

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

POST-DIVORCE MAINTENANCE FOR MUSLIM WOMEN IN BANGLADESH AND INDIA: A COMPARATIVE PERSPECTIVE

AUTHORED BY - SHRISHTI VERMA

PR Number –19010323110

Division- B

Abstract

The misinterpretation of Muslim personal laws has tightened down and deteriorated the right of the Muslim woman all over the world but one of the worst sufferers is the category of Muslim divorced woman who can be generally recognized in the story of destitution and vagrancy because of the construction of the conditions in the society from the infected customary law, in extension to this these women are not solely capable of combating these situations as they previously are coming out of the hole of suffering further which is not the edge of their trail it is subsequently wrapped up by the condition which eventually compels them to sell their bodies and indeed their soul for the sustaining vital necessities of everyday life. The sensitivity and encouragement for them recognized as post-divorce maintenance identified in the holy Quran is masked by web trap of the misinterpretation around the community with the spider as the precarious minded dominant male Muslim who is acting as the hindrance even for the general law to embrace the justice which ought to be secured for reinforcing those helpless Muslim divorced women. There are distinct steps evolving in conduct to revise the conditions of these women in disparate countries, but some still don't stimulate from their sleep of prejudice regarding these Muslim divorced women. Mainly this research paper revolves around the distinctions and attitudes displayed by two countries, India and Bangladesh toward Muslim divorced women population residing there, beside this various observations were made and recognized concerning the frames, which prompted them to advance one step further. These steps can also be recognized as the way carved out because of the fight of resilient destitute divorced Muslim women around these frames and above this misinterpreted world.

Introduction of the research paper

The Fundamentalistic reformative approach is not thoroughly prevented in Islamic personal laws but it is conditional that these laws reformations should not influence the essence of the basis of origination of the religion and its essential belief, as these principles are primarily gleaned from the Holy Quran (the wordings of almighty Allah), Sunnah (which encompasses the statement and teachings of Prophet Muhammad), Ijma (the consensus of the Muslim scholars), Qiyas (which is analogical deduction) and various secondary sources like Istihsan (Juristic equality of juristic preference), Istislah (Public good), Istidat (juristic deductions), Fatawas (Precedent), Legislatures, customs. ¹When any challenge arises on the rule of Islam religion or ideology, then they primarily directed according to the Holy Quran and then Sunnah, and if no definitive guidance is acknowledged later the alternative primary and secondary sources are referred for the simplification.

Moreover, the Holy Quran is exclusively based on laws and its injunctions ascribed to the elemental propositions and answer to the dynamic dilemmas, where after the prophet was authorized to interpret, formulate and guide the pathways towards the ratification of these key principles in their lifetime corresponding to the emerging circumstances of the world. As nobody has the true understanding concerning the variation of the relationship correlated with humans in diverse occasions or in their lifetime, so the prophet of Islam has opened up a very large spherical prospective free for the changes driven by legislatives and judicial precedent².

As the holy prophet employed his wisdom to determine the issues during his lifetime after his death, Islam ideology and religion was in conferred in the hands of the *khalifas* who advocated the ideas of the aforementioned foundations of the Holy Quran and Sunnahs which likewise functioned as the guidance for any circumstances encountered. Later, great Imams carried out these beliefs.³ It bears significance to mention up Hadith in this reference where it is said that—*“When a judge or a ruler exercises Ijtihad and his judgment is correct, Allah grants him a double reward; but when in his Ijtihad he commits mistake even then Allah rewards him with a single reward.”*⁴

¹Farooq A Hassan, *The sources of Islamic laws*, 76 IN THE AMERICAN SOCIETY OF INTERNATIONAL LAW (ANNUAL MEETING) 66 (1982).

² *Id.* at 1.

³ Moslay Uddin & M.D. Ayatullah, *Muslim Law: judicial and legislative changes around the world*, SSRN, (Dec.26 2014).

⁴ Jasri Jamal, *Administration of the Islamic Judicial System: An overview*, 22 MIMBAR HUKUM (2012).

Thus from the above narrative it is clarified that the practice of time worthy reforms in Islam is neither prohibitory nor contradictory rather consistent with its basic principles.⁵ But again here the controversy arises: is the practice of *ijtihad* still in practice or not⁶? As with reference to this Abduh was on a view that the decline of Muslim societies is because of their ignorance and misunderstanding of the faith and because of *taqlid* (blind imitation).⁷ Thus, this is the only way through which Muslims can make them self-compatible with the existing world and can cope with the challenges presented by the contemporary world. Without the tool of *ijtihad*, the gap between Islamic theory or aspirations and contemporary reality or constraints becomes impossible to bridge.⁸ The reformatory gates of Islam are always open with keeping the essence of the Holy Quran and Sunnah safe.

After this we move further where it is maintained that the Quran unambiguously stresses on gender justice.⁹ According to the above mentioned finding the reforms in the religion can be contributed to according to the varying circumstances of the world and evolving human relationships, but it should not change the essence of the underlying beliefs of Islam ideology and it also points out that this religious belief opens a little space towards new reformatory theories.

After contemplating all the argument it can be advocated that post maintenance for Muslim women and its scope can be strengthened and accepted as the considerate reform if needed towards achieving gender justice, it is not like that the Holy Quran is reticent about these issues of maintenance in fact it, has a two derivation of maintenance, where the Holy Quran (4:34) states that-

*“Men are protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means”*¹⁰

These lines specifically talk about the one aspect of the maintenance, that is pre-maintenance secured by the women when she is married, this type of maintenance is also called ‘*nafaqa*’¹¹,

⁵ *Supra* note 2.

⁶ W.B. Hallaq, *Was the gate of Ijtihad closed*, 16 IJMES, 3-41 (1984).

⁷ RAHNEMA, A.: PIONEERS OF ISLAMIC REVIVAL (Zed Books Ltd Publishers, (London), UK eds., 1995).

⁸ Arshia Javed & Muhammad Javed, *The need of Ijtihad For Sustainable Development in Islam*, 8 IIUC STUDIES 215, 215-224 (2011)

⁹ Asghar Ali Engineer, “*Status of Muslim Women*”, 29 (6) ECONOMIC AND POLITICAL WEEKLY 298, 297-300, (1994).

¹⁰ *Id.* at 8.

¹¹ ASAF ALI ASGHAR FYZEE, *OUTLINES OF MUHAMMADAN LAW* 211 (Oxford University Press, 5th ed., 1974)

this maintenance include the fulfillment of basic essentials ¹²required by the wife, and it is regarded as the burden and duty of the husband to maintain her.

Another prospect of the maintenance crops up when the same wife is divorced by her husband, then here the Holy Qurans (Qur'an 2:241) expresses that -

“And the divorced women, too, shall have a right to maintenance in a goodly manner: this is a duty for all who are conscious of God.” ¹³

Here it is simplified that the Holy Quran perceives the conception of post maintenance which is again identified as ‘mataa’ for Muslim women ¹⁴but next challenge arises related to the duration of post maintenance where the Sharia law discloses that the right of a Muslim women in relation to obtain post maintenance when divorce extend only till the ‘iddat’ period ¹⁵after that husband’s duty towards the divorced wife is over¹⁶. There is one exemption for the expansion of this period, that is, if the divorced wife is pregnant, it is protracted till the delivery.¹⁷ So here the question arises that are they receiving an adequate amount of maintenance under that period? And this limited sphere of post maintenance period for Muslim women is sufficient to encompass the emotional fractures, inequality, social and economic insecurity, depression experienced by the Muslim divorcee?

This issues of post maintenance is not just can be the question of paucity of the personal law, but this matter can also be examined under the sphere of equality, human rights of Muslim women, gender justice. Here the factors of gender sensitivity, humanism rises and how they had sported an appearance towards forcing the law towards the social reformative changes required which can be required in this subject matter with the evolving circumstances? Beside this, how do these actions will direct society towards forming a new perspective of seeing the changes in the personal laws which will affect Muslim women that can be needed to be modified with the circumstances of the changing world, the world in which everyone has their recognized right?

In order to find out how these reforms took place and how these issues were settled in two different countries, India and Bangladesh respectively this paper will critically analyze the trail

¹²CHALES HAMILTON, THE HEDAYA 140 (2nd ed., reprint 1994) (1870).

¹³ *Supra* note 2. See also AMEER ALI, THE HOLY QURAN, (1934-1938).

¹⁴ R Abdullah, T. Monsoor, F. Johari & W. M. Radzi, Financial support for women under Islamic Family Law in Bangladesh and Malaysia, 21 ASIAN J. WOMEN’S STUD. 363, 363-383 (2015).

¹⁵ *Supra* note 11.

¹⁶ SYED AMEER ALI, MOOHUMMUDAN LAW II, 364 (Kitab Bhavan, 7th ed, 1986)

¹⁷ Manoranjan, *Role of Indian Judiciary In Upholding Gender Justice in the Matter of rights of Maintenance of Muslim Women*, SSRN, (2011).

followed by the legislature and judiciary separately, which have taken the shape of the present personal law. These both countries will be evaluated in respect of the subject matter because they both experienced the same past and inherited the same legislative framework from the colonial period, moreover in these nations all the personal laws enforced during the colonial times are yet viable with some changes example Dissolution of Muslim Marriages Act 1939¹⁸, the Child Marriage Restraint Act 1929¹⁹, and the Shariat Application Act 1937²⁰²¹. The examining these countries is considerable because in spite of suffering from the legal vacuum to a competent extent towards leading proactive actions against the performing subject matter, their judicial system played a remarkably substantial role toward this issue.

Here this paper also explores the existence of another law (if present) other than Muslim personal laws which observe the right of the post maintenance for a Muslim women in respective countries, and what is its adequacy towards determining these issues? At last this study seeks to ascertain how much these countries are advancing with different progressive pathway opted by these countries in handling and undertaking the issue of post maintenance for Muslim women in ongoing times.

At the introductory stage of research, the researcher has used the Doctrinal form of Research to compile the primary and secondary sources of data from the library like books, journals, reports, conventions, case laws, articles and research paper, acts, code to create an initial base of research. So a researcher can be conscious of previously written data on the discussing issues.

The presentation of research has been based on new principles presented by the judiciary through various case laws a researcher uses which as evidence to support her new arguments. Besides, a researcher has conducted this comparative form of research to accomplish the aim of this paper that is to analyze the cases of Bangladesh and India regarding to the issues of post maintenance for Muslim women. This research article is designed to understand the existing personal Muslim laws, its perception and its relation towards post maintenance laws and rights for a Muslim woman in respective countries that are India and Bangladesh. To demonstrate the presence of general laws other than personal laws regarding the rights of post maintenance for

¹⁸Dissolution of Muslim Marriages Act, No. 8 of 1939, INDIA CODE (1993)

¹⁹ Child Marriage Restraint Act, No. 19 of 1929, INDIA CODE (1993).

²⁰ T. MAHMOOD, THE MUSLIM LAW OF INDIA, (Allahbad: The law book Company 1982).

²¹ Shariat Application Act, No. 26 of 1937, INDIA CODE (1993).

Muslim women. To study the interpretation of the courts in various case laws and to distinguish the reasons that were employed to resolve the issues and analysis of various aspects related to it. To understand the accessibility, appropriateness of the juridical arrangements expressed above by the respective courts of India and Bangladesh in conduct to determine the subject matter. Ultimately Research article is sectioned into Five parts addressing Firstly the introduction, abstract, research objective, methodology, scope; Second part mainly focuses upon the actual interpretation of Quran regarding the subject matter and various other views respectively; Third part focuses on the various judicial interpretation, statutory provisions specifically in India regarding the subject matter; Fourth part concentrates on the judicial interpretation and historical prospective regarding the subject matter; At last the fifth part focuses on research output with comparisons and recommendation.

Analyzation and exploration of personal laws in the context of post-maintenance for Muslim woman generally in both the countries

India and Bangladesh

This part of the study tries to scrutinize the ends of Muslim personal laws in the subject matter of post-maintenance for the Muslim women in various circumstances by understanding the valuable interpretation of the holy Quran and other texts assisting to it. On the other hand, try to understand the standpoint of a Muslim woman in this context based on cases studies in both countries.

The Qur'an states repeatedly, for emphasis, that both the male and the female were created from the same 'nafs'.²² It also processes that both the gender stemmed from the single 'soul' which can be brought out from the depicted tales of the first humans, Adam and Eve.²³ Moreover, the failure of Adam was not burdened on Eve, relatively both were tempted by Satan in order to eat the forbidden fruit and subsequently were sinned by Allah as a result both were sent out from heaven and sinned in pursuing power and immortal life.²⁴ Formerly both were condoned and were competent to God for their own individual actions on earth. She is empowered to read and interpret the Quran and to get along a full pious life as it is appropriately expressed, "Every soul will be (held) in pledge for its deeds."²⁵ They are both judged by the

²² Qur'an 4:1, 6:98, 7:189

²³ Qur'an 7: 20-22.

²⁴ Quran 20:120-122.

²⁵ Quran 74:38.

same measures and were administered the same worshipping rights else different arrangements in civil matters (*muamlat*). In other words, a Muslim woman is as complete against Muslim man created by Allah.²⁶²⁷

In *muamalat* woman is the autonomous legitimate entity, who possesses a stand of her own in the heart of Allah and in the community that is why she retains her own rights in continuation even after marriage. After marriage, she recognizes her independent financial position where she can occupy the property, and no one has the right to intrude in it, even his companion or any relative.²⁸ Islamic law, however, comprehends between the financial rights and liabilities of the two genders. The male, while likewise financially independent, has added financial restraints. He must reinforce the women in his family regardless of their financial condition unless there is another financially able male relative who is upholding her. For particular, a father is liable to preserve his daughter, wife etc. That's why here we can understand that why the male child of the household is receiving more contribution in the property than the female in Muslim Personal Law because his property is just a gross product which will be disseminated further among the other female relative like her wife, mother and indeed her own sister who recently obtained her share which is absolute in nature as no one possesses the right over it as it's exclusively for her.²⁹ If we seek to understand the holy Quranic view, then God tries to furnish extra safeguard to the woman.³⁰ But in today's times, there is the need to revise the interpretation of provisions in certain areas where the woman is driven capable of earning bread for her family and is adequate to maintain her family. Even for the adjustments with the times, the Islamic law yields the solution to it, that its interpretation can be advanced without troubling the core propositions of Islam through the doorway of *ijtihad*.

In divergence, this personal law provision is not straightforwardly applicable in society, it has been subjected to misinterpreted and manipulated versions of it which is encompassing most areas of the society. It is not solely in the case of this quranic version, but every personal law

²⁶ Md. Sadekur Rahman & Hossain Mohammad Younus Sirazi, *Post-Divorce Maintenance (MAA'TA) For Muslim Women in Bangladesh, Pakistan and India*, 23, IOSR-JHSS,1, 1-10 (Feb. 2018).

²⁷ ZAIDAN 'ABD AL-BAQI, AL-MAR'AH BAYN AL-DIN WA AL-MUJTAMA' 194-199 (1977)

²⁸ *Id.* at 37.

²⁹ Dr Taslima Monsoor, *Maintenance of Muslim wives: The Legal Connotations*, 9(1), THE DHAKA UNIVERSITY STUDIES, 63, 63-86 (1994).

³⁰ Azizah Yahia al-Hibri, *Muslim Women's Rights in the Global Village: Challenges and Opportunities*, 15 JOURNAL OF LAW AND RELIGION. 37-66 (2000 – 2001).

provision is negatively influenced by manipulation and misinterpretation where they take advantage of this right of maintaining for their own benefit.

Same can be expressed with the arrangement of post-divorce maintenance for divorced women in Muslim Personal Law. Various Quranic verses are consecrated to the sole benefit of divorced women mainly in surah 2 acknowledged as Al Baqara and in ayat 228, 231 where iddah period and what determines it literally means for Muslim divorced woman is prescribed, 241-242 mainly where holy quranic text talks about the maintenance for the divorce Muslim woman where: "Firstly, we will seek to figure out the meaning of maintenance: "The word 'Maintain' has been extracted from the French term 'Maintenir' and in Latin, the French expression 'Main' is indistinguishable to 'Manus' which processes 'Hand' and 'Tenir' is identical to the term 'Teneo' which routes to 'Hold'. Thus the accurate understanding of the term 'maintenance' can be expressed 'To Hold Hand'." ³¹ The right of maintenance is intensely entrenched in the network, it is the inlaid human spirit in the family where one person tries to uphold the other in the matter of underlying survival like food, clothing when they have no measures to ensure these demands, these reinforcing and upholding feeling is not particularly for close family members but for the members who are stretched at distant edges. The word alimony is also interchangeably used in the place of maintenance, it is inferred from the Latin term ' Alere' which instruments to sustain, feed or allowance, which a husband by Court order pays to a wife for maintenance while they are detached or after they divorced or during the pendency of the proceedings. ³² This maintenance or in alternative words, alimony can be of two types: temporary alimony and permanent alimony. Permanent alimony where the support and maintenance are acknowledged for the lifetime of the wife wherein the case of a temporary alimony time period of implementing the support and maintenance is for a definitive period, in some cases, it can be paid off as the lump sum amount and in some events, it can be carried out as the amount of every month mentioned. In Muslim Personal Law, it is interpreted that the maintenance to the divorced wife can be extended solely for the time period of iddah period. ³³ Further, Secondly, it is consequential to contemplate upon the iddah period and establish a divergence between it and separation after marriage (divorce) so that complications can be ironed out and perception for post-maintenance for Muslim woman can be scrutinized after the

³¹ Dr Taslima Monsoor, From Patriarchy to gender equity: Family Law and its Impact of women in Bangladesh (June 1994) (Ph.d thesis, University of London).

³² *Warne v. Warne*, 36 S.D 573

³³ Kusum, *Maintenance of a Divorced Muslim Wife: A Critique of the proposed Law*, 22 ILJ 408, 408-413 (1980).

iddah maintenance period, which is further known as Mata'a maintenance. Iddah can be said as the crucial continuance period of marriage between Muslim married man and woman in the case of revocable marriage. The main purpose of this period is the reconciliation of the spouses. At this iddah period, they are nevertheless at the juncture of a lawfully married couple where the husband is already legally obliged to maintain her wife. The issue starts after the end of the iddah period of three consecutive menstrual cycles and when no rapprochement between them takes place, further finally the divorce becomes operative where the question of post-maintenance falls into picture.

There are exemptions to the procedure that: Essentially if the wife is pregnant then the iddah period lengthens till the termination of the pregnancy or till the birth of the child.³⁴ In other words, we can say that the waiting period is called the iddat period, it commences when the divorce has been first announced and when it shows up to the knowledge of the wife.³⁵ Further, it becomes operative when the iddah period ends.

The real question comes into picture when the iddah period is expired when there is the question that can the maintenance be stretched after the iddat period, as it is said that personal law of Muslim says that once the iddat is terminated there is no constraint on the husband to maintain her divorced wife, is it right or there are alternative terms and conditions which needs to be welcomed into consideration?

If the condition exists is that after iddah she have no right to maintenance from her husband but then in Quran, there is the reason which has turned over the other concessions to the divorced wife that she will be looked at a legally independent personality because formerly the divorced wife has the access to her male relative and she likewise has her father's inheritance with her which can be exclusively utilised for herself without maintaining anybody else. But the social reality is peculiar in the dwelling society from the construction of society acknowledged in the holy Quran.

In the Holy Quran mainly the Ayat is the concoction of both legal rights and moral rights of the person which need to be executed, further, they explicitly highlight in so many verses that it is the legal duty of the Muslim man to reinforce the Muslim female in every condition further they are also characterized as the guard behind the Allah for the protection and maintenance of

³⁴Quran 2:228 (Quranic references translated by YUSUF ALI (1946)).

³⁵ *Id.* at 43.

Muslim woman as previously the Muslim women were reliant on the Muslim man for numerous needs mainly the monetary demands.³⁶³⁷

In the iddah period where we perceive that the maintenance is an obligatory duty of the Muslim man, but the quantum of maintenance should be handed over or there is no ceiling or minimum limit which needs to be given during iddah period or the mode of payment. Where the question of further maintenance rises, if maintenance is presented to a Muslim woman during iddat period is satisfactory for fulfilling her minimum future needs till then she remarries or it is legitimate amount has been given which will drive her survival possible where she had no source to sustain her than that extent in researcher's point of view is reasonable as touched on in the holy Quran, and further, there is no need for mata'a or post-maintenance, but if the iddat maintenance is not as objectively reasonable then it will not adequate to furnish support to the separated wife, as she will not have any further economic source or any aid from the other male relative member. There is the situation with her where she is not efficient to eat properly, people are taking undue advantage and numerous other misery leading to her. Here some expense of financial support to the divorced wife is the best option which even Quran can not inhibit as men are the maintainers and are one degree superior to Muslim women as alluded to in the holy Quran.³⁸ As in reality, the social situation is always opposite of what the theoretical world responds to The Quranic verse mentioned in 241-242 states *"For divorced women (a one time provision should be paid) on a reasonable (scale). This is a duty on the righteous."*³⁹

"Various interpretations have been devoted to this verse and some of them are Ibn Manthur, the elegant Arabic linguist, interestingly pays consideration to the following dealing with the grammatical and linguistic management of the term: *'It has no time limit, for Allah has not fixed any time limit for the same. He has only precluded the payment of maintenance.'*

⁴⁰Another Indian philosopher, Shah Waliullah Dehlavi, complies with the following in his translation of the same verse: "It is the obligation of those who ward off evil to give the divorced women just and fair provision for life, ie their maintenance and accommodation, Allah

³⁶ Quran 4:34.

³⁷ *Supra note 42.*

³⁸ *Supra note 43, 45.*

³⁹ *Supra note 43.*

⁴⁰ IBN MANZUR, LISAN AL-ARAB, 1290, (1883).

explains thus, His decrees, so that you may understand.”⁴¹⁴² Tahir Mahmood, in his addendum which was combined to Fyzee’s Outlines of Muhammadan Law; he surmised that the period of iddat, in the case of divorced women, is in fact the minimum and not the maximum extent for which maintenance has to be compensated by the divorcing husband.”⁴³

They preferred to characterize as the maintenance has no restricted time specify that it requires to be sustained for only three months as the type of maintenance differ when it is given on iddat period where the men have a legal obligation as at the time of iddat he is still married but after the divorce becomes effective the reasonable scale amount of maintenance should be paid at the second type of maintenance. Here the holy Quranic verses left the limit of time, reasonable maintenance on the man and woman to elect according to the peculiar facts and circumstances of the different couple. Like if the wife is capable to maintain herself even after the divorce or have different sources to maintain herself or have enough iddah maintenance and dower money then nominal mata’a maintenance should be paid off after dealing with the psychological and emotional breakdown but in the case where the divorced wife has no external sources to maintain herself, no economic guarantee which is lacked for her survival or not enough iddat maintenance and dower money or no money for fulfilling the vital survival needs like food, clothes, home then the mata’a maintenance time period should be long sufficient to cover the survival needs till she remarries or have some source of financial support after acknowledging the physical and emotional breakdown, her status and her divorced husband status.

Now after understanding the holy quranic version of maintenance, we will try to understand the Muslim woman’s point of view over the applicable interpretation of the holy Quran in society, in the name of Muslim personal law, through the NGO identified as Bharatiya Muslim Mahila Andolan (BMMA, or ‘Indian Muslim Women’s Movement’) one of India’s most influential Muslim women’s organisations.⁴⁴ In an exhaustive national survey of Muslim women’s perspectives on family law in 2015, the BMMA claimed that 83% of respondents believed that the codification of Muslim personal laws would help to protect women’s rights, with high numbers also supporting the reform of unequal personal laws,⁴⁵ where they feel that

⁴¹ *Supra note 39.*

⁴² SYED MOHAMMED ALL, POSITION OF WOMEN IN ISLAM, THE: A PROGRESSIVE VIEW, 90-94, (State university of New York Press. 2004)

⁴³ A. A. A FYZEE., OUTLINES OF MUHAMMADAN LAW 177 (Oxford University Press. 5th ed., 2008)

⁴⁴ Kirmani, Nida., “*Beyond the Impasse: Muslim ‘Feminism(s)’ and the Indian Women’s Movement.*” LAHORE UNIVERSITY OF MANAGEMENT SCIENCE 12, 1–26 (2011).

⁴⁵ T. MAHMOOD, THE MUSLIM LAW OF INDIA, (Allahbad: The law book Company 1982).

the interpretation of the quranic text which is applicable in the society is having the divergent view with the actual interpretation of Quranic text. Further we will try to understand this through the case laws which were filed by the Muslim woman in the latter part of the article.

**Legal provisions pertaining to Post-divorce maintenance for
Muslim women other than personal laws in India.
(Including both legislature and judiciary)**

This part of the paper specifically dealing with further exploration and understanding of the legislative and legal provisions other than Muslim personal laws in both the respective countries. This part of the research paper is subdivided into three parts expressing the better realization of peculiar laws present in different countries.

**The laws which are present in India only in relation to the post-divorce
maintenance for Muslim woman other than personal laws, and
Reformative principles in India through judicial interpretation**

Currently, in India, there are distinct other legal provisions other than personal laws which are carrying out regarding the post-divorce maintenance in the case of divorce Muslim women. These were not historically recognized but evolved with time because of some unstoppable, courageous Muslim woman who wants to engage in against the misinterpreted versions of verses of the Holy Quran and enlarged their suppression in the name of it, which had emphatically afflicted the Muslim woman all over India. But these other laws in India evolved with time through the body of legislature and mainly judiciary in conduct to meet the protection, support for the Muslim divorced woman as provisions against the interpretation of personal laws which is preferred by most of the Muslim community in India. But it is important steps taken by the judiciary mainly to encompass justice, security and peace by the means of 'Which ought to be' interpretation of laws in the current Indian society. Still, the government has many steps to take under these laws and in the society which are the shortened measures to show up in future otherwise, it will certainly operate as the latent hindrance in the trail of development in India.

This issue is currently accorded with two laws in India under section 125- section 128⁴⁶ of a criminal code of procedure which is a general law and on the other hand a specific law the Muslim Women (Protection of Rights on Divorce) Act, 1986 is at work in the Indian Muslim society.

Earlier before the 1970s the section empowered by code of criminal procedure to the order of the magistrate that in summary proceedings, a husband has an obligated duty to maintain his destitute wife and children, corresponding to the architect of this provision Sir James Fitzjames Stephen, this provision is completed with “a mode of preventing vagrancy or at least of averting its consequences” (e.g., crime and prostitution).⁴⁷⁴⁸ According to section 488(1) and (2) of the criminal procedure code encompassed only married women for maintenance. There was the desperation of broader perception of term wife where the Muslim husband cannot circumvent the right of the Muslim divorced wife, by contemplating that the judicial interference over these matters is extra-judicial in nature and instantly abrogating the right of post-divorce maintenance of divorced Muslim wife, ultimacy forcing a divorced Muslim wife a life of a destitute where she has no end to hold her economical means for basic survival needs. **After 1970s** India accepted the confronting of reinstatement of the old criminal procedure code 1898 with a reaffirmed version with the same title but with a refurbished right for women in India, specifically after acknowledging the woman across the nation and principally the Muslim woman who proved to concentrate the parliamentary scrutiny to the traditional section 488 of chapter thirty-four through the petition in conduct to guarantee themselves from the customary violation in the cite of personal law explicitly to divorce Muslim woman.

The joint parliamentary committee which was driving upon the bill considered new amendments regarding criminal procedure code advocated that:

“The benefit of the provisions [concerning the magistrate's summary jurisdiction to order payment of maintenance] should be extended to a woman who has been divorced from her husband, so long as she has not remarried after the divorce. The Committee's attention was drawn to some instances in which, after a wife filed a petition under this

⁴⁶ CODE CRIM. PROC., No. 2 of 1974, INDIA CODE (1993).

⁴⁷ CODE CRIM. PROC., (1884).

⁴⁸ Lucy Carroll, SHAH BANO, *THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT AND*

MUSLIM WOMAN'S RIGHT TO MATAA: BANGLADESH SHOWS WAY OUT OF IMBROGLIO, 39 JOURNAL OF THE INDIAN LAW INSTITUTE, 83-95 (1997).

section on the ground of neglect or refusal on the part of her husband to maintain her, the unscrupulous husband frustrated her object by divorcing her forthwith, thereby compelling the magistrate to dismiss the petition. Such a divorce can be made easily under the personal laws applicable to some of the communities in India. This causes special hardship to the poorer sectors of the community, who become helpless. The amendments made by the Committee are aimed at securing social justice to women in our society belonging to the poorer classes.”⁴⁹

An amendment which was endorsed by the Commission in section 125 of the bill (which was hitherto classified as section 488 of 1898) which reformulated the interpretation consolidated in the context of term wife under the chapter dealing with the maintenance as thus rectified, “comprises a woman who has been divorced by or has attained a divorce from her husband, and has not remarried.” Though this revised arrangement the magistrate’s order in regard to providing maintenance (maximum limit 500 rupees) by the Muslim husband to the separated wife will satisfy and will be looked at as the responsibility of the Muslim husband.⁵⁰

The amendment bill regarding section 125 was ticketed by both the houses of the parliament in spite of antithetical views displayed by the Muslim members. Further, the Muslim spokesperson took the objections against the bill to the prime minister where new sections which were previously taken place was repeatedly carried in to figure out the variations in section 127, which objectify the questions pertained to the maintenance order under section 125.

There was ambiguity about the section 127(3) (b) peculiar to the part ascribed to the dower amount (*mahr*) should be examined as “the sum obligately paid under customary or personal law was outstanding under divorce” as a nominal substitute to divorced wife overall the community. There was the need for more simplification and magnification to witness it through the glimmer of constitutional values where if we reach by expressed words then it will violate article 14 and article 15 of the Indian constitution. As if the dower amount will be considered or interpreted in such a manner that it will fall under the perceiving “payable by divorce” formerly the magistrate order under section 127(3) (b) will be eliminated and will overthrow the purpose of an extensive interpretation of section 125 of the criminal procedure system.

⁴⁹ Tajinder Kaur v. Balbir Singh , 1978 Cri. L.J.

⁵⁰ *Supra note 56.*

This amendment proposed for section 127(3) (b) was assailed by the Jyotirmoy Basu while asserting that this step will annihilate the enhanced effect and claims of section 125, there she also cited verse 241 of sura 2 of the Quran that the post-divorce maintenance should be handed over to the at the rational scale. Further, she states that section 125 is encouraging only which is earliest endorsed by the holy Quranic text but is not adhered to or interpreted in such a course in the society. Further, the alternative appraisal of Abdullah asserted another point that it is indispensable to empower that “what sum under Muslim Personal Law payable on divorce” by the Muslim man to Muslim women, as *mahr* in his point of view cannot be grouped as the payment on marriage; This point was puzzled over by the Abdullah so that the accommodation can be constructed between the parties that it can be partitioned into the allocations as some can be expressed at an instituted and some can be saved for later. Further, it was construed according to the Quranic text that a husband can particularly be saved from the liability of implementing the maintenance to the divorced wife only in the case where the lump-sum payment or the arrangement of regular alimony between the parties. This debate was more predisposed toward the amendment in the provision of section 127(3) (b) invalidates the implementation of previously amended arrangement of section 125.⁵¹

The trail of this dilemma did not halt here as if the Muslim husband had paid the dower amount then they were spared from the bringing about of section 125 of criminal procedure code because of the survival of 127(3) (b) where the *mahr* was deemed to ‘the payment on marriage’.

Various High courts were clogged with diverse perceptions about the issue.

In the case of “Muhammed v. Sainabi The case of Kerala high court where the justice Khalid perceived the conception of post-maintenance under section 125 of criminal procedure code, further he asserts that the payment of the *mahr* (in this case 2200 rupees) will not affect the discharge of the wife right of post-maintenance. At last, the maintenance was obliged as the duty of husband by the court to pay rupee 50 to the divorced wife and rupee 37.05 to the child.”⁵²

The maintenance was allowed till the wife remarries or till the husband pays the lump sum amount at the payment on divorce.

⁵¹ *Supra note 52.*

⁵² Muhammed v. Sainabi, 1976 K. L.T. 711

In the case of “Rukhsana Parvins v. Sheikh Mohammed Hussein”, where judges of the high court of Bombay have the notion that the 125 section of the new code is secular in nature and the right of maintenance of the divorced wife is not impeded or manipulated by any religion. Sec 127 defined the order of the magistrate, which demanded to be passed at the time of remarriage of the divorced wife for the cancellation of maintenance. In section 127(3) (b) which enumerates the personal law of the divorced woman who is asserting for maintenance. Because of some special circumstances in the case, the wife was withheld from the maintenance as the case saw under the grounds of 127(3) (b). Ultimately, they were in the perception that if the wife has received her dower money and other dues, then she is not authorized to get maintenance under section 125 of the new code.⁵³ Another judgement of Madhya Pradesh high court in the case of Hamid Khan v. Jummi Bi was experiencing the same impression as the above-stated judgement where the right of maintenance to the divorced wife was turned down because the mode of divorce was the khula talaq where the wife surrendered her dower amount as she went for this preference of divorce and further no maintenance was recognized to her to obtain at last she particularly have the right of maintenance at the time of iddat period.⁵⁴

In “Khurshid Khan v. Husnabanu Bombay High Court” had looked at that S.125 of the Code was accomplished by the Parliament to be carried out pertinent to the Muslim wives as it was to all other wives, and maintained that the Parliament was qualified enough to function like this, it is obliged by Art 15 read with Art 44 of the Constitution in instituting this arrangement.⁵⁵ These all judgments were here and there at point taken from ambiguity and incompatibility, which turned up at the demand of magnified clarification or the inferring of the provisions of the newly amended sections ascribed to post-divorce maintenance for their productive implementation to the aggrieved divorced women.

This trail of questions reached the supreme court of India where the sequence of interpretations took place and decisively embodied the law which we are practising today.

At the introductory stage of the supreme court cases like in Capt. Ramesh Chander Kaushal v. Veena Kaushal and Ors. helped to simplify the reluctance of the section criminal procedure code which followed that this section considers performing its social purpose and provide

⁵³ Rukhsana Parvins v. Shaikh Mohammad Hussein, 1977 Cri, L.J. 1041 (Bom.)

⁵⁴ Hamid Khan v. Jummi Bi , (1978) I.L.R M.P. 595

⁵⁵ Khurshid Khan v. Husnabanu 1976 Cri LJ 1584 (Bom.)

secular encouragement to the impoverished women who are in fierce destitution because of divorce. In order to bolster them in some channels, this conflict of section 125 was called for under article 15(3) article 44 of the Indian constitution. But the question of applicability of the provision was falling off behind.⁵⁶ The initial step of the supreme court of India in this direction was analysed through the two cases addressed as Bai Tahira v. Ali Hussain Fissalli Chothia⁵⁷ and Fuzlunbi v. K. Khader Vali⁵⁸ In both cases three judges' bench was set up where Justice Krishna Iyer delivered the consistent, clarified decision which is looked upon as one of the most extensive historical judgments and diverse future judgements are encompassing under its light which is guiding them to secure justice in the evolving society.

“In the case of Bai tahira where justice Krishna Iyer” view it from the constitutional glance where some considerable prospect about the maintenance was analysed, article 15(3) forms the principle of section 125 of criminal procedure code, he figured out that this section is altogether assigned for the protection of forsaken, divorced Muslim wife who do not have the channels for survival to them, as mainly these are the woman who are previously severely torn out from their marriage but also speculating about what will be the condition of endurance in the society for them, as in some cases they indeed have to sell their body and ultimately leading her soul for the survival in the immense inflated society, where she is not even drawn up for the whole plight as mainly in the marriage she was fulfilling the inclinations of her husband where slowly she was pumped physically and mentally and at last when she was shoved out because the husband had new wife or any other reason, more to this husband had paid Mehr and also the iddat maintenance but even the amount was so untenable that she can merely survive for few days, if she have a child with him that mahr amount won't be last long. Even in all these cases, the divorced wife is not in the state to do the job which can turn into her economic source for survival. Conclusively nothing can thwart the state from establishing laws for the welfare of the women and children in some cases it can be viewed as the hope for survival. This section is also favoured by article 39 for capturing the purpose of social and economic justice. Further, by article 38, where this statutory arrangement is also noteworthy for the governance of the state, it also acts as an effort where the citizen can enjoy their rights and also provide the courage to fight if something wrong is going on to them.⁵⁹

⁵⁶ Capt.Ramesh Chander Kaushal v. Veena Kaushal and ors. AIR 1978 SC 1807

⁵⁷ Bai Tahira v. Ali Hussain Fissalli Chothia , A.I.R. 1979 S.C. 362;

⁵⁸ Fuzlunbi v. K. Khader Vali , A.I.R. 1980 S.C. 1730

⁵⁹ *Supra note 65.*

“In the case of bai Tahira justice, Iyer” interpreted the challenged procedure of section 127(3) (b) in a way that there was no scope of oppression, vulnerability to the targeted aggrieved by the section 125. He reformulated the section 127(3) (b) where he ratified that this section cannot be employed the husband to be free from their burden which they have toward the divorced wife except on one condition that he considers the verification of payment of a quantity offered under customary laws whose quantum is more or less satisfactory to the payment of post-divorce maintenance. This section of 127(3) (b) does not have the purpose to save the husband from their substantial obligation but it serves a social purpose he appropriately asserted that “Ill-used wives and desperate divorcees shall not be driven to material and moral dereliction to seek sanctuary in the streets.” He further perceived that by customary payment at the time of divorce which is adequate for the divorce and the husband is liberated from the obligation is contradictory till the point of time the quantum of payment paid on divorce has considered the reasonable care of the wife’s maintenance. He further stated while likewise dealing with the other side of husband that “payment of illusory amounts by way of customary or personal law requirement will be compromised within the contraction of maintenance rate but cannot exterminate that rate unless it is a feasible substitute.” The payment can principally be legally certified when it is competent to fulfil the social obligation it is determined to. If we are not heeding the base on which the statutory arrangement is produced or if it declines to handle its purpose, for which it was set up for, formerly we are absolutely also not complying with the latent constitutional article behind which is animating the same provision which was erected to address some issues but failed because we are not able to understand the true meaning of the targeting issue it is created for. At last “there must be a rational relation between the amount so paid and its potential as provision for maintenance.”⁶⁰He further expressed that these statutory provisions like 125-128 are kind of the welfare laws which must be employed as the raw material to put into effective machinery so that the definite output of justice, security and peace can be created and served to the weaker sections like children, a destitute woman which is the purpose of the spirit of Article 15(3) of the Indian constitution. “The Constitution is a pervasive omnipresence brooding over the meaning and revamping the values of every measure.”

In the case Fuzlunbi v. K. Khader Vali where the Muslim husband neglects her wife because of which she shifted to the maternal home and demanded the maintenance for self and her son under 125 of criminal procedure code which also supported by the trial court but husband

⁶⁰ *Supra note 65.*

changed to the high court who with the support of section 127 (3) (b) the wife was refused to get the maintenance and child maintenance was reduced from rupees 150 to 1 rupees. After which subsequently, the husband divorced the wife and paid her the mahr of 500 and 750 as an iddat maintenance. The wife challenged the decision of the high court to the supreme court. Where three judges administered the case and Justice Krishna Iyer declared the judgement with some exceedingly useful observations which belonged to the decisive basis of most the future judgement. Most of the observations were streamlining with the previous judgement made in the Bai Tahira case. In this case of fuzlunbi where Justice Krishna Iyer observed that these sections from 125 to 128 of the criminal procedure code are secular with the purpose of securing justice for the divorced destitute wife. He also directed the light towards the state responsibility to reinforce the weaker section of the society like destitute women and children. This is not only limited to one religion but is protecting everyone as the citizen of India enshrined under the Indian Constitution. He tried to interpret that this welfare legislature is not particularly barred to the security of one sect of the society, as it should be celebrated as the welfare for the whole community of womanhood. He also tried to formulate that what cannot be interpreted as mahr cannot be considered “as a payment made in lieu of loss of connubial relationship” or the consideration for divorce. Moreover, the payment of mahr cannot be supplanted in the place of maintenance due to a divorced wife or cannot be considered as the replacement in the place of maintenance under section 127(3) (b).⁶¹

These observations were considered as the foundational pillars of understanding the provisions provided in the section from 125 to 127 and their interpretation for guaranteeing social justice in the society by eliminating the poverty and destitution faced by the woman after the termination of the woman regardless of any religion, caste, etc. But Muslim women have some peculiar composition which previously contemplated upon and reviewed above.

“In the case of 1985, Mohammed Ahmed Khan v. Shah Bano Begum” gave rise to the controversy gave which shocked the whole nation, this reached to the supreme court by an appeal of the husband for challenging the judgement of the high court of Madhya Pradesh which ordered him to provide maintenance to her divorced wife of rupees 179 on monthly basis from 25 rupees which was previously decided by the magistrate. After the marriage of forty-three years, and ill and elderly wife had been thrown out of her husband’s house. After that

⁶¹ *Supra note 66.*

approximately for two years, the maintenance of 200 rupees was paid per month, then there was no sign of maintenance. When the wife petitioned for maintenance under section 125 of the criminal procedure code as the result of which subsequently the husband divorced the wife. He paid a mahr of rupees 3000, followed by liabilities for maintenance for the iddah period. The husband was seeking to get rid of the obligation of maintenance for the divorced wife by the protection provided under his interpretation of Muslim Personal Law. The woman was turned down to her right of maintenance after divorce regardless of all the efforts shah bano took to manage the house of her husband for more than forty years, had borne and raised five children. After all these years she entered the stage of her life after divorce where she is enabled to take any career option and prepare herself independent for securing her later stage of life besides this there's the extremely obscure circumstance of her remarriage. On the other hand, her husband was a particularly successful lawyer with an income of almost sixty thousand per year, yet he failed in his obligation for the woman who devoted her whole life to his family and him.⁶²

The question which needs to be forwarded before the bench in order to secure justice for that destitute, ill woman was Interpretation of section 127 (3) (b) in the circumstance when the divorced wife has been neglected and been deprived of post-maintenance right by the husband was justified or not? As mahr had already been paid to her, does this liberate the husband from the duty heretofore brought up and discussed in various cases?

“The five judges’ bench addressed this memorable dispute, in which one of them was chief justice of India in April 1985. Mohammed Ahmed Khan v. Shah Bano Begum, In this case, the supreme court re-certain the preeminence of the criminal procedure code regardless of the personal law governing the parties. They further affirmed that if there will be a conflict between the code, rights and the obligations of individuals under the personal laws, the erstwhile would overcome. The earlier choices of the supreme court in the case of Bai Tahira and Fuslunbi were supported but were administered to one arrangement which needed to be formulated. The subjects provision which demanded to be justly construed was whether the mahr will be considered under the legal provision defined under section 127 (3) (b) in a context of “divorce payment” as in earlier supreme court judgement considered by justice Krishna Iyer on this subject matter? Or will it not be incorporated in the quantity of “payment on divorce”?”⁶³

⁶² Mohammed Ahmed Khan v. Shah Bano Begum A.I.R. 1985 S.C. 945

⁶³ *Id.* at 70.

“The supreme court adopted the second option that mahr cannot be regarded as a sum “payable on divorce” within the meaning of the section.”⁶⁴

Although the supreme court acknowledged the fact that the mahr is the amount which more closely related to marriage rather than divorce it is set as the consideration at the time of marriage and is likewise perceived as the figure as the honour of the bride, further noted that it has no connection to be viewed as the paramount resource relationship of the husband or fulfilling the need of the wife at the time of divorce. Moreover, it is of meagre significance that whether to consider the mahr under the provision specified in section 127 (3) (b) as in the eyes of law if Mehr is such a sum which has been made then also it does not terminate the legal duty of the husband against the post maintenance towards the divorced wife. But mahr will be considered in determining whether it empowers a reasonable substitute to the maintenance order. In another case, if the mahr is not considered as the part of such sum (alike if it has been paid off), it will not give immunity to the husband against the obligation previously alluded to. But in that case, it will be dealt with as a vital component for determining the eligibility for the maintenance order and the quantum of maintenance ordered in her favour.

Mainly the provision of 127 (3) (b) is there to restrict the power of the divorced women to claim the maintenance under section 125 so that the system of check and balance can be maintained and the divorced wife can not override the rights of the husband as an individual by alleging the double maintenance so that ultimately the justice can be secured from the interest of both ends.

As the code is the general and secular legal provision, the divorced woman of any religion has the right under it to demand the post-divorce maintenance under section 125 and they are not barred under section 127 (3) (b) merely because of the proof that at the time of divorce the husband has given some mahr.⁶⁵

After this judgement various protests took place by the ex-husbands, riots were taking place all over India as they perceived it was the infringement of their personal laws boundaries. These all unprecedented uproar because of the judgement culminated “**the Muslim Women (Protection of rights on Divorce) Act of 1986.**” This was the step of the legislature installed to abrogate the legal provisions administered in Shah Bano supreme court Judgement with an intention of dispossessing the right of the post-divorce maintenance to the Muslim women. The

⁶⁴ *Supra note 70.*

⁶⁵ *Supra note 70.*

expression of the section of the latter act specifies that “a divorced woman shall be warranted to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband” and after the iddat period the onus of maintenance will shift on to her relatives. This wording of the section highlights the latent objective behind this which seeks to liberate the husband from their obligation of maintaining the divorced wife after the iddah period, it thereby also exclusively had spared the Muslim community from the domain of chapter nine of the criminal procedure code. The act was promptly in infringement to the provisions carved out in the Shah Bano Case, which channels that divorce Muslim woman can no longer assert the post-divorce maintenance under section 125-128 of the criminal procedure code. Further, “section 5 of the act expresses that an application under these provisions now could merely be made by the divorced woman simultaneously with her former husband as determined by section 5 of the act.” In enhancement to it have a retrospective effect which contributed to all the pending application under it, however, its preamble alleged that it has the purpose to secure the right and justice of the Muslim divorced woman instead of which it deteriorated their rights for the post-divorce maintenance as correlated to the women of another religion. To maintain the superficial objective of this act and in order to match with the words of the preamble which had fakely represented legal provision of securing the post maintenance rights of the Muslim woman was provided with either of the two alternatives: Firstly she can accuse her own relations if the implement is not created then secondly move on to the state Waqf Boards, which are even not in continuation in assorted states and are repeatedly financially unreliable.⁶⁶

The constructive portrayal of the judiciary played a profoundly essential aspect in directing the government that what is right for the society? That legislature can not play with provisions in order to secure their place in forthcoming polls. The following actions with the superficial intention of convincing right of post-divorce maintenance to the Muslim woman have been criticised by the various initial judgement in relation to the provision touched on in the act. Later on numerous important supreme court judgement played the very prominent position in framing the provision and adhering to the preamble of an act which states that “An Act to protect the right of Muslim women who have been divorced by, or have obtained a divorce from, their husbands and to provide for matters associated therewith or incidental thereto.”

⁶⁶ MANORANJAN, “ROLE OF INDIAN JUDICIARY IN UPHOLDING GENDER JUSTICE IN THE MATTER OF RIGHT OF MAINTENANCE OF MUSLIM WOMEN”, SSRN. 8-9, 1-15 (2006).

Initial judgement of the high court in cases like **Md. Yunus v. Bibi Phenkani @ Tasrun Nisa**⁶⁷, **Abid Ali v. Mst. Raisa Begum**⁶⁸ of the Patna and Rajasthan high court subsequently held that section 3 (1) (a) of the new act is depriving the Muslim divorce woman of the rights of getting maintenance beyond the iddat period and weakening the Muslim divorce woman community from resisting back when their right is invaded.⁶⁹ Another case of **Usman Khan Bahamani v. Fathimunnisa Begum and or**⁷⁰ where they obtained the provision given in the section S.3 (1) (a) and believe that the Muslim divorce is not entitled to claim the maintenance beyond the iddat period and ex-husbands are excluded from their duty after the iddat period is over and are compelled to maintain their divorced wife within the iddat period only. In this case, the court explained the term 'within' narrowly and negatively.

Further in the case of Gujarat high court in **A. A. Abdulla v. A. B. Mohmuna Saiyadbhai** acknowledged the right of the Muslim divorced women beyond the period of iddat and also concentrated upon that the term "within" should not be deciphered narrowly and the husband has the obligation of maintaining their divorced wife while carrying out the arrangement in advance for the post-divorce maintenance within the iddah period.⁷¹ In another case of Kerala high court **Ahmed v. Aysha** observing that, expressed the perceiving that under section 3 of the new act 'unable to maintain herself' criteria was phased out in effect to which any woman, even the millionaire wife can claim for maintenance.⁷² In case of **Karim Abdul Rehman Sheikh v. Shehnaz Karim Sheikh and Ors**, honourable judges of Bombay interpreted the section 3 in a broader understanding and complemented its scope by making the distinction between the provision and maintenance where they mindfully clarified the meaning of 'provision' spoken of in section 3 was examined in the broader sense where they interpreted that a precise amount of money will be kept aside by the ex-husband which will be exclusively consecrated to the economic security of the divorced wife after the iddah period. As corresponding to them, the arrangement must incorporate the amount encompassing the future economic security of the wife.⁷³

⁶⁷ Yunus v. Bibi Phenkani @ Tasrun Nisa (1987) 2 Crimes 241(Pat)

⁶⁸ Abid Ali v. Mst. Raisa Begum (1988) 1 Rajasthan LR 104

⁶⁹ *Id.* at 75, 76.

⁷⁰ Usman Khan Bahamani v. Fathimunnisa Begum and ors AIR 1990 AP 225 (FB)

⁷¹ A. A. Abdulla v. A. B. Mohmuna Saiyadbhai AIR 1988 Guj 141

⁷² Ahmed v. Aysha II (1990) DMC 110

⁷³ Karim Abdul Rehman Sheikh v. Shehnaz Karim Sheikh and Ors II (2000) DMC 634

After all the blended response of the distinct high courts where some of the interpretation affirmatively supported section 3 of the new act with definite interpretation while some of them were interpreting in such a manner that it can vitiate the implementation of section 3 of the new act.

The supreme court intervention through the case of Danial Latifi v. Union of India and furthermore upcoming judgements till 2010 changed the game of perception for the legislature and adhered to the solution for recovering the achievement of shah bano case of re-securing the justice for divorced destitute Muslim women.

The first step on the trail of judicial intervention in context to the post-divorce Muslim women was taken through the case of Danial Latifi v. Union of India where the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, on the strands of equality article 14, 15 as Muslim women are experiencing fewer rights as contrasted to any alternative religion and debasing the life of the Muslim divorce wives as they are deprived of post-maintenance under this sec so they stirred the right to life of the Muslim woman and thus infringe article 21. In this case, the supreme court analysed each section of the contemporary act and likewise depicted each section into a manner that it moulded itself bestowing to the judgments carried out in praise of the divorced woman on the one side and secondly also illustrated the constitutional effectiveness of the act as can likewise be singled out as 'balanced interpretation'.

The apex court construed the section 3 (1) (a) which expresses that "a reasonable and fair provision and maintenance to be established and paid to her within the period of iddat by her former husband" where the supreme court dealt with the interpretation of two things in this provision Firstly the interpretation of a "fair and reasonable provision" interpreted as something in advance related for satisfying the responsibility of the future demand for maintenance of the divorced wife ascribed to her assured residence, food, clothes and another article which is for her future purpose beyond the iddat period. Also, simplified that the provision is to be made for sustaining future provision for the divorced wife, whereas the maintenance has to be paid is to be considered as an iddah maintenance. Besides this, the court also spelt out that reasonable provision and maintenance is not only restrained to the iddah period but likewise can be formed for shaping the future needs of the wife beyond the iddah period as solely obligation of making reasonable provision and maintenance is inhibited to the

iddah period. Thus only that person will be discharged from the post maintenance under this act particularly when he paid a lump sum expense to her wife while contemplating the fair, reasonable provision and maintenance in expansion to this they likewise have the liability to pay mahr, restored dowry, granted property and other specified things under section 3 (1) (c), 3 (1) (d) of the new act. If in future the wife is not adequate to maintain herself even after looking at all the sum provided under section three then the onus of retaining them shift to their family members where she can inherit the property and can demand for other rights and if the women don't have relative, then she can take the hold from the waqf board under section 4 of the contemporary act however she can only administer the equitable and impartial provision only against the former husband.

Further, they also point out about the Muslim divorced wife to recourse back to the crpc as it is straightforward provision where if the Muslim divorced wife can demand the post-divorce maintenance from the husband and if they deprived of their right, formerly they can register under section 125 which constitutes till she remarry, if they are ruled out it would not be fair, just and reasonable. As under the new act divorced wife who is previously in trauma first bears to recognize the door of the husband, if the husband is not efficient to retain her then farther she has to fight for her right against the relative if the relatives are not keen to support thus to the waqf board. So these all arrangements are not reasonable and are not a fair substitute of section 125 mentioned under criminal procedure code, which is the general law and cannot deprive anyone from retaliating and to the violation of rights they have endured. So the Muslim divorced woman can not be excluded of any provision mentioned under the chapter of maintenance. Further, it is not comprising all the Muslim women who are married through different act other than Muslim Personal Law under section 2 of the new act. Finally, it was interpreted in such a process under which it was not declared unconstitutional by the supreme court and was made in favour of the Muslim divorced woman suffering from the illness of destitution and vagrancy.⁷⁴

The poorly drafted new act extended the ample extension of interpretation to the judiciary which has been applied to reinforce the judgement of shah bano in most of the prospects further it was competent to bear the deflected end to be streamlined with the judgement to some extent.

⁷⁴ Daniel Latifi v.UOI, (2001) 7 SCC 740, 760

But there was the need for creating these arrangements more stronger by requiring more clarification to the articulate provisions in the new act.

Further in case of **Iqbal Bano vs. state of UP** and anr fulfilled all the left spaces remaining in the provision of a new act in extension to it enlarged the judgement of Daniel Latifi v. UOI, which was in shortly argued that the ex-husband is amenable to make and pay the fair and reasonable provision and maintenance while contemplating the future arrangement for basic facilities for the divorced wife, in which fair and reasonable provisions are broadening beyond the iddat period which must be made by the husband within the iddat period in terms of section 3 (1) (a) of the act.⁷⁵

In the case of **Iqbal Bano v. State of UP and anr**, the supreme court significantly interpreted that the provision Muslim Women (Protection of Rights on Divorce) Act, 1986 that it is better remedy as coordinated to section 125 of the criminal procedure code, as it guarantees the justice of the Muslim divorce woman sooner than the section 125 as under the new act the former husband has to pay the lump sum provision to the women dealing with the future arrangement of the divorced wife within the explicit time limit and without and procedural difficulty involved the monthly alimony under section 125. Beside this taking into consideration the beneficiary nature of the new act and section 125 of the code involving the divorce Muslim women, it was determined that it will be the prudence of the court to treat the petition under the new act or under the code.⁷⁶

After all this simplification further, if the petition under the new act comprises the Muslim divorced women, it failed to simplify the dilemma ascribed to the applicability of sec 125 to divorced Muslim woman as such. Further, in the case identified as **Shabana Bano v Imran Khan**, they also stipulated that if the woman seeks the help of the legal provision mentioned in sections 125, then it is lawfully correct. Beside this, in this judgement, they specified while referring to the case of denial Latifi and Iqbal Bano that the divorced woman would be empowered to assert maintenance against the former husband till she remarried. Honorable Court also pointed out that the Family Courts established under the Family Act shall have the exclusive jurisdiction to arbitrate upon the applications filed under S.125 of CrPC.⁷⁷

⁷⁵ *Id.* at 83.

⁷⁶ **Iqbal Bano vs. state of UP** AIR 2007 SC 2215, 2218 ¶9

⁷⁷ **Shabana Bano v Imran Khan** (2010) 1 SCC 666

Laws and procedures other than Muslim personal laws in relation to post-divorce maintenance for a Muslim woman in Bangladesh and Reformative principles in Bangladesh through judicial interpretation.

Under this heading, we will mainly focus upon the accessible legal provision in order to secure the post divorced woman in Bangladesh as the woman is one who devotes herself to her family, husband aspirations and seeks to fulfill it till the last day of the prevailing marriage. After the divorce, the suffering of the woman during the marriage cannot be restrained in the money, but to secure the basic necessities after the divorce is perceived as the understanding over the husband. We all recognized the post-divorce maintenance in the case of India as we scrutinized, analysed and examined above. Here we will determine the legal structure which is expanded upon to guarantee the rights of the divorced women in Bangladesh.

Bangladesh is the country with Muslim majority, mainly adheres to the hanafi school of Islamic law. Further, they are likewise engaged in the stringent interpretation of Quran and any alternative thoughts outside it is acknowledged as an anti-Islamic. Bangladesh is the country with the yearning connected history of the past where they confronted the dominance together of the British rule because of which most of the legal codes and essential strategies are taken over from them but they didn't, actually interfere with the intimate governing the subjects of the country. After the Bangladesh, India and Pakistan separation, they are unfolding in their own terms with the qualities they are instituting upon the society on the basis of the constitutional provisions. Mainly if we describe about the personal law of Bangladesh was camouflaged as previously before 1960 Bangladesh was the part of Pakistan and was formerly perceived as east Pakistan, due to which majority of the population is pursuing the Muslim Personal Law. After Bangladesh obtained independence from Pakistan it had contributed to some adjustments in the Muslim law.

Bangladesh is comparatively progressing less in the retrieval of family law, which essentially determines the reason for the rigorous interpretation of the Holy Quran which is depicted by the Bangladeshi Islamic community. The conceptions of marriage, dissolution and custody of children fall under the ambit of the religious community.⁷⁸

⁷⁸ Huda, Shahnaz, "Personal laws in Bangladesh: The need for substantive reforms", 15 DHAKA UNIVERSITY STUDIES 103, 103-126 (2004)

In the case of post-maintenance, Bangladesh is not at all advanced still is immersed in the older interpretation of the holy Quranic verses because of which there can be the substantial prospect that Muslim woman community in Bangladesh are indeed not cognizant of these rights. Which is ultimately pushing up the level of destitution and vagrancy level especially among the Muslim divorced woman in Bangladesh? In Bangladesh, the divorced woman is empowered to get maintenance, which lasts long only till the iddah period as spoken of in the strict interpretation of the Quran sura two verses 241 and 242. There is no perception observed in Bangladesh related between the mata'a and iddah maintenance. This inferiority in the perspective of any country directly towards the laws and provision for empowering women demonstrates the position and magnitude of women's status in that country.⁷⁹

“The Commission on Marriage and Family Laws designated by the Pakistan government (as predecessor of Bangladesh) proposed as early as 1956 that courts should be vested with the power to grant maintenance to an unjustly divorced wife for life or until her remarriage”⁸⁰ Further the subject of giving mataa to the wife was examined under this committee. There were positive recommendations regarding it. Besides this, they also addressed the issues of post maintenance to the divorced wife till the time of remarriage, in affirmative responses were recorded with the view that they should have the provision for the women for are middle tagged and are thrown out of their husband's house, homeless, with no security of food, clothes and important article which are required by the women to meet her basic needs after the divorce. They also pondered upon the situation where the destitute Muslim divorced women are thrown out with their children without any obligation of the husband towards them. They also illustrated the need of reinterpreting Islamic laws “as no progressive legislation is possible if Muslim assemblies remain only interpreters and blind adherents of ancient schools of law”⁸¹ But it was assailed by the perception that post maintenance rights of the divorced woman will revoke the rights of the existing wife and her share. Further explaining that:

“The grant of maintenance to the divorced wife would not only mean monetary injustice to the present wife but also lead to the moral degeneration of the beneficiary. The aid from a man who has lived as a husband for a long time would mean a standing threat to the chastity of the divorced woman... The members of the Commission look only to

⁷⁹ Dalia Pervin, *Post-Divorce Maintenance for Muslim Women: Which path to follow in Bangladesh?* 8 SOCIETY & CHANGE, 227 (2014).

⁸⁰Md. Sadekur Rahman & Hossain Mohammad Younus Sirazi, *Post-Divorce Maintenance (MAA'TA) For Muslim Women in Bangladesh, Pakistan and India*, 23, IOSR-JHSS,1, 1-10 (Feb. 2018).

⁸¹ *Id.* at 88.

the monetary aid while Islam aims above all at safeguarding the chastity of the divorced woman. Moreover, the continued payment of maintenance to the divorced wife would keep the mind of the present wife constantly vexed with suspicion. The proposal thus is ill advised and harmful”⁸²

This is a dubious argument overlooking the condition of the divorced women who is living as the homeless after devoting her life to the marriage, to the husband and children, after divorce her life is also not guaranteed as she sinks under the ambush of destitution and vagrancy, wherein that condition she sells herself to get some food for her and her child survival, later also her erstwhile partner does not oblige with any obligation under holy Quranic text interpretation to provide some basic facilities where she can repair herself from the emotional fractures she has sustained throughout. What’s the use of this superficial respect towards women which can even not take care of her life. What’s the treatment of the interpretation where ultimately the conditions for the woman are constituted to live in degraded life after suffering through divorce. This is tampering with her women’s rights and is precisely criticizing the perspective of the society developed towards women, the breakdown of enforceability of the constitutional provisions established there. They on the basis of the mechanism of misinterpretation of the quranic verses can maneuver the rights of everyone and particularly of divorced woman, This is not what the community can be created by interpreting the holy Quran in its appropriate sense.

The Koranic text is the outlook for the person in the room full of darkness by the way of its holy light, which indicates the pure essence of being human. Where positive equality is spread throughout the society, no one is robbed of their right, everyone is fulfilling their obligation as a human, as a true quranic text follower.

Supreme Court of Bangladesh in Hefzur Rahman v. Shamsun Nahar Begum

In the late 1990s, few cases pertained to post divorce maintenance were constructed with the prospect that the right of Muslim divorced woman would be secure at the end. The case in Bangladesh was forwarded by the high court division of the **Supreme Court of Bangladesh in Hefzur Rahman v. Shamsun Nahar Begum**⁸³ In this case parties got married in 1985, their son was born in 1987 and the husband divorced her wife in 1988, 1988. In November 1988, the

⁸² *Supra note 88.*

⁸³ Hefzur Rahman v. Shamsun Nahar Begum 47 DLR (1995) 74

divorced woman filed suit in family court for claiming Mehr and the maintenance for herself and her infant of taka 1000 per month each. Where the family court directed the husband to settle the iddat maintenance of taka 3000 for three months and also taka 600 to the infant from 1000 taka. High court reinforced the order of the family court expected to which infant maintenance was restored to 1000 and further they tried to give the liberal interpretation of the Quranic text in sura two verse 241 in order to understand the true interpretation of the Quranic verse, followed by the endorsed principle of ijithad by the court where Mainly after understanding the liberal translation of the Quran by Yusuf Ali, (that is “mataa on bill maarooof as “maintenance should be provided on a reasonable scale”); they sought to depict the mata’a in the manner where the justice for the destitute woman after the divorce can be guaranteed. They learned that the Quran mirrors the progressive, dynamic and universal character of Islam religion. Finally, they regarded the case and in response to which “they ultimately struggled to maintain the interpretation that the former husband was accountable for maintenance of wives until their remarriage on a reasonable scale”. While enacting it through various dictionaries of arabic translations were used and after they examined out that there is no contravention in between the arrangement of implementing the post divorce maintenance to the divorce women and in holy quranic text, they further executed that they are rather sympathetic and reinforcing about the divorce women.⁸⁴

However, **the decision of the high court was quashed by the appellate division of the supreme court of Bangladesh** on the grounds that the high court division wrongly interpreted mataa as leading out of the way dictated. As the Holy Quran cannot mean “maintenance on the reasonable scale” as bestowing to the appellate bench, it can be further falsified as the compensation in the form of presentation of some measures. Further they maintained that the preceding judgement of the high court downgraded the aspect of the perception of Quran, as it is deemed inadmissible to describe one verse disjointly as it will emerge in the misconception of the substantive understanding of the verse. Ultimately, they reinforced the destitution and vagrancy of the divorced woman by maintaining that no direct payment of maintenance beyond the iddat period in the holy Quran one is constrained to adopt the stern interpretation quoted in the Quran. Lastly, they interpreted mata’a as can never be figured out as the post divorce maintenance for fulfilling basic obligations under Quranic verses 241 in sura two. According to the court, the mata’a is the gift accorded to comfort the divorced women.

⁸⁴ *Id.* at 91.

Other Ways for Bangladeshi women

There are no provisions or any statutory legal provision for guaranteeing the justice for Muslim woman. It can be complied with that the appellate court has left the convenience to enact the provision for post divorce maintenance act which had the power to impact the disparate lives of destitute divorce Muslim woman. In response to which the Muslim woman wielding the Precondition in the marriage contract as an alternation way or indirectly way of bringing about the post divorce maintenance of the divorce women. But there is one condition administered to this stipulation that while impeding the agreement, the stipulated condition must be adhered to the Islamic principle as the Shariah ordain. For example, it was prevalent for marriage contracts in towns and cities to include conditions hampering the husband's right to take a second wife and providing for the wife's right to compensation, divorce, or both in case of breach of this undertaking or mistreatment.⁸⁵ These stipulations can be manipulated as the efficient apparatus to guarantee their right and herself from the destitute. But it also has a restricted benefit for a wife that can be stipulated beside this, can it be maintained when the marriage is not existing?⁸⁶ In current times, there are no arrangement or right as such for the post divorce maintenance in Bangladesh but A Bangladesh marriage form that is Kabin-nama where in the column number 17 there is the space for the Description of special condition which can be employed by the Muslim woman to be self aware of her right and were able to capture it to some degree.⁸⁷

Conclusion

Various frames evolved for achieving the rights of Muslim divorce women in India and in Bangladesh, one was successful while the other was handicapped because of the stringent interpretation constituted by various misinterpretations about the Muslim personal laws. The holy Quran source of this Muslim Personal Law is widely misinterpreted in a way that the people just managing the verse in order to curve the personal law into the point they prefer to carry out. They commonly pass their own interpretation and attitude toward that verse in order to substantiate what they want to see. Same happened in the instance of a post divorce maintenance where instead of some underlying support the divorced wife was left to die even after dedicating their entire history to their marriage, husband and children and pushed to experience the life of destitution. This negative perception by society stitched the enormous web in the name of the personal law, for these divorce Muslim women which at last left drained

⁸⁵ Muhammad Ekramul, *Utilities of Marriage Stipulations to remove Gender Inequalities and to Protect the Rights of Women*, 22 DHAKA UNIVERSITY L.J. 44 (2011).

⁸⁶ *Supra note 87*.

out physically, mentally and emotionally out the marriage are again thrown into the world where for survival they are marketing their body and soul.

The legal arrangement attitude towards the woman and weaker section is a direct proposition to the country's attitude toward them, and likewise the relevance and preservation of their rights. This legal arrangement and their rights are protected by the attitude of the discrete bodies like judiciary and government bodies and executive constituting it. Further, their attitude is modified and determined by the society and people that live in. And if the society is dazzled by the darkness of misinterpretation, then these bodies have to guide them, like if the rights of minority, woman, children are violated then it's the time of the bodies to bring up or amend the law and properly enforce it in the society to make a change. This can be the structure which is followed by India in case of post divorce maintenance and if this whole observation which varies for the Bangladesh because of the principal bodies like judiciary, parliament constituting the country together with society is not bracing for the transformation and wanted to tie up to the misinterpretation which led to the deterioration of the life of the divorce Muslim women in Bangladesh further discouraging the other countries to react on the subject matter.

Distinct steps were welcomed by both the countries in their own ways in which India seeks to have its different perception and condition upholding the amendment referring to the post divorce maintenance where the Judiciary played a an exceedingly imperative part in shaping the attitude of misinterpretation embedded in the society and arranged various rights looking upon it. But there are nevertheless some complexities which are still impeding the implementation of the evolved provision. That constraint is lack of consciousness among the Muslim women which inhibit them from obtaining the post divorce maintenance. Which will be resolved with the cooperation of everyone in the society as it's not exclusively the duty of the government. But the civil societies should consider responsibilities for the help of the Muslim divorced women and provide them all kind of support like legal help, mental help, medical help, etc. Further, one more prominent component which sometimes impedes them from obtaining any help is because of their religion where some downtrodden mentality people take advantage of them instead of supporting them. This can be addressed when there are no intermediaries but through the use of helpline numbers which can instantaneously connect her to the service center where she can encompass all kinds of facilities needed for legal help and information about the post divorce maintenance. This helpline department can be controlled by a separate government department. Furthermore there is also the need of the upgradation of the

waqf board and also to maintain the minimum amount should be fixed by the government for maintaining the financial stability of it.

Whereas if researcher talk about the Bangladesh situation then it possesses the long way to go when the influence of condition for divorced Muslim women will realized and through the gate of ijithad the legal provision can be made, but important change can come only if the evolution of the attitude of the society toward divorced Muslim women will evolve. But till then the interest of the women could be preserved from the preconditions before the marriage which will also take care of the post maintenance of her.

This is not just the story of one personal law but the story of every customary law which is used as the tool for oppression by the predominant class to the weaker class. The neglect of the concept of post divorce maintenance can be perceived as the sati of the Muslim law. As in Hindus, sati was the system where after the death of the husband the society forced the woman to die, on the same hand with some variation but answerable for a same condition of the women like through the neglect of the post divorce maintenance for the divorced wife is the condition where she is propelled to the experienced the life of the destitution in the society where everyday she is struggling to live, for most of these women prostitution is the way of sustaining. Both are in the way of degrading the life of the woman when the husband is dead, or the husband is not there or used her (divorced her). Nevertheless, at least the Muslim men got the opportunity to save the life of Muslim divorced wife from the place of misery created by the misinterpretation of the society in the prospect of the personal laws.