

## A STUDY ON MAINTENANCE UNDER MUSLIM LAW

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### **ABSTRACT :**

The entire idea of upkeep was acquainted all together with observe that if there is a companion who isn't autonomous fiscally than the other life partner should encourage him/her keeping in mind the end goal to make the living of the other individual conceivable and free. Giving upkeep implies that the other individual who is getting the support ought to have the capacity to carry on with the life as he or she lived before marriage if there should be an occurrence of separation and on the off chance that where the two accomplices are not living respectively and they look for support than the mate getting upkeep ought to have the capacity to carry on with an existence as when they lived respectively. Upkeep is the sum which a spouse is under a commitment to make to a wife either amid the subsistence of the marriage or upon detachment or separation, in specific situations. Now of time I might likewise want to say that as indicated by my understanding upkeep not just incorporates essential necessities like sustenance, attire and living arrangement yet it additionally incorporates the things important for solace and status in which the individual qualified is sensibly expected for live. [1] According to me the primary point of giving support is that the spouse ought not be left dejected on partition or separation from her better half. In a laymen's term upkeep are those things which are basic for the survival of person. The most critical part of upkeep is that the gathering which depends on upkeep has no free wellspring of pay to

help himself/herself. The fundamental point we need to center around in autonomous salary. Should the companion who is asserting upkeep have portable or undaunted property, the life partner can in any case guarantee support if the property does not yield any wage. The quantum of upkeep and the costs of the procedures have not been determined in any of the Indian Matrimonial statutes aside from the Divorce Act. The court can settle the support at any sum, contingent upon its attentiveness.

**KEYWORDS :** autonomous , matrimonial status , divorce act , commitment .

### **INTRODUCTION :**

The entire idea of upkeep was acquainted all together with observe that if there is a mate who isn't autonomous monetarily than the other life partner should encourage him/her to make the living of the other individual conceivable and free. Giving upkeep implies that the other individual who is getting the support ought to have the capacity to carry on with the life as he or she lived before marriage in the event of separation and in the event that where the two accomplices are not living respectively and they look for upkeep than the life partner getting support ought to have the capacity to carry on with an existence as when they lived respectively. Support is the sum which a spouse is under a commitment to make to a wife either amid the subsistence of the marriage or upon partition or separation, in specific situations. Now of time I might likewise want to specify that as indicated by my understanding upkeep not just incorporates essential necessities like sustenance, garments and living arrangement yet it additionally incorporates the things vital for solace and status in which the individual qualified is sensibly expected for live. As indicated by me the primary point of giving support is that the spouse ought not be left dejected on partition or separation from her better half. In a laymen's term upkeep are those things which are fundamental for the survival of human being. The people who are qualified for support under the Hindu Adoptions and Maintenance Act (HAMA), 1956 are spouse, widowed little girl in-law, kids, matured guardians and dependants as identified in Section 21 of the Act. Though, under the Muslim law, the people qualified for support are spouse, youthful youngsters, the necessitous guardians, and different necessitous relations inside the disallowed degrees, for example, the Indian Majority Act, 1875, the Criminal Procedure code 1973, Muslim Women (Protection of Rights on Divorce) Act, 1986. [Makarand R Paranjape](#) (2009). The aim of the research is :

1. To know the muslim personal law
2. To find the muslim law marriage and divorce
3. To analyse the history of muslim personal law .

### **HYPOTHESIS :**

#### **NULL HYPOTHESIS :**

There is no significant impact after implementation of protection of rights on divorce act of 1986 maintenance of muslim law .

#### **ALTERNATIVE HYPOTHESES :**

There is significant impact of the implementation of protection of rights on divorce act of 1986 maintenance of muslim law .

#### **MATERIALS AND METHODS :**

The present study deals with analytical research and descriptive study . Data for this research is collected from primary and secondary sources . Data collection methods are :

1. Books and articles
2. Magazines
3. Journals .

#### **MUSLIM WIFE'S CLAIM ON MAINTENANCE:**

It is the commitment forced on the spouse to settle claims for support made by the wife. The spouse is qualified for upkeep from her better half in spite of the fact that she may have the way to keep up herself and despite the fact that her significant other might be without implies.

Muslim spouse's case of upkeep is partitioned in two distinctive branches of law. One under Muslim Personal Law and another under general law of support as is reflected in Code of Criminal Procedure, 1973 which is a common cure

As indicated by the Muslim Personal Law, the spouse's obligation to keep up starts when the wife accomplishes pubescence and not previously; gave dependably that she is dutiful and permits him free access at all legal circumstances. On the off chance that a spouse abandons her better half she loses her entitlement to upkeep. Notwithstanding the lawful commitment to keep up there might be stipulations in the marriage contract which may render the spouse at risk to offer a unique leniency to the wife. Such remittances are called *khan load Dan*. If spouse declines to pay upkeep, the wife is qualified for sue him. Her privilege might be founded on the substantive law, or she may sue under the arrangements of Code of Criminal method which accommodates general law of support under Section 125 wherein the expression "spouse" is broadly characterized and disclosed in order to cover the case of 'lawfully married wife' and additionally of 'separated from wife'. So in short Muslim spouse's claim of support emerges in following conditions.

1. Out of the status of Husband and Wife (During the subsistence of marriage and out of the lawful commitment forced on the spouse.
2. Out of pre-matrimonial assention and
3. Out of divorce (After disintegration of marriage)

### **GENERAL LAW SECTION 125 OF CrPC v. (MUSLIM) PERSONAL LAW MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**

The Code of Criminal Procedure, 1973 being a general law has a uniform appropriateness to every one of the people regardless of their religion, position or status though Muslim individual law is an uncommon law material to the individuals who are affirming Muslim religion and the individuals who are change over to Muslim. In case of contention between an extraordinary law and a general law, it is acknowledged legal rule that exceptional law should beat the general law.

Segment 125 of Cr. P.C, is pertinent to the Muslims including separated from Muslim lady regardless of the way that in Muslim individual law, spouse stops to be wife on Talas. Muslim spouse is at risk to give support to separated from wife who can't look after herself, inasmuch as she had not remarried.

The statute accommodates upkeep of wife by her better half even after the separation and makes a fanciful or invented connection between the two life partners in perspective of the social conditions predominant in the nation. Advance it additionally keeps the previous spouse of the separated from wife to drive their recent wives to a condition of neediness and desperation till they remarry. So plainly lady keeps on being the spouse inside the significance of area 125 of Code of Criminal Procedure, 1973 independent of religion and use of individual law.

Presently, If we look from an alternate view, i.e., from the Muslim Personal law, on the purpose of case of upkeep by a Muslim separated from woman, it is not any more mandatory for the past spouse to give support past Idiotic period. In this manner, it comes in strife with right of Muslim separated from woman "to guarantee upkeep u/Sec. 125 of Code of Criminal Procedure. In the wake of this contention and also logical inconsistency in the two diverse branches of law, Supreme Court has taken a historic point and strong view by maintaining the case of Muslim separated from woman under Section 125 of Code of Criminal Procedure, 1973. Incomparable Court has recognized its past perspectives on a similar issue.

As noted over the judgment given by the Supreme Court is point of interest has cleared path towards the unification of individual laws.

Realities of the Case: The case was concerning Mrs. Shah Bano, a 62-year-old Muslim lady from Madhya Pradesh was separated by her better half in 1978 and was in this manner denied upkeep. Immediately she recorded an appeal to under Section 125 of Cr. P.C. in the Court of Judicial Magistrate, Indore requesting upkeep at the rate of Rs. 500 every month. Amid which the spouse separated from her by articulating Tales. She didn't remarried. In Defense to Shaha Bano's request of for upkeep, he took the supplication that since she is stopped to be spouse after Tally, he has no commitment to look after her. Nonetheless, Magistrate requested him to pay month to month stipend to his separated from spouse, of Rs. 25 every month. Against this request of the Magistrate, Shah Bano recorded an update application in the MP High court petitioning God for the upgrade of support recompense. The MP High Court expanded the upkeep rate to Rs. 179.20 every month. Mohd. Ahmed Khan favored an

interest to the Supreme Court. The Supreme Court expelled the interest and affirmed the judgment of the High Court. [Noorani, A. G.](#) (2001).

### **Judgment and Principle:**

The Supreme Court by setting a point of interest point of reference for the Courts inside the domain of India held that Section 125 of Cr. P.C., 1973 applies to all regardless of the religion honed by the individual and segment 125 supersedes the individual law, if there is any contention between the two. To this degree the legal declaration is instrumental. The court likewise held that

"It would be off base and treacherous to expand the run of support under Muslim Law to the cases in which the separated from spouse can't look after herself, so if the separated from wife can look after herself, the husband's risk stops with the termination of the time of Idiot, yet in the event that she can't keep up herself after the time of Idiot, she is qualified for have response to Section 125 of Cr. P.C.

In this manner it appears from the previously mentioned perceptions of the Supreme Court that there is no contention between the arrangements Section 125 of Cr. P.C and those of the Muslim individual law on the topic of Muslim Husband's commitment to give support to a separated from spouse who can't look after herself. [Benhabib, Seyla](#) (2002).

So with the assistance of this judgment Supreme Court has set another law material on account of Muslim separated from woman that even if a Muslim lady has been separated, she would be qualified for assert support from her better half under Section 125 of Cr. P. C. after the expiry of time of Idiot additionally, as long as she doesn't remarry.

The case made significant verbal confrontation and contention about the degree of having distinctive common codes for various religions, particularly for Muslims in India. This case caused the administration , with its total dominant part, to pass Muslim Woman (Protection of Rights on Divorce) Act, 1986 which debilitated the judgment of the Supreme Court and, in actuality, denied even completely dejected Muslim divorced people the privilege to upkeep from their previous spouses.

**Muslim Women (Protection of Rights on Divorce) Act, 1986: a deception.**

It is a definitive law and arranges some previous tenets of Muslim Law. Under this law, support can be guaranteed from separated from spouse, relatives or from Wakf Board. The Act makes arrangement for:

1. Support of a separated from Muslim lady amid and after the time of Iddatt and
2. For authorizing her claim to unpaid dower and other restrictive properties.

For the most part the Act gives sensible and reasonable arrangement and upkeep to be made and paid from her previous spouse inside the time of. The word 'arrangement' in connection to the Act would mean an activity of giving something heretofore or masterminding ahead of time to address the issues of the separated from spouse. It might be that arrangement can be made for her different needs, for example, garments, nourishment and such different things relying on the methods for the spouse. [Shabana Bano Vs Imran Khan](#)".

In any case, the utilization of a few words, for example, 'inside', 'sensible' and 'reasonable' and 'arrangement' for future life made an issue in elucidation of the Act for separated from Muslim woman. At first sight it creates the impression that lady is the recipient of this Act which is totally a figment. Muslim Woman Act appears to be self-assertive regarding

To begin with: Act does not give an arrangement by enabling her to get upkeep past the time of, since the word utilized is 'inside.'

Besides: Act confined the use of Section 125 of Cr. P.C. to the Muslim separated from woman as it is left discretionary for the spouse as well as for the Parties to the case to be administered by Section 125 of Cr. P.C

The Judiciary began translating the arrangements of the Act in various ways, since as expressed above arrangements and words (counting Preamble) of the Act appears to be misty and vague.

## CONCLUSION :

From above, it is in this manner, inferred that the situation of separated from spouse under other individual laws, is very extraordinary and particular to that of a Muslim separated from lady. Indeed, even the utilization of general law (Section 125 of Cr. P.C.) was subjected to the satisfaction of the conditions as said under area 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 as an alternative. At the point when a left or penniless Muslim (separated) spouse who can't get support by excellence of denial in Muslim Law, approaches and documents application under Section 125 of Cr. P.C., the standard Defense received by the spouse was to argue that he has officially separated from his significant other and subsequently he isn't labile to pay upkeep. This contention wound up more grounded after the institution of Muslim Women (Protection of Rights on Divorce) Act, 1986. Fortunately, the legal has indicated mindfulness and stepped up with regards to securing the enthusiasm of Muslim lady and has in genuine sense enabled Muslim ladies, particularly separated from lady to keep up a satisfactory standard of life and to crush the bad form done to them as per Muslim individual law, it is anything but difficult to dispose of the spouse by negligible articulating Tales. The choice given by the Supreme Court in Danial Latifi case settles the law for the separated from Muslim spouse and vests her with a "protected appropriate" to vocation through support which was first made as an issue in the Shah Bano Begum case. The present Act welcomes more feedback than applaud. The substance of the Muslim Women (Protection of Rights on Divorce) Act, 1986 has left a chance to the legal to not just give some alleviation to the separated from Muslim spouses yet additionally prompt the development of a mindfulness and need to care for them and not to forsake them to desperation. Also, to give them pride and regard of a person and not to consider them as a protest which is utilized for delight and when exhausted tossed out of the house. Support, along these lines is a methods for surviving and to lead an upbeat and aware life. [Walsh, Judith E.](#)

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