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MAINTENANCE RIGHTS OF MUSLIM WOMEN UNDER FAMILY LAW: JUDICIAL TRENDS AND STATUTORY GAPS

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1. ABSTRACT

This article traces the evolution of maintenance rights for Muslim women in India from Shah Bano (1985) to recent Supreme Court decisions (2024–2026), analysing how judicial interpretation has reconciled the Muslim Women (Protection of Rights on Divorce) Act, 1986 with the secular remedy under Section 125 CrPC (now mirrored by Section 144 BNSS). It finds that while the 1986 Act initially narrowed husbands' obligations to the iddat period, courts have progressively read the statute harmoniously with constitutional principles—expanding remedies, affirming concurrent access to Section 125, and pressing for effective enforcement. The article concludes with targeted reform proposals: codification and harmonization of Muslim family law, clearer statutory guarantees of secular maintenance remedies, stronger enforcement mechanisms, and expanded legal aid and awareness initiatives to ensure gender-sensitive access to justice.

2. INTRODUCTION

The rights to maintenance for Muslim women in India intersect personal law, constitutional protections, and evolving gender justice. This area of law has become central to debates on secularism, religious freedom, and the government's duty to protect vulnerable individuals. The journey from the landmark *Shah Bano* judgment (1985)¹ to the Supreme Court's recent pronouncements (2024–2026)² reflects both the resilience of India's constitutional values and the persistent statutory and practical challenges faced by Muslim women seeking maintenance after divorce.

¹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India)

² Mohd. Abdul Samad v. State of Telangana, (2024) S.C.C. OnLine SC 1234 (India)

This article examines the legal framework for maintenance for Muslim women, focusing on Section 125 of the CrPC and the Muslim Women (Protection of Rights on Divorce) Act, 1986. It reviews judicial trends, discrepancies between law and practice, and claimant experiences. The report also discusses Family Courts, recent Supreme Court rulings, access challenges, and comparisons with other jurisdictions, concluding with evidence-based reform recommendations grounded in policy proposals and constitutional analysis.

3. STATUTORY FRAMEWORK: THE LEGAL LANDSCAPE

3.1. SECTION 125 CrPC AND SECTION 144 BNSS: THE SECULAR MAINTENANCE LAW

Section 125 of the CrPC^{is} now mirrored in Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023. This provision is key to maintenance law in India. It is a secular rule designed to prevent poverty among wives (including divorced ones), children, and parents unable to support themselves. It allows a Magistrate to require a person with sufficient means to pay a monthly maintenance allowance.

- **Applicability:** Section 125 applies to all individuals, regardless of their religious beliefs. The term "wife" encompasses a woman who has been divorced by her husband or has secured a divorce from him and has not entered into another marriage.
- **Quantum and Duration:** The sum is established by the Magistrate considering the claimant's needs and the respondent's financial capability. Support persists until the wife either remarries or becomes self-sufficient.
- **Enforcement:** Orders may be enforced by seizing property, garnishing wages, and, in cases of intentional non-compliance, even incarceration.
- **Interim Relief:** Judges can award temporary support while legal proceedings are ongoing to avoid immediate financial difficulties.

3.2. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986³: STATUTORY TEXT AND KEY PROVISIONS

The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted in response to the Shah Bano ruling to “safeguard” the rights of divorced Muslim women, but it primarily limited the husband’s obligations to the iddat period (about three months after divorce).

³ Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, Section 3–5 (India)

Key Provisions:

- **Section 3:** Grants a divorced Muslim woman the right to “reasonable and fair provision and maintenance” from her ex-husband during the iddat period, including mahr, restitution of gifts, and other assets.
- **Section 4:** If a woman struggles to support herself after the iddat period and hasn’t remarried, the Magistrate can order her relatives to provide maintenance. If that isn’t possible, the State Wakf Board may assist her.
- **Section 5:** Both parties may, by mutual agreement, choose to be governed by Section 125–128 of the CrPC instead of the provisions of the 1986 Act, but this requires a joint declaration before the Magistrate.
- **Section 7:** Provides transitional provisions for ongoing applications under Section 125 of the CrPC at the time the Act came into effect.

3.3. OTHER RELEVANT STATUTES

- **Muslim Personal Law (Shariat) Application Act, 1937⁴:** Imposes Shariat regulations on issues related to marriage, divorce, maintenance, dower, guardianship, and similar matters for Muslims in India.
- **Dissolution of Muslim Marriages Act, 1939⁵:** Enables Muslim women to request divorce based on reasons such as lack of maintenance for two years, cruelty, and other designated grounds. It maintains the entitlement to dower upon divorce.
- **Protection of Women from Domestic Violence Act, 2005 (PWDVA)⁶** Provides financial assistance, including maintenance, to women facing domestic violence, regardless of religion. Section 20 allows maintenance orders to be granted alongside or separately from Section 125 of the CrPC.
- **Family Courts Act, 1984⁷:** Creates Family Courts to ensure the quick and specialized resolution of matrimonial and maintenance disputes.

4. JUDICIAL TRENDS: EXPANSION, RESTRICTION, AND RECONCILIATION

4.1. THE SHAH BANO CASE (1985): A WATERSHED MOMENT

Facts: Shah Bano Begum, a 62-year-old Muslim woman, sought financial support under Section 125 of the CrPC after separating from her husband. He argued that

⁴ Muslim Personal Law (Shariat) Application Act, No. 26 of 1937 (India)

⁵ Dissolution of Muslim Marriages Act, No. 8 of 1939 (India)

⁶ Protection of Women from Domestic Violence Act, No. 43 of 2005, Section 20 (India)

⁷ Family Courts Act, No. 66 of 1984 (India)

his obligations ended after the iddat period and the mahr payment, according to Muslim personal law.

Supreme Court's Reasoning and Ruling:

- Section 125 CrPC is a secular, welfare-oriented provision applicable to all, regardless of religion⁸.
- The term "wife" includes a divorced woman who has not remarried.
- Maintenance under Section 125 continues after iddat if the woman cannot support herself.
- Mahr is a proprietary right and does not replace the husband's obligation for maintenance.
- The Court cited Quranic verses to support ongoing maintenance post-divorce.
- It expressed disappointment over the non-implementation of Article 44 (Uniform Civil Code) and urged legal reforms.

Impact:

- The ruling was hailed as a win for gender equality but prompted political backlash, leading to the 1986 Act, which limited a husband's responsibility to the iddat period.

4.2. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986: JUDICIAL INTERPRETATION AND CONSTITUTIONAL CHALLENGE

The 1986 Act faced significant criticism for undermining the Shah Bano ruling and transferring the responsibility for post-iddat maintenance to the woman's family or the Wakf Board, leading to worries about gender justice and constitutional equality.

Danial Latifi v. Union of India (2001)⁹:

- **Challenge:** The constitutionality of the Act was disputed on the basis that it infringed upon Articles 14, 15, and 21 by preventing Muslim women from receiving long-term maintenance.
- **Supreme Court's Interpretation:**

The Act's legality is affirmed with a progressive interpretation. Section 3(1)(a) mandates "reasonable and fair provision and maintenance" during the iddat period, addressing the woman's future needs as well. The responsibility extends beyond

⁸ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India)

⁹ Danial Latifi v. Union of India, (2001) 7 S.C.C. 740 (India)

three months, requiring a lump-sum or future arrangement. If the husband fails to comply, the woman can seek maintenance under Section 125 of the CrPC.

- **Significance:** The ruling aligned the 1986 Act with constitutional principles and upheld the essence of Shah Bano, ensuring Muslim women are not left in poverty after a divorce.

4.3. SUBSEQUENT JUDICIAL DEVELOPMENTS: EXPANSION AND CLARIFICATION

- **Shamim Ara v. State of U.P. (2002)**¹⁰The Supreme Court ruled that mere assertion of talaq is not enough; a valid divorce must be proven with reasonable cause and attempts at reconciliation. Until then, the husband must continue to provide maintenance.
- **Iqbal Bano v. State of U.P. (2007)**¹¹Muslim women can claim maintenance under Section 125 CrPC, and the 1986 Act does not prohibit such claims. A Magistrate may treat a Section 125 application as one under Section 3(2) of the 1986 Act if suitable.
- **Shabana Bano v. Imran Khan (2010)**¹²: A Muslim woman is entitled to maintenance under Section 125 CrPC even after receiving a lump sum under the 1986 Act, as the two remedies are not mutually exclusive and the secular law prevails in case of conflict.
- **Shayara Bano v. Union of India (2017)**¹³The Supreme Court ruled that instant triple talaq (talaq-e-biddat) is unconstitutional, violating women's rights under Articles 14 and 21. This led to the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized instant triple talaq and addressed maintenance and child custody.

4.4. RECENT SUPREME COURT JURISPRUDENCE (2020-2026): AFFIRMING AND EXPANDING RIGHTS

Mohd. Abdul Samad v. State of Telangana (2024)¹⁴The Supreme Court confirmed that the 1986 Act does not override Section 125 CrPC. A divorced Muslim woman can seek maintenance under either law, as they are complementary.

¹⁰ Shamim Ara v. State of U.P., (2002) 7 S.C.C. 518 (India)

¹¹ Iqbal Bano v. State of U.P., (2007) 6 S.C.C. 785 (India)

¹² Shabana Bano v. Imran Khan, (2010) 1 S.C.C. 666 (India)

¹³ Shayara Bano v. Union of India, (2017) 9 S.C.C. 1 (India)

¹⁴ Mohd. Abdul Samad v. State of Telangana, (2024) S.C.C. OnLine SC 1234 (India)

The Court highlighted that maintenance is a right, not charity, and must be interpreted with equality and dignity in mind.

Key Principles from Recent Cases:

- The 1986 Act does not nullify the entitlement to maintenance as per Section 125 of the CrPC; both options remain accessible at the woman's choice.
- The amount designated for maintenance should be practical, sufficient, and in line with the lifestyle maintained during the marriage.
- Judicial authorities have mandated timely hearings, compulsory income disclosures, and rigorous enforcement of maintenance directives.
- The Protection of Women from Domestic Violence Act, 2005, offers a supplementary option for financial support, including maintenance, irrespective of religious affiliation.

4.5. JUDICIAL REASONING PATTERNS: EXPANSION VERSUS RESTRICTION

- **Expansion:** The judiciary has consistently expanded the scope of maintenance rights for Muslim women by interpreting statutory provisions in light of constitutional mandates, ensuring that no woman is left destitute due to rigid personal law interpretations.
- **Restriction:** Legislative interventions, such as the 1986 Act, initially sought to restrict rights, but judicial innovation has restored and reinforced maintenance entitlements through purposive interpretation and harmonization with secular law.

5. STATUTORY- JUDICIAL CONTRADICTIONS AND DOCTRINAL RECONCILIATION

5.1. CONTRADICTIONS BETWEEN STATUTORY PROVISIONS AND JUDICIAL TRENDS

- **Textual Limitation:** The 1986 Act, by its clear wording, seems to limit the husband's financial responsibility to the iddat period, transferring long-term support obligations to relatives or the Wakf Board.
- **Judicial Expansion:** Courts have interpreted "reasonable and fair provision" to necessitate a lump-sum payment or future support for the woman, thus prolonging maintenance obligations beyond the iddat period.

- **Concurrent Remedies:** Although the Act aims to establish a distinct framework, courts have ruled that Section 125 CrPC remains applicable, allowing the woman to opt for the remedy that offers greater benefits.

5.2. DOCTRINAL RECONCILIATION: HARMONIOUS CONSTRUCTION

- The Supreme Court has utilized the principle of harmonious construction to interpret the 1986 Act alongside Section 125 of the CrPC, ensuring that Muslim women retain the same maintenance rights as women from other faiths.
- The Court has stressed that the principles of equality, non-discrimination, and dignity as outlined in the Constitution should guide the interpretation of all maintenance laws.

6. QUANTUM OF MAINTENANCE: PRINCIPLES AND PRACTICE

6.1. DETERMINING THE QUANTUM

- **Judicial Discretion:** Maintenance amounts are determined by the Magistrate or Family Court, considering the claimant's needs, marital lifestyle, and the respondent's income and resources.
- **Lifestyle Parity:** Courts aim for lifestyle parity, helping the claimant maintain a standard comparable to that during the marriage.
- **Income Assessment:** Judges require financial documents, like asset disclosures and tax returns, to prevent income concealment.
- **Interim Maintenance:** Courts offer interim maintenance during proceedings to prevent immediate financial hardship.

6.2. ROLE OF MAHR, GIFTS, AND LUMP-SUM SETTLEMENTS

- **Mahr (Dower):** Mahr is a mandatory payment in Islamic law, but it does not eliminate the husband's duty to support his wife if she cannot support herself.
- **Lump-Sum Settlements:** Under the Supreme Court's interpretation of the 1986 Act, the husband must provide a lump-sum payment for the wife's future during the iddat period, serving as compensation for any lack of maintenance.

7. FAMILY COURTS AND PROCEDURAL PRACTICE

7.1. MAINTENANCE PETITIONS AND FORUM

- **Family Courts:** The Family Courts Act of 1984 establishes specialized courts to handle matrimonial and maintenance disputes, focusing on prompt and empathetic resolutions.

- **Jurisdiction:** Applications for maintenance may be submitted to the court in the claimant's place of residence, ensuring ease of access.
- **Procedural Practice:** Courts necessitate comprehensive financial affidavits and evidence regarding income and expenses, and may provide interim relief while awaiting a final decision.

7.2. ENFORCEMENT OF MAINTENANCE ORDERS

- Enforcement of maintenance orders can be achieved via property seizures, garnishing wages, civil imprisonment, and contempt actions.
- **Issues:** Significant hurdles include delays, non-adherence, and the concealment of assets. In response, courts have eliminated defenses, raised maintenance payments, and utilized coercive tactics.

8. PRACTICAL CHALLENGES FACED BY MUSLIM WOMEN

8.1. BARRIERS TO ACCESS

- **Lack of Awareness:** Many Muslim women are unaware of their rights under secular and personal law, limiting their ability to seek maintenance.
- **Social Stigma:** Requesting maintenance is often viewed negatively in the community, discouraging legal action.
- **Economic Barriers:** Legal fees and financial dependence on family hinder women from pursuing legal proceedings.
- **Discrimination and Procedural Hurdles:** Bias in courts and complex procedures obstruct access to justice.

8.2. ENFORCEMENT AND RECOVERY

- **Non-Compliance:** Women frequently encounter challenges in enforcing maintenance orders, particularly when their husbands are NRIs or live overseas.
- **Cross-Border Challenges:** The enforcement of Indian maintenance orders in other countries relies on mutual agreements and jurisdictional cooperation, which is often insufficient.

9. INTERSECTION WITH THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005¹⁵

- The PWDVA allows for financial assistance, including maintenance, to women experiencing domestic violence, irrespective of their religion.

¹⁵ Protection of Women from Domestic Violence Act, No. 43 of 2005, Section 20 (India)

- Orders issued under the PWDVA can coexist with or be separate from Section 125 of the CrPC, providing an alternate or additional option for Muslim women.
- The Act also establishes provisions for residence orders, protection orders, and child custody, thereby strengthening the protective measures available for women.

10. COMPARATIVE LAW: MAINTENANCE UNDER MUSLIM PERSONAL LAW IN PAKISTAN, BANGLADESH, AND THE UK

10.1. PAKISTAN

- Maintenance (nafaqah) is a legal and moral obligation under Islamic law, codified in the Muslim Family Laws Ordinance, 1961¹⁶, and enforced through Family Courts.
- Maintenance must be provided during the marriage and the iddat period; after the iddat, the duty ends unless the woman is responsible for caring for minor children.
- Sections 488–490 of the Pakistani CrPC offer a secular solution akin to Section 125 of the CrPC in India, applicable across all religions.

10.2. BANGLADESH

- The legal structure resembles Pakistan's, with maintenance rights following traditional Islamic law. The Supreme Court of Bangladesh has expanded these rights for divorced Muslim women, but they remain more limited than in India.

10.3. UNITED KINGDOM

- Islamic divorces (talaq, khula) are not recognized under UK civil law unless accompanied by a civil divorce.
- Maintenance claims are governed by the Matrimonial Causes Act, 1973¹⁷ and are available to all spouses, regardless of religious background.
- Mahr may be enforced as a contractual obligation if incorporated into the marriage contract, but it does not substitute for statutory maintenance rights.

11. CONSTITUTIONAL LAW ANALYSIS: ARTICLES 14, 15, 21, AND PERSONAL LAW EXCEPTIONS

- **Article 14:** Ensures equality in the eyes of the law and equal legal protection.
- **Article 15:** Prevents discrimination based on religion, race, caste, sex, or birthplace; Article 15(3) permits special provisions for women and children.

¹⁶ Muslim Family Laws Ordinance, No. VIII of 1961 (Pak.)

¹⁷ Matrimonial Causes Act, 1973, c. 18 (U.K.)

- **Article 21:** Safeguards the right to life and personal liberty, which has been interpreted to encompass the right to a dignified living.
- **Personal Law Exception:** Personal laws are not considered “laws” under Article 13, but courts have integrated constitutional values into their interpretations, particularly when fundamental rights are concerned.

The Supreme Court has repeatedly affirmed that maintenance laws should be interpreted in a way that maintains constitutional principles of equality, non-discrimination, and dignity, even when addressing personal law provisions.

12. POLICY REFORM PROPOSALS AND NCW RECOMMENDATIONS (2025–2026)

12.1. NATIONAL COMMISSION FOR WOMEN (NCW) REPORT (2026)

The NCW recommends comprehensive codification of Muslim Personal Law, covering marriage, divorce, maintenance, custody, and inheritance. Key proposals include:

- Mandatory marriage registration
- Prohibition of child marriage
- Fair divorce procedures
- Strengthened maintenance rights
- Protection of mahr and women's share in assets
- Gender-sensitive dispute resolution bodies
- Expanded legal aid and awareness campaigns
- Simplified enforcement for maintenance and property rights

These recommendations aim to align personal laws with constitutional values and enhance access to justice for Muslim women.

12.2. MODEL LEGISLATIVE CLAUSES FOR REFORM

- **Codification:** Implement a unified statute that consolidates Muslim family law, clearly outlining regulations regarding maintenance, divorce, custody, and inheritance.
- **Maintenance:** Ensure that divorced women receive maintenance beyond the iddat period, with regular reviews and adjustments to account for inflation.

- **Enforcement:** Enhance enforcement mechanisms, such as property seizure, salary deductions, and international cooperation.
- **Legal Aid:** Increase access to free legal assistance, awareness initiatives, and support services for women facing difficulties.
- **Institutional Reform:** Create specialized family courts that follow gender-sensitive practices and ensure sufficient representation of women.

13.RECOMMENDATIONS FOR REFORM

Building on statutory interpretation, court trends, research findings, and policy suggestions, the following recommendations are proposed:

- **Codification and Harmonization:** Develop a comprehensive Muslim family law code that is equitable for all genders, aligns personal law with constitutional requirements, clarifies maintenance entitlements, and removes any ambiguities.
- **Universal Access to Section 125 CrPC / Section 144 BNSS:** Guarantee that all women, irrespective of their religious affiliation, have straightforward access to secular maintenance options, with explicit statutory provisions confirming concurrent authority.
- **Quantum and Enforcement:** Create legal standards for determining maintenance amounts, establish periodic review processes, and implement effective enforcement measures, such as property liens, income garnishment, and contempt actions.
- **Awareness and Legal Aid:** Initiate national awareness initiatives, broaden legal assistance centers, and offer helplines to empower women in asserting their rights.
- **Institutional Reform:** Enhance Family Court systems, ensure procedures are sensitive to gender issues, and include mediation and alternative dispute resolution options.
- **Cross-Border Enforcement:** Formulate bilateral and multilateral agreements to facilitate the enforcement of maintenance rulings in non-resident Indian (NRI) and international cases.
- **Periodic Review and Monitoring:** Establish regular evaluations of maintenance laws and directives to guarantee their efficacy and adaptability to evolving socio-economic contexts.

- **Intersectional Approach:** Tackle the distinct challenges of marginalized communities, including impoverished, rural, and minority women, through focused interventions and support services.

14. CONCLUSION

The maintenance rights of Muslim women in India have evolved through statutory provisions, judicial interpretation, and constitutional values. While the 1986 Act initially limited these rights, the judiciary has expanded them by affirming that Muslim women can claim maintenance under Section 125 CrPC, which the 1986 Act does not override.

However, challenges remain, including statutory gaps and enforcement issues. Progress requires clear codification, alignment with constitutional principles, and stronger enforcement mechanisms, alongside efforts to empower women through legal aid and awareness. Only then can true gender justice be achieved for Muslim women in India.