

# Provisions Regarding Maintenance after Dissolution of Marriage under Muslim Law in India

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**Abstract** - This paper discusses the various provisions of maintenance for Muslim wife after dissolution of marriage under Muslim law in India. This is a descriptive study based on secondary research. Muslim women's maintenance is primarily governed by the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986. Earlier it was covered under Section 125 of Cr.P.C, 1973. The paper elaborates the right to maintenance after dissolution of marriage based on different ways of dissolution- death of husband, divorce and Apostasy. Different Muslim laws, ie., Hanafi Law, Shia and Shafie law, Dissolution of Muslim Marriage Act, 1939) deal differently with Muslim women's maintenance in case of dissolution.

**Keywords** - Marriage, Dissolution, Iddat, Muslim law, women, Hanafi Law, Shia and Shafie Law, Divorce, Maintenance, Iddat, Apostasy

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## INTRODUCTION

The wife is entitled to maintenance only during the continuance of marriage and not during the term of her natural life. A marriage may be dissolved in several ways by apostasy. The right to maintenance after dissolution of marriage is different in each case. Before the enactment of The Muslim Women (Protection of Rights on Divorce) Act 1986 the Muslim divorce women were also entitled to seek maintenance under section 125 Cr.P.C, 1973 if they were unable to maintain themselves. Now the divorced Muslim women are ruled by the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986.

In Tyabji's Mohammedan Law it is said,

1. Under Hanafi Law, on divorce a wife is entitled to maintenance during her Iddat, whether the divorce is revocable or irrevocable, whether single or triple, and whether she is pregnant or not, unless the marriage has been dissolved for some cause of a criminal nature, originating from the woman.

2. Under Shia and Shafie Law, (a) the wife is entitled to maintenance during her Iddat if revocably divorced; (b) but not in irrevocably divorced; unless an irrevocable divorce is pronounced, during the wife's pregnancy, in which case she is entitled to maintenance until delivery."

"In husband's liability to support the wife continues during the whole period of probation, if the separation

has been caused by any conduct of his, or has taken place in exercise of a right possessed by her. The husband would not however, be liable to support the wife during the Iddat if the separation is caused by her misconduct."

"A woman undergoing the Iddat" says the Fatwai Alamgiri "on account of talaq, is entitled to maintenance and lodging, whether the talaq be revocable or irrevocable, and whether she be pregnant or not. The principle of this is, that when separation is induced by any cause proceeding from the husband, or by any cause proceeding from a third party, the wife is entitled to maintenance during her Iddat."

The Hanafi legists recognize a right in the husband to talaq his wife, even though she may not be present and the proceeding may never come to her knowledge until sometime after. But they hold that in such case the woman would be entitled to her full maintenance until she becomes aware of the talaq, and during the period of probation she has to observe thereon. If the woman be pregnant at the time of separation, her right remains intact until she is confined of the child.

Under Shia Law it is only where the talaq is revocable that the woman is entitled to "Maintenance, clothing and residence" during the Iddat whether she be a Muslim or Non-Muslim. Where the repudiation is irrevocable she has no right

to maintenance unless she is pregnant, when she is entitled to both until delivery.

### Dissolution of Marriage by Death

In this case a widow is not entitled according to better opinion, to maintenance during Iddat even though the wife is pregnant.

According to Shai Law a widow is not entitled to maintenance during the Iddat even if she is pregnant.

### Dissolution of Marriage by Divorce

In this case the wife is entitled to maintenance whether the divorce is revocable or irrevocable and whether she is pregnant or not.

- (a) Till the expiry of Iddat, if the divorce is communicated to her before that date or
- (b) Till the communication of the divorce, if it is communicated to her after the period of Iddat.

If, however, the talak was a result of any misconduct of the wife, she would not be entitled to maintenance during Iddat.

A muslim wife who is divorced is entitled to get maintenance from her erstwhile husband during the period of Iddat. It was held by A.P. High Court in *Maria Munnisa Begum v. Noore Mohammed Saheb* that, to get maintenance for this period, it is not necessary that a suit must be instituted even before the period of Iddat commences. That would be virtually impossible because Iddat starts from the date of the divorce and it will be possible except in extremely exceptional cases to institute a suit on the date of the talaq is pronounced.

The wife would also be entitled to maintenance during Iddat in the case of divorce in other forms, namely Khula, Ila, Lian, Zihar or if the separation results because of some supervening illegality, e.g. the husband having connection with the mother of the wife.

The wife is entitled to sue for interim maintenance at the place where she resides at the time of the divorce and receives the notice thereof.

Under Hanafi Law on divorce a wife is entitled to maintenance during her Iddat but not under the Shafei Law if she is irrevocably divorced. The reported decisions are to the effect that in India the presumption is that mohammedans are Sunnis and Hanafis and whenever a deviation from the Hahafi Law is sought to be relief on in a case, it has to be pleaded and proved.

### Dissolution of Marriage by Apostasy

If the marriage is dissolved on the ground of apostasy of the husband the wife would be entitled to

maintenance during Iddat but she has no right if she herself had apostized even if she returns to faith during Iddat. The wife would also not be entitled to maintenance if she apostatizes during Iddat if the talaq was revocable but she would be entitled to it if the talaq was irrevocable and she returns to faith.

**Shia Law** – The right of the wife to maintenance would revive immediately on return to faith even though the husband was absent.

"If the wife is converted from Islam to another religion" writes Tyabji "the marriage is under Mohammedan Law dissolved, and she loses her right to maintenance."

"If the wife is revocable divorced and she apostatizes, her right to maintenance is lost, and under Hanafi Law, does not revive by her subsequent return to Islam, but under Shia Law it revives on reconversion."

It is stated that, under Hanafi Law, if the divorce is irrevocable and the woman apostatizes, her right to maintenance (during Iddat) is not lost, except while she is in prison for apostasy. In India she would not be imprisoned, for apostasy, and she would not lose her right to maintenance, even under Hanafi texts. The Hanafi rule is, however different where a revocable pronouncement of talaq has been made, in which case if the wife apostatizes, she loses the right to maintenance. Perhaps the reasons for the distinction are that the law disapproves of irrevocable divorces, some of which are characterized even as sinful; and therefore, the husband is muled in maintenance in all circumstances after such divorces.

The Shia Law on the other hand allows the divorced wife maintenance if the divorce is revocable, but not if it is irrevocable, and the reason seems to be that the disapproved kinds of divorces are not permitted under Shia Law, and a considerable part of the Iddat expires before any pronouncement of divorce can become irrevocable under Shia Law. Divorces, revocable and irrevocable, stand on the same footing as far as the approval of the Shia Law is considered; and, as right be expected, a wife is more favoured during the period when the divorce is still revocable, than after it has become irrevocable.

### Section 4 - Dissolution of Muslim Marriage Act, 1939

Under the Mohammedan Law prior to this statute apostasy of either party to the marriage *ipso facto* dissolved or annulled a Muslim marriage. Section 4 of the Dissolution of Muslim Marriage Act, 1939 altered the law in respect of conversion from Islam of married women. In the case of conversion of a Mohammedan husband the law has not been changed and it still operates as immediate dissolution of the marriage. In the case of

Mohammedan wife section 4 of the Act provides that conversion does not *ipso facto* operate as annulment of the marriage. By reason of the proviso the above provision of the section does not apply to a woman, converted to Islam from some other faith, who embraces her former faith. In such a case the law as it stood before the dissolution of Muslim Marriage Act, 1939 will apply and the reconversion to former faith will operate as dissolution of the marriage.

### **Repudiation of Marriage**

A wife separated by the proceeding of Lien, is entitled to maintenance and lodging. So also a woman separated by Khula or by reason of the apostasy of her husband, or of his having been guilty of misconduct. So also the wife who has obtained a cancellation of her marriage on the ground of the impotency of her husband, and a young girl who avails herself of the option of puberty on arriving at the proper age, and a woman who after consummation has been separated from her husband for inequality.

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