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Maintenance of wife under personal laws: An evaluative analysis

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Abstract

The paper talks about the irony of patriarchal norms and values institutionalized by the State in case of domestic violence which is subjected to women in their houses which is considered to be the safest place for the women. The Researcher here tries to adumbrate and justify rights of maintenance of a married woman, whose husband is unable to provide maintenance to her under the personal Laws. The main objective of the paper is:

- To analyze response of Indian judiciary and legal luminaries to Right of the wife to Maintenance under personal laws
- Right to Maintenance of a wife, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956
- To study Right to maintenance in classical different personal laws
- To suggest remedial measures to alleviate sufferings of a woman whose husband is unable to provide maintenance to her.

Keywords: Maintenance, alimony, pendente lite, dissolution, nullity, ad interim

Introduction

The Arabic term for 'maintenance' is *Nafaqah* which literally means "what a person spends over his family". In its legal sense maintenance includes: food, clothing and lodging. Under Muslim law *Hedaya* defines maintenance as all those things which are necessary for the support of life such as food, clothes and lodging. According to *Fatawa-i-Alamgiri* maintenance means food, clothing and lodging^[1]. Right of maintenance of Muslim wife arises in the following two circumstances: firstly, on account of status arising out of a valid marriage. Secondly, on account of a pre-nuptial agreement entered into between the parties to the marriage or between parents in case the parties or one of them is a minor. According to the ordinary sequence of natural events, the first claimant of maintenance is wife her right is absolute and remains unprejudiced even if she has a property or income. A husband is bound to maintain his wife irrespective of the fact whether she being a Muslim or non-Muslim, poor or rich, young or old. In the recent years there has been growing tendency of various quarters including the judiciary, to intrude into Islamic law and interpret its rules in different ways, particularly in Indian sub-continent. Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956^[2]. In assessing the amount of maintenance, the court takes into account the various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from husband. Justifiable reasons are spelt out in the Act. Maintenance pendente lite and even expenses of a matrimonial suit will be borne by either, husband or wife if the either spouse has no independent income. The same principle will govern payment of permanent maintenance^[3]. Christian women can maintenance from her spouse through criminal proceeding or civil proceeding. Interested parties may pursue both civil and criminal proceedings, simultaneously as there is no legal bar to it. In criminal proceedings the religion of the parties does not matter at all, unlike in civil proceedings^[4].

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¹ <https://iamrlawcollege.com/wp-content/uploads/2020/04/MUSLIM-LAW-LEC-5.pdf>

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[https://www.legalserviceindia.com/articles/hmcp.htm#:~:text=Under%20Hindu%20Law%2C%20the%20wife,1956%20\(78%20of%201956\).](https://www.legalserviceindia.com/articles/hmcp.htm#:~:text=Under%20Hindu%20Law%2C%20the%20wife,1956%20(78%20of%201956).)

³ *ibid*

⁴ *Supra* Note 2

This paper tries to deal in depth with all the provisions of all the above-mentioned personal laws dealing with maintenance of wife in the light of the relevant case laws.

Recent judicial pronouncements on maintenance of Muslim women: The courts in India since very beginning are playing a great role for the protection of rights of the weaker section of the society. The Courts are always trying to give a wider interpretation to the provisions relating to maintenance of wife.

In *Shamim Ara v. State of U.P.*,^[5] one Shamim Ara, the appellant, was married to Abrar Ahmad, the respondent, in 1968 according to the Muslim Shariat law. Four sons were born out of the wedlock. In 1979, the appellant on behalf of herself and for her two minor children, filed an application for maintenance under Section 125 Cr.P.C.^[6] complaining of desertion and cruelty on the part of the husband. The learned Judge of the Family Court at Allahabad refused to grant any maintenance to the wife on the ground that she was already divorced by her husband and hence not entitled to any maintenance. However, maintenance at the rate of Rs. 150/- per month was allowed for one son of the appellant for the period during which he remained a minor, the other one having become major during the pendency of the proceedings. On the other hand, the respondent denied all averments made by the wife. He pleaded that he had divorced her by triple

divorce in 1987 before 4-5 witnesses and since then parties had ceased to be spouses. He also claimed the protection of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and also submitted that he had purchased a house and delivered the same to the wife in lieu of dower and therefore the wife was not entitled to any maintenance. The High Court, on revision, held that the divorce which is alleged to have been given by the husband to the wife was not given in the presence of wife and it is not the case of the husband that the same was communicated to her. But the communication would stand completed on 5th December 1990 with the filing of the written statement by the husband. Therefore, the High Court concluded that the wife was entitled for maintenance. Allowing the Special Appeal of the wife the Apex Court held that the *talaq*, to be effective has to be pronounced. In the instant case there was no proof of *talaq* having taken place. A mere plea taken in the written statement of a divorce having been pronounced same time in the past cannot by itself be treated as effectuating *talaq* on the date of delivery of the copy of written statement to the wife. A plea of previous *talaq* taken in written statement cannot at all be treated as pronouncement of *talaq* by the husband nor the affidavit filed in some previous case in which wife was not a party be treated as evidence of any value. Marriage between appellant and respondent not having been dissolved and the husband should continue to be liable for payment of maintenance until the obligation comes to an end in accordance with law.

The Court further observed that the correct law of divorce as ordained by the Holy Quran is that *talaq* must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters one from the wife's family and the other from the husband; if the attempt fails *talaq* may be effected.

In *Sayeed Khan Faujdar Khan v. Zaheba Begum*,^[7] the respondent moved an application under Section 125, Criminal Procedure Code in the year 1997. By the said application, the respondent claimed the maintenance allowance of Rs. 500/- per month. The said application was withdrawn by the respondent in which it was submitted that she has articles of *Jahez* as per the list and also the amount of *mahr* of Rs. 15,000/- where it was submitted that the respondent was not interested in prosecuting the case for grant of maintenance. Later on, the respondent moved an application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 for the reasonable and fair provision for maintenance. In this case the Court held that the withdrawal of the application under Section 125, Cr.P.C. created an estoppel against the respondent to move an application under Section 3 of the Act of 1986. Thus, the application moved by the respondent under Section 3 of the said Act of 1986 is nothing but an abuse of the process of the Court which necessitates invoking the inherent powers of the Court under Section 488 of the Code of Criminal Procedure.

In *Shaikh Mohammed v. Naseembegum*,^[8] it was observed by the Court that that where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in Clause (d) of Sub-section (1) of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986^[9] delivered to a

⁵ JT 2002 (7) SC 520

⁶ Sec. 125. Order for maintenance of wives, children and parents. (1) If any person having sufficient means neglects or refuses to maintain—(a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.— For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority; (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. (2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance. (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation— If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

⁷ AIR 2006 Bom. 39

⁸ (2007) DMC 226.

⁹ Sec 3. Mahr or other properties of Muslim woman to be given to her at the time of divorce. —(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to— (a) a

divorced woman on her divorce, she or any one duly authorized by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties as the case may be.

In *Iqbal Bano v. State of U.P.* ^[10] the Supreme Court held that the Muslim Women (Protection of Right on Divorce) Act, 1986 only applies to divorced women and not to a woman who is not divorced. Furthermore, proceedings under Section 125 Cr.P.C. are civil in nature. Even if the Court noticed that there was a divorced Muslim woman who had made an application under Section 125 Cr.P.C., it was open to the Court to treat the same as a petition under the 1986 Act considering the beneficial nature of the legislation, especially since proceedings under Section 125 Cr.P.C. and claims made under the Muslim Women Act are tried by the same Court.

In *Chand Patel v. Bismillah Begum*, ^[11] the wife filed an application against her husband, claiming maintenance for herself and for her minor daughter under Section 125, Cr.P.C. She stated that she was the legally wedded wife and that her minor daughter was born from the wedlock. She added that her husband had already married her elder sister but had thereafter married her with the consent of his first wife. Gradually, the husband had started neglecting her and her daughter who had no means to support themselves. She, therefore claimed a certain amount as maintenance for each of them. Before the Supreme Court, the husband denied that he had married the respondent. The husband contended that under the Muslim Law, a man could not marry his wife's sister during his wife's lifetime. That such conjunction was prohibited, even if the marriage had been performed the same was void in law and did not confer any rights either on the respondent or her daughter.

The Supreme Court held that if the marriage which was said to have been performed between the appellant and the respondent is held to be void then, respondent will not be entitled to any maintenance from the appellant under Section 125, Cr.P.C. If on the other hand, the marriage is held to be irregular, then the marriage will subsists for all purposes, unless declared void by the competent court. Till such a declaration is made, along with the respondent, her daughter will also be entitled for maintenance under Section 125, Cr. P.C.

In *Firdaus Bano v. Mohammad Ashraf*, ^[12] it was observed by the Court that the divorced Muslim woman is entitled for maintenance only under the Act of 1986 and Section 5 of the said Act gives option to the parties to the proceedings to be governed by the provisions of Sections 125 or 128 ^[13] of the

reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband; (b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children; (c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and (d) all the properties given to her before or at the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

¹⁰ (2007) 6 SCC 785.

¹¹ (2008) 4 SCC 774

¹² 2008 (2) MPHT 111 CG

¹³ Sec.128. Enforcement of order of maintenance. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being

Code of Criminal Procedure, 1973. However, such option has not been exercised by the parties to the proceedings and therefore, in the absence thereof, the parties are governed by the Act of 1986 and the petition under Section 125 Cr.P.C. is not maintainable.

In *Shabana Bano v. Imran Khan* ^[14], the Apex Court has reiterated that Section 125 of Cr.P.C. would be applicable to a divorced Muslim woman for the purpose of claiming maintenance against her husband even after the expiry of *iddat* period so long as she does not re-marry.

In this case, the appellant Shabana Bano was married to the respondent Imran Khan according to Muslim rites at Gwalior on 26.11.2001. According to the wife, the respondent husband and his family members treated her with cruelty and continued to demand more dowry despite the fact that all necessary house hold goods to be used by the couple were given. After sometime, the wife became pregnant and the husband took her to the parent's house. The husband threatened the wife that in case his demand of dowry is not met by her parents, she would not be taken back to her matrimonial home even after delivery.

The husband on the other hand, claimed that he had already divorced his wife in accordance with Muslim Law. Thus, under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986, wife is not entitled to any maintenance after the divorce and after the expiry of the *iddat* period ^[15].

He also claimed that the wife herself was earning Rs. 6,000 per month by giving private tuition and is self dependent, thus she is not entitled to any maintenance ^[16].

The Family Court held that an amount of Rs. 2,000 per month should be paid by the husband to the wife from the date of the institution of the suit till the date of divorce and thereafter to the *iddat* period. After the *iddat* period, the maintenance amount was denied. The Gwalior Bench of High Court upheld the judgment of Family Court which is the subject matter of challenge in the appeal by grant of special leave.

The basic and foremost question that arose for consideration before the Supreme Court was whether a Muslim divorced wife would be entitled to receive the amount of maintenance from her ex-husband under Section 125, of the Cr.P.C. and if yes, then through which forum.

The learned Apex Court before delivering the judgment considered Sections 4 ^[17] and 5 ^[18] of the Muslim Women

satisfied as to the identity of the parties and the non- payment of the allowance due.

¹⁴ AIR 2010 SC 305.

¹⁵ I.A. Khan (ed.), Aqil Ahmad's Mohammedan Law, p.249, (Central Law Agency, Allahabad, 24th edn., 2011).

¹⁶ Ibid, p. 249.

¹⁷ Sec.4: Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where the Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order: Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her: Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the

Act, 1986 and then Sections 7 and 20 of the Family Courts Act, 1984 which provide for the jurisdiction and overriding effect of this Act, respectively^[19].

The Court observed that the bare perusal of Section 20 of the Family Court Act makes it crystal clear that the provisions of this Act shall have overriding effect on all other enactment in force dealing with this issue. Thus, it is quite discernible that a Family Court established under the Family Court Act shall exclusively have jurisdiction to adjudicate upon the application filed under Section 125 of Cr.P.C.

The Court relied upon the judgment delivered in *Danial Latifi and another v. Union of India*,^[20] and further observed that a comparison of these provisions with Section 125, Cr.P.C. will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can support to those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. In the light of the aforesaid discussion the Court held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of the Cr.P.C. after the expiry of period of *iddat* also, as long as she does not re-marry^[21].

In *Mahmud Hanif Abdullah Kadar v. Mehrunnisha Hapumiya Shaikh and another*^[22], both the husband and wife mutually agreed and opted to resort to provisions of Cr.P.C. After that wife filed an application for maintenance under Section 3 of the Muslim Women Act, 1986.

The Court held that provisions of Section 3 to 5 of the Act cannot be interpreted to mean that once such option is exercised by the party of deciding to be governed by provisions of Sections 125 to 128 Cr.P.C., they shall be so optioned perennially or perpetually.

In *Shibabudheen v. Shybi and another*,^[23] the Court held that whether the dissolution is under *Talaq* or *Khula* or *Mubara* or under the *Dissolution of Muslim Marriage Act, 1939*, if the divorce is in accordance with the Muslim law, she is a divorced wife and so entitled to get all the benefits which are

maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order. (2) Where a divorced woman is unable to maintain herself and she has no relative as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

¹⁸ Sec. 5: Option to be governed by the provisions of section 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974); and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly. Explanation.—For the purposes of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.

¹⁹ *Ibid*, p.249.

²⁰ 2001 AIR SCW 3932

²¹ *Supra* Note 15 p.250.

²² AIR 2010 (NOC) 808 (Guj.).

²³ AIR 2010 (NOC) 810 (Ker).

available to her, unless a reasonable and fair provision and maintenance has been made and paid or mahr or dower was paid.

In *Musstt. Rebun Nessa v. Musstt. Bibi Ayesha and Ors.*,^[24] there was dispute regarding the succession of the property of the deceased husband between his first wife and the second wife. Where the first wife failed to establish that the deceased husband divorced his second wife by taking recourse to the words of divorce. There was no written documents or *Talaqnama* which was produced to the Court for the alleged divorce. Witnesses and pleadings which were produced before the court were lacking to prove the divorce of the second wife of the deceased.

Therefore, the divorce of the second wife of the deceased was not proved before the Court. Hence, the Court held that the grant of succession certificate in favour of the first wife depriving the second wife of her due share is not tenable.

It was observed by the Court that for the divorce by *Talaq* there must be proof of the words of divorce which must indicate an intention to dissolve the marriage. Thought the marriage under the Muslim law is a civil contract yet high degree of sanctity is attached to it. In the absence of the reasonable cause and proceeded by an attempt of reconciliation between husband and wife by two arbiters. There cannot be any valid divorce/ *talaq*.

Further the court observed that under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, where there is a divorce by *Talaq* the divorced wife is entitled to succession.

In *Abdul Rahman v. Hariunnessa Abdu and Anr.*,^[25] the husband contracted the second marriage after begotting four children and started ill-treating the first wife. The wife persuaded to seek the dissolution of marriage. It was observed by the court that the Act was intended to protect the rights of divorced Muslim women and the divorced Muslim wife is entitled to the benefit conferred under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, despite of the fact that the wife had voluntarily obtained the decree of divorce, which is immaterial.

It was further observed by the Kerala High Court that the preamble of the Muslim Women (Protection of Rights on Divorce) Act, 1986 would show that the enactment of the Act was intended to protect the rights of the Muslim women, who have been divorced or have obtained divorce. Therefore, irrespective of the question as to how the marriage was dissolved, a divorced Muslim woman is entitled to the benefit under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

The contention was raised before the Court that the wife was employed as a teacher and earning an income. This contention was rejected by the Court on the ground that under Section 125 Cr.P.C. the wife or divorced wife can claim maintenance only on plea and proof that she is devoid of means for her maintenance. Such a condition is conspicuously omitted in Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. So it is evident that the legislator intended to provide reasonable and fair provision to the divorced wife irrespective of the income and the means of the divorced wife. The Court held that though the wife was employed as a teacher and was earning an income but irrespective of the income and the means for her maintenance. She is entitled to a reasonable and fair provision of

²⁴ AIR 2011 Gau. 36.

²⁵ AIR, 2011, Ker. 148.

maintenance under Section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986.

With regard to quantum of maintenance it was held that under Section 3, of the Muslim Women (Protection of Rights on Divorce) Act, 1986, while awarding the maintenance to the divorced Muslim wife her age as well as the chance of her remarriage should be considered. Therefore, it was observed that the wife who was aged 43 years and a mother of four children and the matrimony subsisted for more than two decades there was a little chance of remarriage.

It was further held that the husband has a business wherein he was getting a monthly income of Rs. 50,000/-. He also got a lorry from which he was getting a monthly income of Rs. 10,000/- as well as rubber plantations, cocoa gardens, pepper gardens etc. and thereby getting an annual income of Rs. 5,00,000/-. He had acquired 1.6 acres, 2 acres, and 10 cents of properties. These purchases were made subsequent to the marriage. These acquisitions were joint acquisitions, though the document was obtained in the husband's name. The parties belong to the higher strata of the society. The amount of Rs. 3,84,000/- awarded towards maintenance was not exorbitant.

In *Dudekula Mahboob Saheb v. Dudekula Shehnaz Begum and Ors.* ^[26], it was observed that the Muslim wife had the right to approach to the Court under Section 125 Cr. P.C. for her maintenance unless it is proved that there was divorce between parties and when once the question of *Talaq* is established, the relevant provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, are applicable to the case. A person who alleges he had given divorce must establish what form of *Talaq* was pronounced and when it became irrevocable. Unless a person complies with one of the conditions mentioned above, no *Talaq* becomes effective. A mere mention in a written statement, cannot be sufficient to have the effect of divorce unless it is pronounced in the presence of witnesses or the wife herself. Therefore, in the observation of the enquiry Court the husband never deposed about pronouncement of *talaq* and there was also no evidence as to when and in whose presence, it was pronounced and when it was communicated to the wife.

In his cross examination the husband failed to establish the question of *talaq* and thus, the Court observed that the wife would be entitled to file an application under Section 125 Cr.P.C. and even supposing that there was divorce between them she still got the right to approach to the Court under Section 125 Cr.P.C. and the proceedings initiated under the said Section are to be treated as the proceedings under the Muslim Women (Protection of Rights on Divorce) Act, 1986, for the purposes of paying necessary maintenance to her.

In *Sazid v. State of U.P. and Ors* ^[27]. It was observed by the Allahabad High Court that Section 125 Cr.P.C. is a beneficial piece of legislation, from which the benefits must accrue to the divorced Muslim women. A Muslim woman is entitled to maintenance as long as she does not remarry.

In *Md. Tanqeer Usmani v. State of Jharkhand and Ors.* ^[28], a divorced wife claimed for the payment of Dein Mehar and return of gifted articles and expenses till *iddat* period. But the husband claimed to have made aforesaid payment to the brother of the wife on order of Panchayat. A document was adduced before the court on which the signature of wife was

not found. Also, there was no reason as to why payment was made to the brother when the wife herself was present in the Panchayat. There was no reliable proof that money was returned back. The Court held that the Husband was liable to pay Dein Mehar and return claimed money to divorced wife.

The petitioner was aggrieved by the order passed by S.D.J.M., whereby in a proceeding under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, the petitioner was directed to make the payment of Dein Mehar of 51 Bhar Silver corresponding to Rs. 4590/- return of gifted articles worth Rs. 22,125/-, Salami Rs. 2600/- and expenses Rs. 6,000/- till the *iddat* period to the opposite party who is the divorced wife of the petitioner, and also to make the payment of Rs. 500/- per month to the opposite party for the maintenance of his minor daughter who is living with her mother for her maintenance till she attains majority.

From perusal of the impugned order, an application under Section 3 of the Muslim women Act was filed by the opposite party, claiming herself to be the legally wedded wife of the petitioner stating that she was divorced by her husband, but her dues were not returned back. The impugned order also shows that the marriage between the parties and the birth of the daughter out of their wedlock are the admitted facts in the case. It further appears from the order passed by the Court below that the witnesses were produced and examined before the Court. Some documents were also produced and proved by the parties which have taken into consideration by the Court below.

On appraisal of the evidence brought on record, both oral and documentary, the court came to the conclusion that the opposite party was divorced wife of the petitioner who was divorced by him, but her legal dues such as Dein Mehar, articles gifted to her, Salami were not paid to her. The Court also came to the conclusion that the opposite party was having a minor daughter of the petitioner who was entitled to get maintenance from her father.

It further appears from the impugned order that the Court considered the document proved before it which showed that all the dues were returned back to one Abdul Bahab who is said to be the brother of the opposite party. The Court also found that the opposite party was herself present in the Panchayat, in which the money was alleged to be returned back to the said Abdul Bahab, but the signature of the opposite party was not taken on the said document. The Court also could not find any cogent reply to the question that when the divorced wife was present before the Panchayat then why the delivery of gifted articles and Dein Mehar was not directly made to her, rather it was made to a different person. The Court directed the petitioner to make the payment of Dein Mehar of 51 Bhar silver corresponding to Rs. 4950/- and also directed to return the gifted articles, worth Rs. 22,125/- also Salami worth Rs. 2600/- and also directed the petitioner to make the payment of Rs. 6,000/- to the opposite party being her expenses during the *iddat* period. The Court also directed the petitioner to make the payment of Rs. 500/- per month for the maintenance of his minor daughter till she attains the majority.

The Jharkhand High Court going through the order passed by the lower court upheld the decision of the lower court.

In *Praveen Rao (Smt) v. State of Uttarakhand and Anr* ^[29], it was observed by the Court that under Section 3 of the Muslim Women Act, 1986 a Muslim woman cannot be forced to

²⁶ AIR 2012 (NOC) 222 (A.P.)

²⁷ AIR 2012 (NOC) 100 All.

²⁸ AIR 2013 Jhar. 43.

²⁹ (2013) Uttr. DMC 743.

claim maintenance under the 1986 Act only. She is well entitled to claim maintenance under Section 125, Cr. P.C. irrespective of the fact that whether she is divorced or not, provided that she is not remarried.

Under Section 3 of the Muslim Women Act 1986 quantum of maintenance may also be considered. A healthy and able bodied person is bound to maintain his wife irrespective of the fact whether he has any worldly means of earning or not. Maintenance to the tune of Rs. 2000/-p.m. will cater to interest of justice.

It was observed by the Uttarakhand High Court that in view of the propositions laid down in the precedents, it is abundantly clear that Muslim women cannot be forced to claim maintenance under the Act only. She is well entitled to claim maintenance under Section 125Cr.P.C. irrespective of the fact whether she is divorced or not provided she has not remarried.

Further with regard to the quantum of maintenance the court observed that an interim maintenance of Rs. 1,500/- p.m. to be given to Smt. Praveen Rao from her husband because it is a settled law that a healthy and able bodied person is bound to maintain his wife irrespective of the fact whether he has any worldly means of earning or not. The respondent Mr. Javed is an adult person and is not suffering from any physical ailment. In these circumstances, the Court is of the view that the petitioner Smt. Praveen Rao cannot be deprived from getting maintenance from her husband. In such view of the matter, maintenance to the tune of Rs. 2000/- p.m. will cater to the interest of justice.

In the light of the case laws mentioned, it is submitted that judiciary has played a very important role in the widening of the rights of maintenance available to divorced Muslim women through the interpretation of Muslim Women (Protection of Rights on Divorce) Act, 1986. Courts by interpreting the provisions of the said Act protect and strengthen the rights available to the divorced Muslim women. While interpreting these provisions the Courts considered the Preamble of the Act which shows that the said Act was intended to protect the rights of the divorced Muslim women.

Maintenance under Christian law ^[30]

The maintenance right of a Christian wife is governed by the Indian Divorce Act, 1969. The said Act is applicable to those persons who practice the Christianity religion. A Christian woman can claim maintenance from her spouse through criminal proceedings or/and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

If a divorced Christian wife cannot support her in the post divorce period she need not worry as a remedy is stored for her in law. Maintenance of wife under Christian law is dealt with the Sections 36, 37 and 38 of the Indian Divorce Act, 1869 which deals with the petition for the expenses of the proceedings and alimony pending the suit.

Alimony pendente lite

Section 36 ^[31] of the Indian Divorce Act, 1869, deals with the

provision of Alimony pendente lite. According to this section, in any suit under this Act whether it be instituted by a husband or a wife and whether or not she has obtained an order of protection, the wife may present a petition for the expenses of the proceedings and alimony pending the suit. Such a petition shall be served on the husband and the court on being satisfied by the truth of the statement contained therein, may make such order on the husband for the expenses of the proceeding and alimony pending the suit shall as far as possible, be disposed of within 60 days from the date of the service of notice on the respondent.

The object of this section is to provide the wife with a source of maintenance, whilst a matrimonial suit is pending. She is entitled to present a petition of alimony pendente lite. Alimony pendente lite is an *ad interim* arrangement and its payment is enforced on the ground of necessity and only when the wife has no other means of subsistence. Where pending her application for alimony the wife gets advances from a third party to meet her necessities the party is in equity entitled to recover the sums advanced by him from the husband. The alimony may be claimed by the wife in suits for:

1. Nullity.
2. Dissolution.
3. Judicial Separation.
4. Restitution of conjugal Rights of marriage.

The Indian law with regard to the quantum of alimony *pendente lite* that the alimony *pendente lite* should in no case exceed one-fifth of the husband's average net income for the past three years.

The Act contemplates the payment of alimony to the wife so long as she continues in law to be a wife. An order for alimony *pendente lite* does not create a legal debt, but a liability to pay and is only a personal allowance and so long as the order subsists the right to alimony cannot be alienated or released.

In *Winfred Dhanraj Samuel v. Betsy Ratnakumari*, ^[32] the Court observed that Section 36 of the Indian Divorce Act, 1869, provides that a wife may present a petition for alimony pending the suit. The Court on being satisfied of the truth of the statements contained therein, may ask such an order on the husband for the payment to the wife of alimony pending the suit as it may deem just.

Further it was observed by the Court that the permanent alimony and maintenance can only be granted in case divorce is granted and if the marriage between the parties subsists. However, the wife is given liberty to take appropriate proceedings before the proper forum claiming maintenance and for other reliefs, if any in accordance with law.

In *Caroline Perpetua Eardley v. Glenn B. Eardley*, ^[33] the parties were Christian, and were married in the year 1984. Three daughters were born out of the wedlock. The husband was employed as a driller in an oil rig company in Abu Dhabi

order of protection, the wife may present a petition for alimony pending the suit. Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just: Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

³² II (1992) DMC 219.

³³ II (2002) DMC 34.

³⁰ Romit Agrawal, "Maintenance: Under Hindu, Muslim, Christian and Parsi Laws", available at: <http://www.legalserviceindia.com>.

³¹ Sec. 36: Alimony pendente lite: In any suit under this Act, whether it be instituted by a husband of a wife, and whether or not she has obtained an

and appeared to be in the employment of the company. The husband filed a petition under Sections 10 and 11 of the Indian Divorce Act against the wife for the dissolution of marriage on the ground that wife had committed adultery during solemnization of marriage. Wife denied the said charges and the matter remained pending before the trial Court since the year 1995. During the pendency of the said suit the wife filed the petition for the alimony pendente lite against the husband. The present petition was a Revision against the order passed by the Civil Judge (Senior Division) and Principle Judicial Magistrate First Class on application under Section 36 of the Indian Divorce Act, 1869, seeking the interim maintenance for the wife. This application was dismissed by the trial Court on the ground that the petitioner wife was in a position to maintain herself.

The Court observed in this case that Section 36 of Indian Divorce Act, 1869, entitles the wife to present a petition for alimony pending the disposal of the suit filed under the Act whether such a suit is instituted by the husband or wife. It empowers the Court to make an order on the husband for the payment of alimony to the wife on being satisfied of the truth of the statements contained in the petition seeking such alimony.

The Court set aside the impugned order passed by the trial Court and allowed the said Revision Application and directed the Respondent husband to pay the sum of Rs. 2,500/- per month as maintenance till the conclusion of the proceedings. In addition, the wife shall also be entitled to a sum of Rs. 5,000/- towards legal expenses.

Permanent alimony

Section 37^[34] of the Indian Divorce Act, 1869, deals with the provision regarding power to order permanent alimony.

Power to order monthly or weekly payments: In every such case, the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to receive the same order wholly or in part as to the court seems fit.”

Section 37 of the Indian Divorce Act, 1869, deals with the petition of permanent alimony. Under this section a Christian wife can apply for alimony/maintenance in a civil court or High Court and, husband will be liable to pay her alimony

³⁴ Sec. 37: Power to order permanent alimony.- The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties. Power to order monthly or weekly payments. Power to order monthly or weekly payments.-- In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

such sum, as the court may order, till her life time. According to this section, the High Court may if it thinks fit on any decree absolute declaring a marriage to be dissolved or on any decree of judicial separation obtained by the wife and the District Judge may if he thinks fit on the confirmation of any decree of his declaring a marriage to be dissolved or on any decree of judicial separation obtained by the wife order that the husband shall to the satisfaction of the court have to secure to the wife such gross or annual sum of money sum of money till her life time having regard to her fortune, to the ability of the husband and the conduct of the parties as it thinks reasonable and for that purpose may cause a proper instrument to be executed by all necessary parties. Further this section says that in every such case, the court may make an order upon the husband for the payment of such monthly or weekly sums for the maintenance and support of the wife as the court may think reasonable.

The proviso to this section provides that if the husband afterwards from any cause becomes unable to make such payments it shall be lawful for the Court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to receive the same order wholly or in part as to the Court deems fit.

Payment of alimony to the wife or to her trustee

Section 38^[35] of the Indian Divorce Act, 1869 provides that court may direct the payment of alimony to the wife or to her trustee. According to this section in all the cases in which the court makes any order or decree for alimony, may also direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court and may also impose any terms or restrictions which to the court seems expedient and may from time to time appoint a new trustee if it appears to the court expedient to do so.

In *Myra Joseph Braz Dias v. Joseph Braz Dias*,^[36] it was directed by the Court that husband should pay Rs.1,000/- per month as maintenance to the wife and Rs. 10,000/- towards the costs and issued a direction that the arrears upto March 1991 together with the sum of Rs. 10,000/- shall be paid within eight weeks from the date of the order.

The Court further observed that: “We are unable to trace any rational basis for the rule which prevents the wife from claiming more than 1/5th, even when her needs, and capacity of the husband, warrant awarding larger amount. This amount almost to be a rule of the thumb. Such a provision in the Act of 1869, may have been based on the then notions and concepts, as to a woman’s status and position in the society and her claims against the husband. The provisions of the Hindu Marriage Act enacted in 1955 are, on the other hand, based on the recognition of the wife as equal partner of her husband in life. This is just in keeping with the guarantee of equality to every citizen afforded by the Constitution. It does not depend on whether the wife chooses to devote her talents to household work or to sphere outside. This Act does not permit denying her right to share the husband’s earnings, like his fortunes or misfortunes on the footing of equality....”

³⁵Sec. 38: Court may direct payment of alimony to wife or to her trustee. - In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

³⁶ AIR 1992 Bom 142.

Conclusion

Thus, in the light of the case laws mentioned, it is submitted that judiciary has played a very important role in the widening of the rights of maintenance available to divorced Muslim women through the interpretation of Muslim Women (Protection of Rights on Divorce) Act, 1986. Courts by interpreting the provisions of the said Act protect and strengthen the rights available to the divorced Muslim women. While interpreting these provisions the Courts considered the Preamble of the Act which shows that the said Act was intended to protect the rights of the divorced Muslim women.

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