



Right to Maintenance of Muslim Women

For Prelims: Divorced Muslim Women's Right to Maintenance, [Supreme Court \(SC\)](#), [Criminal Procedure Code \(CrPC\)](#), [Muslim Women \(Protection of Rights on Divorce\) Act, 1986 \(1986 Act\)](#).

For Mains: Divorced Muslim Women's Right to Maintenance, Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

[Source: TH](#)

Why in News?

Recently, the [Supreme Court \(SC\)](#) has decided to examine if a divorced Muslim woman is entitled to a claim of maintenance under **Section 125 of the [Criminal Procedure Code \(CrPC\)](#)** against her former husband — reigniting the debate on whether secular laws should be given precedence over distinct personal laws.

- The dispute arose after a Muslim man challenged a Telangana [High Court](#) direction to pay interim maintenance to his former wife.
- He contended that maintenance in this case will instead be governed by the provisions of the [Muslim Women \(Protection of Rights on Divorce\) Act, 1986 \(1986 Act\)](#), prevailing over **Section 125 of the CrPC**.

How has the Muslim Women Act, 1986 Evolved?

- **Pre-1986: Maintenance under Section 125 of CrPC:**
 - Section 125 of the CrPC is a provision that provides maintenance to wives, children, and parents who are unable to maintain themselves.
 - It applies to all religions and is not specific to any particular religion.
 - The section was made legally available to Muslim women after intervention of the SC in **the Shah Bano case**, where the Supreme Court held that a divorced Muslim woman was entitled to maintenance from her former husband under **Section 125 of the CrPC**.
- **1986 Act:**
 - In response to the Shah Bano case, the Indian Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, providing a specific mechanism for divorced Muslim women to **claim maintenance**.
 - It restricted the maintenance period to **the iddat period and tied the amount to the mahr or dowry** given to the woman.
 - **Iddat is a period, usually of three months**, which a woman must observe after the death of her **husband or a divorce before she can remarry**.
- **Danial Latifi v. Union Of India Case, 2001:**
 - The Supreme Court upheld the constitutional validity of the 1986 Act but extended the right of a Muslim woman to get maintenance till she re-marries.
 - The Court ruled that Muslim **husbands are liable to provide maintenance** to their

divorced wives **beyond the iddat period** till she re-marries.

- **2009:**
 - In 2009, the SC reiterated that divorced Muslim women could claim maintenance under **Section 125 of the CrPC**, even beyond the iddat period, as long as they do not remarry.
 - This affirmed the principle that the **CrPC provision applies irrespective of religion**.
- **2019:**
 - The Patna High Court **emphasised that divorced Muslim women** have the option to seek maintenance under both Section 125 of the CrPC and the 1986 Act.
 - This underscores the **concurrent applicability of both laws** and ensures that Muslim women are not deprived of their rights under either provision.
- **Current Case:**
 - The current case involves an appeal by the Appellant, whose former wife approached a family court in Hyderabad, alleging that he had given her triple talaq and **claimed monthly maintenance under Section 125 of the CrPC**.
 - The husband argued that the provisions of the **Muslim Women Act, 1986**, being a special law, would prevail over Section 125 of the CrPC.
 - He contended that relief cannot be sought before the family court as the **1986 Act gives jurisdiction to the First-Class Magistrate** to decide the issue of mahr and other subsistence.
 - He highlighted that the wife did not file any affidavit before the magistrate stating **her preference for the CrPC provisions over the 1986 Act**, as required by Section 5 of the latter.

The Muslim Women (Protection of Rights on Marriage) Act 2019:

- A Muslim woman who is divorced by her husband by pronouncing talaq can seek maintenance allowance under **the Muslim Women (Protection of Rights on Marriage) Act 2019**.
 - The Act declares 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, to be void and illegal.
 - The Act entitles a divorced Muslim woman to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.
 - The Act is a special law that overrides the provisions of **Section 125 of the Code of Criminal Procedure, 1973**, which deals with the maintenance of wives, children and parents.
 - However, a divorced **Muslim woman can choose to not be governed by the Act and opt for other remedies** available under any other law or custom.

What are the Supreme Court's Observations Regarding the Case?

- **Interpretation of Section 3 of the 1986 Act:**
 - The court pointed out that **Section 3 of the 1986 Act does not bar alternative remedies** for Muslim women under other laws such as Section 125 of the CrPC.
- **Amicus Curiae Submission:**
 - The amicus curiae, concurred with the court's observation and emphasised the need for an authoritative pronouncement on whether the **1986 Act supersedes the right under Section 125 of the CrPC**.
 - An **amicus curiae** is a person or entity who is not a party to the case but offers expertise or information to assist the court in making its decision.
- **Constitutional Principles:**
 - The judges highlighted that the 1986 Act must be interpreted to ensure that divorced Muslim women are entitled to all maintenance rights available to other divorced women in the country.
 - They emphasised that treating Muslim divorced women less favourably would violate **constitutional principles, including Articles 14, 15, and 21**.

▪ **Legislative Intent:**

- Dismissing the petitioner's argument that the 1986 Act intended to debar Muslim women from seeking relief under Section 125 of the CrPC, the court asserted that if such was the legislative intent, it would have been explicitly stated in the Act.
- The absence of such explicit language implies that there is **no restriction on Muslim women from seeking relief under Section 125.**

What are the Related Prior Judicial Precedents?

- In the judgments such as **Arshiya Rizvi v. State of U.P. Case, 2022, Razia v. State of U.P. Case, 2022, and Shakila Khatun v. State of U.P. Case, 2023**, the Allahabad High Court has reaffirmed a divorced Muslim woman's right to claim maintenance under Section 125 of the CrPC even after the completion of the **iddat period as long as she does not marry.**
- **In Mujeeb Rahiman v. Thasleena Case, 2022**, a single judge of the Kerala High Court observed that a divorced Muslim woman can seek maintenance under Section 125 of the CrPC until she obtains relief under Section 3 of the 1986 Act.
 - Such an order will remain in force until the amount payable under Section 3 is paid.
- In **Noushad Flourish v. Akhila Noushad, Case 2023**, the Kerala High Court ruled that a Muslim wife who effected her divorce by the pronouncement of **khula** (divorce at the instance of, and with the consent of the wife) cannot claim maintenance from her husband under Section 125 of the CrPC.
 - When the wife affects divorce by khula to get her released from the husband, the same, in fact, is akin to the refusal of the wife to live with her husband, as provided under Section 125(4) of CrPC.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Which Article of the Constitution of India safeguards one's right to marry the person of one's choice? (2019)

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29

Ans: (b)

Exp:

- The right to marry is a component of the right to life under Article 21 of the Constitution of India which states that "No person shall be deprived of his life and personal liberty except according to the procedure established by law".
- In *Lata Singh v. State of Uttar Pradesh* 2006, the Supreme Court viewed the right to marry as a component of the right to life under Article 21 of Indian Constitution. Therefore, option (b) is the correct answer.

Mains

Q. Customs and traditions suppress reason leading to obscurantism. Do you agree? (2020)

