

## MAINTENANCE OF MUSLIM WIFE

- Muslim law does not properly defines maintenance, It meaning has been imported from Hindu law which provides that- “in all cases, provisions for **food, clothing, residence education and medical treatment**; in the cases of unmarried daughter, Also the reasonable expense of her marriage.
- In the Muslim law of maintenance may be discussed from the point of view of person entitled to maintenance such are
  1. wife
  2. Children
  3. parents and grandparents
  4. other relations

### **Maintenance of wife**

- In Muslim law, wife right of maintenance by her husband is absolute and it arrives is out of the status.
- It is the obligation of husband to support her even if wife has her own means of support
- Wife claim of maintenance is preferred over young children's because the wife is considered the root [Asl] And child is considered as a branch [Fara]
- Wife is entitled to claim maintenance from her husband only when the marriage is valid. If the marriage is irregular and void there is no obligation of maintenance
- The husband's duty to maintain the wife commences only from the date when the wife attends puberty and not before that.
- A wife also has the right to be maintained under section 125 of code of criminal procedure code. The remedy under the code is for quick and immediate relief without going into question of entitlement of personal law.

- The husband's obligation to maintain his wife exists so long as the wife remains faithful to him and was all his reasonable order. However a wife can seek maintenance even if she disobeys her husband, if:
  1. The husband keeps a concubine
  2. The husband is guilty of committing cruelty towards his wife
  3. The marriage cannot be consummated owing to his illness, malformation; his absence from her without her prior permission or husband has a still not attained age of puberty.
- A wife also has the right to be maintained under section 125 of code of criminal procedure code. The remedy under the code is for quick and immediate relief without going into question of entitlement of personal law.

### **Pre-nuptial Agreement**

- If the wife has made conditions before the contract of marriage, that in certain conditions she would be entitled to live separately and can claim maintenance against the husband.
- the conditions could be that the husband will not ill treat her, or take a second wife or keep concubine
- The wife is also entitled to a special allowance called *kharch e pandan* if it is stipulated in pre-nuptial agreement [**Ali Akbar vs. Mst Fatima 1929**] - rupees 25 monthly as kharcha a pandan was given.

### **Maintenance of divorced wife**

- A divorce women is entitled to claim maintenance under following provisions
  1. Muslim personal law
  2. Section 125 of code of criminal procedure
  3. The Muslim women[ protection of right on divorce] act 1986

#### **1. Maintenance of divorced women under Muslim personal law**

- Under Muslim personal law a divorce wife can claim maintenance from her former husband only for the period during which she observes iddat. Husband's liability extends only up to the **period of iddat**.

- Maintenance of divorced Muslim women is now governed under the **Muslim women[ protection of rights on divorce] Act 1986**

## **2. Maintenance of divorced women under code of criminal procedure**

- A Judicial Magistrate First Class can order a person to make monthly allowance for maintenance of the following people if code get proof of neglect of the person with sufficient means who is refusing to maintain:
  1. Wife, unable to maintain her self
  2. Legitimate or illegitimate minor child[ married and unmarried both] unable to maintain itself
  3. Legitimate or a legitimate major child with physical or mental injury due to which he/ she is[ married daughter not included]
  4. Father or mother unable to maintain himself or herself
- Monthly allowance can be any amount as magistrate thinks fit
- Until the proceeding under section 125 and court can also order interim maintenance during the preceding and also the expense for the proceeding.[ should be given under 60 days of from the date of service of notice]
- Section 125 is secular provision governing maintenance laws across all personal laws.
- A wife cannot claim maintenance in case she is living in adultery or she without any sufficient reason and refuses to live with her husband. If she remarries, after the date of a divorce she cannot claim any such maintenance. On any of these grounds, a husband may apply for cancellation of any such order of maintenance
- If husband and wife are living separately by mutual consent even in that situation voice is not entitled to claim any such maintenance.
- Section 125 also extends the right of Muslim woman to receive maintenance from her husband. Under the Muslim law, a Muslim wife must be provided maintenance only for the period of iddat and not beyond it. Section 125 however extends its provisions to Muslim women extending their right to maintenance up to remarriage.

- Maintenance under code of criminal procedure is governed by **section 125**. In it the term wife includes ‘ divorced wife’ who has not remarried
- **Bai Tahira versus Ali Hussain 1979** Supreme Court held that divorced Muslim wife is entitled to maintenance even if she has already received the whole amount due under her personal laws
- Section 125 is independent of any personal law and it is of secular nature. It was held in **Mohammed Ahmed Khan vs. Shah Bano Begum 1985** that section 125 of CrPC applies to divorce Muslim woman unless she remarries.
- In **Mohammed Ahmed Khan vs. Shah Bano Begum 1985** Supreme Court held that there is no conflict between section 125 and Muslim personal law. The court observed that Muslim personal law limits the liability of husband to maintain the divorced wife till the period of iddat
- ✓ If the divorced wife is able to maintain herself the husband's liability expires after the period of iddat if the divorced wife is unable to maintain herself she is entitled to take recourse to Section 125 of code of criminal procedure.
- ✓ This case was widely discussed and also criticized by some section of people because they felt that provision of maintenance beyond the period of iddat even in CrPC is unislamic

### **3. The Muslim Women [Protection of Right On Divorce] Act 1986**

- The act is the outcome of Shah Bano Begum Case. The legislature tried to negate the law laid down by the Supreme Court.
- **Section 3(1)(b)** of the act provide that the divorced women is entitled to a reasonable and fair amount of maintenance for herself during the period of iddat from her former husband
- If the divorced women remain unmarried after iddat entitled to get maintenance from her such relatives who would inherit her property is upon her death
- **Section 4(2)** provide that in absence of any person relative or if relative is not able to maintain then the liabilities upon the Waqf Board to maintain
- **Section 5** provides that on the date of first hearing if the divorced woman and her husband declared by affidavit that they would prefer to be governed by

provisions of section 125- 128 of the code of criminal procedure then the case will be decided as per the code

- This act created a lot of confusion and was very vague law which was enacted just for securing votes of Muslim community for the next election. the confusion and the problems created by this legislation was called a little by the supreme court in
- **Daniel latifi vs. Union of India 2001**
- ✓ Constitutionality of the **Muslim Women [Protection of Right On Divorce] Act 1986** Act was also challenged in the case Supreme Court upheld the constitutional validity of the act and held the following
- ✓ The liability of Muslim husband towards the divorced wife to maintain her is not confined to iddat period. It extends to the whole life of a divorced wife unless she marries again. He has to make arrangement within the period of iddat for wife maintenance.
- ✓ So the maintenance would also account for after the iddat period but husband must arrange it before the end of iddat.
- ✓ The act is not in contravention of article 14, 15 and 21 of the Constitution of India.

### **Maintenance of children**

- Father is bound to maintain his son till he attains the majority and daughter till she gets married[ father is also liable to maintain major Son if he is a lunatic or mentally or physically disabled and not in condition to maintain himself]
- Father is not bound to maintain children if they refused to live with him without any reasonable cause
- There has no obligation to maintain his illegitimate child under Muslim law[ but he is liable under section 125 of CRPC]
- Mother has very little obligation to maintain a child, only in hanafi law if her husband is poor and she is rich she has liability to maintain the child but she can still recover the money from her husband when he is in a condition to pay