



## Maintenance Rights of Divorced Muslim Women

**For Prelims:** [Supreme Court \(SC\), Criminal Procedure Code Muslim Women \(Protection of Rights on Divorce\) Act, 1986, Family courts](#)

**For Mains:** Protection of Rights on Divorce, Government policies and interventions

**Source:** [IE](#)

### Why in News?

In the case of *Mohd Abdul Samad v. the State of Telangana, 2024*, the [Supreme Court \(SC\) of India](#), dismissed a petition challenging the applicability of [Section 125 of the Criminal Procedure Code \(CrPC\)](#) to a divorced Muslim woman.

### What was the Petition About?

- The petition was filed by a Muslim man challenging a direction to pay interim maintenance to his divorced wife under **Section 125 CrPC**.
  - The petitioner argued that the [Muslim Women \(Protection of Rights on Divorce\) Act, 1986](#), should override the secular law of Section 125 CrPC.
- The petitioner claimed that the 1986 Act, being a special law, provided more comprehensive maintenance provisions and should therefore take precedence over the **general provisions of Section 125 CrPC**.
  - The petitioner argued that Sections 3 and 4 of the 1986 Act, with a **non-obstante clause**, empower First Class Magistrates to decide matters of **Maher** (mandatory gift that the husband gives to his wife at the wedding) and subsistence allowances.
  - He insisted that **family courts lack jurisdiction** as the Act mandates Magistrates to handle these issues. The petitioner emphasised the wife's failure to submit an affidavit opting for CrPC provisions over the 1986 Act, as required by Section 5.
- It was argued that the **1986 Act implicitly repealed Section 125 CrPC for Muslim women** due to its specific provisions, thus barring them from seeking relief under Section 125 CrPC.

### What is the Muslim Women (Protection of Rights on Divorce) Act, 1986?

- **Purpose:** The Act was enacted to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands. It provides for matters connected with or incidental to the protection of these rights.
  - This Act was a response to the *Mohd. Ahmad Khan vs. Shah Bano Begum, 1985*. In which the **SC delivered held that section 125 of the CrPC is a secular provision applicable to all, irrespective of religion.**
  - The right to maintenance under CrPC is not negated by provisions of personal law.
- **Provisions:**
  - A divorced Muslim woman is **entitled to a reasonable and fair provision and**

**maintenance** from her former husband, to be paid within the **iddat period**.

- **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.
- The Act also covers the payment of **mahr (dower)** and the return of properties given to the woman at the time of marriage.
- It allows a divorced woman and her former husband to choose to be governed by the **provisions of sections 125 to 128 of the CrPC, 1973**. If they make a joint or separate declaration to this effect at the first hearing of the application.
- **Evolution:**
  - A Constitution bench of the SC had in its 2001 judgement in the case *Danial Latifi & Another vs Union Of India* upheld the constitutional validity of the 1986 Act and said that its provisions do not offend [Articles 14, 15 and 21](#) of the Constitution of India.
    - It extended the right of Muslim women to receive maintenance until they remarry **beyond the iddat period**.
  - **Shabana Bano v. Imran Khan Case, 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.**

## What Does Section 125 of the CrPC Say?

- Section 125 of the CrPC mandates that a **Magistrate of the first class** may order a **person with sufficient means to make a monthly allowance for the maintenance** of:
  - His wife, if she is unable to maintain herself.
  - His legitimate or illegitimate minor child, whether married or not, unable to maintain itself.
  - His legitimate or illegitimate adult child with physical or mental abnormalities or injuries that render them unable to maintain themselves.
  - His father or mother, unable to maintain themselves.

## What are the Supreme Court Observations?

- SC held that **Section 125 CrPC applies to all women**, not just married women. It emphasised that the provision would apply universally.
- The SC's judgement reaffirms the rights of divorced Muslim women to claim maintenance under Section 125 CrPC, ensuring legal parity and safeguarding constitutional **guarantees of equality and non-discrimination**.
- The Supreme Court dismissed the appeal, reaffirming that Muslim women can seek maintenance under **Section 125 CrPC despite the existence of the 1986 Act**.
- The Court noted that Section 3 of the 1986 Act, starting with a **non-obstante clause, does not restrict the application** of Section 125 CrPC, but rather provides an additional remedy.
- The SC emphasised the need for **Indian men to financially empower their wives who lack independent income**. It highlighted the **difference between financially independent or employed married women** and those who stay at home without any means to meet their personal expenses.
- The Court affirmed that divorced Muslim women, including those divorced through **triple talaq (now deemed illegal)**, can claim maintenance under Section 125 CrPC irrespective of personal laws.
  - Triple talaq has been declared as void by the SC and criminalised by the [Muslim Women \(Protection of Rights on Marriage\) Act 2019](#).

## Note

**Instant triple talaq, or talaq-e-bidat**, is a practice within the Muslim community where a **man can instantly divorce his wife by pronouncing "talaq" three times in one sitting**, through phone, or even via text message. The divorce is immediate and irrevocable, regardless of the husband's later desire to reconcile.

Read more: [Right to Maintenance of Muslim Women](#)

**Drishti Mains Question:**

Q. Examine the interplay between Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Criminal Procedure Code. Analyse the Supreme Court's approach in resolving conflicts.

**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)**

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