



A Study on Muslim Women Protection of Rights on Divorce Act, 1986 for the Protection of Women against Discriminations

Sandeep Chauhan

LLB, MBA,NET

ABSTRACT

The Muslim Women Act is also known as Protection of Rights on Divorce Act. This act was passed by Indian parliament in 1986 in order to preserve the fundamental rights of Muslim women who have got divorce from their husbands. This law is implemented in all the states of country except Jammu and Kashmir. Magistrate doing exercise jurisdiction according to Criminal Procedure Code, 1973 is given the authority of administrating these kinds of cases. According to this act, the divorced woman is helped financially by her former husband till another person marries her. According to this act, if the husband of Muslim woman is died and she may not marry another person then in that case, the magistrate has the authority to pass an order that her relatives would pay for her maintenance and these relatives inherit her property after her death according to Muslim law. The current paper highlights the Muslim Women Protection Act of 1986.

KEYWORDS:



Muslim, Women, Divorce

INTRODUCTION

According to Islam, iddah is that period in which a Muslim woman is observed after getting divorce from her husband or after the death of her husband; during which she doesn't marry other person. It is observed that the duration of iddah varies depending on the current situation as it is stated that the duration of iddah for a Muslim woman who has got divorce from her husband is three months.

In the circumstances where the woman is pregnant then the period of iddah continues until the child is born. In case where the husband of Muslim woman is died; the duration of iddah is supposed to be four months and ten days after her husband's death.

The main objective of iddah is to make sure that the male parent of new born child would be known. There is a perception of fair provision where a good amount of money is entitled to a Muslim woman during her period of iddat.

Also, there is a provision of Article 14 and 15 which are mentioned to prevent any kind of discrimination in terms of gender and hold the surety of preserving the fundamental rights of Muslim women. These kinds of



laws and articles are very effective in order to protect the rights of Muslim women.

According to Section 3(1)(a) of Muslim women Act, 1986; her former husband has to entitle for fair provision and maintenance during the period of iddah so that protection of her rights can be done. Also, it is stated by the court that this limit of fair provision and maintenance is not inadequate. This limit is extended until the divorced woman doesn't marry any other person.

This Divorce Act is related to Muslim women so that they have to face no many problems after getting divorce from their husbands or after their husband's death. In the case where the husband of Muslim woman is died and she has no relatives then her property is entitled to the Muslim Board of Law.

According to this act, the liability of husband of paying the fair provision and maintenance is limited to the duration of iddah only. After the duration of iddah, the former husband can't be forced to pay for the maintenance irrespective of what the current situation of her divorced wife is.

Despite the large number of positive court judgements in favour of Muslim women in India, the media prefers to endorse the view that once the husband pronounces talaq, the wife is stripped of all her rights.



MUSLIM WOMEN PROTECTION OF RIGHTS ON DIVORCE ACT, 1986

In India, Muslims personal laws are governed by the Shariat Law. In simpler terms, the Shariat Law is basically governed by the provisions of The Quran, and the teachings of the Prophet Mohammad. It is usual for Muslims in India to be governed by personal laws, as opposed to the Indian laws, as the Constitution of India provides provisions for the Right to Religion (Article 25 of the Constitution of India). However, unlike the usual situation, where Constitutional Rights are given higher strata, in comparison to ordinary laws, this principle fails to apply when it comes to personal laws.

Muslim law allows Muslim men to have four marriages, along with the right to divorce, under the concept of *Talaq*, whereby, the husband has the authority to divorce by the utterance of the term '*Talaq*', without judicial methods, and this may happen without her consent. The PIL filed in this case addressed both these issues, along with some others.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRDA, 1986) seemed to overrule the Supreme Court's decision in *Mohd. Ahmed Khan v. Shah Bano Begum*.

Pursuant to a prima facie reading of the MWPRDA, 1986, a Muslim husband was responsible to maintain his divorced wife only for the iddat



period and after such period the onus of maintaining the woman would shift on to her relatives. The matter resurfaced before the Supreme Court in *Danial Latifi v. Union Of India* when the constitutional validity of the MWPRDA, 1986 was challenged on the grounds that the law was discriminatory and violative of the right to equality guaranteed under Article 14 of the Indian Constitution as it deprived Muslim women of maintenance benefits equivalent to those provided to other women under Section 125 of Criminal Procedure Code, 1973.

Further, it was argued that the law would leave Muslim women destitute and thus was violative of the right to life guaranteed under Article 21 of the Indian Constitution. The Supreme Court, on a creative interpretation of the MWPRDA, 1986, upheld its constitutionality. It held that a Muslim husband is liable to make reasonable and fair provision for the future of his divorced wife extending beyond the iddat period.

The Court based this interpretation on the word “provision” in the MWPRDA, 1986, indicating that “at the time of divorce the Muslim husband is required to contemplate the future needs [of his wife] and make preparatory arrangements in advance for meeting those needs” (at 11). This case is important because, it established for the first time that a Muslim husband’s liability to provide maintenance to his divorced wife extends beyond the iddat period, and he must realize his obligation



within the iddat period, thereby striking a balance between Muslim personal law and the Criminal Procedure Code, 1973.

High Courts have interpreted "just and fair provision" that a woman is entitled to during her iddat period very broadly to include amounts worth lakhs (hundreds of thousands) of rupees.

More recently the Supreme Court in *Danial Latifi v. Union of India* read the Act with Art 14 and 15 of the constitution which prevent discrimination on the basis of sex and held that the intention of the framers could not have been to deprive Muslim women of their rights. Further the Supreme Court construed the statutory provision in such a manner that it does not fall foul of Articles 14 and 15.

DISCUSSION

In *Shabana Bano v Imran Khan*, the Supreme Court held that a Muslim divorced woman who has no means to maintain herself is entitled to get maintenance from her former husband even after the period of iddah and she can claim the same under S.125 CrPC.

Divorced women are entitled to maintenance not only for iddat period from their former husband but also to reasonable and fair provisions for future maintenance. S.3 of the Muslim Women (Protection of Rights on



Divorce) Act has to be given under the liberal interpretation to help divorced women. *K. Zunaideen v. Ameena Begum* (1998) 1 ctc 566.

According to the Statement of Objects and Reasons of this Act, when a Muslim divorced woman is unable to support herself after the iddah period that she must observe after the death of her spouse or after a divorce, during which she may not marry another man, the magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law.

But when a divorced woman has no such relatives, and does not have enough means to pay the maintenance, the magistrate would order the State Waqf Board to pay the maintenance. The 'liability' of husband to pay the maintenance was thus restricted to the period of the iddah only.

Indian society has perpetually been the site of a deadlock between gender equality and religious traditions. Religious traditions gain dominance over gender equality and consequently, the mitigation of injustice faced by a particular gender, usually women, gets marginalized for upholding majoritarian religious views.

An effective way to resist such marginalization is implementing progressive universal norms that supersede class, religion, and gender



differences and uniformly apply to all. Only with such application can laws have positive outcomes regarding gender equality.

One such progressive law is Section 125 of the Code of Criminal Procedure that is a uniformly applicable provision which provides civil remedies to enforce the fundamental obligation of a person to maintain his wife, children or parents so long as they are unable to do so. Ordinarily, the rights and duties under this section have an overriding effect over personal laws.

However, earlier this was subject to the exception of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which is a self-contained statute that codifies the obligations of a Muslim husband and other relatives towards a Muslim woman and provides remedies for enforcing the rights of the woman.

This Act enshrines the Muslim law principle that a husband's liability to pay maintenance to his divorced wife extends only till the Iddat period. Further, Section 125 can have no application to a Muslim woman unless both the husband and wife consent to be subject to it under Section 5 of the Act. The law has developed through judicial opinion, and it is now believed that there is no inconsistency between the Act and the Code.

But now the judicial position has been cleared by the case of *Shamim Bano v Ashraf Khan*. The case is one such milestone as it interprets



Section 125 of the Code of Criminal Procedure to be universally applicable to women regardless of personal laws' dicta on the matter. Taking the lead from the popular *Shah Bano* case, the Supreme Court of India held that Section 125 would apply to Muslim women, and they would be entitled to maintenance irrespective of Mahomedan law's views on the matter.

It has been held that Muslim women are entitled to maintenance through Section 125 of the Code before the divorce and after divorce; they can claim maintenance through the provisions of the Act.

CONCLUSION

The provision in question is Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which states that "a reasonable and fair provision and maintenance to be made and paid to her within the iddah period by her former husband". The Court held this provision means that reasonable and fair provision and maintenance is not limited for the iddah period (as evidenced by the use of word "within" and not "for"). It extends for the entire life of the divorced wife until she remarries.

REFERENCES



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