

A Study on the Laws for the Protection of the Muslim Women with a Reference of Divorce Act, 1986

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ABSTRACT

The Muslim women Act was made for the purpose of preserving the basic rights of Indian Muslim women in the year 1986. This Act is also termed as Divorce Act, 1986 where the basic goal was to protect the rights of the divorced Muslim women. The implementation of this law was done in whole states of the country besides Jammu and Kashmir. Here, the responsibility of the administration was provided to the Magistrate involving in the act of exercising jurisdiction in terms of Criminal Procedure Code, 1973.

This law facilitates the financial aid to the divorced Muslim women and this money is facilitated by their former husband until they (divorced Muslim women) marry another person. This law also suggests that the relatives of the Muslim divorced women would facilitate the fund in the case if the husband of the victim woman is died and after the death of the victim Muslim woman, her relatives can inherit her property. The current paper highlights the laws for the protection of Muslim women with some highlights on the Divorce Act, 1986.

KEYWORDS:

Muslim, Women, Divorce

INTRODUCTION

There are many terms mentioned in the Muslim law. Here, Iddat specifies about that time span where a Muslim woman has to live alone after divorce or death of her husband. During this time of Iddat, the divorced Muslim woman can't marry another person. She is allowed for next marriage after the completion of the time period of Iddat. The duration of Iddat is variant in many countries but the average time period of Iddat is noted to be approximate three months.

In a special case, if it is pointed out that the divorced Muslim woman is pregnant then the time period of Iddat is extended until her delivery is done. Also, the time span of four months and 10 days is specified for the Iddat if the husband of the Muslim woman dies i.e. a Muslim woman can't marry another person for about 130 days after the death of her husband.

Here, the basic point of the introduction of Iddat is that there should be no doubt among the relatives about the male parent of the newly born child. Also, this law facilitates the proper funding of the Muslim women during the period of Iddat so that there should be no problem for the victim women.

The provisions of Article 14 and 15 mentioned under the Divorce Act, 1986 for the Muslim women facilitates the prevention of gender discrimination and also helps in preserving the human rights of the Muslim women. These laws play a major role in the preservation of the fundamental rights of the Muslim women.

Section 3(1)(a) of Divorce Act, 1986 specifies the entitlement of the former husband of divorced Muslim woman in terms of the provision of fair and other maintenance tasks. There is no adequate limit of this fair and maintenance according to the Muslim laws. This procedure of fair & maintenance continues until the divorced Muslim woman does another marriage.

This law also specifies that in case of the death of the husband, all the property of the Muslim woman would be inherited to the Muslim Board of Law if there is no more concerned relative of the woman is found.

This law also states that the husband can't be forced to pay for the fair and maintenance expenses of the divorced Muslim woman after the completion of the time period of Iddat i.e. if a divorced Muslim woman marries another person after the duration of Iddat then her former husband is not liable to pay any expenses for that Muslim woman. During this situation, the former husband of the Muslim woman has the choice of financially helping her former wife.

LAWS FOR THE PROTECTION OF THE MUSLIM WOMEN WITH A REFERENCE OF DIVORCE ACT, 1986

Parliament, with its supposed omniscience in law, may, in its professed omnipotence enact legislations to undo and set at naught the effect of any judicial decision of the Supreme Court or any other Court, however good and conducive to the welfare of the people that decision may be. But to borrow from Shakespeare, while it may be good to have giant's power, it may not at all be good to use the same as a giant.

It is now well-settled, since the celebrated decision of the Supreme Court in *Olga Tellis*,⁴ that right to life and personal liberty guaranteed under Art. 21 of the Constitution includes the right to livelihood. Before the enactment of this Muslim Women (Protection of Rights on Divorce) Act, a Muslim woman, who was divorced by or from her husband, was granted a right to livelihood from her quondam husband in the shape of maintenance under the provisions of Chapter IX of the Code of Criminal Procedure until she remarried.

At the outset the court noted that the Act in terms does not apply to a Muslim woman whose marriage is solemnized either under the Special Marriage Act 1954 or a Muslim woman whose marriage was dissolved either under the Divorce Act 1869 or the Special Marriage Act 1954 nor to the deserted and separated Muslim wives.

It was also made clear that to find out the personal law of Muslims with regard to divorced women's rights, the starting point should be Shall

Bano case and not the original texts or any other material all the more so when varying versions as to the authenticity of the source are shown to exist.

The court held that if the provisions of the 1986 Act were read as less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, then a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community.

The provisions would then be violative of Art. 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Art. 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion”.

To avoid this result the court interpreted the Act by reading its provisions in a manner which would make it compatible with constitutional principles.

Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act 1986 were the principal sections, under attack before the court. Section 3 opens up with a non-obstante clause overriding all other laws

and provides that a divorced woman shall be entitled inter alia to a reasonable and fair provision and maintenance to be made and paid to her within the period of iddat by her former husband".

Section 4 provides that as long as the divorced woman has not remarried and is unable to maintain herself after the iddat period the Magistrate may order 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; if they do not have the means then other relatives who do have the means and failing them the State Wakf Board.

DISCUSSION

The constitutional validity of these two sections was upheld through a process of ingenious interpretation. The court found first that the wordings of s. 3 of the Act indicated that the husband has two separate and distinct obligations:

(1) to make a "reasonable and fair provision" for his divorced wife; and
(2) to provide "maintenance" for her? Second it was held that the word "provision" in s. 3(1)(a) of the Act incorporates "mahr" as a right of the divorced Muslim woman distinct from and in addition to mahr and maintenance for the iddat period.

Third it found that the emphasis of s. 4 is not on the nature or duration of any such "provision" or "maintenance", but on the time by which an

arrangement for payment of provision and maintenance should be concluded, namely, "within the iddat period".

Fourth, "nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it".

It would therefore "extend to the whole life of the divorced wife unless she gets married for a second time". Fifth, the court held "Section 4 of the Act refers only to payment of 'maintenance' and does not touch upon the 'provision' to be made by the husband referred to in s. 3(1)(a) of the Act."

Consequently the right to have a fair and reasonable provision in her favour is a right enforceable against the woman's former husband in addition to what he is obliged to pay as "maintenance" and so "there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman". Finally it was held "what could be earlier granted by a Magistrate under 5. 125, CrPC would now be granted under the very Act itself This being the position, the Act cannot be held to be unconstitutional".

Unfortunately, the court ignored the provisions of Art. 25 and its impact on personal laws for arriving at the same conclusion. It is arguable that the State is limited by Art. 25(2) to enact legislation to amend personal laws only for "social welfare and reform". Further the legislation so enacted must be in compliance with fundamental rights.

At present, as a result of the decision in Danial Latifi, according to some High Courts⁹ the Muslim divorced wife has higher rights than her counter parts in other religions.

Like other divorced wives under Section 125, CrPC, she can get monthly maintenance under s. 3 of the Act provided she is unable to maintain herself. Even when she is able to maintain herself and is even a millionairess, she can get the capitalized payment of amounts under s. 3 of the Act which other divorced wives cannot.

Again while the remarriage puts an end to the claim of other divorced wives, the Muslim divorced wife on re-marriage can keep the capitalized amount with herself with no liability to return the same. Thus viewed from any angle, the Muslim divorced wife under her personal law (i.e. the Act) has larger and superior rights than what her counter parts of other religions have under s. 125 of the Code".

The Act, however, does not in any way affect the rights of the Muslim children to claim maintenance from the father and the provisions of Chapter IX of the Code of Criminal Procedure can obviously be invoked by or on behalf of such children.

CONCLUSION

Section 3(1)(b) of the Act, no doubt, provides that a divorced women shall be entitled to, where she herself maintains the children born to her

before or after 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. But as has been held,“ and rightly too, the right under s. 3(l)(b) is a right of the divorced woman herself and is incidental to the divorce and the said provisions can in no way affect the operation of the provisions of Chapter IX providing maintenance for minor children.

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