

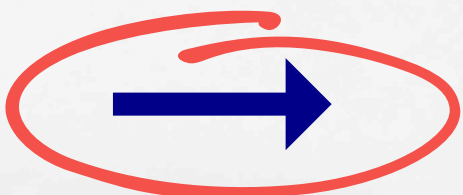


Maintenance Rights of Muslim Women

Journey from Shah Bano to Recent SC Ruling

Mohd. Abdul Samad v. The State of Telangana & Anr.
(MANU/SC/0604/2024/WIP; 2024 INSC 506)

Can divorced Muslim women seek maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C), despite having an exclusive remedy under the Muslim Women (Protection of Rights on Divorce) Act, 1986?



Supreme Court's Observation

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



Maintenance Rights of Muslim Women under Different Legislations

Divorced Muslim women	Illegal divorce as per Muslim Women (Protection of Rights on Marriage) Act, 2019 (2019 Act)
<p>Section 125 of the Cr.P.C applies to all Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.</p>	<p>Relief under Section 5 of 2019 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.</p>
<p>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.</p>	<p>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</p>
<p>The option lies with Muslim divorced women as she can seek remedy under either of the two laws or both laws. The 1986 Act, is not in derogation of Section 125 of the Cr.P.C but in addition to the said provision</p>	<p>The provisions of said 2019 Act provide remedy in addition to and not in derogation of Section 125 of the Cr.P.C</p>

Tracing the History of Maintenance Rights Muslim Women under Section 125 Cr. PC

1985

Mohd. Ahmed Khan v. Shah Bano Begum and others (MANU/SC/0194/1985; 1985 INSC 97)

The SC in this case has extensively dealt with the issue of maintenance and observed that Muslim husbands are obligated to provide maintenance to divorced wife who is unable to maintain herself.

Section 125 Cr. P.C overrides personal law of Muslims and hence, a divorced Muslim woman is a “wife” within the meaning of this provision.

1986

Muslim Women (Protection of Rights on Divorce) Act, 1986 - Enacted

In response to the controversial judgment of Shah Bano, the Parliament has enacted Muslim Women (Protection of Rights on Divorce) Act, 1986.

The objective of the Act is to protect the rights of Muslim women who have been divorced by or have obtained divorce from their husbands and to provide for matters connected therewith, or incidental thereto.

2001

Danial Latifi and Ors. vs. Union of India (MANU/SC/0595/2001)

The Constitution validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged in this case. The court upheld the Constitutional validity of the said act.

2019

Muslim Women (Protection of Rights on Marriage) Act, 2019 – Enacted

The objective of the Act is to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto.