



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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CASE COMMENTARY: MOHD. AHMED KHAN VS SHAH BANO

BEGUM AND ORS

BY: CHIYA TUTEJA

CITATION: (1985) 2 SCC 556

BENCH: Y.V. Chandrachud, Misra Rangnath, D.A. Desai, O. Chinnappa Reddy, E.S. Venkatarmiah

PETITIONER:

RESPONDENT:

Mohd. Ahmed Khan

VS.

Shah Bano Begum and Ors.

DATE OF JUDGMENT: 23/04/1985

Introduction

Family law has always been the most sensitive part of the Indian judicial system. Even after this, it would be fair to state that it has been the most frequently amended and interpreted for social development and welfare with time. Due to the diverse nature of our Indian subcontinent, there exist a quite decent number of religions and people belonging to their individual religions have their own personal laws through which they usually aspire to be governed in family matters. Some of the personal laws are still custom based while others have undergone and accepted major amendments which are solely the outcome of judicial or legislative decisions. Family issues related to marriage, divorce, maintenance, custody etc are predominantly seen in India. Therefore, here we are to discuss the landmark case-Mohd. Ahmed Khan v. Shah Bano Begum and Ors, 1985¹ which precisely highlights the obstacles in family disputes and the contribution of the legislature and the judiciary in such matters.

¹ (1985) 2 SCC 556

Background and Facts

Shah Bano Begum was married to Mohd. Ahmed Khan, a renowned advocate, in 1932. Together, they were parents to two daughters and three sons. Still, after forty years of marriage, in 1975, Ahmed Khan voluntarily expelled his wife from their matrimonial home. She was an elderly woman unable to maintain herself and the children. Therefore, in 1978, Bano filed an application under section 125 of the Criminal Procedure Code, (CrPC) in front of the Judicial Magistrate, First Class, Indore. She applied for Rs. 500 as maintenance as her husband earned about Rs. 60,000 per month from his litigation. On 6th November, 1978, Ahmed Khan divorced her through instant triple talaq (talaq-e-biddat), which is an irrevocable form of divorce initially recognised under Muslim law which is why he argued that Bano was no longer his wife, therefore, he could not be compelled to maintain her. He further added that he had already provided her Rs. 200 per month for two consecutive years and Rs. 3000, the dower (Mahr) during the Iddat period. According to him, he had fulfilled all his obligations towards Shah Bano and his first marriage. Then in August, 1979, the magistrate ordered Ahmed Khan to pay Rs. 25 monthly to Shah Bano as maintenance. Bano was not satisfied with this amount. She filed a revision petition in the Madhya Pradesh High Court which increased the amount to Rs. 179.20 per month in July, 1980. Ahmed Khan countered this decision before the Supreme Court of India after which the landmark judgment regarding divorced Muslim woman was declared.

Issues

1. Can Section 125 of CrPC be applied to Muslims?
2. Are divorced Muslim women entitled to maintenance beyond iddat period?
3. Does Muslim personal law override the secular provision of Section 125, CrPC?
4. Does mere payment of Mahr fulfils husband's obligation towards his divorced wife?
5. Does Section 127(3)(b), CrPC limit a divorced woman from claiming maintenance once dower has been paid?
6. Is Mahr and amount to be paid "on divorce" as per interpretation of Section 127(3)(b), CrPC?

Arguments of Petitioner: Mohd. Ahmed Khan

1. The petitioner argued that he divorced Bano through instant triple talaq which is irrevocable, and ended the relationship between him and his wife, which was why he was not obliged to maintain her.

2. He contended that a divorced Muslim woman cannot claim maintenance under Section 125 of CrPC as disputes of Muslim maintenance are strictly governed by Muslim Personal Law. Section 2 of Muslim Personal Law (Shariat) Application Act, 1937 protects Muslim Law and Section 125 of CrPC cannot override personal laws.
3. He further added that he had already paid Rs. 200 per month continuously for two consecutive years and had also paid the dower amount of Rs. 3000 during the iddat period which fulfilled all his obligations and now he was discharged from all his marital duties towards Shah Bano.
4. Mohd Ahmed Khan contended that maintenance must not be provided to a divorced Muslim woman once the Mahr amount and maintenance during iddat period is paid as per Section 127(3)(b).
5. He also challenged the accuracy of judgments like Bai Tahira v. Ali Hussain Fissalli Chothia² and Fazlunbi v. K. Khader Vali³ that favoured the provision of maintenance to divorced Muslim women under Section 125 of CrPC.

Arguments of the Respondent: Shah Bano Begum

1. Section 125 of CrPC is a secular law applying to all citizens of the country irrespective of their religion. Therefore, payment of maintenance after divorce was obligatory.
2. Bano contended that 'a divorced woman who has not remarried' is inclusive within the term 'wife' under Explanation (b) of Section 125(1) which was why her right to claim maintenance existed.
3. She argued that she was unable to maintain herself while her husband had sufficient means to maintain and suffice her after divorce through maintenance Section 125, CrPC.
4. Shah Bano further argued that mere payment of Mahr does not discharge the husband from paying maintenance as Mahr is an exclusive right of wife arising out of Muslim marriage and it cannot substitute or cancel the amount of maintenance to be paid after divorce.
5. Regarding Mahr, she also stated that the amount of Mahr is not payable "on divorce". Therefore, Section 127(3)(b) could neither be applied nor it could cancel the maintenance claim made by her.

² (1979) 2 SCC 316

³ (1980) 4 SCC 125

6. Shah Bano also contended that Quranic principles also oblige the husband to maintain her divorced wife, as a divorced Muslim woman unable to maintain herself should not be left underprivileged.

Judgment:

The decision of the Honourable Supreme Court delivered by the bench led by C.J.I. Y.V. Chandrachud included the following points:

1. Section 125, CrPC applies to Muslims as it is a secular provision for welfare of citizens regardless of religion.
2. The term “wife” under Section 125, CrPC also includes a divorced Muslim woman as well.
3. Maintenance to divorced wife is not only limited to iddat period.
4. Muslim Personal Law cannot override Section 125, CrPC.
5. Mahr can neither be considered as an alternative for maintenance nor Section 127(3)(b) could bar the claim.
6. Even Quran supports divorced Muslim women.
7. The need of a Uniform Civil Code was identified.

Aftermath of Judgment

The judgment led to:

- Enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- Debates on:
 - 1.Public vs. Political Views
 - 2.Women’s Rights vs. Personal Laws.
- Re-identified the need of a Uniform Civil Code (UCC).

Analysis

The case already serves as a landmark judgment leading to further major judicial decisions such as Daniel Latifi v. Union of India⁴, Shamim Ara v. State of U.P.⁵ and Shayara Bano. v. Union of India⁶ but it is silent on matters such as:

⁴ (2001) 7 SCC 740

⁵ (2002) 7 SCC 518

⁶ (2017) 9 SCC 1

- Clash between personal laws and secular laws.
- Long term financial security of divorced women.
- Amount of maintenance left uncertain.

The Muslim Women (Protection of Rights on Divorce) Act 1986 also highlighted the following loopholes initially:

- Maintenance only restricted till iddat period.
- Economic insecurity for women.
- Transfer of responsibility of maintenance from husband to successors of divorced woman or Wakf board.
- Increase in gender inequality.
- “Fair and reasonable amount” not defined properly.

The loopholes of this act were quite prominent and were criticized by a many judicial activists, feminists and people favouring some irrelevant provisions and practices of Muslim Law. Therefore, many of these were addressed in the case of Daniel Latifi v. Union of India and the Hounourable Supreme Court also interpreted the provision of this act as to providing fair and reasonable amount of maintenance *not only during iddat period* but to provide a reasonable ad fair amount *for long term security within the iddat period*.

Conclusion

This case highlights serious concerns such as discrimination towards women, increased need of raising voice against injustice, conflict between customary or personal laws and secular laws. It also indicates a need to verify common customary laws which have been in practice from time immemorial and have been creating ill effects on the general public providing dominance to some and sufferings to the others. Although the judicial system of India is quite slow, but the fact that it delivers justice at the end of the day cannot be denied. It flawlessly proves “Justice delayed is not justice denied.”