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## CASE COMMENTARY

*Aditi Raikwar*

### MOHD AHMED KHAN v. SHAH BANO BEGUM AIR 1985 SC 945

Bench- Y.V. Chandrachud, Misra Rangnath, D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah

#### INTRODUCTION

The judgment in Mohd. Ahmed Khan v. Shah Bano Begum<sup>1</sup> is a milestone in India's gender justice, secularism, and personal law discourse. The Supreme Court's five-judge bench indicated the inconsistency between Muslim women's rights under personal law and their constitutional rights of equality and dignity. The court was interested in Section 125 of the Criminal Procedure Code<sup>2</sup> (CrPC) supporting wives who are unable to support themselves and its extension to divorced Muslim women.

Shah Bano, a Muslim woman of 62 years, was divorced by her husband, Mohd. Ahmed Khan, who refused maintenance under Muslim law exempting him after the iddat period. The Supreme Court held that Section 125 CrPC was secular and universal in its application, awarding Shah Bano maintenance after the iddat period. The decision enforced constitutional rights over personal laws in the context of fundamental human rights, in effect the right to life and dignity under Article 21<sup>3</sup>.

The decision caused deep political and religious unrest, and the Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>4</sup>, was enacted. It is centrally located in Indian judicial history for

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<sup>1</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

<sup>2</sup> The Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).

<sup>3</sup> INDIA CONST. art. 21.

<sup>4</sup> The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of parliament, 1986.

its rationale and the socio-political concerns it raised regarding secularism, judicial activism, and minority rights.

## **HISTORICAL BACKGROUND AND FACTS**

The Shah Bano case occurred in a multireligious society where marriage, divorce, and maintenance are regulated under various personal laws. In Muslim society, the rights of the husband and wife are primarily regulated by Muslim personal law. A divorced woman under talaq is entitled to maintenance for the iddat period only, which is around three months after divorce. Section 125 of the Criminal Procedure Code of 1973 gives a uniform solution to poor wives of all communities to get maintenance if they are in a state of indigence.

Shah Bano Begum, a Muslim woman aged 62 years, was married to Mohd. Ahmed Khan, a successful lawyer, for more than four decades. Her husband divorced her in 1978 by using the triple talaq system and refused to give her any money. Shah Bano brought the case of Judicial Magistrate court to obtain a monthly maintenance of ₹500 under Section 125 of the Criminal Procedure Code. The husband pressed that he had discharged his duty under the Muslim law by giving a single mehr and maintenance for iddat period and hence argued that he was not obligated to pay anything else.

The Magistrate directed Khan to pay ₹25 per month, increased by the Madhya Pradesh High Court to ₹179.20. Dissatisfied, Khan moved the Supreme Court on the basis that Muslim personal law derogates from him paying maintenance to his wife during iddat, Section 125 being unenforceable on this basis. The dispute raised serious questions: can Section 125 of the Criminal Procedure Code override personal laws, and are divorced Muslim women entitled to maintenance after iddat under Indian law?

## **ISSUES**

1. Whether Section 125 of the Criminal Procedure Code, which mandates maintenance for divorced women beyond the iddat period, is applicable to Muslims.
2. Whether the application of this provision conflicts with the principles of Islamic personal law.

## **ARGUMENTS ON THE SIDE OF PETITIONER**

Shah Bano's husband, Mohd. Ahmed Khan, challenged the lower courts' maintenance orders both on grounds of law and religion. He contended that Muslim personal law prevails,

maintenance only extends to the iddat period, and Section 125 of the Criminal Procedure Code does not extend to divorced Muslim women.

1. Restriction on Maintenance during Iddat Period according to Islamic Law:

The petitioner also averred that, according to the Hanafi school of Islamic law which is followed by the majority of Muslims in India, the economic support of the wife is the only responsibility of the husband for the three months' iddat period after divorce. He argued that he had discharged his responsibility by keeping her for three months as well as providing her with mehr (dower).

2. Mehr Settlement as Last Payment:

Khan's contention was that mehr is an economic burden for life between the spouses. He argued that performance of this obligation at marriage extinguished any future rights to maintenance under any legal system, including civil law.

3. Priority of Personal Laws

Marriage, divorce, and maintenance are regulated by Muslim personal law under Article 25<sup>5</sup> of the Constitution, which guarantees religious freedom. Thus, requiring a Muslim man to pay maintenance in excess of Shariat is unconstitutional and against religious principles.

4. Non-Applicability of Section 125 CrPC to Muslims:

The petitioner argued that general Section 125 CrPC cannot override specific Muslim personal laws. It has to protect religious freedom and personal law autonomy in a secular country with minority rights. No Post-Divorce Relationship: Finally, it was argued that after talaq is uttered, the respondent is no longer his wife legally, freeing him from the obligation to maintain her under Section 125, which uses 'wife' in the present tense.

**ARGUMENTS ON THE SIDE OF RESPONDENTS**

1. Section 125 CrPC is a uniform secular provision:

The lawyer of the respondent had contended that Section 125 of the Criminal Procedure Code of 1973 safeguards vulnerable groups such as wives and children irrespective of religion. This is on grounds of social justice, and it is aimed at avoiding poverty and homelessness. A Muslim woman cannot therefore be deprived of protection under Section 125 irrespective of Muslim personal law.

2. Maintenance During Iddat:

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5 INDIA CONST. art. 25.

A divorced Muslim woman is entitled to maintenance under Section 125 CrPC until she is independent, even post-iddat period. The counsel for the respondent argued that personal law cannot prevail over statutory rights which are in the public interest. Law has to catch up with society's demands, particularly with the rights and dignity of women.

3. Mehr Cannot Substitute Maintenance:

The witness did not agree that mehr (dower) releases the husband from the monetary burden. Mehr is a stipulated amount paid at the time of marriage or dissolution of marriage and is a quantum of debt under the marriage contract. It is different from maintenance, which is for upkeep. To pay mehr, therefore, does not release the husband from liability for maintenance under Section 125.

4. Constitutional Values First:

The petitioner relied on Articles 14, 15, and 21 of the Constitution and contended that it constitutes gender discrimination and an affront to the divorced Muslim wife's dignity if maintenance is denied to her on religious grounds. They further contended that religious freedom under Article 25 has to be consistent with public order and cannot be inconsistent with the assurance of equality and justice.

5. Precedent for Inclusion:

The respondent cited earlier High Court judgments reaffirming that Section 125 CrPC is applicable to Muslim women, reaffirming that the provision is traditionally interpreted to maintain justice.

## **JUDGEMENT**

The Supreme Court, in its pivotal ruling, endorsed the verdict of the Madhya Pradesh High Court and determined that Shah Bano Begum was to be favored. It asserted that Section 125 of the Criminal Procedure Code, 1973, which stipulates provisions for maintenance to wives, children, and parents, constitutes a secular regulation and is applicable uniformly across all citizens, irrespective of their religious affiliations. The Court clarified that a Muslim husband bears the responsibility to provide maintenance to his divorced wife should she be incapable of sustaining herself, extending beyond the iddat period, unless she enters into a new marriage.

The Court made it clear that payment of mehr (dower) at the time of divorce is a contractual prerequisite under Muslim law and cannot be read to be a full discharge of the husband's obligation in terms of Section 125 of the Criminal Procedure Code (CrPC). Highlighting

constitutional principles, the Court stated that personal religious laws cannot override a legislative solution to ensure persons are protected against poverty.

The judgment reaffirmed the sovereignty of constitutional ethics and gender equality over personal law traditions. Though legally sound and socially progressive, the judgment generated widespread political and religious resistance, which eventually led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, thus effectively diluting the effect of the judgment.

### **CRITICAL ANALYSIS**

Shah Bano judgment was a firm support for constitutional regulation of personal laws, especially in cases that touch and concern fundamental rights. The Supreme Court correctly asserted that Section 125 of the Criminal Procedure Code is a secular welfare law for all citizens and is meant to avoid destitution. In upholding the right of a divorced Muslim woman to receive maintenance after the iddat period, the Court reaffirmed gender justice and thereby fortified the ideals of equality (Article 14<sup>6</sup>) and dignity (Article 21).

However, the judgment was opposed by conservative Muslim communities across the board, who regarded it as an encroachment by the judiciary into religious tradition. The political fallout was that the Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted, with many regarding it as a compromise that was a backward step to dilute the progressive spirit of the judgment.

Despite the controversy, Shah Bano is still a landmark case, setting important debates regarding uniform civil code, secularism, and how religious freedom and women's rights must be harmonized in India.

### **PRESENT LEGAL POSITION**

The current legal framework for maintenance rights of divorced Muslim women in India tries to balance personal law with the constitutional ideals of justice. In response to the political backlash of the Shah Bano ruling, the Indian Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act in 1986, which initially seemed to restrict a husband's liability to the iddat period duration. Yet, in the pioneering decision of *Danial Latifi v. Union of India* (2001)<sup>7</sup>, the Supreme Court upheld the validity of the Act while offering a progressive interpretation. The

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<sup>6</sup> INDIA CONST. art. 14.

<sup>7</sup> *Danial Latifi v. Union of India*, AIR 2001 SC 3958.

Court held that a Muslim husband is bound to make a reasonable and fair provision towards his divorced wife's future as a whole, although this provision must be made within the iddat period. This interpretation aligned the Act with the underlying reasoning of the Shah Bano ruling, thereby safeguarding Muslim women from financial hardship. In addition, Muslim women are still entitled to exercise the right to approach the court for relief under Section 125 of the Criminal Procedure Code, further consolidating their right to maintenance regardless of their religious creed.