁹ are not applicable²⁰ in case of Muslim wife. “Subsequently the

¹⁷ AIR 1993 Ker. 308.

¹⁸ AIR 1996 Bom. 80.

¹⁹ Livelaw News Network, Maintenance- magistrate empowered u/s 125 CRPC to sentence defaulter to separate terms of imprisonment of upto 1 month for every month's default: Rajasthan HC Live Law (2021), <https://livelaw.in/news-updates/ajasthan-high-court-maintenance-recovery-125-crpc-magistrate-can-impose-separate-imprisonment-terms-for-separate-defaults-186979> (last visited Mar 2, 2022).

²⁰ Devika Sharma et al., [maintenance to Muslim wife] all HC: "s. 125 CRPC perhaps one of the most secular enactment ever made in this country": HC while upholding maintenance awarded to divorced Muslim wife SCC Blog(2020), <https://www.sconline.com/blog/post/2020/10/28/maintenance-to-muslim-wife-all-hc-s-125-crpc-perhaps-one-of-the-most-secular-enactment-ever-made-in-this-country-hc-while-upholding-maintenance->

case should be decided by the Act of 1986” concluded on considering Section 3 and 7 of the Act of 1986 and of the C.r.P.C.

Besides, many of the different contentions raised in the leading judgments for the Act of 1986 thus have to be scrutinized well with respect to “both sides.” Elevating one of more questions on judicial interpretation of “Sections 3 and 4 of the Act. “It was contended “that a divorced Muslim woman is entitled to reasonable and fair provisions for her future under Sections 3 and 4” if she is not able to “maintain herself after *iddat* period.” However, the Court declines this argument pointing out that under “S.4 of the Act of 1986, a divorced Muslim woman who has not remarried and is unable to maintain herself after *iddat* period. She is entitled to maintenance either from relatives [S.4 of the Act] of the divorced wife or in their absence from the State Wakf Board.”

Subsequently, in 2001, some of the crucial issues were raised and also again, the major contention on the applicability of S.125 C.r.P.C.²¹ was remarked in “*Danial Latifi v. Union of India*.”²² The submissions of the petitioners were that this provision of C.r.P.C. was enacted as a “matter of public concern” for a quick summary remedy to persons unable to maintain themselves. Further, the provisions “reflected the moral stance of the law as a whole should not be ‘entangled’ with religion-based personal laws.

The second point was the concept of social justice²³ enshrined in the Indian Constitution [Article 21], where excluding “divorced Muslim Women from its protection is discrimination against them.²⁴”The Act is an un-Islamic and have the potential to suppress Muslim women as well to undermine the basic secular character of the Constitution, and its preamble. “Finally, the “Act is also violative of Articles 14 and 21.²⁵”

On the observance of both sides, “the Union of India and All India Muslim Personal Law Board”, the Supreme Court at the foremost only considered the “question of the constitutional validity of the Act. Hence, upholding the same pertaining to horizons of basic human rights,

awarded-to-divorced-muslim-wife/ (last visited Mar 2, 2022).

²¹ Saurav Thampan, The interplay between Muslim women (Protection of Rights on Divorce Act), Section 125 CRPC and Family Courts Act Live Law (2020), <https://www.livelaw.in/columns/the-interplay-between-muslim-women-protection-of-rights-on-divorce-act-section-125-crpc-and-family-courts-act-160842> (last visited Mar 2, 2022).

²² (2001) 7 SCC 740.

²³ Rajat Prakash, Concept of social justice SSRN (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2589869 (last visited Mar 2, 2022).

²⁴ Utkarsh Anand, Fundamental rights vs personal laws: Centre wants SC ruling on triple talaq The Indian Express(2017), <https://indianexpress.com/article/india/fundamental-rights-vs-personal-laws-centre-wants-sc-ruling-on-triple-talaq-4529061/> (last visited Mar 2, 2022).

²⁵ Selected articles of the Indian constitution - broken people: Caste violence against India’s “Untouchables” (human rights watch report, 1999), Human Rights Watch (HRW), <https://www.hrw.org/reports/1999/india/India994-15.htm> (last visited Mar 2, 2022).

culture, dignity and decency of life dictates the necessity in the pursuit of social justice. Moreover, this ought to be invariably left to be decided on consideration “other than religion or religions, faith or beliefs or national, sectarian, racial or communal constraints.”

In addition to this, “the Supreme Court further observed that the purpose of the Act is as well to allow the Muslim husband to retain his husband of avoiding payment of maintenance to his erstwhile wife after divorce and the period of *iddat*.”

However, a careful reading of the provisions and, in fact, this word “provisions” mentioned in the Act indicates that something is provided ‘in advance’ for meeting some needs.” is at the time of divorce, the Muslim husband is mandated to look thoughtfully for the future needs as well. Besides, make preparatory arrangements in advance for meeting those requirements “reasonable and fair” that may include her residence, food, clothes and other necessities.

Thus, the court concluded on the points upholding the validity of the Act, the Muslim husband’s “reasonable and fair” maintenance to wife beyond the *iddat* period in terms of S.3(1)(a) of the Act. Hence “the liability of the Muslim husband to pay the maintenance is not confined to the *iddat* period.”

The court also concluded that “the provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.²⁶” And finally, that a divorce “Muslim woman who has not remarried and not able to maintain herself after the *iddat* period can” reach towards S.4 of the Act “against her relatives liable to maintain” as already mentioned before the analysis of the case.

II. CONCLUSION

In the concluding remarks for the article, the statutory Act is meant for substantive justice²⁷ and procedural laws in India. Here the “Muslim Woman (Protection of Rights on Divorce) Act, 1986” and “the Code of Criminal Procedure, 1973.²⁸” I would like to point out the Judicial interpretation extent²⁹ on the legislation by Lord Dunedin³⁰ as follows: “It is our duty to make

²⁶ Krishnadas Rajagopal, Supreme Court to study plea for uniform divorce, alimony rules for all Return to frontpage(2020), <https://www.thehindu.com/news/national/sc-to-study-scope-of-uniform-grounds-of-maintenace-alimony-for-all/article33345078.ece> (last visited Mar 2, 2022).

²⁷ Court can grant maintenance in divorce suit even if Muslim law silent on it: HC: India News - Times of India, The Times of India, <https://timesofindia.indiatimes.com/india/court-can-grant-maintenance-in-divorce-suit-even-if-muslim-law-silent-on-it-hc/articleshow/65249036.cms> (last visited Mar 2, 2022).

²⁸ One Hundred and Fifty Fourth Report, Law commission of India (1996), <https://lawcommissionofindia.nic.in/101-169/Report154Vol2.pdf> (last visited Mar 2, 2022).

²⁹ Principles of interpretation of statutes, https://rockwelleng.com/blog/downloads/fidic/principles_of_interpretation.pdf (last visited Mar 2, 2022).

³⁰ J. L. Montrose, The treatment of statutes by lord denning JSTOR (1959), <https://www.jstor.org/stable/24874702> (last visited Mar 2, 2022).

what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a Judge to declare a statute unworkable.” Further, “a statute is designed to be workable, and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable” as in the analogy of the C.r.P.C. and Act of 1986 observed above in some important judgments. Thus, the Statutory Acts meant for substantive justice prevails notwithstanding the clear omission or clear direction arising in some circumstances.
