

A STUDY OF LAWS RELATED TO MAINTENANCE IN MUSLIMS IN INDIA

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ABSTRACT

The concept of “maintenance”, under Muslim law, is governed by the personal law which imposes an obligation on a husband to provide all necessities including food, shelter, clothes etc to his wife, children and parents. Traditionally it is the well-established rule of Islamic Sharia law that a woman is entitled to maintenance during the subsistence of the marriage and after divorce for Iddat period. The author tries to give some tentative suggestion to overcome this severe issue in the Indian society for the betterment of muslim womens.

KEYWORDS – Maintenance, wife, children, Parents.

I.INTRODUCTION

Maintenance means an aid given by a person to another person on whom the later one depends for his survival. The term maintenance mainly includes financial support, means of livelihood and educational financial. Marriage in Islamic law is a civil contract that gives rise to certain rights and the fulfillment of certain obligations including maintenance, which the husband is bound to provide to his wife. The main objective of law of maintenance is to achieve a goal of social and welfare state and to prevent vagrancy. In India the concept of maintenance depends upon the personal laws but the provision of code of criminal procedure, 1973 related to maintenance are secular in nature. Under Muslim law the maintenance is known as “Nafaqah” which means what a man spends on his family. Under Muslim law these different classes of person are entitled to maintenance. Such persons are

- 1- The wife
- 2- The children
- 3- The Parents and Grandparents

II.CONSTITUTIONAL PROVISIONS

Part III(Fundamental Rights) article 21 says that no person shall be deprived of his life and personal liberty, here the term life has very broad meaning as interpret by hon’ble supreme court in the case of Maneka Gandhi v. Union of India that the right to live is not merely a physical right but includes live with dignity. As we all know that India is a welfare state and law enacted by the state in relation to maintenance for the wives, children or parents endorses an obligation upon the person to provide them the reasonable and fair maintenance so as to live a social and dignified life.

Part IV (Directive principles of state policy) of the Indian constitution under article 38 state has to frame policies so as to secure a social order for the promotion of welfare of the people. Further the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

2.1 WIFE

Under Muslim law wife is entitled to maintenance after divorce only during the period of Iddat and not thereafter. The wife is also entitled to the special allowance known as Kharcha-i-pandan, if given under an ante-nuptial agreement between the parties to the marriage. It is a kind of personal allowance given to the wife by her husband and is the absolute property of the wife.

In *Ali Akbar vs. Mst. Fatima*(1929) ILR II Lah.85, An allowance of Rs. 25.00 per month was fixed for Kharcha-i-Pandan in addition to the amount of maintenance which she is entitled to get from her husband. It was held, that the wife is entitled to the allowance irrespective of the fact that she refuses to stay with her husband.

Mohd Ahmad Khan v. Shah Bano Begum or the Shah Bano Case:

In this case, a 62 year old woman was divorced and subsequently denied maintenance. She had not remarried. On moving the court of the Judicial Magistrate at Indore under section 125 of the code of criminal procedure she claims maintenance of Rs 500 per month, she was awarded a Maintenance of Rs 25 per month from the husband. Aggrieved by the order of judicial magistrate, she filed a revision petition before the Madhya Pradesh High Court, which entitled her to a Maintenance of Rs 179.20 per month. Later on the husband appealed against this order before the Supreme Court, his main contention being that since the dissolution had taken place, she ceased to be his wife and under Muslim law, he was not obliged to pay her maintenance. Also, since he had paid the dower amount during the Iddat period, the wife was not entitled to any Maintenance. The Supreme Court dismissed the appeal and upheld the decision of the High Court. The Supreme Court explained this judgment by saying that, even if there is a conflict, section 125 of the code of criminal procedure is a secular law, and hence, applies to all women, irrespective of their religion. It further stated that the code shall prevail over Muslim Personal Law in case of a conflict. After this case in the year 1986 the union government passed a law i.e. the Muslim women(protection of rights on divorce) act,1986 to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto. According to section 3 of this act a divorced Muslim women shall be entitled to

- A) A reasonable maintenance to be paid to her within the Iddat period by her former husband,
- B) where the divorced Muslim women herself maintains the children born to her before or after the divorce, a reasonable maintenance to be paid by her former husband for a period of two years from the respective dates of birth of such children,
- C) an amount equal to sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to the Muslim law, and
- D) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relative of the husband or his friends.

Daniel Latifi v. Union of India:

In this case, a writ was filed under Article 32 challenging the constitutional validity of the Muslim women(protection of rights on divorce) act 1986. In this case the constitutional validity of the Act was upheld and an interpretation of the provisions of the Act was provided. The court concluded that, one, the Act does not violate Articles 14, 15 and 21 and hence, is not ultra vires. The court made the following interpretations. Firstly, interpreting the meaning of the term "within" used under section 3(1)(a) of the Act read with the terms fair and reasonable, the court arrived at the conclusion that the maintenance, being fair and reasonable, should exceed the iddat period but must be made within the iddat period. Such maintenance made during iddat period should be for her entire future, that is the time after the expiration of iddat period as well. The liability of the husband, therefore, is not limited to the iddat period. Therefore, this Act is not in contravention of section 125 of the Code of criminal procedure

One more remedy is also available to the divorced woman under the code of criminal procedure, 1973 section 125 which deals with order for maintenance of wives, children and parents. This section applies when any person having sufficient means neglects or refuse to maintain his wife ,unable to maintain herself a first class judicial magistrate upon proof of such refusal or neglect order such person to make monthly allowance for maintenance to this wife on such rate as the magistrate deems fit. This section also contain the provision of interim maintenance payable during the pendency of the proceeding related to Maintenance and application for

such interim maintenance shall as far as possible be disposed of within sixty days from the date of service of notice of the application to such person.

In case of *Noor Saba Khatoon v. Mohd. Quasim*, (1997) 6 SCC 233 the court held that the benefit under Section 125 CrPC is available to all children irrespective of religion. Right under Muslim Women (Protection of Rights on Divorce) Act, 1986 is that of the mother to claim maintenance for children for two years from their date of birth and is distinct and independent of the right to maintenance under the code of criminal procedure to minor children unable to maintain themselves.

2.2 CHILDREN

Parents are under the obligation to maintain their children. Under Muslim law father is bound to maintain his sons until they attain puberty and daughters until they are married. According to section 3 of Muslim women (protection of rights on divorce) act, 1986 where the children are born before or after the divorce of Muslim women a reasonable maintenance to be paid by her former husband for a period of two years from the dates of birth of such children.

As per the provisions given under chapter IX of the code of criminal procedure, 1978 any person i.e. father or mother neglects or refuses to maintain even after having sufficient means his minor legitimate or minor illegitimate child (whether married or not) unable to maintain himself or his major legitimate or illegitimate child (not being a married daughter) where such child is by reason of having any physical or mental abnormality or injury due to which they are unable to maintain themselves. But this general rule has one exception given under section 125 of the code which says that the magistrate may order the father of a minor girl child who is married to make such amount unless she becomes major if the magistrate is satisfied that the husband of such minor girl child does not possess sufficient means.

Bakulabai v. Gangaram, (1988) 1 SCC 537.

A child born out of a void marriage between a woman and a man who already has a wife is to be treated as a legitimate child who is entitled to maintenance under Section 125 of the code of criminal procedure.

Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7.

An unmarried daughter unable to maintain herself is entitled to claim maintenance under the Hindu Adoption and Maintenance Act, 1956. The father is obliged to maintain her unmarried daughters even if they are living separately with their mother.

Jagdish Jugtawat v. Manju Lata, (2002) 5 SCC 422

Daughter is entitled to maintenance under when read with Hindu Adoption and Maintenance Act, 1956 even after attaining majority but till her marriage.

Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266

Both, a Hindu divorcee father and a Hindu divorcee earning mother are obliged to contribute for maintenance of their children under the Hindu Adoption and Maintenance Act, 1956. Father is not exclusively responsible to maintain children regardless of mother being affluent.

2.3 PARENTS AND GRANDPARENTS

It is the moral duty of the person to maintain his parents and grandparents. Under the Islamic law, if the children have a right to be maintained by their parents, they also have a like duty to provide maintenance to their parents. Principles related to maintenance of parents under Muslim law are given below-

Those parents who are in need are entitled to get maintenance from their children.

Both the son and daughter have equal duty to maintain their parents.

If the child is in a position that he/she can only support one of its parents, always the mother gets priority over father.

Under Muslim law, son is not bound to maintain his step mother.

In the year 2007 the government of India passed an act i.e. The maintenance of parents and senior citizens act, 2007 to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the constitution and for matters connected therewith or incidental thereto. Under this act the term maintenance is defined under section 2(b) includes provisions for food, clothing, residence and medical attendance and treatment. According to this act parent means father or mother whether biological, adoptive or step father or step mother.

As per section 4 a parent who is unable to maintain himself from his own earnings or out of the property owned by him shall be entitled to make an application under section 5 to the tribunal

-In case of parents or grandparents against one or more of his children not being a minor

-In case of a childless senior citizen against such of his relative referred to in clause (g) of section 2.

An application for the maintenance may be made by a senior citizen or parent, if he is incapable by any other person or organisation authorised by him or the tribunal may take cognizance suo motu.

The maintenance and welfare of parents and senior citizens (amendment) act bill, 2019 was introduced in the lower house of the Indian parliament by the minister of social justice and empowerment i.e. Thawarchand Gehlot on 11 december, 2019. salient features of the bill includes:

Under new definition the term children also include step-children, adoptive children, children in laws and the legal guardian of minor children and the bill expands the term parents to include parents-in-laws and grandparents.

The new bill also expand the definition of maintenance to include the provision of healthcare, safety, and security for parents and senior citizens to lead a life of dignity and the term welfare is defined in broader sense by including the provision of housing, housing , clothing, safety, and other amenities necessary for the physical and mental well being of a senior citizen or parent.

Under the act of 2007 the maximum limit of maintenance is fix to 10,000 but the bill removes the upper limit on the maintenance allowance. The act enact the provision to deposit the maintenance amount to parents or senior citizen with in thirty days after the order is passed but this bill reduces the time to 15 days.

In the act of 2007 only senior citizens or parents are allowed to appeal the decision of the maintenance tribunal but the bill allows children and relatives also to prefer an appeal against the decision of tribunal.

The bill also enhance the punishment of abandonment of senior citizen or parents from imprisonment of upto 3 month or a fine up to 5000 rupees or both to imprisonment between 3 and 6 month or fine of up to 10,000 rupees or both.

Under the act of 2007 state government may set up old age homes but the bill removes this provision and provides care homes for the senior citizens which may be set up by government or private organisation. These care homes must be registered by a registration authority set up the state government.

The bill makes a provision by which all government and private hospital are under the obligation to provide certain facilities such as separate queues, beds, and facilities for geriatric patients.

The bill also provide a provision which requires every police station to have at least one officer not below the rank of ASI to deal with the issues related to parents also state government is under the obligation to constitute a special police unit for senior citizens in every district and such unit will be headed by a officer not below the rank of DSP.

But the maintenance and welfare of parents and senior citizens (Amendment) Bill, 2019 is pending before the standing committee of the parliament.

Earlier there was no provision of maintenance of wives, children and parents in the code of criminal procedure but in the year 1973 the provision related to maintenance was inserted in the code under section 125 if any person having sufficient means neglects or refuses to maintain his father or mother , unable to maintain himself

or herself a magistrate of the first class may upon proof of such neglect or refusal order such person to make a monthly allowances for the maintenance of his father or mother at such rate the magistrate thinks fit.

Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, (1987) 2 SCC 278

Along with a son, Section 125 of the code of criminal procedure imposes liability even on daughter whether married or unmarried, having sufficient means to pay maintenance to her parents who are unable to maintain themselves.

Kirtikant D. Vadodaria v. State of Gujarat, (1996) 4 SCC 479.

A childless stepmother may claim maintenance from her stepson provided she is a widow or her husband, if living, is incapable of supporting and maintaining her.

M. Venugopal v. DM, Kanyakumari, 2014 SCC OnLine Mad 5642.

Senior citizens, including parents, will be entitled to maintenance under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 if only they are unable to maintain themselves from their own earnings or out of the income from the property owned by them.

III.CONCLUSION

Thus from the above article it is very much clear that the maintenance provision under the Muslim law is absolutely different from the other personal laws. But in the year 1986 the successful step was taken by union government by passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 by which the law of maintenance under Muslim law is codified one more step was taken by the parliament by inserting the provision of maintenance under chapter IX of the code of criminal procedure, 1973 which is secular in nature. The Muslim women (protection of rights on marriage) bill, 2019 was introduced in the lower house of the parliament by Ravi Shankar Prasad (minister of law and justice) on June 21, 2019 which replaces an ordinance promulgated on 21 February, 2019. The bill makes declaration of triple talaq i.e. pronouncement of the word "talaq" thrice in one sitting by a Muslim man to his wife a cognizable offence. But the act passed by the legislature improves the conditions of Muslim women in the country.

IV.SUGGESTIONS

From above, it is in this manner, inferred that the situation of separated from spouse under other individual laws, is very extraordinary and particular to that of a Muslim separated from lady. Indeed, even the utilization of general law (Section 125 of Cr. P.C.) was subjected to the satisfaction of the conditions as said under area 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 as an alternative. At the point when a left or penniless Muslim (separated) spouse who can't get support by excellence of denial in Muslim Law, approaches and documents application under Section 125 of Cr. P.C., the standard Defense received by the spouse was to argue that he has officially separated from his significant other and subsequently he isn't labile to pay upkeep. This contention wound up more grounded after the institution of Muslim Women (Protection of Rights on Divorce) Act, 1986. Fortunately, the legal has indicated mindfulness and stepped up with regards to securing the enthusiasm of Muslim lady and has in genuine sense enabled Muslim ladies, particularly separated from lady to keep up a satisfactory standard of life and to crush the bad form done to them as per Muslim individual law, it is anything but difficult to dispose of the spouse by negligible articulating Tales. The choice given by the Supreme Court in Danial Latifi case settles the law for the separated from Muslim spouse and vests her with a "protected appropriate" to vocation through support which was first made as an issue in the Shah Bano Begum case. The present Act welcomes more feedback than applaud. The substance of the Muslim Women (Protection of Rights on Divorce) Act, 1986 has left a chance to the legal to not just give some alleviation to the separated from Muslim spouses yet additionally prompt the development of a mindfulness and need to care for them and not to forsake them to desperation. Also, to give them pride and regard of a person and not to consider them as a protest which is utilized for delight and when exhausted tossed out of the house. Support, along these lines is a methods for surviving and to lead an upbeat and aware life

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