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Constitutional Validity of Muslim Women (Protection of Rights On Divorce) Act, 1986- A Biased Law.

ABSTRACT:

This research aims to examine the role of Muslim **Women** (protection of right on divorce) Act, 1986 and to study the constitutional **validity** of this Act. The above mentioned act ensure the privileges of Muslim ladies who have been separated by, or have acquired separation from, their spouses and to accommodate matters associated therewith or accidental thereto.

This study advances our understanding of how the above mentioned act violates the right of muslim women and we will study how it restricts the muslim **divorced** women to ask **maintenance** from her husband under S. 125 of Code of Criminal Procedure, 1973. By using different doctrinal research sources, this paper explores that how it violates fundamental **right** of muslim divorced women in India. By studying various case studies we will be studying the history and motive of this act.

The main concern of this research is to study the case of *Daniel Latifi & Anr vs. Union of India* in this case the constitution validity of S.3(1) of the Act was already challenged and guidelines were given. This paper study case elaborately and find the loopholes in the judgement. This research paper finds that how Art. 13, 14, 15 & 21 is being violated by this act.

This paper shows that the impact of this act on fundamental rights of muslim women is more complex than previously assumed. Also this paper addresses the controversial belief of the practitioners that this act is not at all discriminating the muslim divorced women.

This study offers insights into the Muslim Women(Protection of rights on divorce), Act 1986. And prompts the readers to re-think about this act that “ Whether it’s right or not”? Also this research will explore many case studies.

INTRODUCTION:

The most basic and common problem faced by the muslim women is most of the muslim women seek remedy under Section 125 of The Criminal Procedure Code, 1973 which talks about the maintenance of wives in general (not religion specific). Under The Criminal Procedure Code the divorced wife of a man has the right to seek maintenance from the husband, if wants to. Majority of the Muslim women seek maintenance under section 125 of CrPC because of the fact that maintenance under this section is way better than that of the one provided under The Muslim Women Act, 1986. The constitution provides no discrimination to anyone on the basis of religion but the specific act of Muslims is discriminatory and arbitrary to law. Further we will discuss how it’s discriminatory also, but first we will examine the difference between the two acts:

- **Difference between maintenance provided under Sec.125 of CrPC and Under Muslim women divorce Act:**

1. Maintenance under S. 125 of Code of criminal procedure:

Wife's entitlement to maintenance, were joined in the Code of Criminal Procedure 1898. These arrangements were made material to all the Indian spouses independent of any religion or station. It is to be noticed that under Section 488 of Cr.P.C. of 1898, the wife's entitlement to maintenance relied on the continuation of her wedded status. Along these lines, it could be vanquished by the spouse by separating from her singularly as under the Muslim Personal Law, or by acquiring a pronouncement of divorce against her under different frameworks of law. ¹

To evacuate this hardship, the joint advisory group suggested that the advantage of the arrangements in regards to maintenance ought to be stretched out to a divorced lady, till the time she has not remarried after the divorce which was acknowledged by the lawmaking body. The

¹ LAW RELATING TO MAINTENANCE OF MUSLIM WIFE
https://shodhganga.inflibnet.ac.in/bitstream/10603/129050/15/08_chapter%203.pdf

lawmaking body took. a radical step and an revision in Criminal Procedure Code appeared in 1973.²

Afterward, under the new Criminal Procedure Code of 1973, Section 125 enabled the Magistrates to arrange the spouse to give maintenance to the spouses. The arrangement was stretched out to 'divorced spouses' moreover. Under section 125³, a divorced Muslim wife, who has not remarried can make an application to the Magistrate for looking for a maintenance request against the spouse if she can't keep up herself and her previous spouse regardless of having adequate methods disregards or will not look after her. On her application, the Magistrate can arrange the previous spouse to pay her a month to month recompense. In the event that the request isn't agreed to, the Magistrate can issue warrants in the way accommodated exacting fines. Further resistance brings about detainment as long as one month or till due installment, whenever made prior. Be that as it may, under area 127 (3) (b), such a request must be dropped or changed on the verification that she has gotten in full from her previous spouse the aggregate which under the Personal Law is payable on such divorce. The arrangements of the Criminal Procedure Code, 1973 establish a bit of enactment which means to help abandoned wife and different relations and require the spouse to pay a month to month total to empower them to live in the general public.

1. Maintenance under Muslim Women Divorce, Act:

Under Muslim Personal law wife's entitlement to get maintenance from her spouse during subsistence of marriage is outright. As respects maintenance after divorce, the Muslim individual law accommodated the spouse's commitment to keep up her in a restricted manner. It is given that wife is qualified for maintenance just during the continuation of marriage and not after it. A Muslim spouse is obliged to keep up his divorced wife just up to the period of Iddat and from that point, his obligation is finished. The time of Iddat upon divorce is three menstrual courses or generally three lunar months. The Iddat of a widow is four months and ten days.⁴ Also, not just the kind of Iddat period decides the wife's entitlement to maintenance, the kind of revocation is additionally saw in this regard. As indicated by Hanafi School of Muslim law, a wife who has

² MULLA, PRINCIPLES OF MAHOMEDAN LAW 343 (LexisNexis Pub., 21st Ed. 2017)

³ The Code of Criminal Procedure 1973; §125.

⁴Javed Ahmad Ghamidi, *Directives related to widows*. (Sept, 1, 2003), <http://www.al-mawrid.org/index.php/articles/view/directives-relating-to-widows>

been divorced, regardless of whether by a revocable talaq or by an unalterable talaq, is qualified for maintenance just during the time of Iddat. As indicated by the Shafei school of Muslim law, a wife who has been unavoidably divorced has no privilege of maintenance. On the off chance that wife is pregnant, the period would stretch out up to the hour of conveyance or premature birth regardless of whether it reaches out past the time of Iddat, for example a quarter of a year. Assuming, in any case, the wife conveys before that period, Iddat will end with that occasion. Once Iddat period is finished, the wife can't guarantee maintenance under any conditions. Both Hanafi and Shafei schools keep up that a pregnant divorced wife is qualified for maintenance.⁵

Ladies' entitlement to maintenance emerges upon marriage and the wife is first arranged by need to this privilege, even before the youngsters. So long she keeps on staying as wife, spouse is compelled by a solemn obligation to look after her. Once divorced, she is entitled for her maintenance just for the time of Iddat, being a period as recommended by Shariat Law.⁶

- If we look above and draw a conclusion, then, in CrPc a women can go for speedy trial but not in Muslim Personal Law. Also, Code of criminal procedure there is a punishment for not providing maintenance but in the Muslim Personal law no such mention is there. The last difference can be that in Muslim Personal Law women is entitled to the maintenance only till iddat period that is provided under S. 3(2) of Muslim Women Divorce, Act⁷ whereas, in Cr. P.C a women is entitled for the life time maintenance if she is unable to maintain herself even after some time post divorce.⁸ Also, there is another Section in Muslim Women Divorce act which is S. 5⁹ which states or gives an option to go by the provisions of sections 125 to 128 of Cr. P. C. But it is with the exception that for the criminal proceedings the women should get the consent of her husband. That's how it becomes arbitrary that no one will give consent for the criminal proceedings hence, no Muslim women can go under S. 125 of Cr. P.C. Where in, Under Art. 14¹⁰ of the Constitution of India it is stated that the State shall not deny to any person equality before

⁵ ASAF A.A. FYZEE, OUTLINES OF MUHAMMADAN LAW 120 (Tahir Mahmood ed., Oxford University Press Pub., 5th Ed. 2012).

⁶ Ibid.

⁷ The Muslim Women(Protection on Rights of Divorce),1986 §3 cl. 2.

⁸ Supra note 1

⁹ Supra note 7

¹⁰ Constitution of India 1950; at 14

the law or the equal protection of the laws within the territory of India. But Muslim Women Divorce Act is completely denying the women to get the benefits of Code of Criminal Procedure.

CASE STUDY OF DANIEL LATIFI & ANR VS. UNION OF INDIA:

- Background

The Act while invalidating the Shah Bano proportion, attempted to limit the separated from Muslim lady's entitlement to support up to the iddat period as it were. A great case of how political contemplations ate into the privileges of an area of the individuals, the Constitutional legitimacy of the Act was tested on the ground of being violative of Article 14, 15 and 21. The essential inquiry raised by right activists was the need of authorizing an Act, totally isolating an area of the populace, while a common cure was at that point accessible under Section 125 of the Code of Criminal Procedure. Even with this consuming debate, the Supreme Court on account of **Daniel Latifi v. Association of India**¹¹ moved toward a center way and held that sensible and reasonable arrangements incorporate arrangement for the eventual fate of the separated from spouse (counting support) and it does not bind itself to the iddat period as it were. The Constitutional legitimacy of the Act was likewise maintained. The Daniel Latifi judgment remains the last case law in such manner. Anyway the discussion has still not been put to rest. In the light of the conflicts and contentions raised, we should hence fundamentally inspect the judgment.

- The critical analysis of the case:

The most dubious inquiry which has been politically critical in the ongoing past out of sight of a common constitution and the idea of welfare state is that whether a separated from Muslim lady after separation post iddat period is qualified for upkeep by her better half or not. The iddat period is commonly viewed as three menstrual courses on the off chance that she is dependent upon feminine cycle, three lunar months on the off chance that she isn't dependent upon period or in the event that she is pregnant at the hour of her separation the period between her separation and the conveyance of youngster or the end of pregnancy, whichever is prior. By and large it is taken to be three months.

¹¹ (2001) 7 SCC 740.

A separated from Muslim lady is qualified for upkeep from her significant other during the time of iddat, after that Muslim individual law however no place allows support after separate yet it additionally does not precludes, explicitly or impliedly, it in anyplace. Truth be told translation of the Holy Quran shows that the Islam as a religion calls for giving support to a separated from lady on a sensible scale, and this is an obligation of each upright god dreading individual. In any case, this elucidation was profoundly bantered upon and was considered as out of domain of the court as the court itself had concluded that they would not be translating the strict writings, when it was so examined on account of **Mohd Ahmed Khan v. Shah Bano Begum.**¹²

Smt. Kapila Hingorani and Smt. Indira Jaisingh, the Counsels remaining in the interest of the candidates battled that the articulation 'spouse' as incorporated into the domain of the Section 125 of the Code of Criminal Procedure is a lady who has been separated by, or has acquired a separation from her significant other and has not remarried. The religion proclaimed by a companion or the life partners has no importance in the plan of these arrangements whether they are Hindus, Muslims, Christians or the Parsis, agnostics or pagans. This arrangement isn't a piece of the common law pertinent specifically to gatherings having a place with a specific religion however a criminal cure appropriate to all on a mainstream premise, the premise there being, disregard by an individual of adequate intends to keep up these and the failure of these people to look after themselves. The very soul of this arrangement was the ethical decree of law and profound quality would never be clubbed with religion . It was likewise additionally fought that Section 125 of the Code of Criminal Procedure is an arrangement made in regard of ladies having a place with all religions to stay away from vagrancy after marriage and rejection of Muslim Women from similar outcomes in separation among ladies and ladies thus abusing Article 15 of the Constitution. There is an infringement of equity under the steady gaze of law as well as equivalent insurance of laws and subsequently damaging Article 14 which thusly inalienably infringes Article 21 just as essential human qualities.

The five judge bench of the Supreme Court upheld the Constitutional validity of the Act.

The forward advance taken by a similar Court in the Shah Bano notwithstanding strict obsession was fixed as the Court in the reason said that, "Assembly does not mean to authorize unlawful laws". While it acknowledges social truth of a male ruled society, it neglects to take

¹² (1985) 2 SCC 556.

acknowledgment of the way that the Act is naturally oppressive. This can be very much demonstrated by the way that it brings inside its domain just 'separated from lady' who has been married by Muslim law and has been separated by or has gotten separate from her significant other as per the Muslim law. Be that as it may, the Act avoids from its domain a Muslim lady whose marriage is solemnized either under the Special Marriage Act, 1954 or a Muslim lady whose marriage was disintegrated either under Indian Divorce Act, 1969 or the Special Marriage Act, 1954.

The Act does not matter to the betrayed and isolated Muslim spouses. Section 4 of the Act makes the family members of the Divorced lady or the state wakf board answerable for the support of the Divorced lady. Be that as it may, the truth is that it is very doubtful that she will get sustenance from the gatherings who were not just aliens to the conjugal relationship which prompted separate. Additionally, wakf sheets would for the most part not have the way to help such down and out ladies since they are themselves lastingly kept from reserves and the potential legatees of a penniless lady would either be excessively youthful or excessively old in order to have the option to expand essential help. Furthermore, the Court neglects to answer the need of an Act, isolating Muslim ladies totally when a mainstream cure is accessible under the Section 125 of the Code of Criminal Procedure. Hindu ladies reserve their option to upkeep perceived under the Hindu Adoptions and Maintenance Act, 1956 however that no chance bans her from guaranteeing support under Section 125 of the Code of Criminal Procedure.

So why, this segregation, the Court bombs answer that. The defense of the law being non unfair dependent on a sensible arrangement thus not violative of Article 14 of the Constitution of India (as given in the Danial Latifi judgment) does not hold great in light of the fact that a law for support to separated from ladies was at that point in power and accessible to each lady of India, independent of their standing, statement of faith, religion. The suggestion set forward that the Act in soul attempts to regard the arrangements in the Personal Law does not hold great as it being a classified Law, needs to breeze through the corrosive assessment of the Constitution, which it wretchedly falls flat. Another, reality to be noted is that Section 5 of the Act offered alternative to the gatherings to the separation, the spouse and the wife, to choose commonly to be represented either by Sections 125-128 of the Cr.P.C or the arrangements of the Act.

However, the principle analysis leveled against this segment was what Muslim spouse might want to experience the rigors of the Cr.PC arrangements when he can be represented by an a lot simpler law. The Section 7 of the Act likewise gave that the pending applications under the Cr.PC were to be managed inside the domain of this Act. However, Gujarat High Court has held on account of **Arab Ahemadhia Abdulla v. Middle Easterner Bail Mohmuna Saiyadbhai**¹³ that a separated from Muslim lady can straightforwardly move to the Court under the CrPC arrangements.

The time span or the iddat period referenced was held to be as far as possible inside which both upkeep for the iddat period and a 'sensible and reasonable arrangement' for the future as a singular amount was to be paid to the separated from spouse to keep away from future vagrancy. The understanding given to the Act by the Courts accordingly systematized the Shah Bano proportion, while it attempted to invalidate it. The Supreme Court through this judgment put to rest the contention identifying with the elucidation of Holy Quran raised during the Shah Bano case and didn't dive into that, however presumed that "mata" as deciphered in Muslim individual laws would bolster the Court's perspective on the term 'arrangement' as one time single amount installment.

Conclusion of the case:

Before the Danial Latifi judgment, the articulation "arrangement and support" made disarray as the High Court of Kerala in **Ali v. Sufaira**¹⁴ the Bombay High Court on account of **Abdul Rahman Shaikh v. Shehnaz Karim Shaikh**¹⁵ and the Gujarat High Court on account of **Arab Ahemadhia Abdulla v. Middle Easterner Bail Mohmuna Saiyadbhai**¹⁶ that the articulation sensible and reasonable arrangement implied course of action for a singular amount sum for the future arrangement of the spouse inside the iddat period other than the iddat period support. Be that as it may, opposite assessments were given by the decisions of the Andhra Pradesh High Court on account of **Usman Bahmani v. Fathimunnisa**¹⁷ and the Calcutta High Court on

¹³(1988) AIR Guj 141.

¹⁴ 1988 (2) KLT 94.

¹⁵ (2000) SCC OnLine Bom 446.

¹⁶ Supra Note 13.

¹⁷ (1990) AIR A.P. 225.

account of **Abdul Rashid v. Sultana Begum**¹⁸ and it was held that the two articulations arrangement and support implied the equivalent, and it secured upkeep for the iddat period as it were. After this judgment the legal executive has held in the cases like in the instances of **Bilkis Begum v. Majid Ali Gazi**¹⁹ it was held that guarantee of upkeep of the separated from spouse can't be continued under Section 125 of the Cr PC after the sanctioning of the 1986 Act.

The discussion still remains. The translation gave by the legal executive in the Danial Latifi case neglects to fulfill the psyches of the sensible individuals, as there are glaring defectes on its substance. In any case, we ought to likewise remember the social point of view. On one hand where it maintains the Constitutional legitimacy of the Act, it additionally deciphers the arrangements of the Act for the separated from Muslim ladies.

The Court could visualize that the nation at such a point of Economic and Social development, could not bear the weight of fallout of another Shah Bano. Be that as it may, remembering the changing occasions and the always advancing importance of Article 21 of the Constitution, which has been held to incorporate the 'right to live with pride' under the instance of **Olga Tellis v. Bombay Municipal Corporation**²⁰ and **Maneka Gandhi v. Association of India**²¹, it is an obligation of the general public to ensure that the separated from Muslim spouse have the arrangement to keep up herself with pride and isn't directed to desperation and vagrancy. The Personal law may hint an alternate thing yet remembering the evolving society, it ought to be available to translation just for constructive changes. That just can assist us with accomplishing the targets of Social Justice set down both communicated and verifiably in our constitution.

RIGHTS PROVIDED TO WOMEN ON THE BASIS OF RELIGION, A BIASED LAW:

India is a pluralistic culture. Since the hour of the Aryans India has been the home of eight significant confidence and strict gatherings. Similarly satisfying has been the way that from the start ethnicity, strict fraternity and common amicability have been watched and supported as a consecrated obligation by the individuals in India. Thus unique individual laws flourished in this

¹⁸ (1992) CriLJ 76.

¹⁹ (2002) Suppl 1 SC 115.

²⁰ (1985) SCC (3) 545

²¹ (1978) AIR 597

nation to direct close to home existences of the individuals in understanding with the confidence. It is nevertheless characteristic that in common nation like India, individuals having a place with different strict masteries have been yielded to the constitution opportunity to be administered by their particular individual laws as for certain touchy and sensitive issues like marriage, separation and progression.

The strategy of saving individual law for Hindus and Muslims in family matters was so carefully clung to, that the constitution declares in Article 372 that the law uphold in the nation before the initiation of the constitution will keep on stay in power until adjusted or revoked or corrected by an able assembly or some other capable position. The approach of safeguarding individual laws for Hindus and Muslims in family matters was so carefully clung to, that the equivalent was repeated by Cornwallis in the Preamble to Regulation III of 1773 which pronounced that, the point of the legislature was to save the Indian Shastras and the Quran in the issues to which they have been perpetually applied.

This approach got acknowledgment by the courts as Sir William Jones of the Supreme Court at Calcutta once watched, "nothing could be more clearly only than to decide private challenge as indicated by those laws which the gatherings themselves had ever considered as the principles of their direct and commitment in common life, nor might anything be able to be smarter than by a authoritative act to guarantee Hindu and Muslim subjects of incredible Britain that the private laws which they severally hold consecrated, and an infringement of which they would have figured the most shocking abuse, should not be supplanted by another arrangement of which they could have no information, and which they probably considered as forced on them by a soul of thoroughness and intolerance.

Around the globe, genuinely oppressed ladies persevered, a lot of it in outright, endured, authoritative document. It has neither rhyme nor reason that the privilege to balance has been avowed over and again, in universal law, National Constitutions and different bargains. Name them: the widespread assertion of human rights, the global pledge on common and political rights, The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) - all provide for equality before the law and equal protection. The Beijing Plan for activity embraced at 1995 United Nations Fourth World Conference on ladies expresses the need to 'guarantee balance and non-separation under the law and practically speaking also, to '

disavow any outstanding laws that segregate based on sex. Numerous prejudicial laws still identify with family law, restricting a ladies' entitlement to wed, separation and re-wed, and taking into account such conjugal rehearses as polygamy. Regularly, polygamy isn't admissible, as even in the Quran, it is permitted in certain remarkable conditions just, for example, for example, to help widows.

From the support to the grave, females are the casualties of various horrendous acts, for example, separation, mistreatment and viciousness - inside the family, at the work environment and in the general public. Laws that unequivocally segregate are just a hint of something larger. The forswearing of equivalent opportunity in training and work, rejection from political portrayal, hardship of sexual and conceptive rights, in addition to the utilization of social powers and physical savagery to scare and subordinate ladies – every one of these infringement are of the rights to equality.

A woman in India is although awarded with the fundamental right, gender equality and right to life and liberty, ensuring dignified and equal status to that of a man under the constitution of India. But in actual practice they are observed more in breach than in compliance position. In India, it is particularly the personal laws that principally govern the lives of women. Women professing any religion; Hindu, Muslim, Christian, Parsis and Jews etc enjoy some rights which govern various aspects of their lives such as marriage, divorce, maintenance and inheritance. Her virtues, vices, strength, and her weakness are assumed on religious practices and religious norms. Historical research has shown that it was the normal practice, from ancient times through the post-colonial era of the last century, for people, whether conquerors or the conquered, to continue to live under 'personal laws' based usually on a combination of custom, tradition and religion that defined them as a people. Patriarchy is the basis of personal laws, regardless of community. In a patriarchal kinship system, a son is the father's natural apprentice, successor and supporter of the parents in the old age. Therefore, a father believes that he will continue to live in the world through his son. A daughter in the other hand cannot effectively take the place of a son. Discrimination against the girl child starts the moment she enters into the mother's womb. All personal laws, the one feature is that they govern unequal and lesser rights to women. These personal laws ensure the secondary status of women within the family as well as they continued

social and economic dependence of the women upon the male members of the family be they fathers, brother, husband or son.

CONCLUSION:

If we look upon the research and other aspects of our study then we can say that Muslim Women (protection on rights of divorce) Act, 1986 Muslim women have to go through this act to get maintenance after her divorce. That is discriminatory because other women get a chance to seek maintenance under Code of Criminal procedure. The evaluation of the status of women in India has been a continuous process of ups & downs throughout the history. It is indeed ironical that when Indian mythology places women on a very high pedestral and they are worshiped and honoured as Goddess in practice we show no concern honour.