



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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TITLE: INDIAN FAMILY LAW: MARRIAGE, DIVORCE AND MAINTENANCE

-Sadia Muskan

INTRODUCTION:

Understanding family law in India becomes important for dealing with the matters related to marriage, divorce and maintenance. This law in India directly impacts your personal life, financial security, and the well-being of your family. The main purpose of the family court is to protect the marriages not performing divorce. The mostly hurdles came into the marriages is divorce or maintenance. The Indian family Law proactively work upon this hurdle. In India, there are various personal law which deals separately according to the religion. Such personal law as- Muslim Marriage Law, Hindu Marriage Act, Special Marriage Act, and so on. In this case commentary we discussed the case relating to the Muslim Marriage Law (Muslim Personal Law). There are many judgements passed under Muslim marriage act regarding marriages, divorce and maintenance. Such judgements are- Shah Bano and ors v. Mohd. Ahmed Khan¹, Danial Latifi v. Union of India², Shayara Bano v. Union of India³ and so on.

Here, we do the case commentary on a particular case, which is: Mohd. Ahmed Khan V. Shah Bano Begum and ors⁴.

1. FACT OF THE CASE:

In 1932, a women named Shah Bano got married to a famous lawyer in Indore. Her husband name was Mohd. Ahmed Khan and they had 3 sons and 2 daughters. There marriage was smoothly runed upto 15 years but after 15 years, there was an issue arise and took marriage a turning point. According to Muslim Law, a Muslim man can get married 4 times without giving divorce to any one of his previous wives. He lived happily with his both wives and children under the same roof. In, 1975, Mohd. Ahmed Khan left her wife Shah Bano with their 5 childrens without giving divorce and any reason. She didn't welcome by her own family house where she lived before the marriage. She was in the age of 62, and she have no financial support or money to survive along with her childrens. So, in 1978, in the month of April, she

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

² Danial Latifi v. Union of India, (2001) 7 S.C.C. 740 (India)

³ Shayara Bano v. Union of India, (2017) 9 S.C.C. 1

⁴ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556

approached to the court of Judicial Magistrate demand maintenance of Rs.500 per month under section 125 of the Criminal Procedure⁵. This suit was instituted due to her husband denied to give her Rs.200 per month as a maintenance and supporting his wife and childrens financially. In the same year, in the month of November, Mohd. Ahmed Khan gives divorce to her wife Shah Bano by stating 'Tripple Talaq'. As per Muslim law, after saying, 'talaq' three times is considered as divorce and in Muslim law the divorce cannot revoke. By this Mohd. Ahmed Khan is no more her husband and further he is not responsible for her maintenance. The court held- Mohd. Ahmed Khan has to pay Rs. 25 per month as maintenance and later in the High Court of Madhya Pradesh changed the maintenance amount and he has to pay Rs. 179.20.

Mohd. Ahmed Khan later filed a petition in the Supreme Court stating that he gives divorce to Shah Bano and as per Muslim law, he has no connection to her and also no liability and responsibility rely upon him to maintain her.

2. ISSUE INVOLVED:

1. Whether the term "wife" mentioned under Section 125(1) of CrPC includes a Muslim Women who is divorced.
2. Whether the Uniform Civil Code is to be followed by all the religions.
3. Whether the husband has a duty to pay maintenance under Section 127(3) of CrPC after the payment of Mehr is fulfilled.

3. PETITIONER'S ARGUMENT:

In the Shah Bano case, the petitioner argued that the matter of maintenance falls under Muslim Personal Law and that the relevant provisions are not clear. It was further discussed that a Muslim husband is liable to provide maintenance only until the completion of the 'Iddat' period. This means that following the divorce, the husband is required to make payments until the three-month Iddat period concludes; thereafter, under Muslim law, the husband's obligation ceases. The petitioner also submitted that Section 125 of the CrPC provides for the payment of maintenance to a wife after divorce and is contrary to Muslim Personal Law. The petitioner stated that he had already paid Rs 200 to the respondent for a period of two years and had also deposited Rs 3,000 in court as Meher. He was standing on his words that he has completed all the responsibilities.

4. RESPONDENT'S ARGUMENT:

The respondent argued that Section 125 of the Code of Criminal Procedure, 1973, is not contrary to Muslim Personal Law, as nowhere does it state that a husband cannot provide maintenance after the 'Iddat' period. While Muslim Personal Law mentions the 'Iddat' period and the payments to be made during that time, it does not preclude the provision of maintenance beyond that period. Therefore, a sound decision can be reached after a careful interpretation of both the laws in question. The respondent emphasized that wife dependent on their husbands

⁵ Code of Criminal Procedure, 1973, § 125, India Code (vol. X).

should receive adequate maintenance. Maintenance is essential in this case because it is not easy for a 62-year-old woman, who is not employed, to care for five children on her own. Therefore, the respondent raised the issue of maintenance to clarify the rules and bring greater clarity to the provisions regarding maintenance.

5. JUDGEMENT:

The Shah Bano case became a landmark judgment because it clarified that Section 125 of the Code of Criminal Procedure, 1973 applies to all women, including Muslim women, regardless of religion. The Supreme Court, led by Chief Justice Y. V. Chandrachud, referred to verses from the Quran and earlier decisions such as *Bai Tahira v. Ali Hussain Fidaalli Chothia*⁶ and *Fazlunbi v. K. Khader Vali*⁷ to hold that providing maintenance to a divorced Muslim woman is consistent with both Indian law and the principles of Islam. The Court ruled that a husband who has sufficient means must support his divorced wife if she cannot maintain herself, even after the iddat period, provided she has not remarried. Although some judges initially expressed reservations and sought consideration by a larger bench, the five-judge bench ultimately upheld the view that maintenance under Section 125 is a secular legal right and cannot be denied on religious grounds. The judgment also highlighted the need for reforms in Muslim personal law and revived discussions on a Uniform Civil Code, though the issue remained unresolved due to widespread public opposition. In response to the controversy, Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986⁸, which appeared to restrict a husband's liability for maintenance after the iddat period and shifted responsibility to relatives or the Waqf Board in certain situations. However, the Supreme Court later clarified the law in *Danial Latifi v. Union of India* by holding that a husband must make a fair and reasonable provision for his divorced wife, ensuring her financial security beyond the iddat period. This judgment effectively upheld the core principle of the Shah Bano decision and strengthened the rights of divorced Muslim women in India.

6. RATIO DECENDI:

After realizing all the issue, the court clearly stated that section 125 of criminal procedure doesn't discriminate any women. It also refers the case of *Jagir Khan v. Jarwant Singh* and implied all the facts of this case. The court also held that this section is a part of criminal procedure and criminal procedure is not a personal law. So, this section is not going against the Muslim law. So, the wife get maintenance till she doesn't get married again. Furthermore, the court stated that Mehr is given to muslim wife and this is included in consideration given to her. Mehr cannot be covered in the amount paid after divorce. The petitioner has to pay the maintenance payment to the respondent and it will come to an end after she gets married again.

⁶ *Bai Tahira v. Ali Hussain Fidaalli Chothia*, (1979) AIR 362

⁷ *Fazlunbi v. K. Khader Vali*, (1980) 4 SCC 125

⁸ Muslim Women (Protection of Rights on Divorce) Act, 1986, Act No. 25 of 1986, § 3. Muslim Women (Protection of Rights on Divorce) Act, 1986, Act No. 25 of 1986, § 3.

7. CRITICAL ANALYSIS:

The Shah Bano verdict was a landmark judgment that strengthened the rights of divorced Muslim women. It established that Section 125 of the Code of Criminal Procedure, 1973, applies to all women, irrespective of religion. The Supreme Court emphasized that maintenance is a matter of social justice and cannot be denied on religious grounds. Although the ruling sparked political and religious controversy, it fostered a discourse on gender equality and legal reforms. The subsequent judgment in the *Daniel Latifi v. Union of India* case affirmed the economic rights of divorced Muslim women. Overall, this case remains a significant milestone in promoting women's dignity, equality, and access to justice.

8. CONCLUSION:

So, this is no ordinary case. The historic Shah Bano case raised awareness among people—and women in particular about their rights regarding marriage and divorce. It empowered many women to raise their voices and fight for themselves. This case is remembered by all because it helped change several rigid rules, put an end to the dominance of husbands, and ensure the betterment of women. This case highlights the importance of Mahr, maintenance, and rights for women. It is viewed as an example demonstrating that women, too, can fight for their rights.