

**DIGNITY ASSURED OR QUESTIONED: EXPLORING THE MAINTENANCE
RIGHTS OF MUSLIM WOMEN IN CONTEMPORARY LEGAL SYSTEM WITH
REFERENCE TO MOHD. ABDUL SAMAD VS. STATE OF TELANGANA.**

Afifa Ahmad (Author)
Assistant Professor
Pendakanti Law College, Hyderabad

INTRODUCTION-

It is rather a controversial and talkative subject as the position of women in most of the cultures and communities throughout the course of its history is always considered to have equal rights in power as males. The detailed charter of the Code of Hammurabi, though in space, sets out particular support rules and is more inclined towards the disfavourment of the women and a smaller status to the men in certain societies. This deviation in status was due to several customs and traditions. Moreover, most religions have not considered women to have this standing. The Manusmriti, for instance, considers women not to be trustworthy nor could they bear witness in a court. Mitakshara School of Hindu Law also holds that women had no right to the inheritance of any kind of property. In many other religions as well we see something of this sort, or at least the same results, if not the same process. This, of course, stakes questions about their survival. In addition, they would be largely deprived of self-confidence, social status, and self-esteem. All these problems either have their seat in a community or, to an extent, forced on by the community. Thus, a crime-free society is never attainable. Well, this can be observed if we look at the legal statistics. They reconcile the opportunity of competing themselves on an equal stance as men, which governments provide by giving these rights. Therefore, all governments have taken sufficient measures to ensure the provision of these rights.

Historical Context-

Section 125 of the Criminal Procedure Code (CrPC) stands out from the other statutes concerning financial assistance to women because it does not break down into separate parts but establishes unrestricted responsibilities.¹ Therefore, it covers all individuals regardless of their religious beliefs, cultural practices, or personal legal systems. Although the idea of

¹ "Section 125, Criminal Procedure Code, 1973, (Act No. 2 of 1974)."

applying a secular law to a specific community regarding family matters has often faced opposition in the past, the courts have consistently asserted that it does not add extra requirements, such as the individual's natal religion, for the person seeking financial support. Section 125 of the Code of Criminal Procedure is founded on the humanitarian goal of being realized through the consistent legal framework that applies to all its people, guaranteeing fairness, equality, and the absence of discrimination. This law stands out for its perspective, acknowledging the connection between a man and a woman regardless of their social standing determined by their personal laws. The Law Commission in its Four Hundred and Twenty-fourth report highlighted: "Section 125, Code of Criminal Procedure is a social law and should be interpreted broadly and in unity, aimed at protecting various family structures."² Opponents of section 125 CrPC in the request for maintenance support through personal laws of each community claim that the enforcement of section 125 CrPC causes disorder, bewilderment, doubt, and would significantly breach the enforcement of personal laws in family law issues. Rather than fostering consistency in family law matters, numerous communities might see it as an extra forceful mandate, contributing to the discrimination shown towards community customs and personal laws. This position would likely lead to a radical shift within the specific community. Agreement with the rule would, as per the communities, threaten the survival of their own legal and cultural traditions.

Legal Framework-

The legal framework governing maintenance rights for Muslim women in India has evolved through significant judicial interpretations and legislative actions. Section 125 of the CrPC provides a mechanism for maintenance for wives, children, and parents who are unable to maintain themselves. The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted in response to the Shah Bano case. Recent rulings have clarified that divorced Muslim women have the right to seek maintenance under both Section 125 and the 1986 Act. The legal framework for maintenance rights is grounded in the Indian Constitution, particularly Articles 15(1) and (3) and Article 39(e), which mandates special provisions for women. The Supreme Court has interpreted Section 125 as a measure of social justice aimed at protecting the rights of vulnerable women, including divorced Muslim women.

Section 125 CrPc-

² Law Commission of India, 424th Report on Review of the Death Penalty (2023).

Section 125 of CrPC is a section of great impression and importance in the Indian legal system, as it deals with the issues of maintenance liability towards the dependents, namely spouses, children, and parents. The broad purpose incorporated within the section is to provide for machinery of financial assistance to persons who are not able to maintain themselves and further the cause of social justice as well as to prevent destitution.³ This section authorizes a wife who is incapable of supporting herself to ask for financial assistance from her husband. This privilege is also afforded to divorced women who did not get remarried. Furthermore, children, regardless of whether they are born into the family or not, can request financial assistance from their parents if they are still minors or are all grown up but cannot find for themselves by reason of physical or mental incapability. Under the same circumstances, parents may as well claim the same kind of financial support from their children. For an applicant to succeed in such a claim for financial assistance, he needs to show that the person from whom he expects to get support has either neglected or refused to support him. The applicant also needs to prove inability to support himself and that the person from whom he expects to get support has the means to support him. The financial aid to be granted by the court would be dependent on several considerations, which may include the respective financial situations of those from whom aid is pleaded and the needs of the person who seeks the aid. The legal machinery of section 125 is set into motion without inordinate delay, causing speedy relief to one who so urgently needs it. In case of non-compliance to financial aid agreement, the person whom help is sort can institute proceedings in a court for enforcement, which may include penalties for non-compliance.⁴

The overarching goal of Section 125 is to ensure that no dependent individual is left in a state of poverty or vagrancy. It serves as a safeguard against the economic exploitation of vulnerable individuals, especially women and children, thereby reinforcing the principles of social justice enshrined in the Indian Constitution. The provision aims to provide a swift and effective remedy, reflecting the state's commitment to protect the rights and dignity of its citizens.

How does the Muslim Women (Protection of Rights on Divorce) Act, 1986 interact with Section 125 of the CrPC?

³ R.V. Kelkar, Criminal Procedure (K.N. Chandrasekharan Pillai rev., 7th ed. 2021) (Eastern Book Company, Lucknow).

⁴ Supra note 3 at 3

The connection between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Criminal Procedure Code (CrPC) plays a crucial role in the legal structure that governs support rights for divorced Muslim women in India. This link has been formed through court interpretations and the original intent of the law, guaranteeing that women receive sufficient legal safeguards. Section 125 offers a way for women, children, and parents who are not self-sufficient to seek support. It is a non-religious rule that applies to all faiths, enabling a divorced woman to request financial support from her ex-husband if she is unable to support herself. The right to receive support under this section is not confined to the iddat (a waiting period after divorce) and can continue after it, as confirmed by various court decisions.⁵ The 1986 Act was passed in reaction to the Shah Bano case, which underscored the necessity for specific provisions for divorced Muslim women. This Act mainly limits the obligation to provide support during the iddat period and links the amount to the mahr (dower) given at the time of marriage.⁶ The Act was designed to clarify the rights of divorced Muslim women but has been criticized for its shortcomings. The interaction between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the CrPC illustrates a complex legal environment designed to protect the rights of divorced Muslim women. The Supreme Court's decisions have confirmed that these laws can work together, offering women various options for obtaining support. This combined framework ensures that divorced Muslim women receive the necessary support, in line with the broader goals of gender equality and social justice in India.

Maintenance rights for Muslim women-

The rules about money support for Muslim women who've been divorced in India come from a mix of personal and general laws, like the Muslim Women (Protection of Rights on Divorce) Act, 1986, and a section of the Criminal Procedure Code (CrPC). This setup is all about making sure divorced Muslim women get enough money to live on, showing that there's a big push for fairness and equality for women. In Islamic law, the term for this money support is “Nafqah”, which is basically the husband's responsibility to take care of his wife and family, including paying for food, clothes, a place to live, and other basic needs. This duty to support doesn't stop after a divorce, as long as the wife can't take care of herself. The CrPC lets any woman,

⁵ "Divorced Muslim Woman Can Seek Maintenance Under Section 125 CrPC," SCC Online, July 11, 2024.

⁶ Aqil Ahmad, Mohammedan Law (27th ed., Eastern Book Company, Lucknow, 2021).

including Muslim women, ask for money support from their ex-husband if they can't manage on their own. If the wife or their kids can't manage, they can also ask for help. The court decides how much money the ex-husband has to give based on how much he can afford and what the wife needs. The 1986 Act has special rules for divorced Muslim women, giving them the right to ask for money during the waiting period and the money they got when they got married. After the waiting period, the money comes from her family or the Waqf Board of the state she lives in, with some limits. The way the 1986 Act and the CrPC work together has been shaped a lot by court decisions, especially those from the Supreme Court of India.

Shah Bano Case (1985): This case showed that a divorced Muslim woman can ask for money from her ex-husband using Section 125 of the CrPC. The Supreme Court said that personal laws can't take away the rights given by the general laws, proving that Section 125 applies to Muslim women too.⁷

Danial Latifi v. Union of India (2001): The Supreme Court said that the 1986 Act is constitutional and that divorced Muslim women can keep asking for money from their ex-husband using Section 125 even after the waiting period until they get married again. This means that the 1986 Act doesn't stop them from using Section 125.⁸

Shabana Bano v. Imran Khan (2009): The Supreme Court said that a divorced Muslim woman can keep asking for money from her ex-husband using Section 125 as long as she doesn't get married again, further saying that this right exists on its own, not just because of the 1986 Act.⁹

Recent Rulings (2024): In a recent decision, the Supreme Court said that divorced Muslim women can ask for money from their ex-husband using both the 1986 Act and Section 125 of the CrPC. The Court said that the 1986 Act doesn't stop them from using Section 125, making it clear that they have multiple ways to ask for money. The setup of the 1986 Act and Section 125 of the CrPC gives divorced Muslim women many options to get the money they need.

Case Analysis-

⁷ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556; AIR 1985 SC 945.

⁸ Danial Latifi & Anr. v. Union of India, AIR 2001 SC 3958.

⁹ Shabana Bano v. Imran Khan, (2009) 1 SCC 148.

Title of the Judgment: *MOHD. ABDUL SAMAD VERSUS THE STATE OF TELANGANA & Anr.*¹⁰

Citation: 2024 INSC 506

Bench Composition: *Justice AUGUSTINE GEORGE MASIH*

Procedural history:

The legal saga of Mohd. Abdul Samad v. State of Telangana started with a marriage that was on the rocks. The defendant lodged a First Information Report against the defendant for violations of Sections 498A and 406 of the Indian Penal Code. The defendant issued a triple talaq on September 25, 2017, and then sought a divorce and maintenance under Section 125 of the Code of Criminal Procedure. Within this scenario, the Family Court issued an order requiring the defendant to provide an interim maintenance of ₹20,000 per month to the plaintiff. However, the defendant appealed this decision to the High Court, which altered the order. It decreed that 50% of the outstanding arrears must be paid by January 24, 2024, and the rest by March 13, 2024. On July 10, 2024, the Supreme Court made its decision, affirming the rights of divorced Muslim women.

This case highlights the intricate issues involved in legal battles over the rights to maintenance allowances or other financial support from ex-spouses. It underscores the need for courts to find a careful equilibrium between personal and secular laws, thereby creating opportunities to improve women's rights in seeking maintenance in ways that suit their individual circumstances. Therefore, this ruling has served as an important landmark in the ongoing discussions about gender justice and equality within the Indian legal system.

Facts of the case: The husband of Respondent filed for divorce after their relationship deteriorated, leading to her leaving the matrimonial home. She filed for criminal proceedings against him and filed FIR in 2017 for offences under Sections 498A and 406 of the IPC 1860. He announced triple talaq and moved for divorce, which was granted ex parte. He attempted to pay INR 15,000/- for maintenance but was refused. She moved a petition for interim maintenance under Section 125(1) of CrPC 1973 and it was allowed. She then moved the High

¹⁰ Mohd. Abdul Samad v. State of Telangana, Criminal Appeal No. 2842 of 2024, Judgment dated July 10, 2024.

Court of Telangana to quash the order and the instant Impugned Order was passed. However, the petitioner contested this decision, arguing that the 1986 Muslim Women (Protection of Rights on Divorce) Act should supersede the provisions of Section 125 of the CrPC, and that the appropriate course of action for maintenance was outlined in the 1986 Act.

This appeal led to the Telangana High Court modifying the Family Court's December 13, 2023, decision, reducing the interim support to ₹10,000 per month. The High Court believed that 50% of the arrears should be settled by January 24, 2024, with the remaining amount due by March 13, 2024. Eventually, the case was brought before the Supreme Court, which issued its ruling on July 10, 2024. The Supreme Court affirmed that divorced Muslim women have the right to seek maintenance under Section 125 of the CrPC, countering the argument that personal laws could nullify secular law. This decision emphasized the significance of providing financial security to divorced women, aligning with broader principles of social justice and gender equality.¹¹

Key Issues-

The main questions in the case of Mohd. Abdul Samad v. State of Telangana included:

1. Should the Muslim Women (Protection of Rights on Divorce) Act, 1986 be considered more important over Section 125 of the Criminal Procedure Code (CrPC) in cases of divorced Muslim women seeking maintenance.
2. Whether divorced Muslim women have right to pursue maintenance claims either in 1986 Act or Section 125 of the CrPC.
3. Does the 1986 Act prevents a divorced Muslim woman from filing a maintenance claim under Section 125 of the CrPC.

Issues Presented by Appellant-

1. *Precedence of the 1986 Act*: It was argued by the appellant that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the 1986 Act), is a special statute and, therefore, it would have an overriding effect over the provisions of Section 125 of the Criminal Procedure Code. It was submitted that it provided a

¹¹ *ibid*

divorced Muslim woman with a more adequate and effective remedy pertaining to maintenance and subsistence allowance under this Act than that available under Section 125 of the CrPC.

2. *Jurisdictional Issues:* It was urged by the appellant that since the 1986 Act grants jurisdiction to the First-Class Magistrate to adjudicate all matters concerning mahr and maintenance, a party shall not knock the doors of the Family Court for relief under Section 125 of the CrPC. His contention was that the respondent should have availed herself of the proper legal remedy by making an application under the 1986 Act and not pursued her claims under the CrPC.
3. *Interim Maintenance Amount:* Feeling aggrieved by the interim maintenance order passed by the Family Court, whereby it was directed that appellant is to pay a sum of ₹ 20,000 per month as maintenance to respondent, the appellant challenged the amount of ₹ 20,000 as being on the higher side and also challenged the order of the High Court reducing the maintenance to ₹ 10,000, stating that he had already paid ₹ 15,000 during the iddat period and that the claims made by the respondent were unjustified.
4. *Legal Standing of the Respondent:* It was urged, on behalf of the appellant, that the respondent's claim under Section 125 of the CrPC is not maintainable, and that there is no reason why if a divorced Muslim woman chooses to move the court under a secular provision, it should be held permissible when specific provision is made by the 1986 Act for such cases.¹²

Issues presented by Respondent-

1. *Right to Financial Support in Criminal Procedure Code:* The person being sued claimed that she had the right to seek financial support from her ex-husband through Section 125 of the Criminal Procedure Code (CrPC), arguing that this section clearly outlines the legal process for obtaining financial assistance, especially since she found it difficult to support herself after the marriage ended.
2. *Effects of Triple Talaq:* The person being sued argued that the person making the triple talaq pronouncement was still legally bound to provide financial support. She highlighted that, even after the divorce, she possessed legal rights that needed to be

¹² Supra note 10 at 6

protected, especially regarding financial support, as she was without sufficient means to support herself.

3. *Temporary Reparation Request:* At the outset, the respondent requested a temporary reparation sum of ₹50,000 monthly, stating that this figure was crucial for her survival and to cover her fundamental requirements after the end of the marriage. The Family Court initially granted her ₹20,000, which she argued was still inadequate considering her situation.
4. *Questioning the Use of the 1986 Act:* The respondent disputed the appellant's assertion that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act) should apply to her maintenance rights. She contended that the 1986 Act does not exclude her from pursuing a claim under Section 125 of the Code of Criminal Procedure, and that she should have access to both legal systems.
5. *Desire for Economic Stability:* The respondent stressed her need for economic stability after the divorce, pointing out that the maintenance request was vital for her survival. She argued that denying her maintenance would infringe upon her rights and leave her exposed.
6. *Previous Court Rulings:* The defendant's legal representatives probably looked into past court cases, like the one involving Daniel Latifi v. Union of India (2001), which supported the rights of divorced Muslim women to request financial support after the iddat period, strengthening her argument for continued financial assistance.¹³

Judgement and Reasoning-

Section 125 of the Code of Criminal Procedure (CrPC) is applicable to all married women, including those who are Muslim. Similarly, it covers all divorced women, regardless of their religious background.

For divorced Muslim women, there are two main scenarios:

1. If a Muslim woman is married and divorced under the Special Marriage Act, in addition to the remedies available under that Act, Section 125 of the CrPC also applies. This means she has the option to seek redress under either the Special Marriage Act or both.

¹³ Supra note 10 at 6.

It's important to note that the 1986 Act does not contradict Section 125 but rather complements it.

2. If a Muslim woman is divorced under Muslim law, both Section 125 of the CrPC and the 1986 Act's provisions are applicable. In such cases, any orders issued under the 1986 Act must be considered under Section 127(3)(b) of the CrPC.

Furthermore, a divorced Muslim woman can also use the 1986 Act to seek relief by filing a case under it, which could be resolved in accordance with the Act's provisions.

In the event of an illegal divorce as per the 2019 Act, a divorced Muslim woman can seek relief under Section 5 of the Act for subsistence allowance. Alternatively, she can also pursue remedies under Section 125 of the CrPC.¹⁴

Observations-

It's important for an Indian husband to recognize that he needs to support and provide for his wife, who lacks her own income, by making his financial resources accessible to her, especially for her personal needs. This act of financial support will help his wife feel more secure within the family structure. Indian husbands who are aware of this responsibility and are willing to share their financial assets with their spouse for personal use, in addition to household expenses, should be commended.

Therefore, it's crucial to focus on both 'financial stability' and 'home security' for Indian women. This will truly empower those Indian women, often referred to as 'homemakers,' who are the foundation and support of an Indian family, which is the basic unit of Indian society that needs to be preserved and fortified. It's evident that a stable, emotionally connected, and secure family contributes to societal stability, as it's in the family where important life values are instilled and passed down to future generations, which is essential for building a robust Indian society, which is desperately needed.¹⁵ It's clear that a strong Indian family and society will ultimately lead to a stronger nation. However, achieving this requires the respect and empowerment of women within the family.

Significance-

This case cleared that the 1986 Act does not replace Section 125 of the CrPC and has not taken its place, allowing both to function independently, as they serve different purposes. As there is

¹⁴ Supra note 6 at 5

¹⁵ Supra note 10 at 6

no contradiction between the 1986 Act, which is classified as quasi-personal law concerning divorced Muslim women, and Section 125 of the CrPC, which applies to women of all religions, the latter cannot be limited to only divorced Muslim women. Removing Section 125 from its application to divorced Muslim women would breach Article 15(1) of the Indian Constitution, which prohibits the State from discriminating against individuals based on religion, race, caste, sex, place of birth, or any other factor.¹⁶ Moreover, our interpretation aligns with the intent of Article 15(3) of the Constitution, which emphasizes the spirit of equality. This ruling establishes a precedent for future legal disputes regarding maintenance claims by divorced Muslim women, offering a definitive legal basis for reference in similar cases. It enables women to pursue legal recourse and financial assistance without facing the restrictions imposed by personal laws.

Conclusion- The conclusion of the case *Mohd. Abdul Samad v. State of Telangana* is significant for establishing the rights of divorced Muslim women in India regarding maintenance claims. On July 10, 2024, the Supreme Court ruled that divorced Muslim women are entitled to seek maintenance under Section 125 of the Criminal Procedure Code (CrPC), affirming that personal laws cannot negate the provisions of secular law.

Concurrent Solutions: The Court underscored that women who have been divorced and are Muslim have the right to seek support claims through both the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Code of Criminal Procedure. This combined strategy guarantees that women are not stripped of their rights due to differing understandings of personal and civil laws.

Recognition of Support Rights: The verdict reaffirmed the concept that support is a basic entitlement for women, designed to safeguard their economic stability and self-respect. The Court pointed out that the 1986 Act does not restrict women from pursuing support claims under Section 125, offering them various legal options for seeking justice.

Justice for the Underprivileged: The decision is in harmony with the wider ideals of social justice as outlined in the Indian Constitution, highlighting the duty of the government to safeguard the rights of those in need, especially women and children.

¹⁶ The Constitution of India, Article 15.

Legal Legacy: This case establishes a crucial example for subsequent cases concerning support claims by divorced Muslim women, making clear their entitlements and the legal structures that apply to such claims. It highlights the significance of judicial analysis in harmonizing personal laws with the rights protected by civil laws.

Effects on Future Laws and Policies: The ruling could shape future debates on laws and policies related to women's rights and support laws, promoting a fairer approach to meeting the needs of divorced women in India.

My Opinion:

The case of Mohd. Abdul Samad v. State of Telangana represents a major shift in how courts are viewing the rights of divorced Muslim women to receive financial support. In earlier decisions like Shah Bano v. Union of India and Danial Latifi v. Union of India, the Supreme Court acknowledged the financial support rights of Muslim women, but usually limited their focus to the Muslim Women (Protection of Rights on Divorce) Act, 1986. The case of Mohd. Abdul Samad clearly stated that divorced Muslim women have the right to seek financial support from both the Muslim Women Act and Section 125 of the Criminal Procedure Code (CrPC), highlighting that personal laws do not prevent such claims under secular law. This approach of offering two legal paths is a significant increase in the legal safeguards available to divorced Muslim women. This case has strengthened the values of gender equality and social justice, offering divorced Muslim women crucial legal rights and options for seeking financial support.