

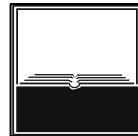
ISSN 0971 – 3212

RELIGION
AND
LAW REVIEW

Volume XXXIII: No. 1
[2024]

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Institute of Objective Studies

Institute of Objective Studies [IOS]

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MAINTENANCE RIGHTS OF WOMEN AFTER MARRIAGE DISSOLUTION: RELIGIOUS AND STATUTORY PERSPECTIVE

*Prof. M. Afzal Wani**

I. Divorce in Religious Perspective

Dissolution of marriage is the most contentious and disputatious phase of family which brings about the disintegration of family life with consequent uncertainty and unhappiness to parties and the children born of the marriage. But it becomes unavoidable when the marriage has actually broken down and the spouses can no longer live together having lost their mutual trust and confidence. The concept of "eternal marriage tie" among Hindus had led to the hardship for women under incompatible unions and development of the practices like *Sati* (burning of widows with deceased husbands), *niyoga* and other kinds of lifelong miseries for widows. So they accepted the practice of divorce by legislations.¹ Presently, Hindu Marriage Act, 1955 contains provisions for both, temporary-timely separation of spouses without termination of marriage and ultimate termination of marriage where the couple is not pulling up with the union. Likewise, the classical Christian response to the dissolubility of marriage is found in the biblical texts: "Whosoever shall put away his wife and marry another, committeth adultery against her; and if she herself shall put away her husband and marry-another, she committeth

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¹ The beginning of the replacement was made in 1930 when the Baroda State introduced reforms in Hindu law of marriage and divorce. Later Bombay Prevention of Hindu Bigamous Marriages Act and Bombay Hindu Divorce Act were passed in 1946 and 1947 respectively. This was followed by Madras in 1949. The State of Saurashtra also passed the Prevention of Hindu Bigamous Marriages Act, 1950 and Hindu Divorce Act, 1955. Statutory measures were also taken in this regard by the States of Travancore and Cochin (Kerala). The Indian Parliament, after independence, granted recognition to the matrimonial causes and made provisions for that in the Hindu Marriage Act, 1955, the Hindu Adoption and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956.

adultery”.² And “Everyone that putteth away his wife and marrieth another committeth adultery, and he that marrieth one that is put away from a husband committeth adultery”.³ These texts show that divorce by either the husband or the wife was strongly condemned by Christianity. Here, for the sake of academic interest a review of the Christian practices is most desirable, as amongst the Christians the question of dissolubility of marriage has not been satisfactorily replied and the texts, not in conformity with general human nature, have been ever put to different interpretation to enable an escape-root from them. Church, which considered marriage indissoluble and denied divorce, however, realised the dispensability of divorce in certain cases and adopted the idea of “nullity of marriage” with some new innovations which allowed the release of the aggrieved party from the marriage tie. This made possible for them to retain the belief of indissolubility of marriage tie declaring the marriage itself as a nullity, that is, void *ab initio*. For example, a marriage was not allowed when a man and woman stood within eight degrees of consanguinity; such a marriage was considered a nullity so that it could be set aside at the instance of one party and could be declared null and of no effect. This phenomenon, of course, caused complicacies and insecurity. In 1215, the degrees of prohibited relationship to marriage were reduced from eight degrees to the four degrees and also recognised the prohibitions on the basis of affinity, due to relationship arising out of marriage. This prohibition against marriage was also extended to spiritual relationship created by baptism through relationship of god parents. The children over seven years were permitted to marry without the consent of parents.⁴

Islam, of course, discourages dissolution of marriage but does not deny it. It cannot be denied that marriage dissolution brings about the disintegration of a family with consequent uncertainty and miseries for children born of such a marriage. It is conceded world over now that the dissolution of marriage is desirable when the spouses can no longer live in harmony – have lost regard for each

² *St. Mark*, X: 11, 12.

³ *Luke*, XVI: 18.

⁴ Mac Gregor Heineman, *Divorce in England*, pp. 2-4 (London 1957).

other and no more enjoy mutual trust and confidence. Taking a compassionate view of human affairs, Islam provides that every possible attempt be made by relatives, friends and society to calm down the spouses to continue a marriage. But when it is proved that the marriage has proved a failure or it has broken down compunction in allowing the parties to separate from each other is not desirable. In other words, ordinarily the marriage in Islam is to last till one of the spouses dies, but if a husband and wife cannot live happily together so that the very object of marriage is defeated and it becomes a mere farce, the dissolution of marriage is not to be denied. Denial in such cases has no good to offer but hardship and adultery, as has been the case under the other legal systems. Islam, on the one hand, discourages marriage-dissolution, hence, prevents an 'evil'; it, on the other hand, permits marriage dissolution, hence stops another 'evil'. This is the possible just, fair and reasonable approach to the problem. Giving his perspective with utmost clarity, the Prophet^{saw} said in most unequivocal terms: "Of all the permitted things, divorce is the most abominable with Allah".⁵ And the "Best amongst ye is the one who is best for his wife and children".⁶ He further asserts: "The most perfect amongst the faithful in respect of faith is he who is best in disposition among them (women) and better among you are those who are better towards their wives".⁷ "Let not the faithful men hate the faithful women, if he dislikes some of her habits, he may like others".⁸ "Get married! Don't divorce; Allah does not like men and women who relish variety in sex matters".⁹

The Holy Quran advises: "...And live with them (the wives) with kindness and equity; if ye take a dislike to them; it may be that ye dislike a thing, but Allah brings about through it a great deal of good".¹⁰

Men have, therefore, been enjoined not to divorce their wives except in the case of their being unfaithful. Divorce is permitted as a matter

⁵ Abu Davud, *Sunan*, I : 296, (Kanpur, n.d.).

⁶ Wali-al-Din-al-Khatib, *Mishkat at-Masabih*, p.181 (Delhi, 1350 A.H.)

⁷ *Id.* at p. 282.

⁸ *Id.* at 280.

⁹ Ali al-Muttaqi, *Kanz-al-Ummat*, V: 159 (Hyderabad-Deccan, 1313 A.H.).

¹⁰ The Quran, Surah Al-Nisa (IV): 19.

of necessity for the avoidance of any greater evil likely to result from the continuance of an actually broken marriage. Even in cases of necessity an attempt is to be made for reconciliation before its dissolution by referring the matter to arbitration. It is laid down by Quran:

*“And if you fear a breach between the two (husband and wife), then appoint one arbiter/mediator from his (husband's) people and one arbiter/mediator from her (wife's) people. If they desire agreement, Allah will affect harmony between them...”*¹¹

Reference to arbitration/mediation for reconciliation strengthens the view that Islam discourages marriage dissolution and encourages compassion. Allah advises: *“So if they (your spouse) co-operate with you seek not a way against them”*.¹²

Islam, therefore, provides for a harmonious and stable marital relationship and under its policy of "no divorce but only in cases of necessity" entrusts the task of judgment about dissolution of marriage primarily to the parties themselves, being the best judges to understand whether the relationship will go harmoniously or not. Relatives and friends are under a duty to support possible reconciliation. If reconciliation fails, the marriage is to be dissolved.

II. Maintenance under Hindu Law

The concept of maintenance under Hindu law has essentially evolved from the inability of a person to get a share on partition of a joint family. Same has been the case of female members of a joint family. Those who take the share on partition shall have to maintain the disqualified ones.¹³ In certain cases, liability to maintain arises out of the jural relationship subsisting between two individuals. In such cases the liability of the person under a duty to maintain other is a personal one. Such is the obligation of a husband to maintain his

¹¹ The Quran, Surah Al-Nisa (IV) : 35.

¹² The Quran, Surah Al-Nisa (IV) : 34.

¹³ Vishnu, XV, 32-38; Vasistha, XIX, 30-33, 35-36.

wife.¹⁴ Thus under Hindu law the right to maintenance has been grounded in two theories, (a) the possession of ownership, and (b) jural relationship.

This peculiar position of woman under Classical Hindu Law had led to the exclusion of woman from inheritance and consequent vesting of maintenance right in her. The obligation of the husband to maintain his wife, therefore, begins with marriage immediately. Here it may be noted that since Hindu law admits of no dissolution of marriage, hence the obligation to maintain lasts for life. Hence the question of divorcees' maintenance among Hindus is in accordance with 'eternal union concept'. The provisions of Indian Criminal Procedure Code, 1973 or The Bharatiya Nagarik Suraksha Sanhita, 2023 about divorcee's maintenance are not in conflict with Hindu faith.

The husband's obligation to maintain his wife comes to an end when she leaves him without any good cause or without his consent. She, however, does not miss her right even if living separate from the husband if-

- (a) he is guilty of abandoning her without reasonable cause and without her consent or of wilfully neglecting her; or
- (b) he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; or
- (c) he is suffering from a virulent form of leprosy; or
- (d) he has any other wife living; or
- (e) he keeps a concubine in the same house in which the wife is living or habitually resides with a concubine elsewhere; or
- (f) he has ceased to be a Hindu by conversion to another religion; or

¹⁴ Vasistha, XIX, 30-32; Baudhayana II, 1.1.37, 2.3.36, 42.

(g) there is any cause justifying living separately.¹⁵

However, a wife entitled to separate residence and maintenance may forfeit her claim if she is unchaste or has ceased to be a Hindu by conversion to another religion.¹⁶ Surprisingly enough the new legislation disentitles a wife from maintenance when she ceases to be a Hindu by conversion to another religion.¹⁷

Being devoid of a share on succession the question of widow's maintenance gains much importance. Gautama mentions widow as a "likely heir", but he makes her only a trustee for the boy to be begotten on her by *Niyoga*, to whom she has to make over the property when he comes to age. Gautama tells the widow:

You are welcome to the use and custody of your deceased husband's estate till the son, to be begotten on you by your *Devara*, attains majority. After that do hand over the whole property to such a son.¹⁸

The widow here is only a care-taker, a guardian, a trustee, not an owner in the full sense of the term. Keeping in view the perpetual dependence of woman after the death of her husband she has been given a right to claim maintenance from those who inherit from the deceased husband.

It is asserted by some the widow's right in husband's property continues to subsist even after the husband's death, although her husband's right as distinguished from hers may pass by survivorship or by succession to sons or even to collaterals; these simply step into the position of her husband, and she is required by Hindu law to live under their guardianship after her husband's death. The reason for recognising her right (to maintenance) continues even after the husband's death. The 'inferior dependent status' of her sex prevents her from taking the husband's interest by survivorship. While she is

¹⁵ Section 18 (2), Hindu Adoption and Maintenance Act, 1956.

¹⁶ *Id.*, Section 18 (3).

¹⁷ *Id.*, Section 24.

¹⁸ Gautama, XXXVIII, 21-22.

the surviving half of "her husband's body, a male issue is his consubstantial; and in a joint family the female members occupy an inferior position, and must live under the protection and guidance of the male members; but their interest in the family property remains unaffected by the husband's death.

Under the Maintenance and Adoption Act of 1956, a widow who has not obtained any share in her husband's estate, by testamentary or intestate succession shall be entitled to be maintained:

- (a) Out of her husband's separate or self-acquired property; and also.
- (b) Out of the coparcenary property in which her husband had an undivided interest.¹⁹

But a widow succeeding as a heir to her husband's separate or self-acquired property or to his undivided coparcenary interest shall not be entitled to be further maintained out thereof.

It may be noted that on passing the Hindu Woman's Right to Property Act, 1937 (now repealed) a widow became entitled to succeed as a heir to her husband's separate or self-acquired property, sharing equally with her sons, as also to the coparcenary interest to which her husband was entitled at the time of his death, but taking only a life estate therein. Now since the passing of Hindu Succession Act, 1956, her such limited interest has ripened into full ownership; and, in a case where her husband dies after such commencement, she would be a heir, taking under Class 1 of the Schedule thereto, both to her husband's separate as well as his coparcenary interest in the joint family property.

A Hindu cannot dispose of his entire property by gift or by will, so as to defeat the right of his widow to maintenance. If he does so, the donee, or devisee must hold property subject to the widow's right of maintenance and the widow may enforce her right against it.²⁰ But the

¹⁹ Section 22 (2), Hindu Adoption and Maintenance Act, 1956.

²⁰ Section 28, Hindu Adoption and Maintenance Act, 1956.

debts contracted by a Hindu take precedence over the right of maintenance of his wife or infant child, or his widow after his death.²¹

Since the passing of the Hindu Adoption and Maintenance Act, 1956 being unchaste for a widow is not a ground for refusing maintenance to her. However, on remarriage a widow's right to maintenance out of the estate of her deceased husband gets forfeited.²²

A Hindu wife is entitled to be maintained, after the death of her husband, by her father-in-law; provided and to the extent that she is unable to maintain herself out of her own earnings or other property; or where she has no property of her own, is unable to obtain maintenance from the estate of her husband or her father or mother, or from her son or daughter, if any, or her estate.²³

But this obligation can't be enforced if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the widowed daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.²⁴

III. Christians Maintenance Law

Theoretically the Christian woman has been the subject of discussion for centuries as to her role in society. One thesis that has been put forth is that the Old Testament makes it a woman's peculiarity and 'curse'; that her (thy) "desire shall be thy husband's and he shall rule over thee" and man's that he shall have to work sweat and sorrow. The opposite thesis is that man was created in God's likeness and only as punishment for man's and woman's original disobedience—they were treated as equals with regard to their moral responsibility were they cursed with mutual conflict and eternal difference. Both

²¹ Section 26, Hindu Adoption and Maintenance Act, 1956.

²² Section 21 (III), Hindu Adoption and Maintenance Act, 1956 and Section 2 of Hindu Widows Remarriage Act, 1956; Paras Diwan, *Modern Hindu Law*, p. 407 (ed. 1985, Allahabad).

²³ Section 19(1), Hindu Adoption and Maintenance Act, 1956.

²⁴ Section 19(2), Hindu Adoption and Maintenance Act, 1956.

these views, that of their basic difference and that of their basic identity have been repeated through the centuries-one age or one philosophical school emphasising the one, another the opposite thesis.

Despite this long going debate the fact that woman in the real home of Christianity – the Europe, has always found herself under the cobweb, male dominance or in an illusion of so called emancipation. Even up to the last century women were totally divested of independent rights concerning property and other social privileges. This means that woman has been denied the right to possess her property just like a minor, a lunatic or someone forbidden by law. Looking to England where the personality of woman was wholly obscured in the personality of her husband two laws in 1870 and 1882 were passed under the name of the Married Women's Property Act and thus the interdiction was raised from women. In Italy in 1919 A.D. only, the woman was removed from the list of interdicted person by law. Under the Civil Law of Germany it is only after 1900 and Civil Law of Sweden after 1907 the woman has had the same legal capacity as her husband. Thus it was only recently that interdiction was raised from European Women. Earlier the very being or legal existence of woman was suspended during the subsistence of marriage.²⁵

The husband under the old law as per some reports, was bound to provide her with bare necessities and for nothing besides bare necessities he was liable. But the wife could bring no action without his concurrence.²⁶ This displays the practical falsity of the husband's duty to maintain his wife. Extreme of women-desperation is marked by the fact that whenever a wife would struggle to support her children by the labour of her hands the unscrupulous husband would sponge upon, what she earned rendering her helpless.²⁷

²⁵ L.T. Hobhouse, *Morals in Evolution*, p. 219 (London, 1956).

²⁶ *Id.* at 220.

²⁷ *Id.* at 223.

Commenting upon the freedom granted to European woman after industrial revolution Will Durant²⁸ presents sorrowfully a dreadful reality that the European woman ought to feel grateful for her freedom and her right of ownership to machines and not to men of Europe and should bow her head to the great cogs of machinery and not before European man. It was the greed and covetousness of mill owners pushing them to make more profit and to pay less wages which caused men to put up the draft of the Act for the financial independence of women in the British Parliament.

The first legal step in the emancipation of our grandmothers was the legislation of 1882, by which it was decreed that thereafter the women of Great Britain should enjoy the unprecedented privilege of keeping the money they earned. It was a highly moral and Christian enactment, put through by the factory-owners in House of Commons to lure the ladies of England into attendance upon their machines. From that year to this the irresistible suction of the profit motive has drawn women out of the drudgery of the home into the serfdom of shop.²⁹

Now the wife in England has been given a right to claim maintenance from the husband and enforce it through courts.³⁰ The wife shall be entitled to claim maintenance from her husband when:

- (a) he has deserted her;
- (b) he has been guilty of cruelty to her;
- (c) he has committed adultery;
- (d) he insists on having intercourse with her while suffering from a venereal disease;
- (e) he is a habitual drunkard or drug addict;

²⁸ Will Durant, *The Pleasures of Philosophy*, pp. 131-132.

²⁹ *Ibid.*

³⁰ *Sandilands v. Carus* (1945) 1 ALL E.R. 374.

- (f) he has compelled her to submit to prostitution;
- (g) he has neglected to provide maintenance to her;
- (h) he has been convicted of an offence against her.³¹

All these grounds have been provided on the basis of various such evils present in English society. A wife loses her right to maintenance, if she is guilty of desertion or adultery. In Europe usually husbands connive at their wives adultery; if such is the case adultery cannot disentitle her to maintenance.

An earning wife cannot claim necessaries from her husband even when she was compelled to leave him on account of his cruel conduct.³² The standard on which maintenance is ordered is chosen by the husband and the wife's own earnings are counted at the time of maintenance fixation. Also the wife must support her destitute husband when she is earning more than is necessary for her own support and the support of her children or has substantial private means.³³

The husband can claim maintenance from his wife when:

- (a) she files a petition for divorce or judicial separation on the ground of her husband's incurable insanity,³⁴
- (b) he obtains a decree of divorce or judicial separation on the ground of the wife's adultery, cruelty, desertion and the wife has property either in possession or reversion. In such a case Court may make such an order as it thinks fit for the benefit of husband.³⁵

³¹ Matrimonial Proceedings (Magistrates' Courts) Act, 1960.

³² *Biberfeld v. Berens* (1952) 1 ALL E.R. 237.

³³ Section 16(3) and 20(b) Matrimonial Causes Act, 1950; Matrimonial Proceedings (Magistrates' Courts) Act, 1960.

³⁴ *Ibid*, Section 15 (b), 16(3), 20(1) (b).

³⁵ *Ibid*, Section 17 (2) and 19.

- (c) he obtains a decree for restitution of conjugal rights and the wife is entitled to any property either in possession or reversion, the Court may order a settlement of the property or part thereof for the benefit of the husband.³⁶

On the dissolution of Marriage, English Court can order under Matrimonial Causes Act, 1965 either spouse to pay such gross or annual sum of money to the other for life or for such period as the Court may deem fit under peculiar conditions of a case.³⁷

The Indian Divorce Act, 1869, that applies to the Christians of India provides for both maintenance *pendent lite* and permanent alimony.³⁸ However, the husband's inability to make payments is fatal to maintenance order and renders it ineffective.

IV. Islamic Maintenance Law

The social role assigned to man and woman by Islam within the family emanates from one simple but profound reality that the two are equal but of dissimilar natures and the 'social harmony' demands no similar role from both.

However, it is to be noted that to be different does not mean to be superior or inferior. Both are equally important and honour some. There is only role differentiation. Islam, though does not restrict her from suitable social dealings, makes woman primarily the queen of home and considers home more prestigious, creative and rewarding than the shop floor or secretarial desk, where at least ninety per cent of 'emancipated' women finally end up working. Sex difference, reproduction, role differentiation, sexual morality, survival of the family, healthy child development and the health and strength of society are closely interlinked and mutually dependent phenomena, in which sex based role differentiation is the key to the stability of the entire system. If it is abandoned, the whole chain will snap; sexual morality will collapse, personality disorder will be rampant, anarchy

³⁶ *Ibid*, Section 21 (3).

³⁷ Section 16.

³⁸ Sections 36 and 37.

and chaos will be the order of the day. Not the least, the family will vanish.

It would not be out of place to mention that a perfect and devoted home-queen has proved historically the best guide and friend of the great men of the world and have made better contributions than those who have escaped their fundamental sphere of action.

Thus 'equality' should not be confused with 'similarity'. Woman is equal to man but not similar. Pursuant to the role differentiation and for the attainment of the objectives at which the Islamic marriage aims, husband has been put under an obligation to maintain his wife. Wife is not supposed to ignore her fundamental duties and come out to earn a living for herself. She may, but is under no obligation to make any financial contribution to the family budget; she has to look after the domestic comforts of the husband.

In the sphere of rights and obligations Islam maintains a balance, it is not like a pro-male or pro-female law. In short it is pro-humane and balanced. Hence if the husband fails to provide adequate maintenance-provision for wife, she can lawfully refuse to live with the husband. Similarly if the wife refuses or fails to live with the husband, the latter is no longer bound to support her.

In Islam the husband and wife retain their individuality even after marriage. There is no concept of merger of personality of wife into that of husband. Both wife and husband can own and retain separate properties. The wife's right to maintenance is irrespective of her own financial position. Even a rich wife can claim maintenance from the husband. The wife in Islam enjoys inheritance rights as well as the maintenance right yet she is under no obligation to maintain any one.

'Maintenance' in Islam has been described to signify all those things which are necessary for the support of life including such articles as

are necessary according to the custom of a place and particular class of people.³⁹

Wife's Maintenance

The husband has to maintain his wife during the subsistence of marriage and also during the period of wife's *Iddat*. It makes no difference whether the wife is a Muslimah or Kitabiyah, rich or poor, young or old, and virgin or otherwise.⁴⁰ It shall be due even when intimacy is not possible with the wife due to her old age or some physical defect as when she suffers from *Ratq*, *qarn*, etc. If consummation of marriage is not possible solely on account of some defect in the husband, maintenance is incumbent on him. Thus wife shall be entitled to get her maintenance even when the husband is a minor or impotent or too ill to be intimate with her.⁴¹ If the husband is a minor, then maintenance shall be realised from his property if he has any or from his father if he has undertaken the liability for the payment of the same.⁴²

It is the absolute right of the wife that the husband should maintain her even when he is destitute while she is wealthy.⁴³ But in order to be entitled to maintenance, the wife must faithfully perform the obligations devolving on her by her marriage or be ready or be in a position to perform the same. As some of the important objects of marriage are: to safeguard against loose living, domestic comfort of the husband, procreation of children and a happy companionship. Hence a wife cannot be entitled to maintenance when these objects cannot be achieved on her account. Thus maintenance shall not be due when she is refractory (*Nashiza*) or un-submissive and unjustifiably refusing herself to her husband.

³⁹ Al-Marghinani, *Hedaya*, p. 140 (Delhi, 1982, Reprint of Hamilton's Tr.) *Infra* note 40 at 288.

⁴⁰ Al-Fatwa al-Hindiya, Vol. II, p. 142 (Deoband, n.d.).

⁴¹ *Ibid.*

⁴² Ibn Abidin, *Radd al Muhtar*, Vol. II, p. 887 (Cairo, 1324 A.H.)

⁴³ *Supra* note 39 at page 147.

Whether a wife is refractory or not is a question of fact to be determined on the facts of each particular case. The general principle of law that can be deduced is a wife shall not be considered to be refractory if her act does not amount to refraction or is due to causes over which she has no control or is due to a justifiable cause.

If a wife leaves her husband's house against his wishes then she shall not be entitled to get any maintenance from him. But a wife living at her father's house since before her marriage and has not yet gone to her husband's house then she shall be entitled to get maintenance from her husband unless he wanted her to come to his house and she failed or refused to do so without any reasonable cause. Moreover, a wife who leaves her husband shall not necessarily be considered to be refractory in each and every case, because it is possible that she might have been forced to leave his house on account of his conduct. Hence a wife shall not become disentitled to maintenance when it is the conduct of the husband that forces her to leave him and live apart from him.

Again if a husband has more than one wife, each of them can claim a separate apartment and refuse to live with another wife. Under such circumstances she can claim separate maintenance and also the dissolution of marriage if the husband fails to provide it for her. An unchaste wife is not entitled to maintenance from her husband.

Where a wife carries on some business or profession and spends her time on attending to the same, the question arises whether she is entitled to be maintained by her husband. Her right shall depend on the fact as to whether she does the work with his permission or without it. In the former case she shall be entitled to get maintenance from him. But if she does so against his wishes, she shall become disentitled to maintenance from him.⁴⁴ This is because the husband is deprived of her services during the time which she spends on carrying on her business or profession. She will obviously do so by neglecting some, if not all, of the domestic responsibilities.

⁴⁴ Ibn Abidin, *Op. cit.*, p. 915.

A wife also loses her right to maintenance when she apostatises. The right revives again only when she returns to Islam. If the apostatised wife is living with her husband she will retain her right to maintenance even on apostasy provided she has converted to a revealed religion, that is, Christianity or Judaism.⁴⁵

Under Islamic law a widow is an heir to the husband and succeeds to a part of his estate. Besides Quranic directive is to the effect of one year's maintenance for her under an obligatory bequest of the husband. It provides:

“*Such of you as shall die and leave wives ought to bequeath to them a year’s maintenance*”.⁴⁶

Consequences of Non-maintenance

Where the wife is entitled to maintenance but the husband fails to maintain her, the *Qadhi* can authorise her to raise a loan on the husband's credit for her support. The husband shall be responsible for its payment and the creditors have a right to recover the same from him. The wife can also use such portion of her husband's property as may be necessary, even without an order by the *Qadhi*.⁴⁷ When the husband is rich and able to provide maintenance to the wife but neglects or refuses to do so he can be imprisoned and not released until he pays the maintenance.⁴⁸

On the husband's failure to maintain his wife for a considerable time the marriage can be dissolved.⁴⁹ However, where the husband fails to maintain his wife because of poverty or any other cause not under his own control it is advisable not to dissolve the marriage and the spouses should live with cooperation and tolerance in such hard situations. Admirable is the sincerity and character of a wife who

⁴⁵ For detailed study of the subject See M.A. Wani, Maintenance Rights of Muslim Women, (Genuine Publications, Delhi, 1987).

⁴⁶ *Id.* at p. 27; Quran, Surah Baqara (II) : 240.

⁴⁷ *Supra* note 40, at p. 145; *Supra* note 42, at p. 903.

⁴⁸ *Ibid.*

⁴⁹ Al-Shirazi, al-Muhazzab, Vol. II, p. 143 (Cairo, 1296 A.H.).

purely on moral basis continues to be at the side of the husband in adverse situations.⁵⁰

In the sub-continent of India, under Dissolution of Muslim Marriages Act, 1939, non-maintenance has been recognised as a ground of divorce. If the husband neglects or fails to maintain the wife for a period of two years the wife can claim termination of marriage (*Faskh*). The wife will be entitled to obtain a decree of dissolution on the ground that the husband has neglected or failed to provide for her maintenance for a period of two years.⁵¹

The failure or neglect to maintain the wife must be without a reasonable cause, otherwise marriage cannot be dissolved.⁵² Any other interpretation of non-maintenance clause will be against justice and fairness.

Where maintenance has been decreed by the *Qadhi*, or husband has agreed to that, the wife can claim arrears of maintenance.⁵³ But the arrears of maintenance can also be claimed even without a *Qadhi's* order.⁵⁴ The wife can release the husband from payment of past arrears but not from future obligation. The release for the future shall be effective for only the next one month.⁵⁵

Divorcee's Maintenance

Islam permits divorce but considers it most detestable. To provide an opportunity for reconciliation on a break-down of marriage Islam provides for a period of *Iddat* to be observed just after pronouncement of divorce so that parties will have time to come closer again and live as husband and wife, burying the differences. For the period of *Iddat* wife is entitled to use husband's board and lodging and claim maintenance from him. Quran provides:

⁵⁰ Syed Abul Ala Maududi, *Haquq-uz-Zawjain* (Delhi, 1981).

⁵¹ Section 2 (ii), Dissolution of Muslim Marriage Act, 1939.

⁵² *Ahmad Abdul Qadir v. Raffat Bano*, AIR, 1978 AP 417; see for details, *Supra* note 45.

⁵³ *Supra* note 40, p. 145.

⁵⁴ Ibn Qayyam, *Zad al Ma'ad*. Vol. IV, p. 343 (Cairo, nd).

⁵⁵ *Supra* note 40, p. 145.

*“When ye divorce women, divorce them at their prescribed periods. And count (accurately) their prescribed periods (Iddat). And fear your Lord and turn them not out of their houses, nor shall they themselves leave, except when they are guilty of open lewdness...”*⁵⁶

*“And when they fulfill their term appointed, either take them back on equitable terms...” or part with them on equitable terms...”*⁵⁷

After the expiry of *Iddat*, if the spouses choose to separate, no maintenance is payable by one to the other. They regain their pre-marital status and can remarry without any restriction. Their every relation to each other ceases on the dissolution of marriage and hence wife can't claim maintenance from the husband after termination of marriage.

In Islam the wife inherits property from her relatives and also can own her separate property. She can after marriage-dissolution maintain herself out of that property and also claim it from her parents or those relatives who can inherit her property or could have inherited her property when she has no property.

In India, there are some legislation which contain provisions binding a person to maintenance of certain relatives, including wives, mothers, fathers, sons, daughters and even illegitimate children. The provisions provide a speedy remedy to claimants through given procedural laws. Here are given the select provisions from these statutes.

V. Statutory Provisions about Maintenance of Divorced Women

1. Bhartiya Nagarik Suraksha Sanhita, 2023⁵⁸

Section 144. Order for maintenance of wives, children and parents

⁵⁶ Quran, Sura Talaq (LXV) : 1.

⁵⁷ *Id.*, 2.

⁵⁸ Earlier, the Criminal Procedure Code, 1973.

- (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 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 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 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 female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding

under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation: For the purposes of this Chapter, "wife" includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

- (2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.
- (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 allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, 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 for the maintenance or the interim maintenance and expenses of proceeding, 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.

Section 145. Procedure

- (1) Proceedings under section 144 may be taken against any person in any district-
 - (a) where he is residing; or
 - (b) where he or his wife resides; or
 - (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child; or
 - (d) where his father or mother resides.
- (2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his advocate, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from

the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

- (3) The Court in dealing with applications under section 144 shall have power to make such order as to costs as may be just.

Section 146. Alteration in allowance

- (1) On proof of a change in the circumstances of any person, receiving, under section 144 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.
- (2) Where it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under section 144 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.
- (3) Where any order has been made under section 144 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that-
 - (a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;
 - (b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-
 - (i) in the case where such sum was paid before such order, from the date on which such order was made;

- (ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;
 - (c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.
- (4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 144, the Civil Court shall take into account the sum which has been paid to, or recovered by such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.

Section 147. Enforcement of order of maintenance

A copy of the order of maintenance or interim maintenance and expenses of proceedings, as the case may be, 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 for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be, 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 satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

2. The Muslim Women (Protection of Rights on Divorce) Act, 1986

Section 3. Mahr or other properties due to Muslim women 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 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 her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.
- (2) 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) have not been delivered to a divorced woman on her divorce, she or any one duly authorised 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.
- (3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-
- (a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or
 - (b) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as 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 her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

- (4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

Section 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 a 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 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 relatives 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.

3. *Section 5. Option to be governed by the Bhartiya Nagarik Suraksha Sanbitha, 2023*

If, on the date of the first hearing of the application under subsection (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.

3. The Muslim Women (Protection of Rights on Marriage) Act, 2019

Section 3. Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4. Any Muslim husband who pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Section 5. Without prejudice to the generality of the provisions contained in any other law for the time being in force, *a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.*⁵⁹

Section 6. Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

⁵⁹ *Emphasis added.*

Section 7. Notwithstanding anything contained in the Bhartiya Nagarik Suraksha Sanhita, 2023

- (a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage;
- (b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;
- (c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.⁶⁰

VI. Conclusion

It is quite obvious from the above that the maintenance of a divorced wife is an issue in the cases where she does not remarry or is not able to maintain herself from her existing property or ability to work. The position in personal laws, based on belief or religion, is different with respect to liability of an erstwhile husband to maintain his erstwhile wife. Under statutory laws in India the husband is held liable to maintain his erstwhile wife even after divorce. The above account of laws, beliefs, practices and considerations can help in finding various answers related to the maintenance rights of divorced women. Judiciary has to look on case to case basis the genuineness of granting maintenance to divorced women and develop healthy precedent. General grant of maintenance to any claimant can lead to misuse of the privilege under law, which needed to be restricted.

⁶⁰ If the grant of bail is denied to such a person, it can hamper the way for the accused person to earn and contribute towards his maintenance or that of the wife.

SUPREME COURT ON MAINTENANCE OF DIVORCED MUSLIM WOMEN: LATEST TREND SETTING

*Dr. Afkar Ahmad**
*Dr. Tauheed Alam***

Introduction

In a significant ruling, the Supreme Court of India, through a bench comprising Justices BV Nagarathna and Augustine George Masih, addressed the contentious intersection of personal law and secular legal provisions concerning maintenance rights by dismissing a petition filed by a Muslim husband's plea against the direction to pay interim maintenance to his divorced wife under Section 125 of the Cr. P.C. The case involved a Muslim man challenging an interim maintenance order under Section 125 of the Criminal Procedure Code, 1973, arguing that the Muslim Women (Protection of Rights on Divorce) Act, 1986 should exclusively govern the matter. This judgment is poised to influence how maintenance disputes involving divorced Muslim women are adjudicated in Indian courts.

Brief Facts of the Case

The Appellant was married to Respondent No. 2 on 15 November, 2012. Their marital relationship deteriorated over time, leading to significant discord between the parties. Respondent No. 2 left the matrimonial home and subsequently initiated criminal proceedings against the Appellant by lodging an FIR (No. 578 of 2017) under Sections 498-A and 406 of the Indian Penal Code, 1860 (IPC 1860). These sections pertain to the offenses of cruelty and criminal breach of trust, respectively. In response to the criminal charges, the Appellant pronounced a triple *talaq* on 25th of September, 2017. Following this, the Appellant sought a formal declaration of divorce from the office of the *Quzath*. The divorce was granted ex parte, and

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a divorce certificate was issued on 28th of September, 2017. The Appellant attempted to provide INR 15,000 as maintenance for the *iddat* period, which Respondent No. 2 declined. Instead, Respondent No. 2 filed a petition for interim maintenance under Section 125(1) of the Criminal Procedure Code, 1973 (Cr.PC 1973) before the Family Court, which was numbered M.C. No. 171 of 2019. The Family Court allowed the petition and issued an order for interim maintenance on 9th June, 2023. The husband challenged this order in the High Court of Telangana, arguing that they had divorced according to personal laws in 2017 and that the Family Court had failed to consider the divorce certificate. The High Court upheld the interim maintenance order but reduced the amount to Rs. 10,000 per month, requiring the husband to pay half of the arrears by January 24, 2024, and the remainder by March 13, 2024, while also instructing the Family Court to resolve the main case within six months. The husband approached the Supreme Court, asserting that a divorced Muslim woman cannot file a petition under Section 125 of the Cr.PC and must instead seek relief under the Muslim Women (Protection of Rights on Divorce) Act, 1986, which he claimed is more beneficial for Muslim women regarding maintenance. He stated that he had already paid Rs. 15,000 to his ex-wife during the *iddat* period and challenged her decision to approach the Family Court under Section 125, arguing that they had not submitted an affidavit prioritising the CrPC over the 1986 Act, as required by Section 5 of the Act.

Legal History

The roots of this issue can be traced back to the landmark 1985 Supreme Court ruling in *Mohd. Ahmed Khan v. Shah Bano Begum*¹, where the Court unanimously determined that Section 125 of the Cr PC is a secular provision applicable to Muslim women. This decision faced backlash from certain societal groups, who viewed it as an infringement on religious personal laws, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which limited Muslim women's maintenance rights to 90 days post-divorce (the *iddat* period).

¹ AIR 1985 SC 945.

The constitutional validity of this Act was later challenged in the case of *Danial Latifi & Anr v. Union of India*², in the year of 2001, where the Supreme Court upheld the Act but clarified that a Muslim husband's obligation to maintain his divorced wife extends beyond the *iddat* period. In subsequent rulings, such as *Iqbal Bano v. State of UP (2007)*³, the Court rejected the notion that a Muslim woman cannot file a petition under Section 125 of the CrPC. In *Shabana Bano v. Imran Khan (2009)*⁴, the Court decided that, as long as she hasn't remarried, a divorced Muslim woman may file for support under Section 125 after the *iddat* period. Last but not least, the Supreme Court upheld in *Shamima Farooqui v. Shabid Khan (2015)*⁵, that a Muslim woman who is divorced may file a maintenance claim under Section 125 of the CrPC.

Legal Questions

- A. Can a divorced Muslim woman seek maintenance under Section 125 of the Criminal Procedure Code, 1973, despite the existence of the Muslim Women (Protection of Rights on Divorce) Act, 1986?
- B. Does the Muslim Women (Protection of Rights on Divorce) Act, 1986, override or replace the provisions of Section 125 of the CrPC, or can both operate simultaneously?
- C. In cases of illegal divorce as defined under the Muslim Women (Protection of Rights on Marriage) Act, 2019, what are the options available to a Muslim woman seeking subsistence allowance under Section 5 of the 2019 Act or opting for maintenance under Section 125 of the CrPC?

² AIR 2001 SC3958.

³ (2007), 6 SCC 785.

⁴ AIR 2010 SC 305.

⁵ AIR 2015 SC 2025.

Arguments Advanced by the Petitioner in the Present Case

A) Special Nature and Legislative intent of the 1986 Act

Senior Advocate S. Wasim A. Qadri contended that the Muslim Women (Protection of Rights on Divorce) Act, 1986, is a special law that offers more comprehensive provisions than those found in Section 125 of the CrPC. He highlighted that, in addition to maintenance, Section 3 of the Act addresses *mehr* (dower), and the return of property, ensuring a "reasonable and fair" provision for the divorced woman's entire life, which is not guaranteed under Section 125. Qadri argued that the legal position established in the landmark case of *Mohd Ahmed Khan v. Shah Bano Begum* was effectively overturned by the enactment of the 1986 Act, which serves as a complete code intended to have an overriding effect on Section 125 of the CrPC.

B) Precedence of Special Law and Option to Opt-Out

Qadri emphasised that established legal principles dictate that a special law, such as the 1986 Act, takes precedence over a general law like the CrPC. He maintained that the clear language of the Act should be upheld without further interpretation, and the Court must enforce what is explicitly stated. Additionally, he pointed out that Section 5 of the Act provides an option for divorced couples to choose not to be governed by its provisions, indicating that a Muslim wife cannot pursue remedies under both the Act and Section 125 simultaneously.

C) Interpretation of Pending Petitions and Doctrine of implied repeal

In addition, Qadri stated that Section 7 of the Act provides that any Section 125 of the CrPC petition that was ongoing at the time that the Act was being implemented shall be addressed by the Magistrate in line with Section 3 of the Act. This implies that the scope of Section 125 in such instances should be construed in light of the provisions of the 1986 Act, in combination with Section 5 of the

Criminal Procedure Code, which precludes the application of provisions of the Criminal Procedure Code where a special provision is present. In the end, he made use of the doctrine of implied repeal, which states that Parliament is presumed to be aware of existing laws and would not intend to create confusion by retaining conflicting provisions. This, in turn, strengthened the argument that the 1986 Act is superior to the Criminal Procedure Code in matters pertaining to maintenance for divorced Muslim women.

Arguments Advanced by the Respondent

A) Nature and Interpretation of the 1986 Act

Arguing that the Muslim Women (Protection of Rights on Divorce) Act, 1986 just codifies Muslim personal law and increases a divorced Muslim woman's claim to support beyond the *iddat* period, Amicus Curiae appointed by the court said. He underlined that as the two clauses serve different objectives, the Act does not remove the remedy offered by Section 125 of the Cr.PC. Furthermore, he argued that the petitioner's dependence on Section 5 of the Act is unfounded as this clause only applies to applications submitted under Section 3 of the Act, thereby rendering Section 5 useless in this instance.

B) Transitional Provisions and Legal Clarity

The Amicus Curiae explained that Section 7 of the Act serves as a transitional provision, stipulating that if Section 125 of the Cr.PC application was pending at the time the Act commenced, it should subsequently be governed by Section 3 of the Act. However, this does not imply that new petitions under Section 125 can no longer be filed. He noted the need for clarity in legal interpretation, as different High Courts have adopted varying views on the applicability of Section 125 and the 1986 Act. For instance, the Kerala High Court has held that both petitions are maintainable, but a woman must choose between the two, a position Amicus Curiae argued is incorrect.

C) Rights and Remedies for Divorced Muslim Women

During arguments was cited the decision made by the Supreme Court in *Danial Latifi & Anr v. Union of India*, which maintained the 1986 Act's legality but expressed worries about the possibility that it might deny Muslim divorced women in the nation access to the same rights as other women. He emphasised that a husband may escape being liable for maintenance under Section 125 if a provision has been made under personal law, as per Section 127(3)(b) of the Cr.PC. In these situations, the courts are required to carry out a fact-finding investigation. In addition, he drew attention to a situation in which a Muslim woman who had been divorced might accept a personal law provision for her lifetime but later find it insufficient, contending that she ought to have the freedom to pursue relief under Section 125 of the Cr.PC rather than being limited to the 1986 Act's provisions. Consequently, he came to the conclusion that she ought to be allowed to seek both cures and not be forced to choose between them.

Supreme Court's Reasoning in the Judgment

During the proceedings, the Supreme Court Bench highlighted several key points regarding the relationship between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Cr.PC.

A. Non-Obstante Clause

The Bench pointed out that the 1986 Act's Section 3 starts with a non-obstante phrase, meaning it functions as an extra remedy rather than negating the terms of Section 125 of the Cr.PC. Emphasising that the Act does not forbid the submission of a Section 125 petition, Justice Masih said, "there is no statutory provision provided under the Act of 1986 which says that 125 is not maintainable". Justice Nagarathna agreed, saying the 1986 statute does not forbid one remedy in favour of another. She said:

"One cannot read Section 3 of the 1986 Act containing the non-obstante clause so as to restrict or diminish the right to maintenance of a

divorced Muslim woman under Section 125 of the Cr.PC and neither is it a substitute for the latter. Such an interpretation would be regressive, anti-divorced Muslim woman and contrary to Articles 14 and 15(1) and (3) as well as Article 39(e) of the Constitution of India. Therefore, in spite of an option of seeking maintenance under the provisions of the 1986 Act, Section 125 of the Cr.PC is applicable to a divorced Muslim woman."

B. Financial Provisions During *Iddat* Period

It was discovered that the petitioner had not given the respondent-wife any financial assistance throughout the *iddat* period when the Bench asked about it. The Amicus said that the respondent-wife did not claim a draft of Rs. 15,000 that the petitioner had provided during the *iddat* period. The Bench noted that the petitioner may have used Section 127(3) (b) of the Cr.PC. if it had made arrangements during the *iddat* time.

C. Interpretation of Section 7

Responding to the petitioner's claim that Section 7 of the Act had not been addressed in earlier rulings, Justice Nagarathna made it clear that this provision is temporary in nature and only applies to matters that are still ongoing. The Amicus cited a Kerala High Court ruling that held that divorced Muslim women's entitlement to bring petitions under Section 125 of the Cr.PC is not terminated by Section 7. According to the Kerala High Court, Muslim women who have outstanding Section 125 petitions no longer need to submit fresh claims under Section 3 of the 1986 Act because of the transitory clause.

D. Legislative Intent

The Bench expressed that if Parliament intended to extinguish the rights of Muslim women to file under Section 125, it would have used clear and specific language to that effect. The Court noted, "If the Parliament had the intention to extinguish such rights of the Muslim woman, it would only be reasonable to expect the Parliament

to speak in definite and specific language about such extinguishment". The message from Parliament appears to be that both rights under Section 125 and Section 3 are conferred upon divorced women, allowing them the choice of remedy.

E. Constitutional Concerns

The Court countered the petitioner's assertion that the Act indicates Parliament's intent to bar Muslim women from filing maintenance claims under Section 125, stating that such a restriction would be unconstitutional. Justice Nagarathna remarked, "In the absence of such a thing, can we add a restriction to the Act? That is the point". This underscores the Court's position that without explicit legislative intent to restrict rights, such limitations cannot be inferred. Furthermore, she held that *"If Section 125 of the Cr.PC is excluded from its application to a divorced Muslim woman, it would be in violation of Article 15(1) of the Constitution of India which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of them. Further, our interpretation is consistent with the spirit of Article 15(3) of the Constitution"*.

Conclusion

Over the past few decades, a number of high courts have rendered conflicting decisions about this unclear matter. The Supreme Court's ruling has now resolved any doubt and said categorically that the rights of divorced Muslim women under the advantageous provisions of Section 125 of the Cr.PC have not been terminated by the new Act. The Supreme Court's rationale emphasised the coexistence of rights under both the 1986 Act and Section 125 of the Cr.PC, affirming that divorced Muslim women have the right to choose between the two remedies without facing restrictions.

SUPREME COURT OF INDIA ON THE RIGHTS OF DIVORCED MUSLIM WOMAN IN THE PRESENCE OF MULTIPLE LEGISLATIONS

*Dr. Manish Kumar Yadav**

The Supreme Court Case of *Mohd Abdul Samad vs. The State of Telangana and Anr.* in Criminal Appeal No. 2842 of 2024 arising out of Special Leave Petition (Crl.) No. 1614 of 2024 is a landmark case considering it has touched on the provisions of Personal Law, Secular Law, and practices of the Doctrine of Harmonious Construction, *Mahr*, *Talaq*, *Iddat*, *Mata*, etc. The learned bench of Hon'ble Mr. Justice Augustine George Masih and Hon'ble Ms. Justice BV Nagarathna decided in the affirmative on the key question of whether a Muslim woman could take recourse to Section 125 of the CrPC to seek maintenance.

In the judgement Hon'ble Judge Masih cited Section 3 of the Muslim Women (Protection of Rights on Divorce) 1986 Act extensively for reasonable and fair provision of maintenance to be made and paid to a divorced Muslim woman within the *iddat* period through *Mahr*/Dower, or the properties referred to in clause (d) of sub-section (1). Justice Masih also touched upon the recourse a divorced Muslim woman can take like the Code of Criminal Procedure, 1973 (2 of 1974), if the ex-husband fails without sufficient cause to comply with the order under sub-section (3).

Following the enactment of the 1986 Act, several legal challenges were brought before the court arguing that it violated fundamental rights guaranteed by Articles 14, 15, and 21 of the Indian Constitution. Specifically, Sections 3 and 4 of the Act were contested. The court closely examined Section 3, which contains a clause overriding other laws, in its ruling on the Act's constitutionality in the

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Danial Latifi case. In paragraph 33 of that decision, the court highlighted the importance of Section 125 of the Criminal Procedure Code (CrPC), 1973 as a secular safeguard for women from all backgrounds.

The Court initially found the 1986 Act unconstitutional but later upheld it, interpreting it not to overrule existing rights for divorced Muslim women. The Act's provisions were argued to supersede other laws due to its non-obstante clause. This was supported by previous court decisions, like in *Danial Latifi and Another v. Union of India* (2001) 7 SCC 740 and *Iqbal Bano v. State of Uttar Pradesh and Another* (2007) 6 SCC 785 case. The transitional provision of the Act was also cited to reinforce its supremacy.

The amicus curiae Mr. Gaurav Agrawal, Senior Advocate argued that a divorced Muslim woman is entitled to maintenance under both the personal law (1986 Act) and the secular law (Section 125 of the CrPC). He contended that the 1986 Act does not explicitly bar the application of Section 125 of the CrPC and that denying a Muslim woman the right to seek maintenance under both laws would violate her constitutional rights. The amicus further emphasised the historical context of Section 125 of the CrPC as a remedy for wives, including divorced women.

The court in *Shri Bhagwan Dutt v. Smt. Kamla Devi and Another* (1975) 2 SCC 386 case clarified that Section 125 of the CrPC is preventive, not punitive or remedial, and exists independently of personal laws.

However, in *Inderjit Kaur v. Union of India and Others* (1990) 1 SCC 344 case, it was clarified that the right under Section 125 of the CrPC is not absolute, and the wife must prove her inability to maintain herself and the husband's capacity and refusal to provide maintenance.

The court in *Fuzlunbi v. K. Khader Vali and Another* (1980) 4 SCC 125 (SC) case emphasised that Section 125 of the CrPC is a secular provision designed to enforce maintenance for all women, irrespective of religion or region.

The judgment touched upon cases like *Shabana Bano v. Imran Khan* (2010) 1 SCC 666, Five Judge Bench, *Khatoon Nisa v. State of Uttar Pradesh and Others* (2014) 12 SCC 646, and *Danial Latifi* (supra) case which affirmed a divorced Muslim woman's right to seek maintenance under both personal law (1986 Act) and Section 125 of the CrPC, regardless of opting for one or the other.

In *Shamim Bano v. Asraf Khan* (2014) 12 SCC 636 case, the court clarified that a divorced Muslim woman can file petitions under both Section 125 of the CrPC and Section 3 of the 1986 Act simultaneously, and the provisions of Section 125 of the CrPC would apply to both petitions.

Justice Masih observed that the Family Courts Act of 1984, established exclusive jurisdiction for family disputes, including maintenance, limiting the applicability of Section 125 of the CrPC. However, in *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705, the court upheld the right of divorced Muslim women to seek maintenance under both Section 125 of the CrPC and the 1986 Act, contradicting previous judgments that limited their rights to the 1986 Act alone.

A single-judge verdict of the Allahabad High Court in the case of *Shahid Jamal Ansari v. State of Uttar Pradesh* 2008 SCC Online All 1077 was also touched upon which stated divorced Muslim women cannot claim maintenance under Section 125 of the CrPC due to the existence of the 1986 Act. Contrary to the Allahabad High Court verdict, certain High Courts interpreted the non-obstante clause of the 1986 Act as not barring the remedy under Section 125 of the CrPC in the following cases: *Mumtazben Jusabbbhai Sipahi v. Mahebubkhan Usman Khan Pathan* 1998 SCC Online Guj 279, *Kunbi Mohammed v. Ayishakutty* 2010 SCC Online Ker 567, *Mrs. Humera Khatoon and Others v. Mohd. Yaqoob* 2010 SCC Online All 202, *Sazid v. State of Uttar Pradesh and Others* 2011 SC Online All 1059, *Jubair Ahmad v. Isbrat Bano* 2019 SCC Online All 4065, *Shakila Khatun v. State of Uttar Pradesh and Another* 2023 SCC Online All 75, and *Khalil Abbas Fakir v. Tabbasum Khalil Fakir and Another* 2024 SCC Online Bom 23.

The Kerala High Court's decision in the Kunhi Mohammed case aligns with the Supreme Court's ruling in Danial Latifi, finding no express extinguishment of rights under Section 125 of the CrPC by the 1986 Act. The court emphasised the distinct domains of the two provisions and adopted a harmonious construction.

The Court relied on the Danial Latifi case to interpret the 1986 Act. The decision clarified that the Act entitles divorced Muslim women to both "provision" and "maintenance," distinct from each other. To clarify "Provision"/ "*Mata*" according to Yusuf Ali's translation of the Quran is a one-time settlement for future needs, while "maintenance" is ongoing support. The Act does not limit these rights to the *iddat* period. The Court emphasises that the Act does not preclude a divorced woman from seeking additional maintenance under Section 125 of the CrPC if the "reasonable and fair provision" under the 1986 Act is insufficient. This interpretation aligns to provide adequate support to divorced women. To affirm, reliance is placed on paragraph numbers 28 and 29 of the decision in Danial Latifi (*supra*), which were reproduced verbatim with special emphasis on the Shah Bano case [(1985) 2 SCC 556: 1985 SCC (Cri)].

The Court clarified that the 1986 Act aims to provide lifelong maintenance for divorced Muslim women, not limited to the *iddat* period. Women retain the independent right to seek maintenance under Section 125 of the CrPC. However, any amount received under personal or customary law should be considered when determining maintenance under Section 125 of the CrPC. to avoid double benefits.

The Court reaffirmed the principles laid down in Fuzlunbi (*supra*). Section 127(3)(b) of the CrPC aims to prevent double payment of maintenance and ensure divorced women are not rendered destitute. Any amount received at the time of divorce should be considered in determining maintenance under Section 125 of the CrPC. However, this amount must be adequate and substantial to meet the woman's needs, and cannot be used as a complete defense against maintenance.

Hon'ble Ms. Justice BV Nagarathna in her concurring and separate judgment stated that the right to maintenance, as outlined in Section 125 of the CrPC, is a fundamental aspect of social justice and it aligns with the Constitution's commitment to protecting women and children, as expressed in Articles 15(1), 15(3), and 39(e).

She observed Section 488 of the CrPC and Chapter 36 of the Code of Criminal Procedure aimed to serve a social purpose of protecting wives and children, as held in *Jagir Kaur vs. Jaswant Singh* (1964) 2SCR 73.

Justice Nagarathna stated that in *Bhagwan Dutt vs. Kamla Devi*, (1975) 2 SCC 386, case it was held that to subserve the object of Section 125(1) of the CrPC, 1973 is to prevent vagrancy and destitution for wives, by providing a standard of living that is neither luxurious nor penurious. Moreover, maintenance is rehabilitative, not punitive, ensuring the basic needs of food, clothing, and shelter for deserted wives.

Justice Nagarathna vide *Jasbir Kaur Sebgal vs. District Judge, Dehradun*, (1997) 7 SCC 7 case reiterated that married women often sacrifice careers for family and care work, leading to financial dependence. Furthermore, divorced women without income may borrow during the interim period, creating further obligations and vulnerabilities.

By citing *Bhuvan Mohan Singh vs. Meena*, (2015) 6 SCC 353 and *Reema Salkan vs. Sumer Singh Salkan*, (2019) 12 SCC 303 she touched upon the concept of law of maintenance which balances a husband's duty to support his wife and children with the need to avoid imposing excessive financial hardship on him.

The Kerala High Court Division Bench judgment in *Kunhi Moyin vs. Pathumma*, 1976 KLT 87 authored by Justice Khalid upheld Section 125 CrPC against constitutional challenges, emphasising its social welfare objectives. It clarified that Section 127(3)(b) does not apply to *mahr*, dower, or *iddat* period maintenance. The provision aims to prevent double payments, but not to deny rightful claimants their

benefits under Section 125 of the CrPC. The court also emphasized Parliament's intent to provide maintenance for divorced women.

Justice Krishna Iyer's judgment in *Bai Tahira vs. Ali Hussain Fidaalli Chothia*, (1979) 2 SCC 316 was also found enlightening in this respect. Section 125 of the CrPC is a crucial social welfare measure designed to protect women and children. The law aims to prevent destitution and provide a reasonable standard of living for divorced women. While the 1986 Act offers additional protections, it does not replace or limit the rights under Section 125 of the CrPC. The court emphasised that both laws should work in harmony to ensure women's financial security. The concept of double payment was also addressed, with the understanding that any amount received under personal or customary law should be considered when determining maintenance under Section 125 of the CrPC but should not negate the women's right to adequate support.

The interpretation of Section 125 of the CrPC has been consistently upheld in various cases like *Danial Latifi vs. Union of India*, (2001) 7 SCC 740 and *Fuzlunbi vs. K. Khader Vali*, (1980) 4 SCC 125. It was applied to Muslim women in the Shah Bano case, overriding personal law. Furthermore, Section 127(3)(b) requires a reasoned order justifying the cancellation of maintenance based on sufficient payments under personal or customary law. To point out here the 1986 Act was enacted in response to the Shah Bano judgment.

Justice Nagarathna citing cases like Shah Bano, Danial Latifi, Bai Tahira, and Fuzlunbi went on to great lengths to interpret the 1986 Act and added Section 125 of the Criminal Procedure Code (CrPC) as a crucial provision for protecting the rights of women, particularly divorced women. It guarantees maintenance for wives and children, serving as a crucial safety net against destitution. The law recognises the challenges faced by women who often sacrifice career opportunities for family responsibilities and may find themselves financially vulnerable after divorce.

According to the 1986 Act, if a divorced Muslim woman couldn't support herself after the waiting period (*iddat*), she was entitled to

maintenance from 1) Her male relatives who would inherit her property; 2) Other relatives if the first ones couldn't afford it; and 3) The State Wakf Board if she had no relatives or they couldn't help. Section 3 of the Act provides for *Mahr* or other properties of Muslim woman to be given to her at the time of divorce and Section 4 deals with the order for payment of maintenance.

While discussing the 1986 Act extensively Justice Nagarathna further observed that it provides additional provisions for divorced Muslim women, and it does not supersede the rights granted under Section 125 of the CrPC. Both laws are complementary, aiming to ensure the financial well-being of divorced women. Moreover, the concept of double payment is addressed, with the understanding that any amount received under personal or customary law should be considered when determining maintenance under Section 125 of the CrPC but should not negate the women's right to adequate support.

Courts have consistently interpreted Section 125 of the CrPC in a manner that prioritises the welfare of women. The law is considered a measure of social justice, aligned with constitutional principles of equality and protection of vulnerable groups. The provision has been upheld against constitutional challenges, emphasising its role in social reform.

In essence, the legal framework provides a robust mechanism for safeguarding the rights of divorced women, striking a balance between the husband's obligations and the woman's right to a dignified life.

A non-obstante clause gives overriding effect to a provision. Recently, a seven-judge Bench of the Supreme Court in a Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 arising out of Civil Appeal No. 1599 of 2020 (In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899), (2023) SCC Online SC 1666 with reference to *Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram*, (1986) 4 SCC 447 explained that such a clause is used to ensure a specific provision prevails over conflicting laws or

contracts. This means the clause-protected provision will operate fully, regardless of any contrary rules.

She observed further in reference to *ICICI Bank Ltd. vs. SIDCO Leathers Ltd.*, (2006) 10 SCC 452 that a non-obstante clause doesn't automatically override all other laws. Its scope is limited to situations where there's a direct conflict. The clause's purpose is to ensure the provision it precedes takes precedence in case of such conflict. Ultimately, the clause's impact depends on the legislative intent and policy and it doesn't nullify other parts of the same act.

Justice Nagarathna further cited *Asvini Kumar Ghosh vs. Arabinda Bose*, AIR 1952 SC 369 case which stated it is only when the enacting part of the statute cannot be read harmoniously with what is stated in the non-obstante clause, would the non-obstante clause result in yielding to what is stated in the enacting part.

Similarly, she cited *Municipal Corporation, Indore vs. Ratnaprabha*, AIR 1977 SC 308, where it was observed that there should be a clear inconsistency between a special enactment or rules and a general enactment.

Furthermore, Justice Nagarathna touched upon the Bombay High Court case of *Karim Abdul Rehman Shaikh vs. Shebnaz Karim Shaikh*, 2000 SCC Online Bom 446 in which Justice Ranjana Desai held that the 1986 Act aims to supplement, not replace, existing maintenance rights for Muslim women. The terms 'maintenance' and 'provision' in the Act allow for a balance between personal and secular laws. The Act ensures divorced Muslim women receive adequate support beyond the *iddat* period, covering essential needs like housing, food, and healthcare.

Justice Nagarathna also observed that the 1986 Act was upheld by this Court in the *Danial Latifi* case based on a purposive interpretation that mitigated the possibility of the absurd consequence of denying access to justice to a divorced Muslim woman. According to her, the rights created under the provisions of the 1986 Act are in addition to and not in derogation of the right

created under Section 125 of the CrPC, and the same is the basis for this Court's conclusion in *Danial Latifi* to save the 1986 Act from the vice of unconstitutionality. She also noted that the learned senior counsel for the appellant, Mr. Qadri relied upon the language of Sections 5 and 7 of the 1986 Act to argue that the Parliament intended to give the 1986 Act an overriding effect over the secular law on maintenance, i.e., Sections 125 to 128 of the CrPC. Furthermore, she observed there is no reference to any bar under the provisions of the 1986 Act and neither has this Court created any such bar in the aforesaid judgment for a divorced Muslim woman to approach the Court under Section 125 of the CrPC for maintenance.

Justice Nagarathna held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity" as stated in the *Olga Tellis v. Bombay Municipal Corpn.* [(1985) 3 SCC 545] and *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] case. Moreover, the provisions of the Act prima facie, therefore, appeared to be violative of Article 14 of the Constitution mandating equality and equal protection of the law to all and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion. Moreover, the Act would apply to Muslim divorced women only and solely on the grounds of their belonging to the Muslim religion. The Court argued that the Muslim Women (Protection of Rights on Divorce) Act, 1986 discriminates against divorced Muslim women by denying them the right to maintenance guaranteed to other women under the Criminal Procedure Code. This violates the constitutional rights to equality and non-discrimination. However, instead of declaring the entire Act invalid, the Court interpreted it in a way that upholds its constitutionality, ensuring divorced Muslim women continue to have some form of maintenance.

The Court referred to its previous ruling of the *Danial Latifi* case in *Sabra Shamim vs. Maqsood Ansari*, (2004) 9 SCC 616 case, where it overturned a High Court decision that restricted a divorced woman's maintenance to the *iddat* period. This established that maintenance obligations extend beyond this timeframe. Consequently, the constitutionality of the 1986 Act was preserved only by interpreting it

broadly to reconcile the rights under secular and personal laws. This approach is in line with the court's usual practice of trying to preserve laws by interpreting them in a manner that avoids conflicting with constitutional rights, as is seen in the *Binoy Viswam vs. Union of India*, (2017) 7 SCC 59, Pr. 83. case.

Justice Nagarathna further noted that the Danial Latifi case implicitly recognises the cardinal principle of non-retrogression that prohibits the State from taking measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise vide *Navej Singh Johar vs. Union of India*, (2018) 10 SCC 1, Pr. 202 case. She, therefore, reiterated that the 1986 Act does not take away rights that divorced Muslim women have either under personal law or under Section 125 of the CrPC. Moreover, she didn't find any inconsistency between the provisions of the 1986 Act and Section 125 of the CrPC. Thus, a Muslim divorced wife is entitled to maintenance under Section 125 of the CrPC irrespective of her personal law, as seen in *Shabana Bano vs. Imran Khan*, 2009 (14) SCALE 331 case.

Justice Nagarathna vide *Abdul Hameed vs. Fousiya*, (2004) 3 KLT 1049 case observed that the remarriage of a divorced Muslim woman does not nullify her claim to a just settlement under the 1986 Act, wherein it was held that a husband cannot recover the settlement amount awarded under the 1986 Act merely because his ex-wife gets remarried. This is consistent with our legislative regime of protecting the rights of married women against matrimonial harassment, vide *Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori*, (2014) 10 SCC 736.

Citing *Rana Nabid @ Reshma @ Sana vs. Sabidul Haq Chishti*, (2020) 7 SCC 657 case Justice Nagarathna observed that a maintenance petition in a Family Court under Section 125 of the CrPC cannot be converted to one under Section 3 or Section 4 of the 1986 Act reasoning that the 1986 Act is not contrary to the object of Chapter IX of the CrPC as it provides remedies to a divorced Muslim woman. The Court reasoned that the 1986 Act, designed for divorced Muslim women, does not contradict the purpose of the CrPC's maintenance provisions. Additionally, the verdict of the aforesaid case emphasised

India's international commitments to gender equality under the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the Convention on the Elimination of All Forms of Discrimination against Women (1979). These treaties oblige India to implement laws and policies that promote women's rights.

Justice Nagarathna determined that the 1986 Act and Section 125 of the Cr.PC. are separate laws that can be used concurrently by divorced Muslim women. These laws address different aspects of maintenance and do not contradict each other. Limiting the application of Section 125 to non-Muslim women would be discriminatory and violate the constitutional principle of equality. The Court's interpretation aligns with the spirit of the Constitution, which allows for special provisions for women but does not permit discrimination.

Justice Nagarathna further elaborated on Section 5 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 in which *Talaq* is defined in Section 2(c) as '*talaq-e-biddat*' or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband which is void and illegal as per Section 3 of the said Act. In other words, a married Muslim woman can seek subsistence allowance if *talaq*, as defined in the 2019 Act, is pronounced on her. This complements existing maintenance laws. The intent is to protect women from financial hardship due to marital discord, regardless of whether the marriage is legally valid. Therefore, whether a woman is married or divorced, she can seek maintenance under different laws depending on the circumstances.

Justice Nagarathna also acknowledged through Judge Murtaza Fazal Ali in *Siraj Mobmed Khan Jan Mohamad Khan vs. Hafizunnisa Yasinkhan*, AIR 1981 SC 1972 case, the paradigm shift from viewing maintenance as a mere charity to a matter of parity and rights, essential for women. She further noted through *Kirti vs. Oriental Insurance Co. Ltd.*, (2021) 2 SCC 166 case, that the services and sacrifices of homemakers for the economic well-being of the family, and the economy of the nation, remain uncompensated in large

sections of our society though the contributions of such a homemaker get judicial recognition only upon her unfortunate death while computing compensation in cases under the Motor Vehicles Act, 1988.

Finally, the vulnerability of a married Indian woman regarding her security of residence in the matrimonial home was also observed by Justice Nagarathna through the case of *Prabha Tyagi vs. Kamlesh Devi*, (2022) 8 SCC 90, while considering Section 17 along with other provisions of the Domestic Violence Act, 2005.

To conclude the criminal appeal was dismissed by the Hon'ble Judges. To add Section 125 of the CrPC would apply to all married women, including Muslim women. Divorced Muslim women will have the following options: 1) If married and divorced under the Special Marriage Act, they can use both the Special Marriage Act and Section 125 of the Cr.PC.; 2) If married and divorced under Muslim law, they can choose between the 1986 Act and Section 125 of the Cr.PC., or use both; and 3) If using Section 125 of the Cr.PC., any amount received under the 1986 Act will be considered when determining maintenance. Moreover, in cases of illegal divorce under the 2019 Act, women can seek relief under either the 2019 Act or Section 125 of the Cr.PC. and the 2019 Act will not replace Section 125 of the Cr.PC.

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http://scourtapp.nic.in/supremecourt/2024/3533/3533_2024_11_1501_53688_Judgement_10-Jul-2024.pdf

**SUPREME COURT JUDGMENT IN MOHD ABDUL
SAMAD V. THE STATE OF TELANGANA: A
BURDEN SHIFTING**

*Mujib Ur Rahman**

Law classified for divorced Muslim women under The Muslim Women (Protection of Rights on Divorce) Act, 1986 and a room accommodating divorced women in general irrespective of their religious identity or faith; in terms of seeking maintenance, the one under Section 125 of the Cr.P.C., now Section 144 The Bharatiya Nagrik Suraksha Sanhita, 2023, put at the crossroads of litigation, either wanted or unwanted gets often cocooned to a legal conundrum. Verdicts on the subject lead to the debate either for or against the two strands to run parallel or otherwise.

Overall, the judicial approach on the subject herein is found to carry the golden thread of objectivity of not to let a divorced woman to be left to penury for her basic maintenance, an acknowledgement of her Human Right, a Right to life.

Section 4 of The Muslim Women (Protection of Rights on Divorce) Act reads:

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 & 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 proportion in which they

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would inherit her property and at such periods as he may specify in his order.

Section 4 (2) provides, where a divorced woman is unable to maintain herself and 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 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, 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 shares of such of the relatives who are unable to pay, of such periods as he may specify in his order.

Explanation to Section 125 of the Cr. P.C. now Section 144 of BNSS reads:

For the purposes of this Chapter, wife includes a woman who has been divorced by, or has obtained from her husband and has not remarried.

Section 146 deals with situations of alteration in allowance. Accordingly, Section 146 (3) specially provides: Where any order has been made under Section 144 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that...

- a) The woman has, after the date of such divorce, remarried, cancel such order as from the date of marriage.
- b) The woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or

personal law applicable to the parties, was payable on such divorce, cancel such order –

- (i) In the case where such sum was paid before such order, from the date on which such order was made;
 - (ii) In any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman.
- C) The woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

These two Statutes as such, carry a provision for a divorced woman or who has obtained divorce for seeking maintenance on satisfying the Magistrate upon the requirements as envisaged under respective law under which the claim be raised.

The two Statutes carry their own formulations and are carried out within their own set of mechanisms.

Over and above the position of law on seeking and granting of maintenance of a Muslim divorcee under The Muslim Women (Protection of Rights on Divorce) Act and simultaneously this right of maintenance seeking being available vide Section 144 of BNSS as to divorced Muslim woman, virtually seems to be a prick of constitutional morality to provide for substantial justice on ground as to divorced Muslim woman, who stands to have been left unaddressed by the community she belongs to and so, to achieve the objective, the doctrine of harmonious construction of the legislations is not ignored at its first sight.

The inclusive definition of “women” vide Section 144 of BNSS to include a “divorced woman” provides for seeking of maintenance by her from her husband, irrespective of the stand of the husband as to dissolution of his marriage even if same be within the prescribed and

recognised modes of Muslim law and the parameters of granting of maintenance under The Muslim Women (Protection of Rights on Divorce) Act, 1986, calls to be seen through the constitutional construction of being State a Socialist, Secular one.

Analysing predominant factors with respect to divorced Muslim woman on being, a divorcee thrown in the situation of being distressed, left at the doors of vagrancy and more so, on being left without any covenant for such an eventuality within the marriage contract, a question mark stands before a Secular, Socialistic, Welfare State to be born and the same could not have been left unaddressed.

Difference in Scope, Treatment and Application *ex facie* varies on the practical side in the aforementioned legislations but the aim and objective, all along, no more seems to be at variance i.e., not to let the divorced women to doors of destitution at least.

Besides, these two sets of Statutes, we have The Protection of Women's Domestic Violence Act, wherein, we find definition of "Aggrieved Person" vide Section 2(a), definition of "Domestic Relationship" vide Section 2(f) and so the scope, intent and means of maintenance seeking, of compensation relief seeking to a divorcee woman, irrespective of her Art of living, her faith, belief, practice is of broader spectrum gets adjusted.

The Doctrine of Rights, Duties & Liabilities, under the jurisprudence of Law of Contract is of mandatory outlook to be gone through, so as to be more clear and illustrative why this issue is being raised ?

Marriage among Muslims is executed within the observance of *Shariah*. Same is contained in the chapter of *Nikah* (a Nuptial knot) which gives a host of legal requisites to exist and to follow.

The judicial pronouncements have read it as a Contract born between the spouses with rights & liabilities.

Viewing the relationship through this compass, the same comes to an end upon dissolution of the marriage contract .The relationship

between the two stands no longer to be read legal, if any even kept by the duo on effecting of divorce.

Upon closing the doors of reconciliation approach as provided under Muslim law, the relationship gets forbidden on divorce, with no liabilities of maintenance beyond the *iddat* period.

Be said, on the end of a contract, the relationship comes to an end in all respects and they stand read as strangers to each other.

On termination of marital relationship to labour a Muslim husband beyond the *iddat* period under the Muslim Women (Protection of Rights on Divorce) Act reads not happily answering the Muslim theology.

So the confusion, why at all a Muslim husband who has ended up his marital knot with the exercise and pronouncement of divorce is saddled for maintenance of his divorced wife, seeks for an answer.

Resorting under Secular legislation by a Muslim divorced wife on no more occasions a Muslim husband to preempt from maintaining his divorced wife, on the plea of Muslim theology.

In an attempt to understand the genesis of the legal crusade to ameliorate the position, the status of a divorced woman, one finds constitutionality of legislation based upon its own set of appreciation and approach of the issue, in line with the Preamble of the Constitution and at the same time in understanding of the International outlook of the issue at the same time.

Another issue born stands as to whether a divorced Muslim woman can simultaneously seek through the Law courts under these said legislations at the one and the same time. And, if so, on what rationale and what parameters.

In an attempt to answer it, the reply seems to be two fold. One to read the objectives of the legislation, and another to read in terms of extent or its measure.

Upon relying her claim through the province of The Muslim Women Protection of Divorce Act, the switching over to seeking of claim through Common law i.e., Section 144 of BNSS, and PWDV Act, seems to impair the objectivity of legislation for a divorced Muslim woman for the fact that the scope of activism is limited in it than the other side held secular legislations and the orders passed have the potential to create the laws to axe a Muslim husband disproportionately to his act of divorce by itself. It will be jeopardy of his rights to exercise of his Right to Divorce itself and in absence of providing an Option to seek for the relief among either of the three, the legal conundrum over the issue is sure to invest energies at the bar.

In reply to it is the question as to why a Muslim is saddled with the liability of maintenance despite of having ended up his matrimonial relationship, it appears that a responsive and a responsible State can never shroud over its responsibility *vis a vis* class injustice, be for want of proper mechanism, proper address to the crisis born within the society itself and so herein commenting upon the subject, India, being a Welfare State, attentive to her subjects, well conscious of human values, conscious of needful legislation has let a Muslim husband under The Muslim Women (Protection of Rights on Divorce) Act to come forward to share on behalf of the State for the odd situation, to cure for the proximate situation caused by him but to overcome the penury, vagrancy, destitution of a divorced Muslim woman, left with no source of income or resources to live a dignified human life.

As to the second limb of the answer finding, one may raise the question that this maintenance seeking by a divorced Muslim woman is better provided within The Muslim Women (Protection of Divorce) Act and the shifting of Maintenance seeking at the same time under a set of other Common laws is itself at all needful or justified, begs an answer. All the same appears asking for a revisit of the whole subject.

Upon the dissolution of the marriage contract among Muslims, the *inter se* relation of husband and wife comes to an end. It stands dissolved for every practical purpose. The rights and liabilities on execution of *Nikah*

no more reads to be of extensionality and here it may be read as, the State coming forward to this class of divorced Muslim woman within its Welfare State vision and charges the husband as the proximate causative factor, responsible for situation creating *vis a vis* a divorced wife and so State shifts the burden, this responsibility as a Citizen of the land upon the primary causative soul to come forward to share his role, responsibility under this set of legislation.

As to the second part of the question, the exercise of relief seeking through aforementioned legislation at one and the same time or one after another or the same is to be read as an abuse of the process of law as after this aspect calls for a revisit.

The nature of maintenance seeking by a divorced Muslim woman from her husband who has divorced her or against whom a Muslim woman has obtained divorce is beyond contractual chapters in the first instance, secondly the extension of maintenance liability reads against the Islamic theology and so, the maintaining a divorced Muslim woman by her husband is not to be missed as burden shifting of the State as Welfare State towards a divorced Muslim woman, who does not otherwise qualify in any of the corners of the contract of *Nikah* on its dissolution.

The maintenance of a divorced woman is never to be a haven finding but may be read to fulfill her fundamental human needs of sustenance from the State through proximate causative agent (husband) of this odd situation and so seeking maintenance under so held secular laws one under Section 144 of BNSS or under DV Act need to be held as an option and not a concurrent remedy available.

In the alternate a legislation needs to come to hold registration of *Nikah* Agreement to be compulsory under the Registration Act as the same can be a relief provider, let parties to draw covenants, a way forward to not let the Muslim women be object of insecurity, distress or victim of penury, vagrancy or to destitution even on dissolution of marriage.

LEGISLATIONS ON MAINTENANCE OF WOMEN: SUPPLEMENTARY FOR MUSLIM WOMEN

*Ashok Kumar Sharma**

The recent case¹ is based on maintenance of Muslim divorced wife whether it should be beseeched by a secular provision² or through personal law³. Though it was held by the Supreme Court that special law has an edge over the general law⁴ but when it comes to rule of law and equal protection of law⁵, special provisions for women for their benefit and right to dignified life. This secular right given under Section 125 of the Cr.P.C. is neither punitive nor it provides any remedy but it is a preventive provision to safeguard the women from destitution and undignified life. Both the judges B. V. Nagarathna and Augustine George Masih, J. gave concurrent but separate judgments upholding validity of both the provisions provided in the 1973 Act and in the Act of 1986 for the benefit of Muslim Women. In secular law while wife is to prove that she is unable to maintain herself on the other hand in Section 3 of the MWA, 1986 the

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¹ *Mohd. Abdul Samad v. The State of Telangana*, 2024 Live Law (SC) 452; Criminal Appeal No. 2842 of 2024 [Arising out of Special Leave Petition (CRL) No. 1614 of 2024].

² The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125.

³ The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986), s. 3.

⁴ *M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India and Another* (1980) 4 SCC 435, but in the present case where saving divorced women from destitution there may be an exception as it is followed in the Fundamental Rights and Directive Principles of State Policy in Article 15(3) and special provisions which are obligatory upon the State in Article 39 (e) respectively.

⁵ Article 14 of the Constitution enshrined both the notions there shall be an equality while facing any legal repercussion, it is somewhat negative in nature but encompasses towards equality and shuns biasness and arbitrariness, the second notion guarantees that rights of citizens in alike situation should be protected equally, in case of women even special beneficial laws might enact by the legislature in conformation of fundamental right given in Article 15(3) and Directive Principle of State Policy enshrined in Article 39 (e).

maintenance period is limited to *iddat* which goes far most upto the three months only in the situation arising out of event from divorce. The Section 125 on the other hand stretches till the wife remains unmarried means there is no prescribed time period but a situation or status. In short, the Muslim Women Act, 1986 does not take away a divorced Muslim woman's right under the preventive provision of Section 125 of the Cr.P.C.⁶. If we consider facts in nutshell of this case the deserted wife had approached the family court in Telangana for maintenance under Section 125⁷ and the family court awarded her Rs. 20,000 as monthly maintenance allowance. In the meantime, the husband divorced her by pronouncing *triple talaq* and got the certificate from the office of the *Quzath* and claimed that after the *talaq* she was not entitled to claim maintenance. He argued her rights now lie under the MWA⁸. On his behalf, it was argued that since the MWA postulates a more beneficial and efficacious remedy for divorced Muslim woman in contradistinction to Section 125 of the Cr.P.C. 1973, the recourse lies exclusively under the 1986 Act. In addition, it was submitted that the 1986 Act, being a special law supersedes the provisions of the Cr.P.C. 1973⁹, a general law. But both these submissions were rejected by the Telangana High Court. However, it reduced the amount of maintenance to Rs. 10,000 per month. Against this order, the husband approached the Supreme Court. The Court explained this to mean that the husband was required to contemplate the future needs of the divorced wife and make preparatory provisions in advance to meet these needs. When the question came up whether the *Danial Latifi*¹⁰ ruling had clarified the issue of applicability of Section 125 of the Cr.P.C. to a divorced Muslim woman, it was held that this was not the core issue of contention. However, it was stated that there was no express extinguishment of the rights under Section 125 and neither the same

⁶ Available at: <https://indianexpress.com/article/opinion/columns/supreme-court-muslim-women-maintenance-right-judgment-battle-court-9452822/lite> (last visited on July 29, 2024).

⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

⁸ The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986), Section 3.

⁹ *Supra* Note 5.

¹⁰ *Danial Latifi and Another v. Union of India* (2001) SCC 740.

was intended nor conceived by the legislature while enacting the 1986 Act. It was perceived that the realms engaged by the two provisions are altogether different as the secular provision demands an inability to maintain oneself for invoking the said rights while Section 3 of the 1986 Act stands independent of divorced wife's ability or inability to maintain oneself.¹¹ So, by invoking both the provisions in harmony for preventing woman in question from destitution, the rights of divorced Muslim wife were kept intact.¹² If the Parliament intended for divorced Muslim women to no longer be entitled to file petitions under Section 125 of the Cr.P.C. from the date of commencement of the Act, it could have explicitly given an overriding effect to the Act.¹³

Conclusion

The inferences emerging from the concurring but separate judgments are Section 125 of the Cr.P.C. applies to all married women including Muslim married women. Insofar as divorced Muslim women are concerned, Section 125 of the Cr.P.C. applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act. If Muslim women are married and divorced under Muslim law then Section 125 of the Cr.P.C. as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the Cr.P.C. but in addition to the said provision. If Section 125 of the Cr.P.C. is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986

¹¹ Available at: <https://www.thehindu.com/news/national/watch-explained-supreme-court-verdict-on-divorced-muslim-womens-right-to-maintenance/article68428753.ece#;>(Last visited on July 27, 2024).

¹² *Ibid.*

¹³ Editorial, "Indian Husbands Must Financially Empower Their Wives Who Don't Have Independent Source Of Income : Supreme Court" *LiveLaw*; available at: <https://www.livelaw.in/supreme-court/indian-husbands-must-financially-empower-their-wives-who-dont-have-independent-source-of-income-supreme-court-262944>.

Act shall be taken into consideration under Section 127(3)(b) of the Cr.P.C. This means that if any maintenance has been given to Muslim wife under the personal law, then it shall be taken into account by the Magistrate to alter the maintenance order under Section 127(3)(b). In the case of an illegal divorce as per the provisions of the 2019¹⁴ Act then, relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the Cr.P.C. could also be availed. So far, the 2019 Act is concerned, if during the pendency of a petition filed under Section 125 of the Cr.P.C., a Muslim woman is 'divorced' then she can take recourse under Section 125 of the Cr.P.C. or file a petition under the 2019 Act. The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the Cr.P.C. So there are certain judicial moves from Section 125 to Shah Bano Case to the MSW Act, 1986 to Danial Latifi wherein this secular provision was made available far from religious circumferences then Act of 2019 was brought to made *triple talaq* or *talaq-e-biddat* illegal and void. And finally this judgment prevents Muslim divorced women from financial agony which may lead if not taken care of in disgraceful conditions.

¹⁴ The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019).

SUPREME COURT ON MAINTENANCE RIGHTS OF MUSLIM WOMEN: FROM MOHD. AHMAD TO MOHD. ABDUL SAMAD

Amrendra Kumar
*Atul Yadav**

The case of *Mohd. Abdul Samad v. The State of Telangana & Anr.*¹, recently decided by the Supreme Court of India upheld ‘Muslim Women’s Right to claim Maintenance’ from their husbands under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter Cr.P.C. 1973)² notwithstanding other remedies under the Muslim Personal Law and the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter MWA or the 1986 Act).³ The impugned decision not only raises significant questions regarding the interplay between secular and personal laws, but has also spurred up debate on the scope and extent of judicial interference into the Muslim Personal Law. While the Vice President of India⁴ and women rights activists including Zakia Soman⁵ and Flavia Agnes⁶ have welcomed the decision, Muslim Pressure Groups including the All

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¹ Criminal Appeal No. 2842 of 2024, Decided by Augustine George Masih, J. and BV Nagarathna, J., Supreme Court of India. (10 July, 2024).

² Code of Criminal Procedure, 1973. (Cr.P.C.)

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

⁴ ‘Big Step: V-P Dhankhar Lauds SC Order on Maintenance for Muslim Women, *The Indian Express*, (11 July, 2024) available at: <https://indianexpress.com/article/india/big-step-v-p-dhankhar-lauds-sc-order-on-maintenance-for-muslim-women-9447117.html> (Last Visited on July 27, 2024).

⁵ Zakia Soman, ‘In a time of religious polarisation, Supreme Court verdict on alimony for Muslim Women is a Step Forward’, *The Indian Express*, (11 July, 2024) available at: <https://indianexpress.com/article/opinion/columns/in-a-time-of-religious-polarisation-supreme-court-verdict-on-alimony-for-muslim-women-is-a-step-forward-9447081.html> (Last Visited on July 27, 2024).

⁶ Flavia Agnes, ‘SC Judgment on the Muslim Women’s Right to Maintenance: The battle in Court from 1980 to 2024’, *The Indian Express* (14 July, 2024) available at: <https://indianexpress.com/article/opinion/columns/supreme-court-muslim-women-maintenance-right-judgment-battle-court-9452822.html> (Last Visited on July 27, 2024).

India Muslim Personal Law Board (AIMPLB) have expressed resentment⁷ calling the judgment against *Shariat* and an assault on constitutionally guaranteed rights of Muslims. This case comment seeks to analyse the judgment in light of the legal provisions, judicial precedents, socio-religious sensitivities and the broader implications for maintenance rights of divorced Muslim women in India.

The above case arose out of a Special Leave Petition against a Telangana High Court Judgment awarding monthly maintenance to a divorced Muslim woman. The appellant ex-husband attempted to pay maintenance for the *iddat* period (a period of three months after divorce within which a divorced Muslim woman cannot remarry), but the wife filed a petition for maintenance under Section 125(1) of the Cr.P.C. 1973 (a secular law), which was allowed by the Family Court, and later modified and upheld by the Telangana High Court. The husband contested this by arguing that under the Muslim Personal Law on this matter as codified under the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), the ex-wife is entitled to maintenance only during the *Iddat* period and not afterwards. In addition, he contended that the 1986 Act, being a special law, supersedes the provisions of Section 125 of the Cr.P.C. 1973 by relying on several judgments emphasising that special laws prevail over general laws.

The Supreme Court rejected the above contentions and upheld, the wife's right to claim maintenance under Section 125 of the Cr.P.C. terming it a socially beneficial provision applicable to all women married or divorced including Muslim women. Further, insofar as divorced Muslim women are concerned, the Apex Court held that they have the option to seek remedy under either of the two laws or both laws (subject to avoiding double benefit), because the 1986 Act is not in derogation of Section 125 of the Cr.P.C. Furthermore, it held that illegally divorced women under the Muslim Women (Protection of Rights on Marriage) Act, 2019 (MWA) can also seek

⁷ LalmaniVerma, 'Muslim Board to Explore ways to overturn Supreme Court's Alimony Verdict', *The Indian Express*, (15 July, 2024) available at: <https://indianexpress.com/article/india/muslim-board-to-explore-ways-to-overturn-sc-alimony-verdict-9453614.html> (Last visited on July 27, 2024).

the remedy under Section 125 of the Cr.P.C. The Court reasoned that Section 125 of the Cr.P.C. aims to provide a summary procedure for maintenance to protect the weaker sections of society, including women unable to maintain themselves. As it is a socially beneficial provision applicable to all women to prevent them from “vagrancy and destitution” and to enable them to live with “dignity”, any interpretation to exclude Muslim women whether married or divorced would be violation of fundamental rights conferred under Articles 14, 15, 21 read with Article 39 of the Indian Constitution.⁸

A five-Judge Bench in *Mohd. Ahmed Khan v. Shab Bano Begum*⁹ in 1985 had also held on similar lines that ‘the remedy for seeking maintenance under Section 125 of the Cr.P.C. 1973 is independent of personal laws and is available to all women including Muslim women’. However, after protests from Muslim organisations, the Indian Parliament enacted the MWA, 1986, providing for a “reasonable and fair provision and maintenance” to be made and paid to a divorced Muslim wife “within the *iddat* period” by her former husband “notwithstanding anything contained in any other law”.¹⁰ When the validity of this Act was contested, the Supreme Court in *Danial Latifi case*¹¹ upheld its validity by a harmonious and purposive interpretation holding that the non-obstante clause in Section 3 of the 1986 Act, does not bar the secular remedy under Section 125 of the Cr.P.C. and that the Muslim woman can seek either or both remedies subject to avoiding double benefit as per Section 127(3)(b) of the Cr.P.C. The Court creatively interpreted the phrase “within the *iddat* period” to mean that reasonable and fair provision and maintenance for her whole life is to be paid within the *iddat* period. In other words, the maintenance is not limited to the *iddat* period, but for whole life (subject to her remarriage) and is to be paid within the *iddat* period.

⁸ The Constitution of India, 1950; Arts. 14, 15, 21, 39.

⁹ *Shab Bano Begum v. Mohd. Ahmed Khan* (1985) 2 SCC 556.

¹⁰ *Supra* note 4, Section 3 (*Mahr* or other properties of Muslim woman to be given to her at the time of divorce).

¹¹ *Danial Latifi v. Union of India* (2001) 7 SCC 740.

The Supreme Court, in this judgment however, did not invalidate, degenerate or criticise the Muslim Personal Law on Maintenance or called it less efficacious. Instead, it merely extended the secular remedy of maintenance under Section 125 of the Cr.P.C. available to all women including Muslim women invoking the principles of equality before the law (Article 14), non-discrimination (Article 15), and the right to a dignified life (Article 21) read with Article 39 (obligation of State to prevent abuse of women and children) enshrined in the Indian Constitution.¹² In this judgment, one of the Judge observed that “equivalent rights of maintenance ascertained under both, the secular provision of Section 125 of the Cr.P.C., and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence”.¹³ On the other side, another Judge even considered the entitlement or right of a divorced Muslim woman under Muslim Personal Law wider¹⁴, than the ambit of maintenance under Section 125 of the Cr.P.C. because under the latter, a woman seeking maintenance has to establish that she is unable to maintain herself. And if a fair “reasonable substitute” has been already provided for by the husband under their personal or customary laws at the time of their divorce, the maintenance provided for by a Magistrate or a Family Court, under Section 125 of the Cr.P.C. can be reduced to the extent of deemed double benefit being given to a divorced wife.¹⁵ It merely grants Muslim women an additional choice either to go for the remedy under personal law or under secular law or under both.

With regards to the AIMPLB assertion that it doesn’t augur well “with human reasoning that the man is held responsible to maintain his ex-wives when the marriage itself is non-existent”¹⁶, one should note that the maintenance under Section 125 of the Cr.P.C. is based on constitutional considerations for financial empowerment of womankind, a subjugated lot since centuries. The purpose is to prevent their vagrancy and destitution and to ensure their financial

¹² *Supra* note 9.

¹³ *Supra* note 1, at para 37.

¹⁴ *Ibid*, at para 22.

¹⁵ *Id.* at para 36.

¹⁶ *Supra* note 7.

security for the overall wellbeing of the nation as reasoned by Justice BV Nagarathna.¹⁷ However, at the same time, one must also note that the constitutional provisions like 14, 15, 21 and 29 invoked by the honorable judges to obligate ex-husbands to maintain their ex-wives financially actually obligates the State, not individuals, to ensure empowerment of weaker sections including women. And this can be better done by ensuring their quality education, skills and jobs to make them financially independent in true sense and thus mitigating their dependence on men for maintenance and also for overcoming the stereotypes that come along with such maintenance.

In terms of socio-political and religious implications, the judgment might further alienate Indian Muslims already under the pressure of real or perceived threats to their religion and culture in an 'Islamophobic' environment. The judgment, while progressive in its intent to protect women's rights, can be seen as undermining Muslim Personal Law. The implication that Muslim Personal Law is insufficient in providing for divorced women's maintenance may not fully recognise the provisions and safeguards within the 1986 Act. Though not intended by the judgment, it did create an impression through the mainstream media that oppressed Muslim women have been saved from the vagaries of a patriarchal and oppressive Muslim Personal Law and now placed under a Progressive Secular Law granting them perpetual rights of maintenance beyond the three months *iddat* period. However, relevant *Quranic* verses and Prophetic sayings on this issue totally negate this impression as:

“Let them live where you live, according to your means. And do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. And if they nurse the child, compensate them, and consult together courteously. But if you fail to reach an agreement, then let another woman nurse ‘the child’ for the father. Let the man of wealth provide according to his means. As for the one with limited resources, let him provide according to whatever Allah has given

¹⁷ *Supra* note 1, at para 47.

him. Allah does not require any soul beyond what He has given it. After hardship, Allah will bring about ease'.¹⁸ [Holy Quran 65:6-7]

The Islamic Law already provides for a just and fair maintenance and welfare of divorced women, and the 1986 Act aligns well with these principles. In the current socio-political climate, where Muslims are frequently targeted and belittled over petty issues¹⁹, this judgment could be perceived as another instance of the legal system's bias²⁰ against Islamic practices. It is crucial for the judiciary to be sensitive to the potential for such judgments to be misinterpreted or misused to propagate Islamophobic narratives. It can be argued that the judiciary should strive to balance the protection of women's rights with respect for religious laws, ensuring that interventions do not inadvertently reinforce negative stereotypes.

Overall, this judgment has significant implications for the rights of divorced Muslim women in India. It reaffirms that the secular provision of Section 125 of the Cr.P.C. is applicable to all women ensuring their right to maintenance. The judgment also underscores the necessity of interpreting personal and secular laws in a manner that does not infringe upon the fundamental rights guaranteed by the Constitution of India, particularly Articles 14, 15, and 21 ensuring that the constitutional mandate of equality and social justice is upheld. The judgment is a progressive step towards protecting the rights of divorced women and preventing their destitution, regardless of their religious background.

It may be underscored for the necessity of a nuanced approach that respects personal laws and addresses the socio-political ramifications

¹⁸ Holy Quran, Surah At-Talaq, available at: <https://quran.com/65> (last visited on July 27, 2024); also read Quran 4:19: *O believers! It is not permissible for you to inherit women against their will or mistreat them to make them return some of the dower 'as a ransom for divorce'—unless they are found guilty of adultery. Treat them fairly. If you happen to dislike them, you may hate something which Allah turns into a great blessing.*

¹⁹ World Report 2023, Human Rights Watch, available at: <https://www.hrw.org/world-report/2023/country-chapters/india>.

²⁰ Shailesh Poddar, 'Discrimination in Criminal Justice', *The India Forum*, (5 Nov., 2021) available at: <https://www.theindiaforum.in/letters/discrimination-criminal-justice.html>.

of legal decisions. The judiciary must balance the enforcement of constitutional principles with the recognition of personal laws to foster an inclusive and just society. This judgment, while extending the secular remedy of maintenance to Muslim women, should be viewed as a call for continuous dialogue and reform within personal laws ensuring actual practices adhere to true religious precepts and evolve in line with the principles of justice and equality. At the same time, it is imperative to be mindful of the broader implications for community perceptions and social cohesion in a diverse and pluralistic society like India. The extension of Section 125 of the Cr.P.C. to divorced Muslim women, while religiously, constitutionally and legally sound, must be contextualised within the broader framework of protecting the rights of marginalised classes and maintaining social harmony.

SEARCHING POSITIVITY IN MOHD ABDUL SAMAD V. STATE OF TELANGANA JUDGMENT OF THE Supreme Court of India-2024

*Dr. Sheeba Ahad**

I. Introduction

In *Mohd. Abdul Samad v. State of Telangana*, critical question concerns to explore the laws of maintenance of divorced Muslim women in India. In this particular case, there is an important question related scope of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 (earlier Cr.P.C.) and the Muslim Women (Protection of Rights on Divorce) Act, 1986. The judgment strengthens the law for divorced Muslim women to secure financial independence within the dynamics of the conflict between personal and statutory laws. This case depicts the part played by the judiciary in bridging the constitutional provision of separation of power between the executive and religious domain from the aspect of denying several sectors of the society from receiving adequate protection.

The Petitioner, Mohd. Abdul Samad in the case-

- a) Contested the maintenance claim filed by his divorced wife under Section 125 of the Cr.P.C. (corresponding to Section 144 of the BNSS).
- b) Argued that the Muslim Women (Protection of Rights on Divorce) Act, 1986, should exclusively govern the maintenance rights of divorced Muslim women.
- c) Contended that the specific provisions of the 1986 Act were designed to address the unique circumstances of divorced Muslim women and should take precedence over Section 125 of the Cr.P.C.

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The respondent divorced wife in the case-

- a) Argued that Section 125 of the Cr.P.C. should apply to her case to ensure that she receives maintenance and prevent destitution.
- b) Maintained that the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, do not preclude her from seeking maintenance under Section 125 of the Cr. PC.
- c) Asserted that both laws should be read harmoniously to provide comprehensive protection.

II. Issues involved

1. ***Applicability of Section 125 Cr.P.C. to Muslim Women:*** The two primary legal issues were: (i) Is the Section 125 of the Cr.P.C. – the provision for maintenance for divorced women, available to Muslim women? (ii) If yes, to what extent was this provision available to divorced Muslim women in consideration of the Muslim Women (Protection of Rights on Divorce) Act, 1986? This issue presented the Court with the responsibility of applying the legislative intent for both statutes so as to decide if they could both apply at the same time or not. The Court had to determine in doctrinal analysis if the secular character of Section 125 could be reconciled with several provisions in the 1986 Act particularly in relation to Muslim women and their rights under both the enactments.
2. ***Extent of Maintenance:*** The Court was required to again look into the extent and for how long a divorced Muslim woman is entitled to maintenance under the provisions of law in force. Here it was required to construe the meaning of ‘maintenance’ as per Section 125 of the Criminal Procedure Code and the Muslim women (Protection of Rights on Divorce) Act, 1986 so as to provide sufficient financial help to the divorced woman. The Court was faced questions like– What is reasonable standard of

living for a divorced woman, the quantum of the husband's income, the period that maintenance should be paid to avoid pauperism?

III. Opinion of the Court

Being in conformity with the Section 125 of the Cr.P.C. the Court upheld that divorced Muslim woman has also the right of maintenance and the said Muslim Women (Protection of Rights on Divorce) Act, 1986 does not bar the applicability of Section 125 of the Cr.P.C. The Court argued that when enacting Section 125 Cr.P.C., the Indian Parliament's purpose was to protect divorced women from becoming vagrants and being left in destitution, regardless of their faith. The judgment also underlined that because Section 125 is modern and secular and any divorced woman including Muslim woman can receive maintenance. The Court elaborated more and said that the Muslim Women (Protection of Rights on Divorce) Act, 1986 despite naming it as Maintenance Act to give extra layer of protection to Muslim women who could be left marooned after divorce. Accordingly, the Act does not assume the role of abrogating the secular sections of the Cr.P.C. but proposes added security for divorced Muslim women in tears.

IV. Key Points of the Judgment

1. ***Maintenance under Section 125 Cr.P.C.:*** It pointed out that Cr.P.C.'s Section 125 is a secular provision meant to partly provide for the needs of divorced women so that they do not turn into paupers. The provision in question entails the rights of all women, even the Muslim ones, whereby they are to be provided maintenance after the marital breakdown. The Court added that Section 125 was enacted to provide for maintenance to divorced women in a pragmatic, desirable and efficient way so as to avert them from turning into rogues and vagabonds. This secular provision means that all the divorced women of all the religions will be treated fairly as per the laws of the country.

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

The Court in connection with clarification stated that the Act in no manner has stripped off its rights belonging to Muslim women under Sections 125 to 128 of the Cr.P.C. Instead, it offers one more security to divorced Muslim women, following up the first thing that is guaranteed to them after divorce – that they would not stay without any support. The Court observed that the 1986 Act was passed for the divorced Muslim women had been given some rights/dignity under the new law/act. That notwithstanding, this is not to suggest that they are locked out from the protection offered under Section 125 of the Cr.P.C. Together, two laws should be interpreted in a mutual way so that divorced Muslim women can get full protection under these laws.

3. ***Interim Maintenance:*** In this regard, the Court underlined the need for interim maintenance where the aggrieved spouse can be provided during the continuance of the case. This section makes it possible to provide for the needs of the divorced woman before the case is finally concluded, thus sparing her immediate hardships. The Court agreed that legal process is not a fast food affair, and divorced women stand the chance of suffering severe economic embarrassment in the meantime if they have no in-between money to feed their needs. Pendente lite support is therefore, a safety measure that guarantees divorced women the financial ability to fend for themselves as their cases are being determined.

4. ***Burden of Proof:*** Maintenance cases have been discussed before the Court to understand that it is obligatory on the part of the husband to prove that he has made adequate provision to the divorced wife as contemplated under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Court also made a point that in maintenance cases the applicant being the husband is usually in a better position to prove of the maintenance he has provided. It also shields divorced women from being placed in an expectant position of proving a necessity for maintenance – this approach is instrumental in the less biased way of handling any case pertaining to maintenance.

V. Analysis and Discussion

The judgment of the Court in *Mohd. Abdul Samad v. State of Telangana* is significant for several reasons:

1. ***Reaffirmation of Secular Principles:*** By upholding the applicability of Section 125 Cr.P.C. in Muslim women the Court maintained the inter-linkage between Muslims and the Constitution of India and further upheld the secularity of the provision that affords divorced women irrespective of their religion a right to maintenance. This judgment reaffirms the proposition of equality where secular laws that are intended to serve the societal needs, in this case providing for the welfare of society, should be equally applicable to everybody irrespective of one's religion. It strengthens the message that divorced women, as well as other weak and powerless members of society, have to be protected from the state from deformation into beggars and vagrants.
2. ***Harmonisation of Laws:*** The judgment, therefore, brings Cr.P.C. and the Muslim Women (Protection of Rights on Divorce) Act, 1986 on par so that the rights of Muslim women are not lost under both the enactments. Much as it is realised that the personal laws may in some instance contravene statutory laws, this approach is laudable as it douses any conflict between personal laws and statutory provisions, thus enhancing legal compliance. Thus, by reading the two laws together, divorced Muslim women are afforded total protection, as the benefits both from the Cr.P.C. as well as from the 1986 Act.
3. ***Protection of Women's Rights:*** The verdict also focuses on ensuring that divorced women and especially those that come from the minority groups within the society are protected. Therefore, by providing financial support, the Court eliminates vagrancy and destitution among women who have been divorced which is socially just. This judgment demonstrates the position of the judiciary in protecting women's rights as such they will not lack support once the marriage split up through divorce. It also

underlines the necessity of also being kind and fair when it comes to the financial requirements of divorced women.

4. **Judicial Activism.** It was evident that the judiciary has been rather assertive in enhancing the protection of women's rights through interpretation of laws. Another way through which the Court has shown its intention to ensure that women receive adequate financial support after divorce is through the subjecting of interim maintenance and the burden of proving the need for same to test. This pro-active approach shows that judiciary is ready to go the extra mile and step away from literalist approach to have a broader picture of stimulating down the social and economic lives. It specifically suggests that the judiciary plays an active role in bringing changes that would be advantageous to the society and persons susceptible of being harmed.

VI. Conclusion

Mohd. Abdul Samad v. State of Telangana is another legal precedent which further strengthens the maintenance rights of the divorced Muslim women under Indian law. Thus, following the applicability of Section 125 of the Cr.P.C. and assimilating it to the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court has safeguarded their entitlement of maintenance. Thus, such judgment is a great leap forward for social justice and recognising the rights of divorced women in India. It re-emphasises the secular characteristic of Indian law as it shields divorced women of all the religion, making it unlawful for any of them to be without maintenance. The judgment also underscores the need for judicial activism especially in the process of constitutional interpretation to ensure that vulnerable persons are protected as espoused by the judiciary's social justice-oriented mandate.

**HARMONISATION OF LAWS ON MAINTENANCE
RIGHTS OF MUSLIM DIVORCEES**
**With reference to the judgment in Mohd Abdul
Samad v. State of Telangana & Anr.**

*Khalid Azeez**

The recent Supreme Court judgment in Criminal Appeal No. 2842 of 2024 has significant implications for the maintenance rights of Muslim divorcee women in India. The judgment addresses the intersection of the Muslim Women (Protection of Rights on Divorce) Act, 1986 ("1986 Act") and Section 125 of the Code of Criminal Procedure, 1973 ("Cr.PC 1973"), providing clarity on the applicability and precedence of these laws.

A. Context and Background

The case in question revolves around the maintenance rights of a divorced Muslim woman under Indian law. The appellant Abdul Samad married the respondent no.2/wife on 15th November, 2012. Their relationship deteriorated, leading to the respondent no.2/wife leaving the matrimonial home on 19th April, 2016. The wife filed an FIR (No. 578 of 2017) against Abdul Samad, the husband under Sections 498A and 406 of the Indian Penal Code (IPC) on charges of cruelty and criminal breach of trust. In response, Abdul Samad pronounced triple *talaq* on September 25, 2017.

He sought a divorce declaration from the office of *Quzath*, which was granted *ex-parte*, and a divorce certificate was issued on 28th September, 2017. Abdul Samad attempted to send INR 15,000 as maintenance for the *iddat* period, which was refused by the wife. The wife filed a petition for interim maintenance under Section 125(1) of the Code of Criminal Procedure (Cr.PC) in M.C. No. 171 of 2019, which the Family Court granted on 9th June, 2023, ordering Abdul Samad to pay INR 20,000 per month. Appellant Abdul Samad challenged this order in the High Court of Telangana, which reduced

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the interim maintenance to INR 10,000 per month on 13th December, 2023. The appellant Abdul Samad preferred to appeal against the impugned order of the High Court to Supreme Court.

The central issue revolved around whether a divorced Muslim woman could seek maintenance under Section 125 of the Cr.PC 1973 or whether she was restricted to remedies under the 1986 Act.

B. Key Issues

(a) *Applicability of Section 125 of the Cr.PC v. Muslim Women (Protection of Rights on Divorce) Act, 1986*

The primary contention was whether a divorced Muslim woman can seek maintenance under Section 125 of the Criminal Procedure Code (Cr.PC) or whether she must rely solely on the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

(b) *Precedence of Special Law over General Law*

The appellant argued that the 1986 Act, being a special law, should prevail over the general provisions of Section 125 of the Cr.P.C. The case relied on precedents where special laws were considered to supersede general laws in matters of conflict.

C. Supreme Court's Observations and Rulings

- a) ***Section 125 of the Cr.PC as a Secular Provision:*** The Court reaffirmed that Section 125 of the Cr.PC is a secular provision designed to prevent vagrancy and destitution, applicable to all women irrespective of their religion. It was emphasised that this provision aims to provide a quick and efficient remedy for maintenance.
- b) ***Interpreting the 1986 Act:*** The Court noted that while the 1986 Act provides specific provisions for Muslim women, it does not expressly bar the application of Section 125 of the Cr.PC. The judgment highlighted that a divorced Muslim woman could still

seek maintenance under Section 125 of the Cr.PC if the provisions of the 1986 Act are not adequate.

- c) ***Harmonious Construction:*** The Court applied the principle of harmonious construction, ensuring that both laws are interpreted in a manner that upholds the rights of divorced Muslim women without creating a conflict. This approach ensures that the secular objectives of Section 125 of the Cr.PC are preserved while respecting the personal laws under the 1986 Act.

(d) *Significance of the Judgment*

- a. This judgment underscores the secular nature of Section 125 of the Cr.PC 1973 and its applicability across different religious communities.
- b. It emphasises the judiciary's role in ensuring that the fundamental rights of women, including divorced Muslim women, are protected, particularly their right to maintenance and dignity.

(e) *Implications for Legal Practice*

- a. Advocates and legal practitioners must recognise that Muslim divorcee women have the option to seek maintenance under both the 1986 Act and Section 125 of the Cr.PC 1973.
- b. This duality provides a broader framework for securing financial support, ensuring that women's rights are upheld irrespective of the personal laws governing their community.

(f) *Future Considerations*

- a. The judgment opens avenues for further legal reforms and judicial interpretations aimed at harmonising personal laws with constitutional guarantees.
- b. It invites a re-examination of personal laws in light of contemporary standards of gender justice and equality.

D. Comparison with Previous Judgments

1. ***Shah Bano Case (1985)***: This landmark judgment asserted that a Muslim husband is obliged to provide maintenance to his divorced wife beyond the *iddat* period if she cannot maintain herself. The Supreme Court in *Mohd. Abdul Samad* reaffirmed the principles laid down in the Shah Bano case, emphasising that Section 125 of the Cr.PC is applicable to Muslim women.
2. ***Danial Latifi Case (2001)***: In this case, the Supreme Court upheld the constitutional validity of the 1986 Act but clarified that a reasonable and fair provision for the future maintenance of the divorced wife must be made by the husband. The *Mohd. Abdul Samad* judgment builds on this interpretation, ensuring that divorced Muslim women have access to maintenance under Section 125 of the Cr.PC if needed.

E. Conclusion

The recent Supreme Court judgment in *Mohd. Abdul Samad v. The State of Telangana & Anr.*, is a significant affirmation of the maintenance rights of divorced Muslim women in India. It reinforces the applicability of Section 125 of the Cr.PC as a secular and inclusive provision while recognising the special provisions of the 1986 Act. This balanced approach ensures that the fundamental rights of divorced Muslim women are protected, promoting gender justice and equality.

This judgment is a crucial step towards harmonising personal laws with the secular framework of the Indian Constitution, ensuring that all women, irrespective of their religious background, have access to justice and financial security after divorce.

READING BETWEEN THE LINES: AN ANALYSIS OF THE MOHD ABDUL SAMAD JUDGMENT

*Prof. Sanjay Kulshreshth**

Facts and Issues

The appellant, *Mohd. Abdul Samad*, was the husband of the respondent no. 2. The parties got married on 15.11.2012, but the relationship deteriorated and the respondent no. 2 left the matrimonial home on 09.04.2016. The respondent no. 2 filed a criminal case against the appellant under Sections 498A and 406 of the Indian Penal Code. The appellant pronounced triple *talaq* on 25.09.2017 and sought divorce, which was granted *ex parte*. The respondent no. 2 filed a petition for interim maintenance under Section 125 of the Code of Criminal Procedure (Cr.PC), which was allowed by the Family Court. The appellant challenged the maintenance order in the High Court, which modified the order and reduced the maintenance amount.

Issues to be considered were: (1) Whether the provisions of Section 125 of the Cr.PC prevail over the Muslim Women (Protection of Rights on Divorce) Act, 1986; and (2) Whether a divorced Muslim woman can seek maintenance under Section 125 of the Cr.PC or if the remedy lies exclusively under the 1986 Act.

Based on the information provided in the truncated document, here are mentioned below the key arguments made by the appellant and the respondents in favour of their opposite contentions:

Arguments by the Appellant

1. The provisions of Section 125 of the Code of Criminal Procedure (Cr.PC) do not prevail in light of the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (the '1986 Act').

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2. Even if a "divorced Muslim woman" seeks to move the court under the secular provision of Section 125 of the Cr.PC, it would not be maintainable. The correct procedure would be to file an application under Section 5 of the 1986 Act, which the respondent no. 2 has not done.
3. The 1986 Act provides a more beneficial and efficacious remedy for divorced Muslim women as compared to Section 125 of the Cr.PC. Therefore, the recourse lies exclusively under the 1986 Act.
4. The 1986 Act, being a special law, prevails over the provisions of Cr.PC 1973, which is a general law. Reliance was placed on judgments like *M/s. Jain Ink Manufacturing Company v. LIC* and *Chennupati Krunthi Kumar v. State of Andhra Pradesh* to support this position.
5. Sections 3 and 4 of the 1986 Act, with their non-obstante clauses, have an overriding effect on any other statute. Judgments like *Danial Latifi* and *Iqbal Bano* were cited to support this argument.

The Amicus Curiae's Arguments

1. The amicus curiae submitted that the remedy under Section 125 of the Cr.PC is not foreclosed for a divorced Muslim woman by the enactment of the 1986 Act.
2. The amicus curiae argued that the 1986 Act does not expressly or by necessary implication bar the exercise of the remedy under Section 125 of the Cr.PC.
3. The amicus curiae highlighted the distinction between the object and purpose of the two provisions, suggesting that they can co-exist.

Analysis of Law and Precedent

Relationship between the 1986 Act and Section 125 of the Cr.PC

About the key issue, whether the provisions of the 1986 Act, being a special law, override the general provisions of Section 125 of the Code of Criminal Procedure (Cr.PC), the Appellant argued that the 1986 Act, with its non-obstante clauses in Sections 3 and 4, has an overriding effect on any other statute, including Section 125 of the Cr.PC. The Appellant contended that the 1986 Act provides a more beneficial and efficacious remedy for divorced Muslim women, and therefore, the recourse lies exclusively under the 1986 Act.

Principle of Lex Specialis Derogat Legi Generali

The Appellant relied on the principle of "*lex specialis derogate legi generali*", which means that a special law prevails over a general law. Accordingly, the Appellant cited judgments like *M/s. Jain Ink Manufacturing Company v. LIC* and *Chennupati Kranthi Kumar v. State of Andhra Pradesh* to support the argument that the 1986 Act, being a special law, should supersede the general provisions of Section 125 of the Cr.P.C.

Interpretation of Non-Obstante Clauses

The Appellant argued that the non-obstante clauses in Sections 3 and 4 of the 1986 Act have an overriding effect on any other statute, including Section 125 of the Cr.P.C. The Appellant relied on judgments like *Danial Latifi* and *Iqbal Bano* to bolster this argument.

Amicus Curiae's Submission

The document indicates that the Court appointed *amicus curiae* to assist in the matter. The amicus curiae submitted that the remedy under Section 125 of the Cr.P.C is not foreclosed for a divorced Muslim woman by the enactment of the 1986 Act. The amicus curiae argued that the 1986 Act does not expressly or by necessary implication bar the exercise of the remedy under Section 125 of the Cr.P.C. The amicus curiae highlighted the distinction between the

object and purpose of the two provisions, suggesting that they can co-exist.

Interpretation of Legislative Intent

The amicus curiae's arguments suggest that the Court should interpret the legislative intent behind the 1986 Act and Section 125 of the Cr.P.C to determine whether the two provisions can be applied concurrently or if the 1986 Act is intended to be the exclusive remedy. The court would need to analyse the object and purpose of the two provisions to ascertain their interplay.

The appellant argued that the 1986 Act, being a special law, prevails over the general law of Section 125 of the Cr.P.C. Reliance was placed on judgments like *M/s. Jain Ink Manufacturing Company v. LIC* and *Chennupati Kranthi Kumar v. State of Andhra Pradesh*, which held that a special law supersedes a general law. The appellant also argued that Sections 3 and 4 of the 1986 Act, with their non-obstante clauses, have an overriding effect on any other statute. Judgments like *Danial Latifi* and *Iqbal Bano* were cited to support this position.

Court Reasoning

The Court appointed an amicus curiae, who submitted that the remedy under Section 125 of the Cr.P.C is not foreclosed for a divorced Muslim woman by the enactment of the 1986 Act. The amicus curiae argued that the 1986 Act does not expressly or by necessary implication bar the exercise of the remedy under Section 125 of the Cr.P.C. The amicus curiae highlighted the distinction between the object and purpose of the two provisions.

Decision

What emerges from our separate but concurring judgments are the following conclusions:

- a) Section 125 of the Cr.P.C applies to all married women including Muslim married women.

- b) Section 125 of the Cr.P.C applies to all non-Muslim divorced women.
- c) In so far as divorced Muslim women are concerned -
 - i) Section 125 of the Cr.P.C applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.
 - ii) If Muslim women are married and divorced under Muslim law then Section 125 of the Cr.P.C as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the Cr. P.C but in addition to the said provision.
 - iii) If Section 125 of the Cr.P.C is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the Cr.P.C.
- d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.
- e) In case of an illegal divorce as per the provisions of the 2019 Act then-
 - i) Relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the Cr.P.C could also be availed.
 - ii) If during the pendency of a petition filed under Section 125 of the Cr.P.C, a Muslim woman is 'divorced' then she

can take recourse under Section 125 of the Cr.P.C or file a petition under the 2019 Act.

- iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the Cr.P.C.
- f) The criminal appeal is dismissed.

REPORTS ON CONFERENCES/ SEMINARS ETC.

Eleventh IOS Lifetime Achievement Award Presented to Prof. Dr. Syed Khalid Rashid (March 2, 2024)

The Eleventh IOS Lifetime Achievement Award posthumously conferred on the former professor of law, International Islamic University, Malaysia Prof. Dr. Syed Khalid Rashid. The award was presented to his son, Hamid Rashid, at an impressive ceremony organised by the Institute of Objective Studies at Hall-2, Convention Centre, Jamia Hamdard here on March 2, 2024.

The function began with the recitation of a Quranic verse by Maulana Adnan Ahmad Nadwi.

In his welcome address, the Secretary General of the Institute, Prof. Z.M. Khan, said that Prof. Syed Khalid Rashid was an internationally known personality. He was a noble soul and a committed scholar. He also highlighted the activities of the Institute.

Former radio journalist S.M. Shafiq, read out the citation which described Prof. Rashid as a scholar of the international repute.

Registrar of Jamia Hamdard, Dr. M.A. Sikandar, presented the scroll of honour to Mr. Hamid Rashid, son of late Prof. Syed Khalid Rashid.

The Vice-Chairman of the IOS, Prof. M. Afzal Wani presented a cheque worth Rs. 1 Lakh to Mr. Hamid Rashid as the amount of the award. Prof. Z.M. Khan presented a Memento to him and his sister.

Addressing the function, the former Union minister for minority affairs, Mr. K. Rahman Khan, observed that Dr. Syed Khalid Rashid was an expert on Muslim Law, particularly Indian Muslim law and the administrative law, and contributed a number of articles on the subject. He held that Muslims owned biggest waqf properties in the

world. But they were not being properly administered. He said that the Waqf Act, 1995 had several lacunae and in order to rectify them, several amendments were made during his tenure as minister of awqaf at the Centre. Waqf property was important because it belonged to Allah. Muslims had a duty to properly manage waqf properties and spend on the welfare of the community. Expressing concern over the large-scale encroachments on waqf properties, he said that if nothing could be done to protect such properties, Muslims would be answerable to Allah. He averred that awqaf were the property and a trust of Allah. About 123 waqf properties of Delhi were given to the entities for other purposes. Efforts should be made to take those properties back, he added.

Chairman of the IOS, Dr. M. Manzoor Alam, in his speech which was read out by the Secretary of the All India Milli Council, Shaikh Nizamuddin, said that the legacy of the IOS Lifetime Achievement Award had been rich, and this year too, the honour was being dedicated to some one whose phenomenal life and actions were nothing short of an inspiration. An educationist par excellence, an institution building, Prof. Syed Khalid Rashid invested too much of his talent and capabilities in producing innumerable works which enriched the academic in India, Nigeria and Malaysia for over six long decades. He said that as a teacher and scholar researcher, his trajectory was remarkable.

The speech of the guest of honor, Dr. Mohd. Na'im Mokhtar, minister for religious affairs in the office of the Prime Minister of Malaysia, was read out by Dr. Fazlur Rahman, Fellow, Indian Council of World Affairs. In his address, Dr. Mokhtar said, "In a world that is constantly changing, I thought it is essential to recognise and celebrate the achievements of those who have risen above the challenges and have made a lasting difference to honour the best of the best, and to express our gratitude for their invaluable contributions. This year, as we cherished the Eleventh IOS Lifetime Achievement Award conferred upon (Late) Prof. Dr. Syed Khalid Rashid, former Professor of Law, International Islamic University Malaysia (IIUM), for his extraordinary contributions in waqf laws and its management.

“This ceremony marks a special occasion for all of us, as it gives us an opportunity to acknowledge the outstanding efforts of Dr. Syed Khalid Rashid, applaud his contributions, and be inspired by his contribution of knowledge and services, especially in the field of waqf, which has greatly and positively affected and benefited many”.

Thanking the IOS for conferring its lifetime achievement award to his father, Mr. Hamid Rashid said that Prof. Syed Khalid Rashid had love for Islamic law. He spent 25 years in the IIUM. Awqaf was his first love on which he worked throughout his life. He published about 18 books on law and allied subjects. He said that his father donated the entire amount of the royalty on his books to waqf institutions. Though he lived in Malaysia for a long time, yet he never renounced his Indian citizenship. This is enough to prove his love for his native country. He had much respect for the renowned institution builder, Hakim Abdul Hameed Saheb, Hamid Rashid said. On this occasion, the revised edition of the book titled ‘Waqf Laws and Administration in India’ authored by Prof. Syed Khalid Rashid, and published by the Institute, was released.

In his presidential remarks, Vice-Chairman of the IOS, Prof. M. Afzal Wani, said that he studied Prof. Syed Khalid Rashid’s books while doing law at the Aligarh Muslim University, Aligarh. Describing Prof. Khalid as a true son of India, he noted that both he and Dr. Mohammad Manzoor Alam contributed to India by their valuable ideas. Today, India pays homage to Prof. Syed Khalid Rashid. He was not an ordinary person because he gave so much to the country. As an under-developed country, we do not give much importance to learning and knowledge. He maintained that great jurists like Prof. Khalid Rashid were born in India. It is the vision of Dr. Mohammad Manzoor Alam which brought scholars together. Laying stress on more research on Awqaf, he observed that unlike in 1960s, today it is easy to undertake research on waqf. Dr. Khalid’s works are relevant not only in India, but also in the entire world. There is need for protection, proper management and development of Awqaf. Dr. Khalid edited IOS journal *Religion and Law Review* for 23 years, he added.

The function ended with the presentation of a vote of thanks by the Assistant Secretary General of the IOS, Prof. Haseena Hashia.

**Mujaddid IOS Centre for Arts & Literature organises
discussion on “Manifest Requirements of Tawhid”
(March 11, 2024)**

A discussion on the “Manifest Requirements of Tawhid: In the context of welcome to the month of fasting (*Tawhid ke Badeehi Taqaaẓe: Mab-i-Siyam ke Istaqbal ke Pasmaẓar mein*)” was organized by the Mujaddid IOS Centre for Arts and Literature at the IOS auditorium on March 11, 2024.

Convenor of the Centre, Mr. Anjum Naim introduced the topic by briefly highlighting the importance of the month of Ramadhan.

Prof. Mohammad Ishaque, former Dean, Faculty of Humanities and Languages, Jamia Millia Islamia, New Delhi, was the main speaker who said the faith in Tawhid (oneness of God) is the core of the fundamental beliefs of Islam. This is the essence of Imaan (faith) and the strong foundation of Islam. Rest of the beliefs are parts of Iman that make it complete. The entire building of all the Islamic beliefs and actions rests on Iman Billah (Belief in God). The strength of all actions and laws emanates from Allah. We have belief in Angels because they are His creatures and perform their duties in the universe on His command. We have belief in Messengers (Rasool) because they brought Allah’s message for the human kind. He observed that we have belief in the Holy books because they are based on the commands of Allah.

Prof. Ishaque noted that only the holy Qur’an is preserved in its original form and we are bound to spend our life according to the commands enshrined in the Holy Book. Similarly, we have belief in the life hereafter because Allah is the Master of the Day of Judgment who will dispense justice to human beings in accordance with their deeds. All the actions are done to seek the pleasure of our Master. He said that Allah made the human being superior to rest of the creatures and invested him with the nature of virtue and vice, benediction and evil, submission and disdain, endurance and blemish. Both types of abilities and qualities are equally infused by God in human beings. As a consequence, an individual could do virtue and

vice, both. Meaning thereby it is possible for a man to do virtue or vice. He said that in spite of this, if one chooses virtue, he could make his life and its moments successful by his qualities and obedience to Allah. By his actions he could seek the closeness of Allah. This is a big sign of being noble and kind. Explaining the main purpose of fasting, he observed that forbearance and sobriety were the main elements of the month-long exercise.

Prof. Ishaque held that in Qur'an, Allah commanded the faithful to observe fast as it has been made obligatory on them like the followers of other religions before the advent of Islam. Fast has been made obligatory so that the faithful could become pious during these days which are numbered. Abstinence means preventing desires from tending towards evils and fasting is the potential tool of it. Referring to a *Sahabi* (companion of the Prophet [PBUH]), who once approached the Prophet and asked him to direct him to do something which could please Allah, so that he could get the blessings of Allah. The Prophet (PBUH) asked him to observe fast. He said that no other deed than fasting could match it. He said that the arrival of the month of Ramadhan was welcome. This month is the spring season of rectitude and obedience. That is why the month of Ramadhan is full of magnificence, superiority and profusion compared to other months of the Islamic calendar. During this month, Allah bestows His pleasure, love, gift, guarantee, kindness and radiance on the faithful. The quantum of reward for each act of piety during Ramadhan is increased manifold, he remarked.

Prof. Ishaque maintained that if the fast is observed with faith and a sense of accountability, all the sins committed in the past could be forgiven with the blessings of Allah. Similarly, all the past *Saghirah* sins are forgiven if the *Taramih* (A prayer offered at night after *Isha*) is offered by the believer. In this month, one act of righteousness carries reward equal to the *Farz* prayer and offering the *Farz* prayer carried reward seventy times. This month has a night called *Shab-e-Qadr* which has been declared to be better than one thousand months. Fasting during Ramadhan is obligatory and the *Taraweeh* prayer is optional (*Sunnah Moakkidah*). Ramadhan is the month of forbearance and the reward for this is *Jannah* (Heaven).

This is the month of sympathy and charity. In this month, sustenance for a Muslim is increased. One who arranges Iftar for a fasting Muslim, will get reward equal to the latter in the form of absolution, forgiveness from sins and liberation from *Jehannum* (Hell). This month is divided into three phases. Each phase consisting of 10 days is called *Asrab*. While the first *Asrab* is devoted to *Rahmah* (compassion), the second *Asrab* is for *Maghfirat* (forgiveness) and the third is for liberation from *Jehannum*, he added.

Presiding over the discussion, former Professor of Arabic, English and Foreign Languages University, Hyderabad, Prof. Mohsin Usmani, said that *Tawhid* and *Shirk* were contradictory to each other. He observed that Muslims were duty-bound to call for *Tawhid* for liberating the world and humanity from the scourge of *Shirk* (Accepting other divinities or powers alongside God as associates). It should always be kept in mind that only *Tawhid* was core to the Islamic belief.

At the end of the discussion, the Assistant Secretary General of the IOS, Prof. Haseena Hashia extended a vote of thanks to the attendees.

**IOS two-day International Conference on the “Contribution
of Prof. M. Nejatullah Siddiqi in Islamic Economics”
(April 27-28, 2024)**

New Delhi: A two-day online international conference on the “Contribution of Prof. M. Nejatullah Siddiqi in Islamic Economics” was organised by the Institute of Objective Studies (IOS) on April 27 and 28, 2024.

Inaugural Session

The inaugural began with the recitation of a verse from the Holy Qur’an by Maulana Adnan Ahmad Nadwi of the Arabic section, IOS. It was followed by the brief introduction of the topic by Dr. Kaleem Alam, faculty of Economics, King Abdulaziz University, Jeddah, KSA. He said the conference is under the series of conferences initiated by the IOS on personalities of national and international repute. But, Prof. Siddiqi’s personality fits into both national and international category. He held that he had known him for a long time. He met him few times since childhood. He had been his father’s teacher in the university. It was he who influenced his father, Dr. Mohammad Manzoor Alam to do Ph.D. Last time, he met him in Istanbul and introduced himself to Prof. Siddiqi. It was his first interaction with him. He was considered as one of the founders of the field of Islamic economics. He said that this conference will focus on contributions of Islamic scholars to Islamic economics. Prof. Siddiqi had written several books in Urdu and English, a few of them have been translated into different languages. He was a recipient of King Faisal International Award for Islamic Economics in 1982. He was one among the founders of the Institute of Objective Studies. He was also a recipient of the IOS Shah Waliullah Award of the Institute conferred on him in the year 2003.. He was associated with the IOS since its establishment in 1986. He inspired Islamic economists in the last five decades. He said this conference aims to establish or store the values of these scholars for future generations. It also aims to make them aware of the importance of their contribution to the field as far as Prof. Nejatullah Siddiqi and Islamic economics is concerned.

Dr. Kaleem observed that Prof. M. Nejatullah Siddiqui theorized convincingly perhaps for the first time in mid-1960s that equity laws of banking and investment banking without interest was possible. He also argued as to how Islamic economic philosophy and theory and history could be studied in the context of present days' scenario of global economy.

In his welcome address, patron of the Institute, Prof. Z.M. Khan said Prof. Nejatullah Siddiqui is a big name, not because of any association, but because of his ideas, work, labour and his relevance. During the time when Prof. Siddiqui started speaking about Islamic economics, those were difficult times. The task was difficult. He noted that this conference should go a long way in terms of propagating the very idea of Islamic economics and the contribution of many people who had been working very hard on these themes. The IOS may claim to have got a very active and direct concern and contact with Prof. Siddiqui. He was very kind to the Institute and used to visit IOS when in Delhi. Founding Chairman, and chief patron of the Institute, Dr. M. Manzoor Alam had got a very active and affectionate relationship with Prof. Siddiqui. And in return, Prof. Siddiqui also reciprocated the same sentiments to him and the Institute. He said we are obliged and will remain obliged to Prof. Siddiqui for his kindness and his concerns. Referring to the IOS, he said that it had completed nearly four decades of its existence working on various themes, carrying out research on ideologies and problems relevant to national and international concerns, like Indian polity, society, economy, religion and culture. IOS is concentrating basically on the problems and issues related to the marginalized sections of Indian society. And as Muslims fall in the category of marginalized sections, so naturally they occupy a very important place in our concerns, he said.

Prof. Khan observed that the importance and relevance of revealed knowledge was also a big area and a big concern that provided a background to understand all situations and concerns. Another important area that the institute was concentrating upon was to connect itself with national and international agencies. And that was being done through various methods—collaborations, signing MoUs,

and through participating with them in various programmes. And according to the mutual concerns, mutual understandings and mutual agreement, IOS carried forward these programmes. Apart from that, IOS has got very specialised committees that consider various problems relating to their specific areas and the said committee advise us as to how to go about. We have also got various other committees which have their specified role in dealing with the problems assigned to them. Besides, we have got chapters also. There are five chapters in the whole of India. And these chapters are basically catering to the local needs of areas because the general problems, for instance, Maqasid-e-Shariah cannot be translated into action in every situation and every area.

Prof. Khan said that though the regional people had got their regional specified problems which should be really looked into from different angles. If it came to listing the areas of operation of the IOS, the first title came to mind was research. The Institute took up research in a much bigger way. There were various methods of inviting people to associate with the Institute in terms of conducting research. For instance, a committee was in place to decide certain specific themes that should be taken up for research. The same committee tried to find out experts. And the experts are requested and are supposed to call them to the headquarters for discussion and then the assignment is given to them. He held that another part was that anybody who is considered for any programme or anything relevant to the research area, he/she should submit a research proposal to IOS giving a small budget. According to our capacity, we try to provide a little assistance also in terms of giving them financial grant, he said. This research is not confined to one kind of research. We have got conceptual research, empirical research and action research. He said that the major area of our concern is research. And the second major area that we engage ourselves into, is organizing conferences and appropriate conferences on national and international scale.

Prof. Khan added that the big area which the IOS catered to was the standard of organization, standard of logistics and the standard of academic excellence. He said besides that, we have publications.

Publications is a huge area with us. We have got our publication system also. Survey reports is another area. The other area in which we deal, is translation. Translation is a big area and we are dealing with Arabic, Urdu, Hindi, English and so on. We have a big plan to start a translation bureau concentrating on Indian languages. Indian regional languages occupy our attention to a large extent. In terms of regular publications, we have got bi-annual journals Religion and Law Review, Journal of Objective Studies, Mutaleaat, and the IOS Newsletters in Urdu and English. We also have a data bank which is very useful in terms of providing data, especially concerning marginalized sections. This data has been used by various committees appointed by the government of India. This data has been referred to and utilized by many other people who are working on the subject. He observed that the IOS was working to achieve the objectives and he invited all to associate themselves with concerns and the activities of the Institute.

Inaugurating the conference, a renowned Islamic scholar from Kuwait, Prof. Mohammad Anas Al Zarka, whose speech was read out by Shaikh Nizamuddin, a member of the General Assembly of the IOS, said that in the year 2014, Prof. Siddiqui asked him to look after an Arabic translation of his book in Urdu *Maqasid-e-Shariat* (Objectives of the Shariah). This gave him a chance to go deeply into one of the Siddiqi's enduring contributions to both Islamic fiqh and the Islamic Economics. Based on this, he summarized some of the views of Prof. Nejatullah Siddiqi on *Maqasid*:

1. It is not possible to solve today's problems using only micro fiqh (qiyas/analogy) based on texts, and on earlier fatawas of great scholars/imams. We have to also depend heavily on *Maqasid*.
2. This reliance on *Maqasid* has been practiced by great jurists in the past. Prof. Siddiqi's book on *Maqasid* is full of detailed examples on this, past and present.
3. *Maqasid* are not confined to the famous five—i.e., protection of Al-din, protection of Al-nafs, protection of Al'ird,

protection of Al-aql, and protection of Al-maal, but are subject to ijihad to expand them, solidly based on the principles of the Qur'an and Sunnah of Prophet Muhammad (PBUH).

4. The duty of considering Maqasid in deriving Islamic solutions for the present-day problems should not be confined to Shariah scholars. It is also the duty of relevant professionals, in formulating solutions in the light of Maqasid, the Qur'an and Sunnah.

Prof. Zarka pointed out that the current practice to elicit participation of professionals in finding solutions, was to invite them as advisors to Fiqh academicians and as non-voting experts in the Shariah supervisory committees. Prof. Siddiqi did not explicitly discuss this current practice. But his book clearly implied that this advisory role was not enough; and professionals should be voting members along with Shariah scholars. He said that deriving solutions could not be based on Maqasid alone; it also required much knowledge of Shariah and reality. What Siddiqi asserted was that knowledge of Shariah rules alone without considering Maqasid could not produce solutions for today's problems, he added.

Presenting the profile of Prof. Nejatullah Siddiqi, his son Arshad Siddiqi, said that his family belonged to Mubarakpur, Azamgarh in UP. His forefathers were Hakims and were Qazizs. His father was associated with Jamaat-e-Islami. He was much influenced from Maulana Syed Abul Aala Maududi and his commentary on the Qur'an. He noted that Aligarh Muslim University was the best choice for him for higher studies. While in Aligarh, he used to go for a walk early in the morning. He also used to attend staff club. He said that he was fortunate to travel with his father in India from Kashmir to Kerala. He enjoyed travelling and visited several foreign countries. Prof. Siddiqi was very fond of acquiring books and his writings were done normally after dinner, he pointed out.

Speaking as a guest of honour, Secretary general of International Islamic Fiqh Academy, Jeddah, H.E. Prof. Emeritus Dato Dr.

Koutoub Moustapha Sano, observed that his contact with Prof. Nejatullah Siddiqi was through books. His books on Islamic economics, particularly on interest-free banking, impressed him. His contribution to Islamic economics still remained relevant. His philosophy of Islamic economics and its maqasid were more relevant today. He differentiated between the conventional economics and Islamic economics. He said that inequality was widening under conventional economics and Islamic moral economy could solve this problem. Sense of moral economy and sense of duty were important in creating equity. This economy was more human because of ethics and morality in investment. He said that Prof. Nejatullah Siddiqi touched upon all aspects of economics. Banking without interest was challenging and there was a need to take up the objectives of Shariah. Capitalism and socialism failed to solve the problems facing today's economy. But Islamic economics was very different from conventional economics and the answer with latter lay in the former, he noted.

Dr. Ali Muhieddin al-Qaradaghi, president, International Union of Muslim Scholars, Qatar, was the next speaker as guest of honour who explained the objectives of Shariah and the contribution of Prof. Nejatullah Siddiqi to Islamic economics.

Dr. M. Yaqub Mirza, president & trustee of Centre for Islam in the Contemporary World, Shenandoah University, USA, was another guest of honour who said that he met Prof. Nejatullah Siddiqi in the 1970s. He was one of the pioneers of Islamic economics and he made practical contribution to Islamic economics, finance and development. He tried to free Muslim ummah from capitalism, socialism and communism. He studied at Aligarh Muslim University and it was the then vice-chancellor of the university, Prof. A.M. Khusro who made him professor and chairman of the department of Islamic Studies in 1977-78. Later on, he moved on to the Kingdom of Saudi Arabia. He had inter-disciplinary approach to economics. He was recipient of the coveted Shah Faisal International Award for his contribution to Islamic Studies in 1987.

In his key note-address, the chief patron of the IOS, Dr. Mohammad Manzoor Alam whose speech was read out by Dr. Kaleem Alam, said that Prof. Siddiqi's intellectual support at every crucial juncture regarding the plan and activities of the Institute of Objective Studies, especially towards focusing on the promotion of Islamic economics and finance, his guidance and directives to take initiative to the economic upliftment of Indian Muslims, and incorporating issues and agendas in the Institute's activities were unforgettable. He held that in mid-1980s, it was almost unthinkable and an uphill task to arrange funds for establishing a think-tank for raising social, economic issues facing the Indian Muslims. The farsighted suggestions, opinions received in this exercise had now put the IOS getting co-operation from various research institutions from around the globe, he noted.

Dr. Alam observed that he was particularly impressed with Prof. Siddiqi's rational approach to explain the concept of money, interest and profits, the debt and equity in Islamic banking and finance. His historical analysis of the Muslim economic thinking and the upliftment of Indian Muslims from the Islamic perspective provided a fresh understanding of this emerging discipline. His writings in Urdu and English, and their translations into several Asian languages covered diverse areas, he said.

Presiding over the session, Chairman of the Institute, Prof. M. Afzal Wani, noted that at every stage, there was a need for such scholars who could jump the conventional kinds of approaches which were being adopted. There was a concept, might be it still prevailed in different parts of the world that was 'bound in chains'. When somebody would commit an offence, then a heavy ball was to be put in his ankle so that he could not move. What it meant was that sometimes there was a self-improving punishment under which most of the academicians were going on. And that further meant that there was a straight jacket. He said that he was worried that there were about two million youths in the world today and they were recurring at training. They were the minds to take the world ahead for a better future. But what is the mechanism and what is the thought to nourish their talent and to give them better understanding and to acquaint them with realities so that we expect that a new world is in safe hands

and humanity lives with dignity and honour which it deserves. If I take an extreme kind of expression to support me that there are many countries in the world which claim to be developed. But how much percentage of rape is taking place in those countries? How much hunger and starvation is existing in those countries? How much peacefulness and happiness is there and how food security and food safety is there? The question attains more importance, he said.

Prof. Wani argued that he was looking for the science of economics right from the days of Adam Smith, if not earlier, to this day. How it had contributed towards human dignity, compassion, peace and better life. All these needs a review—review with compassion and good understanding rather than finding a scholar that he had to follow a particular track and then ultimately ending up in the same trap; track to track and then what was the conclusion. That is how the institutions, like the Institute of Objective Studies, are resorting to objectivity. Come out of any kind of obsessions and have an examination which will be quite objective and object-oriented. That is basically what Maqasid is. So, from age to age, we have to examine any of the policies—social, economic, cultural, legal work. As regards technology, we have to examine them with respect to the human good objectively and keeping the objectivity in mind, he added.

At the end of the session, vice-chairperson, IOS, Prof. (Ms.) Haseena Hashia presented a vote of thanks to the participants.

Business Session-I

This first business session focused on the theme “Prof. M. Nejatullah Siddiqi as an Islamic Economist, and Maqasid al-Shariah.” Prof. Abdul Azim Islahi, retired professor Islamic Economics Jeddah was in the Chair. The session was conducted by Shaikh Nizamuddin, member of the General Assembly of the IOS.

First speaker of the session was Prof. Dr. Mohamed Aslam Haneef, professor at department of economics and management science, IIUM, Malaysia, who said that he met Prof. Nejatullah Siddiqi in 1983 as a student. He described Prof. Siddiqi as one of the scholars

of Islamic economics who wrote on the subject along with other scholars. He was one of his teachers of Islamic economics. He presented the perspective of Islamic economics. And the second phase of his writings centred on the development of Islamic economics. He prepared a curriculum and gave an insight into the development of Islamic economics. He observed that while dealing with Islamic economics, one should reflect reality. He asked not to expect moral orientation more than what was necessary. He also asked not to start a war with the West on the question of Western economics. He called for having courage to develop new knowledge. He said that there was a need to understand Qur'an and develop new knowledge.

The second speaker was Dr. Tariqullah Khan, from the International Centre for Education in Islamic Finance (INCEIF) University, Kuala Lumpur, Malaysia. He spoke on revising Islamic economics in memory of M. Nejatullah Siddiqi. He held that Prof. Siddiqi organised the ideas of profit sharing. He developed hierarchical framework of methodology with purpose, vision and mission. This was future-fit methodology of Ijtihad. He said that Islamic economics had given too much importance to markets and ignored the primary institution of the family. In future, family rather than the market should be the focus as primary institution, he noted.

The third speaker was Prof. Ziauddin Malik, professor at the department of Islamic Studies, Aligarh Muslim University, Aligarh, who focused on Maqasid al-Shariah in the writings of Prof. M. Nejatullah Siddiqi. He said that Prof. Siddiqi had invited scholars to discuss with them his ideas. He received criticism with cool mind. Basically, he was an independent thinker. Though ideas on Maqasid al-Shariah were not new, yet he created independent ideas. He disqualified some of the ideas of the Ulema. He evaluated the contemporary enterprise in the perspective of Maqasid al-Shariah. He comprehensively discussed ten points to understand Maqasid-al-Shariah with intellectuals.

The fourth speaker of the session was Prof. Dr. Jasser al-Auda, president, Maqasid Institute, Malaysia. He said that Prof. Siddiqi was

a man of caliber. His work was devoted to Hikmah and the purpose of Maqasid-al-Shariah. His project opened the door to the basic fundamentals of economics. He was aware of the difficult position for Ummah. His approach to Maqasid-al-Shariah was in the context of the Indian sub-continent.

The fifth speaker of the session was Dr. Lubna Naaz from department of Islamic Studies, Women's College, Aligarh Muslim University, Aligarh. She noted that Islamic economics was an economic thought based on Islamic principles. She said that Islamic paradigms in Islamic economics were more challenging. There were certain issues involved in Islamic economics. These were public and private ownership, role of money in economy and eradication of interest. These were the instruments to achieve the goal of Shariah. She said that Prof. Siddiqi was an influential scholar of Islamic economics. Islamic knowledge was a comprehensive system based on moral and spiritual teachings of Islam, she insisted.

In his concluding remarks, Prof. Abdul Azim Islahi, chairperson of the session held that research in Islamic economics did not go in correct direction. He said that he did his Ph.D. under Prof. Siddiqi and he knew that he had unique ideas. He suggested that a survey should be conducted to know how Prof. Siddiqi's writings influenced later economists.

Business Session-II

The second business session, devoted to the theme "Islamic banking and finance-1", was chaired by Dr. Kaleem Alam. Faculty of Economics, King Abdulaziz University, Jeddah, K.S.A.

The first speaker of the session was Prof. Valeed Ahmad Ansari from the department of Business administration, AMU, Aligarh. He spoke on 'Sailing in the same boat: A Review of Prof. Nejatullah Siddiqi's perspective on Ethical Investment'.

The second speaker of the session was Prof. Abdul Ghafar Ismail from Universiti Kebangsaan, Malaysia. He focused on ‘Constitutional Rules—What matters related to Islamic Economics’.

The third paper presenter was Dr. Shariq Nisar, Principal of Rizvi Institute of Management Studies and Research, Mumbai who focused on ‘Remembering Prof. M. Nejatullah Siddiqi: His contribution to economics, finance and fiqh. He said that Prof. Siddiqi was influenced from the writings of Maulana Abul Aala Maududi and Maulana Ashraf Ali Thanvi. He spent seven years in Rampur where he studied Arabic. He said that banking should be based on profit and loss sharing by investors. There should be Maqasid-based mechanism of Islamic banking and finance.

The fourth speaker was Dr. Aftab Alam, head of the department of economics, Abeda Inamdar Senior College of Arts, Science and Commerce, Pune. He touched upon the topic ‘Prof. M. Nejatullah Siddiqi: Banking without Interest: A book review paper’. He held that Prof. Siddiqi had an inter-disciplinary approach to Islamic economics because it had social, ethical and economic implications.

The fifth speaker was Dr. Aijaz Ahmed, associate professor at the department of Islamic Studies, AMU, Aligarh. He spoke on ‘A Study of Prof. M. Nejatullah Siddiqi’s views on partnership, profit-sharing and insurance.’ He observed that Prof. Siddiqi developed a unique system of economics based on Islamic thought. His views on profit sharing, partnership and insurance opened a new chapter in Islamic economics. He favoured insurance free from impurities. It must be purist and based on Islamic principles. He was aware of the contemporary social challenges.

The sixth speaker was Dr. Mohammad Wasiullah Sheikh, assistant professor, Crescent School of Business, BSA Crescent Institute of Science and Technology, Chennai. His topic was ‘Charting the future of Nejeconomics in the light of Prof. Nejatullah Siddiqi’s Literary Legacy’. He called for future direction’s for taking his legacy forward.

The seventh speaker was Fahad Babaginda from Universitas Islam International, Indonesia. They spoke on ‘Analysing the influence of Banking without interest on profit-sharing investment account design in Nigerian Islamic banking.’ In their presentation, they said Prof. Nejatullah Siddiqi’s ground-breaking book, titled *Banking without Interest*, played a role in shaping the theoretical landscape of Islamic economics. A critical gap remains in understanding the book’s granular influence on the design of specific Islamic banking products; hence, this systematic research aims to meticulously delve into this lacuna by thoroughly investigating the impact of *Banking without Interest* on the development of profit-sharing investment accounts offered by Islamic banks in the northern region of Nigeria.

The eighth speaker was Dr. Mohammad Muslim, assistant professor at department of Islamic Studies, AMU, Aligarh. He spoke on ‘Prof. M. Nejatullah Siddiqi’s views on Islamic Banking.’ He said Prof. Siddiqi is considered to be a towering personality in Islamic banking. He proposed a modern system of Islamic banking. There are certain questions like how to run a financial institution with or without the help of the government and what will be source of capital for the bank, he said.

Last paper was presented jointly by Muhammad Abdul Bari & Prof. Asheref Illiyan, professor of economics, Jamia Millia Islamia and research scholar, department of economics, Jamia Millia Islamia respectively. They focused on ‘Navigating Sukuk Critique: Some insights and reflections’. They said that Sukuk, as a financial instrument gained prominence in the global financial market as an alternative to the conventional bonds. In a closer look, the translation of Sukuk into ‘Islamic Bonds’ may not totally cover the substance of the Sukuk. However, a careful examination of Sukuk shows that it includes the elements that resemble both shares and bonds. Sukuk resembles stocks in their representation of partnership with holders regarded as owners of the underlying asset and sharing in associated profits and losses.

Day-2

Business Session-III

Focused on Islamic Banking and Finance-II, the third business session was chaired by Prof. Javed Ahmad Khan, professor at the Centre for West Asian Studies, Jamia Millia Islamia, New Delhi.

The nephew of Prof. Nejatullah Siddiqi, Dr. M. Ahmadullah Siddiqi, professor emeritus of journalism and public relations at Western Illinois University, USA was the first speaker of the session. He spoke on 'Prof. M. Nejatullah Siddiqi's seminal contribution to the understanding of Maqasid-al-Shariah'. He said the Prof. Siddiqi wrote 17 books in English and 14 in Urdu. He called for educating Muslim ummah to understand their problems. He also called for honour and dignity of human kind, and the cooperation at global level. Today, there were 400 Islamic banks and Ijtihad was important to understand Islam. He said that Prof. Siddiqi scouted for co-operation with non-Muslims by engaging and interacting with them. He said, we have our inability to understand Shariah because of failure of Muslim countries to bring justice to Palestinian people. He was a positive thinker who entertained criticism. Dr. M. Ahmadullah Siddiqi was followed by Prof. Dr. Mohd. Mumtaz Ali from department of Usul al-din and Comparative Religion, IIUM, Malaysia. He said that Prof. Nejatullah Siddiqi left behind a legacy of scholarship. He was always taking the world view of Islam. Islamic world view was communicated to the universe by Prophet Mohammad (PBUH). His world view was distinguished from other scholars, he added.

The third speaker of the session was Dr. Showkat Hussain, associate professor, department of Islamic Studies, Islamic University of Science and Technology, Awantipora, Kashmir. He focused on 'Discourse and inclusion of Maqasid al-Shariah in Islamic Economics: An Analysis of Prof. M. Nejatullah Siddiqi's views.' He was followed by Dr. Shahana Khan, visiting faculty, Saint Miras College, Pune. Her topic was 'Ethical foundations of Islamic Finance: Insights from Prof. M.N. Siddiqi's perspective.' The fifth speaker

was Dr. Shahid Lone, assistant professor, Financial Economics and Econometrics, MIT World Peace University, Pune, who spoke on 'Revisiting Prof. Nejatullah Siddiqi's alternative economic paradigm'. Sixth paper presenter was Dr. Nikhat Mushir, assistant professor, School of Management and Commerce, K.R. Mangalam University, Gurgaon. Dr. Nasreena K.K., post-doctoral fellow at Kerala State Higher Education Council, Research Department of Economics, Government Arts and Science College, Calicut, Kerala was the seventh speaker who spoke on 'Prof. Nejatullah Siddiqi: A Pioneer of Heterodox Economic Thought.' Ishfaq Amin Parrey, a Kashmir-based independent researcher with Ph.D. in Islamic Studies specializing in Maqasid al-Shariah thought, was the last speaker who presented his paper on 'A contemporary reading and application of Maqasid al-Shariah: An appraisal of Prof. Nejatullah Siddiqi's Maqasid Thought.'

Business Session-IV

Chaired by Dr. Shariq Nisar, the fourth business session of the conference was devoted to 'Islamic Economic Thought and Teachings.'

The first speaker of the session was Prof. Obaidullah Fahad, former chairman from department of Islamic Studies, AMU, Aligarh. His topic was 'Prof. Nejatullah Siddiqi—An established Islamic thinker.' He said that Prof. Siddiqi was an Islamic thinker of innovative ideas. He went through his work and found that there was scope for further research. In a later book, he made certain changes and gave new ideas. He elaborated and interpreted near about twenty issues and all of them were important for the Muslims, he added.

The next speaker was Prof. Hamidullah Marazi, visiting researcher, ISTAC, IIUM, Malaysia. He spoke on 'Some reflections on the views of Prof. M. Nejatullah Siddiqi with reference to Zakat.' He said zakat is to eradicate certain evils in society. It also eradicates inequality. Zakat means empowerment of Muslims. Zakat can be used as civilizational innovator. He called for thinking what could be the role of Zakat in the present context. Awqaf and Zakat have not been

properly studied. It is a positive obligation. Zakat could be a great catalyst for the welfare of the Muslim community, he emphasised.

Dr. Mohammad Javed Tavakkoli, associate professor of economics at Imam Khomeini Education and Research Institute (IKI), Iran was the third speaker who centered on ‘The identity of Islamic economics from the viewpoint of Prof. Nejatullah Siddiqi.’

Prof. Shakeel Ahmad, former principal, Poona College, Pune. He referred to his association with Prof. Nejatullah Siddiqi who taught him at the Aligarh Muslim University, Aligarh. He said that the noted scholar of Islamic economics came under the influence of Maulana Abul Kalam Azad. Fifth speaker was Mr. H. Abdur Raqeeb, general secretary, Indian Centre for Islamic Finance, New Delhi. His topic was ‘Contributions of Prof. M. Nejatullah Siddiqi to the field of Islamic Economics in India – A brief recall of my personal experiences with the expert in last three decades.’ He said Dr. Nejatullah Siddiqi is a well-known authority globally in the field of Islamic Economics. His contributions were already recognized by the experts of the field nationally and internationally. Dr. Waqar Anwar, financial consultant, Jamaat-e-Islami Hind, New Delhi was the sixth speaker who focused on the ‘Course correction in Islamic finance carried by Prof. Nejatullah Siddiqi.’ He was followed by Dr. Masihullah Khan, assistant professor, department of Islamic studies, Jamia Millia Islamia, New Delhi. Mr. Athar Shahbaz Wani, senior research fellow, department of Islamic Studies, Islamic University of Science and Technology, Awantipora, Kashmir, was the last speaker of the session. He spoke on ‘Genesis of Islamic economic thought from 1960-1980: An analysis of Prof. M. Nejatullah Siddiqi’s contribution’.

Valedictory Session

Addressing the valedictory session as the guest of honour, Professor Emeritus, Dato Dr. Azmi Omar, president & chief executive officer, International Centre for Education in Islamic Finance University (INCEIF), Kuala Lumpur, Malaysia, said that Prof. Nejatullah Siddiqi derived his ideas from Shariah which were rooted in Fiqh. He

endorsed and supported the ideas of Prof. Siddiqi regarding Islamic banking. Islamic economics was aimed at generating positive impact on economy. He elaborated on the objectives of Shariah which included justice, equality and sustainability. The stream of Islamic banking started after 1980. Many universities introduced Islamic economics as a subject. He said that Islamic economics was based on Maqasid-al-Shariah in banking. He stressed the need for developing Islamic model of economics.

Another guest of honour in the valedictory session was Prof. Abdul Azim Islahi, retired professor of Islamic Economics, Jeddah. Recalling his association with Prof. Nejatullah Siddiqi, he said that it was not easy to take up research on Islamic economics. He was appointed lecturer in King Abdulaziz University on Prof. Siddiqi's recommendation. While in Jamaat, he was very active and dynamic. He stood for social and economic uplift of the community, Prof. Islahi said.

Prof. Mehmet Asutay, professor of Middle Eastern and Islamic Political Economy and Finance, Durham University Business School, Durham, UK, another guest of honour in the session, held that he liked the articles of Prof. Nejatullah Siddiqi published in London. He said that society had to be organised according to Islamic law. He respected his legacy as he was distinct from other scholars. Referring to Prof. Siddiqi's idea of Islamic social transformation, he said that new generation of economists would study him. He developed a new discourse of Islamic economics. He wanted to gather the last speeches of Prof. Siddiqi and edit them. He would bring together his unpublished material in book form in order to pass a positive message on to the new generation. He suggested that a book project be prepared to collect and publish his works. He sought suggestions for reviving his legacy.

In his valedictory address, Prof. Omar Hasan Kasule, secretary general, IIT, USA, described Prof. Nejatullah Siddiqi as a great scholar of Islamic economics. He studied Fiqh, Hadith and wrote many books and articles and taught many students. He deserved to be called imam of Islamic economics because of his deep knowledge of fiqh, Hadith and Tafsir disciplines. He taught and trained many

students who had gone on the text and developed ideas to teach and spread his ideas. And eventually, they were put into practice by using economic institutions and programmes. Nejatullah school of economics was a distinct school that was still developing and growing. He said that the biddings of Nejatullah school could be traced to his first Urdu book in 1960s that flatted the deceit of investment based on profit and loss sharing as an alternative to Riba based on transactions. The book was printed in 1973 and reprinted in 1980 and 1983. He wrote 17 books, 44 papers and presentations. Most of his work was based on the application of Fiqah-e-Maamlaat to contemporary economic problems. But he also called for more research on the basic themes that he presented in his writings. And he called for a fresh look at the Qur'an and the Sunnah as sources of knowledge, he added.

Presiding over the session, Chairman, IOS, Prof. M. Afzal Wani observed that in his belief the two-day conference attained its objectives as there had been very diverse projections of thought with which Prof. Nejatullah Siddiqi indulged in. He tried to create a dent in bad practices and definitely succeeded in making a mark, and today we remember Prof. Siddiqi with lot of many thoughts and the best is that anybody with confidence can talk of Islamic economics. It is richer today and it is full with supportive arguments. It is with a personal viability to work on the ground. I believe that the Institute of Objective Studies and its tradition of projecting the thoughts providing the humanity the objective studies and the light on the hidden corners of academics is indeed a wonderful work of the Institute in that way. We are beholden to Dr. Mohammad Manzoor Alam, the founder chairman and chief patron of IOS and also as a constant inspiration for all of us to continue our efforts in studies in different aspects of human sciences and providing solutions for different problems.

Referring to the contribution of Prof. M. Nejatullah Siddiqi, Prof. Wani said, "How I would place him in sequence. I believe that we have to look to the developments in the 20th century and then also in the quarter of the 21st century, and then we can think of a future which is definitely so important for humanity. And there we have to

see the importance of revealed knowledge and the relevance of the revealed knowledge to the developments and then to any of the spheres of life. How it can provide the best of regulatory mechanism and how it can best provide support to the human mind. And then how we can feel confident that one can live with peace of mind with trust and dignity, and also with confidence. A control on material resources, prevention of their misuse, promoting a healthy consumerism, promoting a healthy trade tradition and then developing the best of the production as economy revolves around production, distribution and consumption of goods and services’.

Prof. Wani continued, “How can we get inspiration and then how Prof. Siddiqi felt it that he did provide and develop a thought and nourish with it most of our universities and scholars. They must see that it is developed first and then it is to support the humanity in the best of its forms”. He believed that the responsibility was on the industrial world as well and the responsibilities on those who were developing technology and then those who relied on technology that how to go ahead with the agenda. He said that then the principles which had been highlighted by Prof. Siddiqi should be followed along with all other thinkers in the same line of understanding the world and justice.

The conference also unanimously adopted a 7-point resolution at the valedictory session. The resolution, read out by Prof. (Ms.) Haseena Hashia, vice-chairperson, IOS, stated:

1. The conference urged upon the need for focus on Islamic economics in light of Maqasid-al-Shariah.
2. The concerned institutions should launch special project studies and scholarships for advancement of research in Islamic Economics and Finance to fulfill the objectives of Shariah attracting scholars from across the globe.
3. Curriculum and teaching in Islamic Economics and Finance must be reoriented to the pressing requirements of taking up

studies on the thought projected by Prof. M. Nejatullah Siddiqi and like other contributors to knowledge.

4. Libraries of universities and research institutions should be enriched with data related to studies in Islamic Economics and Finance along with Maqasid-al-Shariah for general promotion of the knowledge on this subject.
5. Agencies working on the promotion of Shariah-Application in the world should devise programmes leading to result-oriented action in enhancing Maqasid-oriented interpretation of Shariah.
6. IOS may collect and publish Prof. Nejatullah Siddiqi's speeches and unpublished works in different languages.
7. IOS may translate Prof. Nejatullah Siddiqi's published works in different languages.

The two-day international conference concluded with a vote of thanks proposed by Prof. (Ms.) Haseena Hashia.

**“IOS Yearbook – 2023: Status of Quality School Education
among Muslims in India” released
(June 8, 2024)**

New Delhi: ‘Yearbook – 2023: Status of Quality School Education among Muslims in India’, prepared by Dr. Khalid Khan, was released at an online function organised by the Institute of Objective Studies on June 8, 2024. It may be recalled that the yearbook is the latest publication of the IOS.

The function began with the recitation of a verse from the Holy Qur’an by Maulana Adnan Ahmad Nadwi of the Urdu section of the Institute with its translation in Urdu.

Introducing the yearbook-2023, Dr. Khalid Khan, assistant professor at Kazi Nazrul Islam Mahavidyalaya, Asansol, said that this study was focused on the minority concentration districts. His study covered 710 blocks of 20 minority concentration districts spread over U.P, Bihar, Jharkhand, West Bengal and Assam. Socio-economic parameters of these districts as a whole were used to bring them at par with the national average. It was aimed to study the attainment at different levels. Referring to the chapterisation of the yearbook-2023, he said that Muslims in India’s public policy on school education were located. Religion-wise disparities in school education at the all-India level were studied. He observed that serious concern with regard to the backwardness of minorities was witnessed. Some steps were, however, taken under Prime Minister’s 15-point programme for the minorities. He made special mention of the Sachar Committee’s key findings in regard to the educational backwardness of Muslims. He emphasised that the minorities’ access to facilities, their development and quality education was necessary.

Releasing the yearbook, former lieutenant governor of Delhi, Mr. Najeeb Jung said, “We all know that quality education is missing in these states. South India has done a very good work in the field of education. But in the North, it is missing. Sachar Committee was set up to study the root causes that lead to the socio-economic and educational backwardness of the minorities. But nothing happened

despite the committee's report was submitted to the government and made public". He remarked that Muslims were repeatedly targeted for "their appeasement". But the fact was that the minorities were missing from all the schemes of the government of India. He said that the main problem before the Muslims in India was their inaccessibility to education. Since education was a basic right, it was obligatory on the government to educate every citizen of the country. But the problem was that whenever a decision in favour of Muslims was taken, it was negatively propagated as a result of which they remained educationally backward. He held that the number of madrasas imparting religious education was very large, and they were running without government aid. The curriculum of these madrasas was purely religious and now was the high time to revise their syllabus by including contemporary education in it. He said the Muslim populace still attached utmost importance to the leadership of the *ulema* and heeded their advise.

Commenting on his visit to Samarqand and Bukhara, he said that the madrasas there had curriculum which contained all the basic subjects. There were no distinction in these madrasas. He urged the madrasas to bring about change in their syllabus and keep themselves abreast of modern requirements. He was all praise for the tribals of Madhya Pradesh who were doing well in the field of education. He called for bringing in a change in education and cutting the rate of drop-outs who were forced to take up some non-skilled jobs due to lack of education. Underlining the importance of education, he noted that Israel came into existence in 1948, but she beat Saudi Arabia, Bahrain, Iran etc., because of the power of education. Thus Muslims today were in a 'catch-22 situation' in which they were not sure about what to do. He said that religious education was wonderful, but it would remain incomplete without modern education. In Uzbekistan, madrasas were teaching science and medicine along with the religious education. The question today was – how to educationally empower the Muslim community. He appreciated that a great work was done by the Sachar Committee as well as the IOS. He laid stress on the need for doing the kind of work being done by Jamia Millia Islamia in giving coaching to IAS aspirants. He talked of giving quality education to the community.

Prof. Arun C. Mehta, former professor and head of the department of educational management information system, NIEPA, New Delhi, held that the Sachar Committee conducted survey to collect data on the status of Muslim education. It recommended a data bank to digitise the progress of Muslim education at panchayat, district, state and central level. But the committee's recommendation did not see the light of the day. He said that not much development had taken place so far as educational data of Muslims was concerned. This yearbook on education series by the IOS thus was good for further development. All India survey of education for the years 2012-2024—grade II and III was available. Secondary education data, district education data system should have been updated. For the year 2022-23, student-wise data should be collected. It might be worked to some 22 crore population. Data from Muslim minority districts was available. He said that there should be a shift from Muslim dominated districts to Muslim education data. Different age-group should also be factored in, he added.

As a key speaker, former Vice-chancellor of Central University of Himachal Pradesh and professor in the centre for management studies, Jamia Millia Islamia, Prof. Furqan Qamar, called for diagnosing the ailment. In order to do it, data collection was very necessary. But what was important was good education meaning thereby good schools and quality education. Then it came to action and action should be initiated at the government level to benefit the community. He said that he had been doing this in the field for a long time. As far as the data was concerned, it was available at the National Sample Survey Organisation. He congratulated the IOS and Dr. Khalid Khan for working on an important work on the status of education among Muslims. He said that a set of data was provided by the Sachar Committee. Much had changed since the report was submitted and now it needed to be updated. He observed that he was in the know of it that there was dearth of the data. But still, data on education in the community should be collected. "Reliable data was very difficult to get, but we could identify all sources where data is available and that data should be collected from them. He asked for collecting Muslim connected data since 2014 in a systematic way. Then the data should be developed and analysed." It must also been

seen if any kind of change had taken place or any development took place or not. While emphasising the need for collecting data every year, he suggested that the enrolment of Muslim students during 2014-19 should be studied. He also said that the drop-out rate from elementary to higher education should be examined. He maintained that the IOS had access to intellectuals and thus it could find out details from them. And based on these details, the data could be documented. The IOS had national and international contacts which could also be utilised for the purpose, he pointed out.

Professor (Retired), IASE, Faculty of Education, JMI, Prof. Mohammad Akhter Siddiqui, described the yearbook-2023 as meaningful. He said that the quality education should not be confined to secondary education. There was proxy quality and no real quality education. "We can assess the facilities, like books and quality education. This study shows the position of enrolment at primary and secondary level, and the level of dropouts. Dr. Khalid Khan collected and analysed the data. He called for bringing children to quality education inside the class room because they did not reach the level required. Some concrete measures would have to be taken to ensure that the quality education was available in the classroom. He said that National Assessment Survey at the primary level was available. But, there were other surveys that differed from the national survey. He said we are lacking quality education. Quality of education is measured when the children come out for the next class. In schools, students have freedom, but this is not the case in madrasas. It is not clear what is being taught in the classroom of Urdu medium schools." He said that what Dr. Khalid observed was very important. He presented state-wise data. National Open learning did not indicate the number of Muslims student drop-outs, he added.

Associate professor, department of sociology, Maulana Azad National Urdu University, Prof. K. M. Ziyauddin, emphasised the need for controlling the rate of drop-outs. Quality education was the indicator of the kind of funding and facilities in the school. There was a complete gap of education between government and private schools. He asked the Muslim intellectuals to push for controlling the drop-out rate. Tracing the cause of low enrolment of Muslim

students, he said that distance between the school from home led them to go to the madrasa. The spirit of serving back to the community was also missing. He noted that elsewhere Muslim students were not coming up to the level of Delhi. There was also a question as to how to push Muslims to come to the domain of the subjects of other streams. He suggested to do some quality study on the education of Muslims.

Mohammad Affan Badar, Professor and Director, Bailey College of Engineering & Technology, Indiana State University, Indiana, USA, in his guest speaker speech, held that from the engineering point of view, data was important. The question was how the drop-outs could be compensated for the loss. The second question was how to improve the educational backwardness of the Muslim community. He said that the issue of quality education could be addressed if serious efforts were made. He hoped that what had not been covered in the yearbook-2023, would be covered in the next yearbooks in the series to come.

Prof. Ashwani Kumar, professor at the Tata Institute of Social Sciences, Mumbai, another guest speaker at the function, described the yearbook-2023 as wonderful. Referring to the Sachar Committee Report he said it was a fundamental document. This yearbook was fully devoted to education since education was a secondary element of development. He briefly spoke on the growing inequality of the Muslims in the field of education. It was a de jure disenfranchisement of inclusive idea and diversity. He held that quality education meant good education and good education made a good human being.

In his presidential remarks, the Chairman IOS, Prof. M. Afzal Wani, observed that whatever IOS did, had a purpose. Thus the Institute found it necessary to have a yearbook with a purpose—way to go forward. It had an expression of reality. “We have to be conscious of the context for incentivising. But what the reality is. There is a lot of secondary data and the need is to obtain primary data on education. There is no reference to the leadership of education. It should be seen how action has been taken to activate education as a fundamental right.” He said that statistically, there should be

evaluation at the age of 14 years of a child. It should be found out how much action had been taken by the state because this was the responsibility of the state to give education to every child. Besides ensuring education at the primary and secondary levels, it should be seen that proper facilities were available. If everything was available, it would enable to make a favourable environment. He explained the value of quality education. He said that the state had failed to create an enabling environment in educational institutions.

Prof. Wani maintained that no school could run without basic facilities and a library. “We should have the reality checks and start working accordingly. What is the minimum is that everyone has a right to education. There is no need to categorise people unnecessary. The IOS is giving you thought, idea, statistics, etc., and this should be taken seriously. Thus the statistics has to be given with reference.” “Regarding Muslims, he said that it was related to the system that had to be followed. Referring to *Iqra*, he noted that it was as what one needed like water. There should be collective initiative that everyone has education.” “You should develop initiative for action. There should be more purposefulness. A word of knowledge is very important.” He held that education system had to be modified and developed. It should have an ability to understand. Leadership at levels of education, whether technology or literature, was a must. He said that madrasas were also working in a big way. He concluded saying that suggestions were always welcome in order to correct the shortcomings, if any.

Earlier, Secretary General of the IOS, Mr. Mohammad Alam, in his welcome and introductory remarks, said “Institute of Objective Studies is a non-political and not-for-profit public organisation recognised at the national and international level for promoting frontline academic research and publishing books and journals on contemporary issues and themes. IOS enjoys consultative status (Roster) with the Economic and Social Council of the United Nations”. He observed that since its inception in 1986, IOS had been widening the scope of its work by conducting surveys in areas of concern for the state and civil society, and actively engaging itself in the fields of social welfare, education and management. The IOS was

working on development models suited to Indian conditions, particularly to uplift of the poor, marginalised and deprived sections. It is well-known for its initiatives and interventions to foster world peace and efforts to develop mechanisms and create conditions for conflict resolutions. He said that the IOS had always done its best to uphold the ideals of diversity, secularism, democracy, rule of law and constitutionalism. The IOS is also known for its work on regional problems and among marginalised sections in different regions of India. It enjoys high credibility and visibility for bringing together a galaxy of social scientists, policy planners and social activists for creating an intellectual movement and network of scholars, community leaders and social activists.

Mr. Alam held that the institute had so far published 450+ books and reports on a range of subjects from education, economics, politics, technology and culture to development, religion, philosophy and human rights by eminent Indian and international scholars, writers and journalists. It has so far organised 1300+ programmes, conferences consultations, seminars, symposia, academic research workshops and discussions at national and international levels in association with well-known universities and organisations in India and abroad. Besides bringing out more than 15 books on education, the IOS has started work on the preparation of the yearbook on Muslim education in India in the year 2021 under the broader concept of “Synergising Education of Muslims in India” wherein it was decided to prepare and publish yearbook every year to put forth data and recommendations related to the educational condition of Indian Muslims on different key indicators of education, like enrolment, rate of drop-outs, retention, quality education, level of education, infrastructure facilities, educational schemes and programmes for the Muslims and the budgetary allocation. Referring to the yearbook 2023, he said “It comprises the status of quality school education among Muslims with focus on minority connected districts where access to school education, drop-out rate, availability of schools, infrastructure and human resources and the status of Urdu medium schools and Madrasa education has been examined.”

Mr. Nizamuddin Shaikh, Member, General Assembly, Institute of Objective Studies, moderated the proceedings.

Vice Chairperson of the Institute, Prof. (Ms.) Haseena Hashia extended a vote of thanks to the attendees of the programme at the end of the function.

ABOUT RELIGION AND LAW REVIEW

The *Religion and Law Review* (RLR) is a peer reviewed legal periodical published by the Institute of Objective Studies, New Delhi. It covers scholarly discussions on various aspects of religion, law and other socio-legal issues. The periodical accords particular importance to the study of issues and events which are of contemporary concern, having a direct or indirect bearing on situations of minor or major religious groups and other underprivileged sections of the society.

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- To undertake research on problems and issues of social importance.
- To provide a forum for contact and exchange of views among social scientists.
- To cooperate and coordinate with all individuals, organisations and institutions that are working for identical objectives at national or international level.
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Mode of Citation for This Volume
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RELIGION AND LAW REVIEW

Volume XXXIII: 2024

ISSN 0971 – 3212

Declaration

Place of publication	:	New Delhi, India
Periodicity	:	Bi-annual/Annual
Language	:	English only
Editor	:	Prof. M. Afzal Wani
Owner, Publishers & Printers	:	Institute of Objective Studies 162, Jogabai Main Road, Jamia Nagar, New Delhi – 110025

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Computer setting by Mohammad Naseem, New Delhi
Printed at: Bharat Offset Press, 2035, Gali Qasim Jaan, Delhi-110006