

**MUSLIM WOMEN'S RECEIVE SOCIAL SECURITY UNDER
MUSLIM LAW: A CRITICAL ANALYSIS**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD
OF DEGREE OF MASTER OF LAWS**

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CERTIFICATE

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PREFACE

Women's equality in society is neither a new nor a totally resolved topic. Women's status in many human communities around the world varies. Women hold an unrivalled status in all civilizations, whether developed, developing, or underdeveloped. Almost all human communities in various parts of the world are governed by men. Males play an active role in society, whereas females play a passive role. Muslim women have been fighting for gender equality under Islamic law, which governs marriage, divorce, and property rights, for decades. This study aims to provide a concise and accurate presentation of Muslim women's rights as well as an assessment of women's status.

India is a secular and independent country that welcomes people from all walks of life, regardless of their background or religion. India is a varied country because it claims to treat everyone with respect and decency. With a Muslim population of 102 million (as of 2017), India has the world's third largest Muslim population and the world's largest Muslim-minority population. India has 10.3% of the global Muslim population. According to the 2011 census data, India has over 84 million Muslim women compared to over 88 million Muslim men, indicating that females have a 5% lower birth rate than males in Islam.

When we look at the rules that apply to Muslims in different countries, we can see that India allows them to enjoy both personal and legislatively enacted laws. Muslim women have access to Indian courts and can take use of Indian rights and personal laws. This is not available in every country. For example, Article 2 of Egypt's constitution declares Shariah to be the country's law source, implying that they only follow Islamic law. As a result, Egypt's women's maintenance rights are severely restricted, and their marriage age is set at 16, with polygamy permitted.

There are many types of security provided by the Islam even in Islam the man and women considered equally but due to interpretation of Islam there is a huge difference created between man and women. It is right that security is given but in reality the condition of Muslim women in India is very harsh, sometimes they are treated like a toy. In this research paper, researcher try to find out that what kinds of security provided to Muslim women and is she able to enjoy that security. This study is critically examining the social security given to Muslim women under the Muslim law.

In Chapter one the researcher has highlighted about the general introduction that what is the social security given to Muslim women and what is the origin of that security, also discuss the types of security like mahr maintenance etc. In this chapter the researcher also discussed the provisions of Quran that what the Quran say about the rights of Muslim women's.

In chapter two deals with the historical background of the security provided to the Muslim women's. In the chapter it has also been discussed by the researcher that what is mahr, what is marriage how many forms of the marriage, is there is any disabilities provided or not, also highlighted the classification of marriage that is void marriage valid marriage irregular marriage and what are the conditions of that marriages. The researcher also discussed the nature of Muslim marriage and lastly what is divorce and the kinds of divorce and is women have right to take divorce to her husband or not.

In chapter third the researcher highlighted about the concept of mahr under the Muslim law, an overview is given in this chapter. Researcher highlighted the general concept with nature of the mahr, what are the essentials of mahr are given in the Muslim law are discussed in this chapter. Also discussed the classification of mahr that is specified dower unspecified dower also the prompt and deferred dower and when the dower is given. Researcher also discussed the quantum of mahr and the value of 10 dirham. In this chapter the researcher also discussed the right of retention of the specified mahr.

In chapter four, the researcher discussed about the concept of maintenance under the Muslim law which is given to the Muslim women's. In this chapter discussed about the agreement to maintenance, maintenance given to widow or not and who is given maintenance to the Muslim women after divorce or after the death of her husband. In this research the researcher tries to find out the difference between the criminal procedure code and the Muslim laws regarding the concept of maintenance because there are huge controversies regarding this topic. The researcher also discussed the Muslim women (protection of rights on divorce) act, 1986. The provision of this act and also discussed the constitutional validity of this act, also highlighted that what this act came into force. And at last the researcher discussed the legislative and the judicial view on maintenance.

In last chapter i.e chapter five end with the conclusion and the suggestion that how the condition of Muslim women can improve, that it's not the Quran which differentiate between Muslim man and women, it's the interpreter of Islam which interpreted Islam according to his convenience, because they always wants to be superior. In this chapter the researcher also discussed the role of media to interpret the Islam only for the sake of business.

LIST OF ABBREVIATIONS

S. NO.	SHORT FORM	FULL FORM
1.	AIR	All India Reports
2.	ART	Article
3.	Bom.	Bombay
4.	Cr. L.J.	Criminal Law Journal
5.	Cr.P.C.	Code of Criminal Procedure
6.	Edt.	Edition
7.	Etc.	Etcetra
8.	ILR	Indian Law Report
9.	PC	Privy Council
10.	SCC	Supreme Court Cases
11.	Sec.	Section
12.	UOI	Union of India
13.	V.	Versus

LIST OF CASES

S. No.	NAME OF THE CASE	CITATION/REFERENCE
1.	Abdul Kadir v. Salima	(1886) ILR 8 All 149
2.	Abdur Rehman v. Wali Mohammad	AIR 1923 (Pat) 72
3.	Abi Dhunissia Bibi v. Mohammad Fathi-ud-din	(1918) ILR 41 Mad 1026
4.	Abid Ali v. Mst. Raisa Begum	1988 (1) Raj. L.R. 104
5.	Ali v. Safaria	(1988) 2 K.L.T. 94
6.	Arab Ahemadhia Abdullah v. Arab Bail Mohmuna Saiyadbhai	AIR 1988 Guj 141
7.	Asma Bibi v. Abdul Jamal	ILR 32 Allahabad (1910) 167
8.	Asia Khatun v. Amarendra Nath Babu	AIR 1940 Cal. 578
9.	Atiqa Begum v. Mohd. Ibrahim	Privy Council Appeal No. 67 of 1915
10.	Ali Yar v. Puthu	1988 (2) KLT 446
11.	Babee Bachun v. Hamid Hussain	(1871) 14 MIA 377
12.	Badruddin v. Aisha Begum	1957 All LJ 300
13.	Bai Fatima vs. Ali Mohammed Aiyeb	(1912) 37 Bom. 280
14.	Ch. Shakar S.Dass V Mahbub Jain	AIR 1942 Peshawar 92
15.	Chand Bi v. Bandesha	AIR 1961 Bom 121

16.	Cooverbai Nasarwanji Bulsara v. Hayatbi Budhan Bai	AIR 1943 Bom. 374
17.	Danial Latifi v. Union of India	(2001) 7 SCC 740
18.	Syed Fazal P.T. v. Unioin of India	AIR 1993 Ker. 308
19.	Ghana Kanta Mohania v. Gereli	(1904) 32 Cal. 479
20.	Hafijabi v. Suleman Darwajkar	AIR 1996 (Bom) 80
21.	Hamira Bibi v. Zubaida Bibi	I.L.R. 38 All 58
22.	Iqbal Ahmad Khan v. State of U.P.	1998 (1) AWC 288
23.	Jusab v. HajiAdem	(1911) 37 Bom. 71
24.	Kapoor chand v. Kadar- unnissa	1953 AIR 413; 1950 SCR 747
25.	Karim Abdul Reluman Shaikh v. Shehnaz Karim Shaikh	(2000) (3) MILJ 555
26.	Khurshid Khan Amin Khan v. Husna Bano	(1976) 78 BOMLR 240
27.	Kunhi Moyin Vs. Fathumma	1976 KLT 87
28.	Marina Jatoi v. Nuruddin Jatoi	P.L.D. 1967 S.C. 580
29.	Mirvahedali Kadumiya Vs. Rashidbeg Kadumiya	AIR 1951 Bom. 22
30.	Mohd. Ahmed Khan v. Shah bano begum	AIR 1985 SC 945
31.	Mohd. Jusab v. Haji Adem	(1912) 14 BOMLR 336
32.	Mohd. Karimullah v. Amam Begum	I.I.R. 17 All 93

33.	Mohd. Shahabuddin v. Mst. Umator Rasool	AIR 1960 Pat 511; ILR 38 Pat 624
34.	Mst. Bibi Makbul Unnisa Vs. Mst. Bibi Umat- un-Nisa	AIR 1925 All 474
35.	Mst. Mahtab-un-Nissa v. Rifaqatullah	AIR 1925 All 474
36.	Mst. Maina Bibi Vs. Vakil Ahmed	(1924) 52 IA 145
37.	Mst. Zohra Khatoon v. Mohd Ibrahim	1981 SCR (2) 910
38.	Mst. Ghulam Kubra v. Mohd. Shafi	AIR 1940 Pesh 2
39.	Mydeen vs. Mydeen	AIR 1951 Mad. 992
40.	Nansur vs. Azizul	(1928) 3 Luck. 603
41.	Naseem v. State of U.P	AIR 1993 SC 2592
42.	Nasra Begum v. Rijwan Ali	AIR 1980 All 118, 1979 All WC 722
43.	Noor Saba Khatoon v. Mohd. Khatoon	AIR 1997 SC 3280
44.	Noor Sabha Khatoon v. Mohd. Qasiru	AIR 1997 SC 5211
45.	Patnam Vahedullah Khan v. Ashia Khatoon and another	(2000) Cr. CLJ 608
46.	Rabia Khatoon v. Mukhtar Ahmed	AIR 1966 All 548
47.	Rizwana Begum v. Motiullah	1989 Cr. (NOC) 155 Ori 15
48.	Sadiq Ali v. Jaikishor	(1923) 30 Bom. LR 1346

49.	Sarwari v. Shaf Mohammad	Criminal Revision No. 255 of 1955
50.	Sughra v. Masuma	(1880) ILR 2 All 573
51.	Syed Ahmed Khan vs. Smt. Imrat Jahan Begum	AIR 1982 All 155
52.	Syed Fazal P.T v. Union of India	AIR 1993 Ker 308
53.	Shoharat Singh v. Jafri Begum	17 Bom LR 13 (PC)
54.	Umar Hayat Khan v. Mahabubunnisa	1976 Cri LJ 395
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CHAPTER ONE

1. INTRODUCTION

The notion of social security is founded on the principles of social justice and fundamental human rights to a fair standard of living. Social security is founded on the notion that certain people in the society cannot afford to deal with certain fundamental economic hazards on their own, and that there will always be individuals whose own resources and efforts fall short of meeting their basic necessities. Among those people, “women” are one of them. This research paper examines the original Islamic viewpoint and judicial attitude on Muslim women’s social security. Islam gives women social security in the form of Maher, Maintenance and share of Inheritance. Under Muslim Law, a woman has the unfettered right to Maher, maintenance, and share the Inheritance. This study examines and determine the actual position of Muslim women and the extent to which she is protected under Islamic law. The paper highlights the current societal situation and what Quranic ordains exist on women’s social security, notably Maher, Maintenance, and Inheritance. With this in mind, a review of major judgments in the areas of Maher and maintenance, all of which are connected to Muslim women’s social security, has been made.

1.1 OVERVIEW OF THE RESEARCH

Women's equality in society is neither a new nor a totally resolved topic. Women's status in many human communities around the world varies. Women hold an unrivalled status in all civilizations, whether developed, developing, or underdeveloped. Almost all human communities in various parts of the world are governed by men. Males play an active role in society, whereas females play a passive role. Muslim women have been fighting for gender equality under Islamic law, which governs marriage, divorce, and property rights, for decades. This study aims to provide a concise and accurate presentation of Muslim women's rights as well as an assessment of women's status.

India is a secular and independent country that welcomes people from all walks of life, regardless of their background or religion. India is a varied country because it claims to treat everyone with respect and decency. With a Muslim population of 102 million (as of 2017), India has the world's third largest Muslim population and the world's largest Muslim-minority population. India has 10.3% of the global Muslim population.

According to the 2011 census data, India has over 84 million Muslim women compared to over 88 million Muslim men, indicating that females have a 5% lower birth rate than males in Islam.

When we look at the rules that apply to Muslims in different countries, we can see that India allows them to enjoy both personal and legislatively enacted laws. Muslim women have access to Indian courts and can take use of Indian rights and personal laws. This is not available in every country. For example, Article 2 of Egypt's constitution declares Shariah to be the country's law source, implying that they only follow Islamic law. As a result, Egypt's women's maintenance rights are severely restricted, and their marriage age is set at 16, with polygamy permitted.

1.2 STATEMENT OF PROBLEM

There are many types of security provided by the Islam even in Islam the man and women considered equally but due to interpretation of Islam there are huge differences created between man and women. It is right that security is given but in reality, the condition of Muslim women in India is very harsh, sometimes they are treated like a toy. In this research paper, researcher try to find out that what kinds of security provided to Muslim women and is she able to enjoy that security. This study is critically examining the social security given to Muslim women under the Muslim law.

1.3 APPROACH

The approach used in this research is theoretical in nature.

1.4 AIMS AND OBJECTIVES OF RESEARCH

The aims and objectives of this research is to identify the gap between the rights of women in Islam.

Their quantum of power to exercise their rights in a legit way.

The amount of freedom they have in exercising their power to have their rights fulfilled.

The remedies they have if rights are infringed in a non-legit way.

1.5 REVIEW OF LITERATURE

That the laws have been taken from Indian Penal Code, 1860, Code of Criminal Procdeure,1973 and Muslim Women (Protection of Rights on Divorce) Act, 1986 and there are also several literature books which have been read and reviewed to analyse the topic and to understand it.

1.6 HYPOTHESIS

Whether the rights of Muslim women under Muslim law guarantees equality.

Rights of women as compared to men in Islam are impartial in nature, how.

Why their's a diversity in the rights of two.

1.7 RESEARCH METHODOLOGY

- The methodology or research approach used is purely doctrinal in nature.
- The doctrinal research involves going to the root of legal principles and concepts to understand and analyze and reach valid conclusions. A researcher composes a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations).
- The pivot point of this doctrinal research is answering the question
- It is library based and reviewing different materials research, which implies that we try to find answers to legal question through a thorough cut investigation and digging deep in the legal provisions from the books, statutes, legislation, commentaries and other legal documents. It's theoretical research and does not involve any kind of experimentation and field surveys or works.
- Here, we basically seeing that what are the rights of women and its critical analysis how it is recognized within India which statute recognize its legitimacy etc. The whole proposition begins with a starting point that what is the rights of Muslim women, its history and how it is recognized and then the entire research is directed in finding the validity and of that hypothesis. It simply means reviewing and studying different legal documents and deducing a complete answer to the question asked at the beginning by means of rational understanding, rational interpretation and logical reasoning.

1.8 SIGNIFICANCE OF RESEARCH OR TENTATIVE CHAPTERIZATION

Chapter 1 Introduction

- In Chapter one the researcher has highlighted about the general introduction that what is the social security given to Muslim women and what is the origin of that security, also discuss the types of security like mahr maintenance etc. In this chapter the researcher also discussed the provisions of Quran that what the Quran say about the rights of Muslim womens.

Chapter 2 Historical Background

- In chapter two deals with the historical background of the security provided to the Muslim womens. In the chapter it has also been discussed by the researcher that what is mahr, what is marriage how many forms of the marriage, is there is any disabilities provided or not, also highlighted the classification of marriage that is void marriage valid marriage irregular marriage and what are the conditions of that marriages. The researcher also discussed the nature of Muslim marriage and lastly what is divorce and the kinds of divorce and is women have right to take divorce to her husband or not.

Chapter 3 Concept of Mahr Under Muslim law: An Overview

- In chapter third the researcher highlighted about the concept of mahr under the Muslim law, an overview is given in this chapter. Researcher highlighted the general concept with nature of the mahr, what are the essentials of mahr are given in the Muslim law are discussed in this chapter. Also discussed the classification of mahr that is specified dower unspecified dower also the prompt and deferred dower and when the dower is given. Researcher also discussed the quantum of mahr and the value of 10 dirham. In this chapter the researcher also discussed the right of retention of the specified mahr.

Chapter 4 Right of Maintenance of Muslim Women -A Study

- In chapter four, the researcher discussed about the concept of maintenance under the Muslim law which is given to the Muslim women's. In this chapter discussed about the agreement to maintenance, maintenance given to widow or not and who is given maintenance to the Muslim women after divorce or after the death of her husband. In this research the researcher tries to find out the difference between the criminal procedure code and the Muslim laws regarding the concept of maintenance because there are huge controversies regarding this topic. The researcher also discussed the Muslim women (protection of rights on divorce) act, 1986. The provision of this act and also discussed the constitutional validity of this act, also highlighted that what this act came into force. And at last the researcher discussed the legislative and the judicial view on maintenance.

Chapter 5 Conclusion and Suggestion

- In last chapter i.e chapter five end with the conclusion and the suggestion that how the condition of Muslim women can improve, that it's not the Quran which differentiate between Muslim man and women, it's the interpreter of Islam which interpreted Islam according to his convenience, because they always wants to be superior. In this chapter the researcher also discussed the role of media to interpret the Islam only for the sake of business.

1.9 INTRODUCTION: A General Overview Unveiling the Status of Women In Islam

The issue of women in Islam is fraught with misunderstanding and distortion, owing in part to a lack of understanding, but also to the misbehavior of some Muslims who have been misrepresented as representing Islam's teachings. We're talking about what Islam teaches, which is the standard by which Muslims should be judged. As a result, the Quran, Allah's words, and the Prophet's sayings, deeds, and confirmation serve as my foundation and source. These are the sources from which Islamic laws are derived. We can talk about women's spiritual, economic, social, and political positions to help us with our conversation. The greatest method to assess a country's progress is to look at its women's situation. Women's status in a society is a true reflection of its cultural and spiritual achievements. Women have always been an important component of society, dating back to the dawn of time. Her contributions to the evolution of ideals that have counted for what might be characterized as all-around progress have been significant. Her position serves as a yardstick for judging any age's cultural standard. The standing of women in relation to males is a key indicator of a society's growth.

The more women participate in a culture, such as India's, the more equal the opportunity structure for men and women becomes. Regrettably, their contribution is rarely acknowledged, and they remain ostracized. Due to a lack of education, technical skills, and information, they are denied access to social resources. The vast majority of women are victims of feudal and religious fundamentalism complexity. Women are still considered as commodities, and as a result, greater atrocities against women are becoming increasingly common. Women are denied gender justice as a result of gender bias. This is a universal truth regarding women across the globe, regardless of race, class, location, society, or nation, and Indian women are no exception.

If someone wishes to learn about the status of women in any civilization, they must first learn about the variety of roles that women play in society in terms of socioeconomics, culture, religion, and politics. It's also crucial to learn about how they deal with challenges and scenarios associated with their sex roles from birth to death, as well as how they react to these events. The role of women has changed over time and from society to society. In general, the position of women in Muslim society is often a topic of debate. It is commonly assumed that Islam is an adversary of women since it degrades and lowers her status by declaring her mentally incompetent and placing her in a position similar to that of animals. She is reduced to nothing more than a machine for the propagation of the human species and a source of sexual fulfillment for man: Which is enough to demonstrate how subordinate woman

is to man in the eyes of Islam, with the result that man rules her and has an overall supremacy over her. It is a common misconception that a Muslim male has unrestricted authority over Muslim women. This begins after her marriage, when she realizes she does not have a respectable life to live and no provision for her social security. Whether it is a matter of Mahr, Divorce, or Maintenance, she always finds herself in a sea of deep sorrow and loneliness.

Women's rights are human rights, and this conclusion is one side of the picture when it comes to Islam. Like other religions around the world, Islam recognizes women's rights as vital and fundamental to society's effective functioning. Islam is based on the belief that biological and psychological distinctions exist between men and women, that these distinctions should be preserved, and that these distinctions should be used to determine men and women's roles and obligations in society. Islam has given women extensive social and economic rights, enhanced their position, and offered moral and legal safeguards in its system for the protection of their rights and position that no other social system can match. The Holy Book Quran addresses its readers solely as believers, not as men and women of any particular social class or religious community. Islamic Law draws no distinction between the protection of life and property, as well as honor and reputation. However, simply citing this fact does not convey the full extent to which Islam has honored women and improved their status in society.

The history of human civilization reveals that woman has long been viewed as a symbol of depravity, humiliation, and vice. A man was so ashamed by the birth of his daughter that he could not raise his head in shame. The custom of disposing of daughters by killing them had become common among many nations. Apart from the illiterate and ignorant, learned scholars and religious leaders also disputed for generations whether woman was a human being, and whether the Almighty God had granted her a soul. Both men and women's minds had been affected by Islam. Islam is responsible for instilling in men the idea of granting women their rights and a place of honor in society.

The feminist slogans, such as "women's rights," "women's education," and "women's emancipation," that one hears so often these days are actually an echo of the Holy Prophet Mohammad's revolutionary cry, which forever revolutionized man's way of thinking. It was Islam's Prophet Mohammad who first taught the world that a woman is just as much a human being as a male, and that God makes no distinction between two.

“Islam is the first religion in the world which recognized women as a legal entity and gave her all right that man enjoyed. Islam brought about freeing of women from bondage and gave her identical rights and recognized her uniqueness as human being. Islam improved the status of women by instituting the rights of possessions, ownership, inheritance, education, marriage and divorce”.¹

Because of the ulama's and jurists' disagreements, this core idea has remained in the middle till now. The injunctions of the Quran about women were not acceptable in a particular society because they directly challenged men's seeming authority and made women equal to men in every way. Because of the ambiguity in the numerous rights and varied interpretations of the Quran, women are in a much more difficult position in the absence of a proper codified rule in Muslim personal law. In Islam there are various rights are provided to the Muslim women or you can say that there are various security provided to Muslim women but we know our society is so dynamic and the laws are interpreted by the high officials of Islam. And now women's are only a part of entertainment because of the patriarchal society they don't want that women do any work beyond his power and that's why many laws are wrongly interpreted.

The Prophet Mohammad elevated the woman from shame and humiliation to a position of honor and respect. He reminded the father that having a daughter was not a source of shame for him; rather, raising and educating her was a path of salvation. The Prophet Mohammad was the one who pointed her own legal rights, for which she might seek legal protection. Women had discovered in the Prophet Mohammad such a kind, empathetic, and strong protector of their rights that they would readily approach him with all kinds of complaints about their husbands' mistreatment. The males, on the other hand, were wary of giving their wives the opportunity to file a complaint against them with the Holy Prophet Mohammad. According to Abdu Uah-bin Omar, the companions of the Prophet Mohammad treated his women with the utmost politeness during his lifetime for fear of a commandment being brought down concerning them, and it wasn't until after he died that they began interacting freely with them.

According to Ibn-i-collection Majah's of traditions, the Holy Prophet Mohammad forbade women from being mistreated. When Hazrat Umar complained that the women had become insolent, he requested permission to use violence to enforce their rights. The Prophet Mohammad granted the permission,

¹available at: <http://www.legalserviceindia.com/legal/article-234-rights-of-muslim-women-an-analysis-underpersonal-law.html>(visited on 3 June, 2021).

and the next day, seventy women were beaten in their homes by husbands who had been waiting for this permission for a long time.

This moral and legal reform resulted in the woman achieving such a high status in Islamic society that it has never been seen before in history. In both religious and mundane worlds open to the Muslim male, the Muslim woman has the right to the highest rank of honor and advancement materially, intellectually, and spiritually. At no point does her sexuality get in the way. Even in the twenty-first century, the world falls short of this Islamic standard. Human intellectual progress has not yet reached the level set by Islam.

The Holy Book has given women not just the right to equal status, but also the right to education and equal rights to contract, start a business, make money, and own property. Prophet Mohammad declared over 14 centuries ago that every Muslim male and female is obligated to seek knowledge.

Thus, the study of Islam indicates that a woman is equal to men in terms of personal and communal responsibilities, and in terms of obtaining rewards for her accomplishments and deeds; she is recognized as an independent entity with human attributes and spiritual ambitions. Her human nature is neither inferior nor abnormal in comparison to men's.

As a result, in Islamic Law, a woman's legal, moral, or social position is unaffected in any way. Islam, as a religion, on the one hand, protects all of her legal rights and, on the other hand, encourages society to treat her with kindness and fairness. Islam fosters an environment in which, whatever position a woman achieves, she holds it with dignity and honor. No alteration in her honor and dignity can happen as long as such encouragement exists.

No one is able to bring her down from her perch. After Almighty God, His Prophet Mohammad, and Mother, Islam assigns the highest position. Because both of them bestow benevolence on him, Islam tells man to respect his father and mother with justice and fairness, and mandates him to obey them. However, the Quran and Hadith make more explicit and prominent references to mother's enormous kindness.

Islam not only emphasizes the legal rights of mothers and fathers, but also recommends treating them with kindness and decency. According to Islam, parents' legal rights should be respected wholehearted, with love and devotion, and should not be seen as a burden. It also reveals that, aside from legal rights, one should treat parents with as much dignity and respect as possible, and that, once again, mother deserves more affectionate attention. Mothers should be rewarded for better behavior than fathers are.

The principles of Islam are quite explicit in regards to daughters, and they are treated extremely well. Parents were very proud of their sons prior to the Prophet Mohammad's proclamation of prophet hood, and they were thought to be their greatest asset since they gave their tribe more power, and they and they were assistants in their tremendous exertion in the field of money. Daughters, on the other hand, were thought to be a burden and a source of shame or humiliation.

In place of their savage and harsh thoughts, Islam instilled completely other feelings in girls. In Islam, adequate nourishment and sustenance of females is encouraged. It is considered a good deed and a means of achieving Heaven. According to Hazrat Aisha, Prophet Mohammad said, "*Whoever is in charge of three daughters and treats them graciously will be put to the test.*" They will then operate as a barrier between him and the (Hell) Fire.

But now the condition is different in reality the position of women is very harsh, not a single day goes spare of news about Muslim women rights violation. Zeid Raad alHussein, the United Nations human rights commissioner states about the murder of an Iraqi lawyer, who was promoting women's rights in Iraq by Islamic State Fighters².

Sons are generally shown more love and devotion in terms of food, clothing, education, and training, and they are given preference in every way. This is complete oppression and unfairness. Such treatment is forbidden and condemned in Hadith. Glad tidings for escape from Hell and the accomplishment of Heaven are presented in all of these Hadith on adequate nourishment, education, training, marriage arrangements, and equal treatment for daughters or sister's. The value of these Traditions is lost on those who do not believe in God and the everlasting day, and who place all their emphasis on the current world alone. However, the believer's (Momin) ultimate purpose is to succeed on the Day of

²available at: https://amity.edu/UserFiles/aibs/a94f2019%20AIJJS_72-84.pdf(visited on 4 June 2021).

Judgment. This goodness contains everything he desires for a believer. An example of such a teaching for the fair and just treatment of girls can be discovered.

According to Islamic Law, if a child does not have a job or enough means of subsistence, his father is obligated to provide for his upkeep. According to this regulation, a daughter's maintenance or allowances are required from him or she until her marriage and in the absence of his father, her nearest relative is responsible for her maintenance. After marriage, the obligation for her maintenance passes to her husband, and in the event of her husband's death or divorce, and if the woman is not financially self-sufficient, the responsibility passes to her children, or if she has no children, it passes to her nearest relative. This is a legal privilege, and its significance is highlighted in the Tradition. In terms of her function as a wife, she is not a toy for her husband, and he does not have unrestricted authority over her. In Islam, women have their own self-contained entity. Her obligations do not evaporate in the personality of her husband as a result of Nikah, nor does she become his slave or servant. When she takes on new obligations after marriage, she also gains new rights. Her rights cannot be revoked.

There is some legal and moral basis, Islam provides for this relationship:

The relation of husband and wife is, infect, the relation of love, affection, and intimacy as described in the Holy Quran. There is always a head of every minor in the institution. In Islam, man obtains the position of a head of the family for several reasons, but it does not mean that man has acquired unlimited and whole and sole authority on his wife. Woman, while accepting the superiority of man in domestic life, gains, and enjoys all rights of maintenance residence alimony and education and training and several other rights. If a man falls short of performing all these rights of woman, she can secure them through law for her social security.

3. The Islam exhorts man not only to discharge the legal rights of his wife but to behave with her decently and justly. Nice treatment with wife is required in every condition.

Allah says in Almighty the Quran:

On the contrary I live with them, On a footing
of kindness and equity.

If they take a dislike to them.

It may be that ye dislike.

A thing and Good brings about.

Through it a great deal of good³.

As a result, the best man is the one who treats his wife with justice and fairness. The type of relationship that Islam aims to promote between husband and wife is obvious from the preceding study. If they have such a relationship, both of them will be each other's assistants and well-wishers, their lives will be happy and ideal, and all of the unpleasant rights and demand issues that cause disruption and damage domestic life will never occur in their lives. In this way, women's legal rights are protected in the Islamic family system. She not only has a respectable social rank, but she is also covered by social security.

The scholar has made a sincere effort to analyse the condition of Muslim women while keeping in mind their social security in the pursuit of Islam, for which the study is rigorously adhered to three important areas of Muslim women's security, namely Mahr, Maintenance, and Inheritance.

According to Islamic Law, a woman has total rights to Mahr, Maintenance, and her Share, which are all protected by Inheritance Law. This study was carried out in order to examine and evaluate the true position of Muslim women and the extent to which she is protected under Islamic law. With the goal of highlighting the current societal situation and what Quranic ordains exist for women's security, notably Mahr, Maintenance, and Inheritance.

This research examines the original Islamic viewpoint and judicial attitude on the issue of Muslim women's security, taking into account the demands of time and circumstance. In the recent past, it has been seen that courts have issued judgments that are not in accordance with the spirit of Islamic law (with proper consideration for the court). With this in mind, a review of major judgments in the areas of marriage, mahr, maintenance, and divorce, all of which are connected to Muslim women's social security, has been conducted. Furthermore, it is claimed that in Islam, law and religion are so inextricably linked that they cannot be readily separated.

³available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/294085/6/06_chapter%201.pdf(visited on 4 June, 2021).

Shariat and Fiqh both flow through a single canal. The Shariat incorporates both law and religion, which may work in opposition to one another. The current changing topic necessitates a fresh study into Islamic Law, which has yet to be revealed or has been misinterpreted. As the study demonstrates, the Holy Prophet Mohammad and Islam were responsible for far-reaching and human improvements. However, Islam places a high importance on education and considers it to be the responsibility of both men and women to gain knowledge. However, in reality, the Muslim community, particularly its women, has difficulties due to a lack of education and awareness.

Islam considers education to be a fundamental requirement for women to develop their capabilities. According to Mohammed Qutb, acquiring knowledge is as much a woman's responsibility as it is a man's, because Islam intended for women to develop their reasoning powers alongside their physical ones, allowing them to aspire to higher planes of spiritual existence.

Knowledge enables its owner to differentiate what is banned from what is not, it lights the way to heaven, it is our friend in the desert, our society in loneliness, our companion with the benefit of friends, it directs us to happiness, the Prophet Mohammed preached to his people. As a result, Islam has prioritized education in people's lives. Despite the fact that Prophet Mohammed advocated for women's education, the Quran's injunctions on the subject are frequently disregarded in practice. Because of their lack of education, the Muslim community has misconstrued numerous Islamic teachings, particularly laws pertaining to women and their relationships with males.

As a result, education is a necessity for the social and economic upliftment of women, so that they can enjoy the rights that have been granted to them. Their rights can only be protected if they are aware of them. They will only be able to achieve their goals if they are aware of their rights.

This research's extensive analysis of Marriage, Dower, Divorce, Maintenance, and Inheritance will amply testify to the advances wrought by ISLAM, particularly the way in which it has elevated the status of women by providing them with social security. The Quran and Hadith are the foundations of Islamic law. The basic source of Islamic Law, the Holy Book Quran, bestows enormous rights on mankind. The Holy Book Quran, also known as 'Al-Quran,' is the source of Islam's foundational beliefs and commandments. Every Muslim believes that the Quran is the divinely revealed book, and that as a result, all positive rules derived from it have precedence over laws enacted by mankind.

It is the true basis upon which Islam's vast superstructure is built." In any discussion on Islamic ideas and regulations, it is the only absolute and final authority. All laws, norms, and principles must be in accordance with the Quran's and Hadith's spirit. Anything that contradicts the Quran's requirements or contradicts Hadith shall be rejected. The Quran, in its current form, is a book divided into 114 verses and including roughly 6666 verses, with less than 200 verses dealing with legal concepts and almost 80 verses dealing with Marriage, Dower, Divorce, and other topics.

In this context, the Shariat Act of 1937 strives to restore Islamic law to all Muslim communities in India and to remove customs that are in violation of the Shariat. This act applies to every Muslim, regardless of whose school he or she belongs to. The interpretation of Islamic law is also influenced by judicial decisions.

These rulings include those of the Privy Council, the Supreme Court, and the several High Courts of India. Judges articulate the law when making decisions in specific circumstances. These rulings are used as precedents in future cases. These judicial decisions simply state the law and do not serve as a source of law when it comes to Islamic law, but they do supplement and change it. The Muslims Usurious Loans Act 1918, The Religious Toleration Act, The Freedom of Religions Act, 1913, The Musalman Wakf Validating Act, 1930, The Wakf Act, 1954, The Child Marriage Restraint Act, 1929, and The Indian Contract Act, 1872 have all affected, supplemented, and modified Islamic Law in India. The Muslim 'Women (Protection of Rights on Divorce) Act, 1986 was established by the Indian Parliament in 1986 to give special law in respect of divorced Muslim women.

Since Islamic Law is formed from the Quran, the Sunnah, Ijma, Qiyas, Istihsan, Islamic Interpretation or Ijtihad, and other sources, it can be used to deduce regulations. However, towards the end of the Abbasid period, jurists had declared the door to interpretation closed, owing to a lack of trained personnel capable of making Ijtihad and the assumption that the exposition of principles by four Sunni schools was sufficient to meet all future requirements. The door of interpretation has always been wide open in the Shia community, and it still is. Islam teaches that a man's relationship with his wife and children must be founded on justice, compassion, love, and fraternity, not just as a religion but also as a way of life. It aims to elevate people by instilling greater spiritual principles in them. "The noblest of you in Allah's sight is the best in behavior, it instructed men. Women will no longer be looked down upon because of their frailty once these higher values are firmly established in society.

This is the only method to establish societal symmetry and harmony." The attitudes and practices of Muslim men contribute to the continuation of women's lower status in their communities. Most men feel that women should not have equal standing with men and that they have no right to demand a respectable existence, and this belief is manifested in a variety of institutions, beliefs, and behaviors that they nurture. Thus, whether it comes to girls' education, seclusion, dower payment, family decision-making, and women's property rights, the vast majority of men either practice or at least nurture ideas that undermine women's place in society, leaving them vulnerable. These individuals support the arbitrary right of divorce over the wife.

To be sure, the vast majority of these men are aware that their attitudes and behavior in these areas are contradicted by the Quran and Hadith, but they persist in their beliefs and behaviors. As a result, these ideas and behaviors have solidified into traditions, rituals, and institutions and they have found a place in the Muslim community's value system. These aspects are to blame for the current problem of women's security in Muslim culture, despite the fact that they have no validity in Islamic religion. Because they have many women in their lives in the roles of their mothers, sisters, wives, and daughters, it is now vital for men and young boys to be aware about women's rights. If these women's rights are safeguarded, the day will not come when Muslim women's rights will be safeguarded by the community and the state.

In this research we know about the historical background that what are the social security provided for the Muslim women's like mahr maintenance and all. Then under chapter third we talk about the concept of mahr their classification essential condition and quantum of mahr. Under chapter fourth we talk about the wife right of retention and mahr as an unsecured debt, under chapter fifth we talk about the concept of maintenance and the Muslim women's that what are the procedure under Muslim law for maintenance of women and is really she is socially secured. Under chapter six we talk about the inheritance of Muslim women's and at last the conclusion and suggestion.

CHAPTER TWO

2. HISTORICAL BACKGROUND

2.1 HISTORY OF MAHR

There are much social security provided to the Muslim women's but the main are Mahr and the maintenance. In this chapter we talk about the concept of both and the historical background that why this type of security are provided to the Muslim women's.

2.1.1 Mahr

To truly understand Mahr's historical history, it is vital to first understand the concept of marriage. Both concepts are intertwined. There's a Mahr, and there's a marriage. Without Mahr, there can be no marriage. It is critical to first review the history of the institution of marriage before delving into the various laws governing Muslim marriage. Previously, there was no such thing as family law.

Because there was no general rule of laws governing the Arabian Peninsula, each tribe was ruled by its own rules, and disagreements were directed to the chief or decided by an appeal to the word. Those were the days of idolatry and superstition. Woman's position was not much better than that of an animal. They had no legal standing; as children, they were the father's possessions and chattels, and after marriage, the husband became the lord and master.

Polygamy was frequent, divorce was simple, and female infanticide was widespread. This was the state of Arabian society when Islam offered reforms that resulted in a thorough overhaul of the society. The Arabs became so aware of this shift that they began to refer to the time before Prophet Mohammed as the Ayyam-il-Jahiyya, or the period of ignorance, wildness, or savagery in contrast to the moral reasonableness of a civilized man.

Tribes and Chieftains acted in accordance with tradition and practise prior to the arrival of Islam. Children's filiations and gender relations were governed by ancient Arabian custom. Marriages in its traditional form, as well as several other forms of relationship between members of the opposing sex, were popular.

Abdur Rahim describes four types of Arabian marriages prevailing before the Islam:

A type of marriage similar to that sanctioned by Islam, in which a man asks another for the hand of his daughter or ward and subsequently marries her by paying her a dower.

A man wishing noble offspring would persuade his wife to summon a powerful chief and engage in sexual relations with him. The husband would stay away during the duration of such intercourse, and then return to her once the pregnancy was far advanced.

A lady would invite a small group of males (less than ten) to have sexual relations with her. She had the right to summon all the men if she conceived and delivered a child, and they were obligated to come. 'O so and so, this is your son,' she would say. This legally established paternity, and the man had no right to deny it.

Prostitutes in general were well-known. Their tents featured a distinctive tag as an indication of their vocation, and they used to have a set amount of guests. If a lady from this social stratum became pregnant, the males who frequented her home were gathered, and the physiognomies judged who the kid belonged to.

Temporary marriage (Muta) was a popular practise, and a study of Hadith reveals that Muta was a type of legalised prostitution that the Prophet Mohammed permitted in the early days of Islam before prohibiting it later. Some of the conjugal interactions described above cannot be called manages in the modern sense of the term. Today, it's more accurate to think of them as kinds of legalised prostitution or customary tribal sexual conduct. "The believer is only perfect when he has experience a Muta, thus observe the Shia theologian al-hur-al-amili. It may be difficult to say that when an ithna Ashari Muslim enter into a Muta marriage, he does so with a view to perfecting his belief. The fact of the matter is that a Muta marriage is survival of a pre Islamic Arab custom whereby the Arab women use to entertain men in their own tenant."⁴

All of these types of marriages, as well as Muta marriages, were forbidden by the Prophet Mohammed. The idea of selling a woman was associated with marriage in paganism, and Islam accepted and changed this concept by making the woman the primary contracting party, as well as the contract's object and the current marital forum.

2.1.2 Marriage in the eye of Hadith

Various customs ordained by The Holy Prophet Mohammed to Islam's followers are listed below in order to better comprehend the true essence of Muslim marriage: -

⁴ Dr. Paras Diwan, *Muslim Law in Modern India* 47 (Allahabad Law Agency, Faridabad, Haryana, 12th edn. 2016).

The Prophet Mohammed says, Nikah is my Sunnah (tradition).

The Prophet Mohammed forbade all of these types of marriages, as well as Muta marriages. In paganism, selling a woman was related with marriage; Islam embraced and altered this concept by making the woman the principal contracting party, the contracts object, and the current marital forum. I fast and break it, pray and sleep, and am married, therefore anyone is inclined to anything other than my Surmah is not of me. According to the Prophet Mohammed, when a man sincerely marries, he performs half of his religion. It is now up to him to finish the other half of the task by living a moral life in continual fear of God. There are no acts of worship other than marriage and faith, which have existed since Adam's time and will continue in paradise. Gathering of youths: whoever among you has, he should marry because it is a restraint on the appearance, and whoever is unable to do, let him keep fast. There are three people that the Almighty has pledged to assist, the first of whom is a man seeking to buy his freedom. Second, who marries in order to keep his chastity, and third, who battles for God's cause.

Whoever marries a woman in order to keep his eyes – has God bestowed blessings on her and on him? Some writers claim that the Prophet Mohammed said that marriage is the same as Jihad. Marriage is a sin if it is not performed. It is Sunnah and those who are physically fit and able to afford it must do so. Now, if marriage is nothing more than a civil contract, then the person who enters into a civil contract completes half of his religion, according to the foregoing traditions.

The Almighty God promises to assist anybody who enters into a civil contract, which is equivalent to Jihad. Very physically fit Muslims are required to enter into civil contracts, and so on. All of these deductions are patently ludicrous and unworkable, implying that Muslim marriage is more than a civil contract. At the first meeting of husband and wife, the Prophet Mohammed also advised praying to God for divine grace. It is apparent what the aim of marriage is in light of Quranic and Hadith guidelines.

The purpose of Muslim marriage is to preserve the human species, to fix descent, to restrain men from debauchery, to promote love, affection, and union between husband and wife, to mutual aid in earning a living, to protect and encourage chastity, and not just to satisfy sexual lust and procreate children. The marriage symbolizes the joining of two spirits who are fundamentally one. If they continue to be apart, an unnatural state of affairs will emerge. They enter a natural condition when they marry, and

this union is vital for their physical, mental, emotional, and social well-being. People are encouraged to marry because it is vital to live a virtuous life free of immorality, and a mutual vow is required for mutual conformity, protection, and successful performance of the male and female roles in Islamic society.

2.1.3 What is marriage?

As a word of Arabic language 'Nikah' is a wide term, comprising many different forms of sex relationship, but in Muslim Law it has a very definite legal meaning. It is a contract for the legalization of intercourse and the procreation of children. Here, below are some definitions of various scholars in regard with 'Nikah' the Muslim marriage. In Hedaya it is defined as: “Nikah in its primitive sense means carnal conjunction. Some have said that it signifies conjunction generally. In the language of law it implies a particular contract used for the purpose of legalizing generation”⁵.

2.1.4 Forms of Muslim Marriage

As to the forms, the following conditions are necessary: -

- (1) Offer on the part of one party to the marriage,
- (2) Acceptance by the other party,
- (3) The words with which the marriage is contracted must be clear and unambiguous,
- (4) The proposal and acceptance must both be expressed in one and the same meeting

Every Muslim of sound mind who has attained majority can enter into a contract of marriage. The majority is attained at puberty. The presumption is that a person attains majority 15, but the Hedaya lays down that the earlier period for a boy is 12 years and for a girl 9 years. The Privy Council in a Shiite case says that majority in the case of a girl is attained at the age of 9. The marriage of minors can be contracted only by their guardians. Such a marriage, although valid, is capable of being repudiated. In a decision it was decided that a marriage entered into by a girl while she had not attained puberty was not a marriage in the eye of the law, and was therefore void, And if we talk about the

⁵ Aqil Ahmad, *Mohameddan Law* 107 (Central Law Agency, Allahabad, 12th Edition, 2013).

nature of marriage in case of “*Shoharat Singh v. Jafri begum*”⁶, the Privy Council said that “Nikah” under the Muslim law is religious ceremony”.⁷

2.1.5 Disabilities

There are six main limitations to the unfettered capacity for a Muslim to marry any person of the opposite sex. The prohibition may be on the grounds of

- (1) Number;
- (2) Religion;
- (3) Relationship (Consanguinity, Affinity & Fosterage);
- (4) Idda
- (5) Unlawful conjunction
- (6) Miscellaneous Prohibitions

2.1.5.1 Number

As to plurality of husbands or wives the rule in Islamic Law is that a Muslim man may marry any number of wives not exceeding four but a Muslim woman can marry only one husband, if a Muslim marries a v" wife, such marriage is not void but irregular whereas if a Muslim woman marries a second husband, where she is liable for bigamy Under Section 494 of IPC.

Dr. H.D. Kohli, *Muslim Law Cases and Material* 4 (Universal Law Publication, New Delhi, 2012).

Indian Penal Code, the offspring of such a marriage are illegitimate and cannot be legitimated by any subsequent acknowledgement.

2.1.5.2 Religion

The difference of schools - Muslims belonging to different schools may intermarry freely with one another and a mere difference of school of law, such as Shiite or Sunnite, Hanafi or Shafi, is entirely immaterial. Each spouse retains his or her own status on marriage, and no rule of law compels the wife to adopt the husband's school; there is thus no mergence as in the law of domicile. A man in Hanafi Law may marry a Muslim woman or a Kitabiyya; but a Muslim woman cannot marry anyone except a Muslim. It is necessary to explain the terms Kitabi and Kitabiyya, the former of which refers to a man

⁶ 17 Bom LR 13 (PC).

and the latter to a woman. A Kitabi is a man believing in a revealed religion possessing a Divine Books. The words Kitabi and Kitabiyya have also been rendered 'scripturary'. In India, it is a term applied only to Jews and Christians, each of whom 44 possess a revealed book (Kitabi), but it really extends to the adherents of other religions also for instance to Samaritans, Sabaeans and, according to the Ithna Ashari and Fatimid Shiites, to the Zoroastrians as well.

In “*Mst. Mahtab-un-Nissa v. Rifaqatullah*⁷ where a Hindu married women embraces Islam and marries a Mohameddan the mere fact of her changing her religion does not ipso facto dissolve her previous marriage. Though she must be deemed to be governed by the Mohameddan law after conversion yet even under that a law convert’s first marriage is not dissolve automatically. It also depend on the country where such law is not administered, there the marriage is so dissolved. So the second marriage cannot be valid marriage inspite of the principal of factum valet.”⁸

2.1.5.3 Relationship

(A) Consanguinity- The third bar to marriage is on the ground of blood relationship. A man is prohibited from marrying:

His mother or grandmother how high so ever;

His daughter or granddaughter how low so ever;

His sister whether full consent give uterine;

His niece or great niece how low so ever;

His aunt or great-aunt how high so ever, paternal or maternal.

A marriage with a woman prohibited by reason of blood relationship is totally void and the issue is illegitimate.

(B) Affinity - A man is also prohibited from marrying certain relations by affinity. These are (i) ascendants or descendants of his wife; and (ii) the wife of any ascendant or descendant. By way of exception, a man may marry the descendant of a wife with whom the marriage has not been consummated. A marriage prohibited on the ground of affinity is generally declared to be void.

⁷ AIR 1925 All 474.

⁸*Id.* at p. 17.

(C) Fosterage - Where the relationship of fosterage is established, Mohammedan Law prohibits the marriage within certain limits, A man may not, for instance, marry his foster-mother, or her daughter, or his foster-sister. A marriage forbidden by reason of fosterage is void.

2.1.5.4 Iddat

In Mohammedan Law, when a marriage is dissolved by death or divorce, the woman is prohibited from marrying within a specified time. This period is called Iddat and the most approved definition of Iddat is the term by the completion of which a new marriage is rendered lawful. It is a period of continence imposed on a woman on the termination of a marriage in the interests of certainty of paternity during which a woman is supposed to live a life of seclusion and to abstain from certain luxuries. The observance of Iddat is necessary where cohabitation has taken place; such cohabitation may be lawful, as in the case of consummation of marriage is unlawful, as in illicit intercourse. If pregnancy follows due to illicit intercourse 'Idda' must be observed.

If consummation of marriage has taken place and the marriage is dissolved by divorce, the duration of Iddat is three courses, or if the woman is pregnant, till delivery. If the marriage is dissolved by death, the period of Iddat is four months and ten days or, if the woman is pregnant, till delivery, whichever is longer. If consummation of marriage has not taken place Iddat has to be observed in the case of death, but not in the case of divorce.

2.1.5.5 Unlawful Conjunction

A man is also forbidden to have two wives at the same time, so related to each other by consanguinity, affinity & fosterage that they could not have lawfully intermarried with each other if they had been of different sexes. Thus, a man cannot marry two sisters, or an aunt and her niece. Under Hanafi Law, generally speaking, disregard of the bar of unlawful conjunction renders the marriage irregular but not void. The most important case arising under this rule is the marriage of two sisters to one man. There is nothing to prevent a man from marrying his wife's sister after the death or divorce of his wife; but it is unlawful to marry two sisters at the same time, or to marry the sister of the wife during the wife's lifetime.

2.1.5.6 Other Prohibitions

In additions to the above mention prohibitions to marry there are few others however not so important. These are the rules of prudence rather than the mandatory provisions of law there are:

(a) Kafa

This is the rule recognized by society that in order that a marriage may bear the character of a suitable union in law, the husband must be the equal of the woman in social status. It is not necessary that the wife should be of an equal status with the husband because by marriage itself he was assumed to raise her to his own position. So the Hands hold that equality (Kafa) between the two parties in a necessary condition in marriage. The following factors must be considered for determining equality

Family;

Islam;

Profession;

Freedom;

Good character; &

Means.

Illicit intercourse and undue familiarity if a person has illicit intercourse with a woman or commits act of undue familiarity some of the woman's relations are forbidden to him, although he can marry the woman herself

(b) Pilgrimage

In Ithna Ashari and Shafi Law a man who has come within the sacred precincts of the Kaba and put on the pilgrim's dress, may not enter into a contract of marriage while on the pilgrimage

(c) Divorce

Divorce constitutes an important legal bar and will be fully considered in the section on Divorce. Briefly stated, the rule is that when a man divorces a woman, and the divorce is effective as triple Talaq, remarriage between them is impossible unless the woman observes Iddat, lawfully marries another husband, the second marriage is consummated, and the second husband lawfully and effectively divorces her. Some important cases have occurred in India and they require careful consideration.

2.2 CLASSIFICATIONS OF MARRIAGE

(1) Valid Marriage (Sahih): or

(2) Void Marriage (Batil); or

(3) Irregular Marriage (Fasid)

2.2.1 Valid Marriage (Sahih)

A marriage which conforms in all respects with the law is termed Sahih correct in regard to legal requirements. For a marriage to be valid it is necessary that there should be no prohibition affecting the parties. Now prohibitions may be either perpetual or temporary. If the prohibition is perpetual, the marriage is void; if temporary, the marriage is irregular. “There must have been a proposal of one party and the acceptance of another party, the consent of party is free, proposal and acceptance must have taken place at one meeting and before two witnesses. They must be major and of the sound mind but under Shia law no witnesses are necessary, also the parties must have the capacity to contract”.⁹

2.2.2 Void Marriage (Batil)

A marriage which has no legal results is termed Batil or Void. It is the semblance of marriage without the reality. A marriage forbidden by the rules of blood relationship, affinity or fosterage is void. The issue of such a union is illegitimate, and law knows no process whereby the union may be legalized. Similarly, a marriage with the wife of another, or remarriage with a divorce wife, when the legal bar still exists, is void. A void marriage is an unlawful connection which produces no mutual rights and obligations between the parties, for example - there is no right of dower, unless there has been consummation. The death of one of them does not entitle the other inherit from the deceased. The illegality of such unions commences from the date when the contracts are entered into and the marriage is considered as totally non-existing in fact as well as in law.

2.2.3 Irregular Marriage (Fasid)

A union between a man and a woman may be either lawful or unlawful. Unlawfulness may be either absolute or relative. If the unlawfulness is absolute, marriage would be a void marriage (Batil) and if it is a relative than the marriage is irregular marriage (Fasid).

“Irregular marriage is also known as Fasid marriage. Thus, when a person marries his wife’s sister, the marriage is irregular, but he can validate it by pronouncing talaq on his wife. The laws are somehow same in the Hindu marriage act and Muslim marriage act related to the marriage of pregnant women,

⁹Supra note 5, page no. 101.

as it is mentioned under section 12(1)(d) of Hindu marriage act about the voidable marriage which explains that if respondent at time of marriage is pregnant by some other person other than petitioner is considered as irregular marriage”¹¹

2.3 NATURE OF A MUSLIM MARRIAGE

The Hanafi Law has won universal recognition not only of various High Courts but also of the Privy Council and the Supreme Court. Describing the nature of Muslim marriage, Mahmood, J. Marriage among Mohammedans is not a sacrament, but purely a civil contract, says the author, and though it is solemnized generally with recitation of certain verses from the Quran, the Mohammedan Law does not specifically prescribe any service peculiar to the occasion. And though a civil contract, it is not positively prescribed to be reduced to writing, but the validity and operation of the whole are made to depend upon the declaration or proposal of the one, and the acceptance or consent of the other of the contracting parties, or of their natural and legal guardians before competent and sufficient witnesses, as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case.

2.3.1 Relation between Divorce and Maintenance

Divorce is one of the Islamic institutions about which there is widespread misunderstanding, to the point where even Islamic Law, as it is applied in the courts, is not immune to these misunderstandings. Marriage is marriage, regardless of the circumstances. There is no such thing as a Hindu, Parsi, Christian, or Muslim marriage. Nonetheless, the concept of marriage differs, and this is what distinguishes the two. The concept of marriage under Christian Law is that it is;-

(1) Sacrament

(2) An indissoluble union for (one) life

Similarly, under Hindu Law, the concept is that marriage is (1) sacrament (2) indissoluble union, and (3) for seven lives. As against this concept under Muslim Law the marriage is sacrosanct (sacred contract) and it is a dissoluble union. It means marriage is not only sacrament but also a civil contract, pure and simple. The terms 'pure' and 'simple' are not the terms of edifice but of legal connotations;

'pure' means free from conditions or restrictions and 'simple' means not evidenced by seal, writing or record. As a result, under Muslim law, divorce is an unavoidable part of the marriage (control). Other legal systems do not treat marriage as a contract, so this is not the case. As a result, various legal systems have modified their matrimonial rules to accommodate divorce. Some Western countries have come to believe that it is pointless to try to figure out where the bitter water of matrimonial conflict comes from once it has begun, and some (Western countries) now prescribe divorce on the spot. But it is solely to Muslim Law's credit that it established and pioneered divorce on demand in the form of Talaq. It's possible that Muslim law invented and pioneered the Talaq, a form of divorce on demand, but that doesn't give Muslims the right to use it indiscriminately and without repercussions. It is important to note that Islam is strongly opposed to divorce and prefers to avoid it whenever possible. Islam has provided this remedy only in cases where there is no other option but reparation. Men who marry one woman after another and divorce them in fast succession are considered enemies of God in Islam.

2.3.2 Islamic Reforms

These rituals of divorce were frowned upon by Islam's Prophet Mohammad, who saw their practise as a planned attempt to undermine society's foundation. However, given the current state of society, it was impossible to completely prohibit the practise. The Prophet Mohammad had to bring the minds of a semi-barbarous and uncultured population to a higher level of development. According to Ameer Ali, Prophet Mohammad's reforms represented a turning point in the history of Eastern Legislations.

The most loathsome of all things authorized is divorce," the Prophet Mohammad is claimed to have stated with Allah, and he effectively outlawed its use by men without the involvement of an arbitrator or a judge at the end of his life. He declared "Talaq" to be the most detestable of all permitted things before God because it "prevented conjugal happiness and interfered with the proper bringing up of children. Ameer Ali added that the permission (of divorce) in the Quran, despite giving some credence to old customs, must be read in the High of the Lawgiver's own enunciations. When you consider how closely law and religion are intertwined in the Islamic system, it's simple to see how his comments apply to the institution of divorce. In the case of irreversible separation, Islam imposed an effective curb on frequent divorce and remarriage by requiring that the wife marry another man, and that this marriage be consummated before divorce, and that the wife practise Iddat.

This was a step that made separation less common. Certain detractors call the treatment "disgusting" and "revolting," but they overlook the fact that among proud, envious, and sensitive peoples like the Arabs, such a condition was one of the most powerful antidotes to evil. It aimed to exert influence over one of the world's most sensitive nations by acting on their most primal instinct, a sense of honour.

2.3.3 Injunctions against Talaq in Islam

Divorce was undesirable for the peace and happiness of a family, as well as the protection and proper upbringing of children, according to Islam. The Holy Quran prohibits women from being divorced by their husbands. Despite the sacredness of marriage's character, Islam recognized the importance of maintaining the door open for its divorce in extraordinary circumstances. It is therefore required to resort to the appropriate verses of the Holy Quran, which is the basic source of Islamic Law on the husband-wife relationship and husband-wife divorce.

Divorced women must wait three months to speak about themselves, and their husbands have the better right to take them back during that time if they choose to reconcile.

2.3.4 Irrevocable Pronouncement after Third

If a husband divorces his wife for the third time (irrevocably), he cannot remarry her until she has married another husband and he has divorced her. In such situation, neither of them can be blamed if they reunite, as long as they believe they can keep the boundaries set by God. When ye divorce women and they complete the time of their (Iddat), do not prevent them from marrying their (former) husbands; if they mutually agree on equitable terms, either take them back on equitable terms or set them free on equitable terms; if anyone does this, he wrongs his own soul.

When you divorce ladies and they complete the terms of their (Iddat), it does not preclude them from marrying their (former) spouses on equitable conditions.

There is no blame on you if you divorce women before consummation or fixation of their dower: but bestow on them (a suitable gift) A gift of a reasonable amount is due from those who wish to do the right thing, and if you divorce them before consummation but after fixation of a dower for them, then the half of the dower (is due to them) unless they remit it or I (the man's half) is remitted by him.

2.4 DEFINITION OF DIVORCE (TALAQ)

“Just as text is cited from the dharamshastra in support of diametrically opposite preposition, the texts are cited in Muslim law in support of unilateral divorce as well as against it.”¹⁰

Talaq denotes repudiation or rejection in its original sense, but it is a release of the marriage tie under Muslim law, either immediately or afterwards. In legal terms, divorce refers to the breakup of a husband and wife's marriage. According to Muslim Law, a husband who is of sound mind and has reached puberty has the right to divorce his wife at any time, for any cause, and on his own whim or caprice.

2.4.1 Divorce by the Husband

In its literal sense, the Arabic word Talaq means "to remove any connection or restraint," and it refers to the dissolution of marriage in law. To pronounce Talaq in Hanafi Law, no unique form or word is required. The Ithna Ashari Law, on the other hand, requires rigorous adherence to a form, which requires it to be spoken orally in Arabic in the presence and hearing of two male witnesses who must be honest and virtuous Muslims.

Even the wife's attendance is not essential. The Talaq would be considered to have gone into force on the date the wife learned of it. In some instances, such as when the wife is required to observe Iddat and the dower are due during Iddat, the communication of Talaq is required. While Sunnis accept both oral and written Talaq, Shias only accept oral Talaq. It can be offered at any time and with any wording.

In reality, it is standard practise for a husband to plead that he had pronounced Talaq on his wife while facing maintenance procedures, such as those brought under Section 125 Criminal Procedure Code, and the courts see this as convincing evidence of a final divorce. Talaq is a technique that almost defies any kind of enslavement. The key is in the hands of the husband, who can give no cause, go to no court, take no wife's agreement, disregard her condition, follow no protocol or formality, and simply pronounce Talaq.

¹⁰*Supra* note 4, page no. 180.

2.4.2 Talaq-e-Ahsan

The most commendable divorce, according to Hedaya, is when a husband repudiates his wife with a single statement during a period of Tuhr (purity, i.e. when the wife is free from her menstrual cycles) during which he has not had intercourse with her, and then leaves her to the observance of Iddat. During the Iddat, the divorce is reversible, and the parties retain their inheritance rights. The condition of Tuhr is not applicable where the wife and husband live apart or when the wife is past the age of menstruation (in old age). It is also not applicable to a written divorce.

This Talaq can be cancelled either explicitly or implicitly during the Iddat period by cohabitation. It is not obligatory for the wife to undergo an intermediary marriage in the event of such revocation; the husband can simply state, "I have retained you." The Talaq becomes permanent and irrevocable after the Iddat time has expired without revocation.

2.4.3 Talaq - e - Hasan

In Talaq Hasan, the husband declares divorce three times in a row during periods of purity (Tuhr). As a result, it's "a divorce upon a divorce," with the first and second announcements reversed, followed by a third, and only then does Talaq become irreversible. It is also necessary that no intercourse occurred throughout the period of purity during which the proclamation was made.

This can be illustrated as follows: When the woman is in Tuhr, the husband pronounces Talaq without having had any sexual relations with her. Then, through words or intercourse, he revokes it, and menstruation ensues. When she is in Tuhr and the husband pronounces Talaq before intercourse, intercourse follows (repudiation). Menstruation occurs once more. He now pronounces Talaq during Tuhr without having had intercourse. This is final, and the divorce is irreversible. "In *Chand Bi v. Bandesha*¹¹, when the marriage has not been consummated, a Talaq is the ehsan Talaq may be pronounced even if the wife is in her menstruation. When the spouse is away from each other for a long period or where the wife is beyond the age of menstruation, the condition of Tuhr is not applicable."¹²

2.4.4 Triple Divorce

Hedaya defines it as a divorce in which the husband repudiates his wife with three divorces in one speech or by repeating the term three times within Tuhr. In Hanafi Law, such a divorce is legal, but sinful; nevertheless, it is not permitted in Shia Law. As a result, he may declare, "I divorce you, one

¹¹ AIR 1961 Bom 121.

¹² *Supra* note 5, page no. 126.

divorce you, one divorce you; this is triple divorce," or "I divorce you thrice." Even the triple form isn't an absolute requirement.

'I divorce you in Talaq-ul Biddat or Talaq-ul-Bain form,' he would say. The divorce is irreversible when the purpose is obvious.

“The use and status of triple Talaq in India has been a subject of controversy and debate. Those questioning the practice have raised issues of justice, gender equality, human rights and secularism. The debate has involved the Government of India and the Supreme Court of India, and is connected to the debate about a uniform civil code (Article 44) under constitution of India. On 22 August 2017, the Indian Supreme Court deemed instant triple Talaq (*Talaq-e-biddah*) unconstitutional. Three of the five judges in the panel concurred that the practice of triple Talaq is unconstitutional. The remaining two declared the practice to be constitutional. Three of India's neighboring countries — Pakistan, Bangladesh and Sri Lanka are among the 23 countries worldwide that have banned triple Talaq. The Quran established means to avoid hasty divorces. It prescribes two waiting periods of three months before the divorce is final in order to give the husband time to reconsider his decision. On 30 July 2019, the Parliament of India declared the practice of Triple Talaq illegal and unconstitutional and made it a punishable act from 1 August 2019”¹³.

2.4.5 By the Wife - Talaq-e- Tafwid (delegated divorce)

This idea is unique to Muslim Law and is not found in any other legal system. That is, a husband may delegate his divorce authority to his wife. He has the option to do so at the time of the marriage contract or at any time thereafter. "As a man may repudiate his wife in person, so he may commit the power of repudiation to himself or to a third party," according to Baillie.

This type of delegated divorce is becoming more popular in India. The arrangement under which the husband enables the wife to divorce him if he marries a second wife without her consent has been upheld by the Indian High Courts on numerous occasions. Tafwid comes in three varieties. The delegation must be expressed in plain words, and the conditions under which the wife (or a minor wife's guardian) will exercise the option must be specified. Conditions must not be incompatible with public policy.

¹³available at:https://en.wikipedia.org/wiki/Triple_talaq_in_India(visited on 12 June 2021).

Delegation of the right to Talaq in the event that her spouse fails to pay her maintenance is thus possible. The wife must expressly utilise her option; the occurrence of the specified incident does not automatically result in Talaq. The authority might be delegated at the time of the nuptial agreement or later on in the marriage. The husband cannot revoke the power that has been delegated. The wife may use her power to oppose a husband-filed petition for restitution of conjugal rights, which will be referred to as a divorce of wife by husband because she will be acting on his behalf. Regardless of delegation, the husband retains the power to Talaq her as he sees fit.

2.4.6 Khula (redemption)

If the husband and wife's relationship isn't working out, the wife can seek a Khula divorce, which involves abandoning her claim to the dower. However, it is entirely up to the husband to accept the dower consideration and grant the divorce. A husband can also suggest a Khula divorce to his wife, who can accept or reject it. If she accepts, it indicates she has given up her right to receive dower from her husband. Khula can be for any reason, including dower, money, property, and so on. The failure of the wife to pay the agreed-upon consideration in a Khula divorce does not render the divorce null and void; allowing the husband to sue for restitution of conjugal rights, but only entitles him to do so.

To make a claim for dower release or to bring a lawsuit for any money or property owed under the contract. In the leading case on Khula divorce is “Monshe Buzul- ul – Rahim v. Luteefut- un- Nisaa it is a suit brought by the respondent against the plaintiff to recover “dyn mahr” secured by Kabinnamah by reason of the divorce of the respondent from the appellant. The appellant by his answer denied that he had divorced by respondent by Talaq and that she has executed an ikrarnamah and had thereby released him from all claims in respect of her dower and that she has given him a Khula and executed a kaboolnamah. The respondent in her reply has stated that ikrarnamah is the fabricated one and the kaboolnamah has been obtained by duress and thus stressed that the appellant has admitted the existence of divorce that is Talaq. It was held that ikrarnamah and kaboolnamah are the special place taken by the defense and as such are of no avail and have no effect unless proved and thus Talaq is said to have been proved and thereby she is entitled to her dower”.¹⁴

In Islam the social security is given but it is so interpreted by the people who follow Islam also men have more rights as compared to women's, Only because of superior complex. In Islam the Talaq are

¹⁴*Supra* note 6, page no. 145, 146.

not very good thing but in practical life Muslim woman faced this without any mistake because man have right to divorce his wife at any time and she have not as much rights. She is only a piece of entertainment for the Muslim man. We can see the condition of Muta marriage that it is degrade the women's modesty and also the relationship of husband and wife that this type of marriage is only for entertainment. Is this justifiable? The answer is no. But these types of provision are given in Islam which is totally wrong and also degrade the women's dignity by performing this type of acts.

And the other thing is maintenance which is given only to the period of Iddat that means only by her three menstruation cycle and what about beyond Iddat period? Yes the provision is given that after Iddat she can claim maintenance by Waft Board. This shows that women's are living on the mercy of her husband that when husband want to give divorce he can do it without any reason. Is this the level of protection provided to Muslim women? Right, safety, and so on these kinds of words are only found in books; in actual life, women's conditions are quite different from those described in books. The Apex Law-making Body of Muslims on religious and personal affairs, the All India Muslim Personal Law Board, has proposed a series of amendments in marriage and divorce laws aimed at offering the community's women a better deal. The most significant of the proposed modifications concerns the ongoing issue of triple Talaq. On this point, the Board's decision to "restrict" Muslim men from pronouncing quick triple Talaq falls far short of expectations.

Nothing short of a complete prohibition of the offensive practise of Talaq-e-Bidat will make a significant difference. The Board has no reason to be hesitant on this subject because it falls within the Shariat's framework. Only the Hanafi School of Islamic Jurisprudence upholds Talaq-e-Bidat, which grants Muslim men total and unilateral divorce power.

Maliki, Shafii, and Hambali are the other three schools that oppose it. Furthermore, the Quran does not sanction Talaq-e-Bidat, where the word "Bidat" implies "undesirable or forbidden innovation." Calipha Umar employed it as an emergency measure a few times and eventually regretted allowing it.

This un-Quranic type of Talaq is prohibited in many Muslim nations, including Pakistan, where the majority of Muslims follow Hanafi Law. If a husband utilises this kind of Talaq to divorce his wife in Pakistan, he must notify an arbitration council / Shariat Court soon after the triple Talaq is issued. The effect of such a notice is that it will freeze the Talaq for 90 days, during which time the council will attempt to reconcile, and if no reconciliation is achieved during this time, the Talaq will become final.

The second issue that has sparked debate is the payment of Mehr, which is rarely done according to Quranic standards. Normally, Mehr is postponed, and even after divorce, it takes a long time to realize the amount with the help of a Civil Court, but thanks to the Muslim Women Act of 1986, which allows a divorced wife's application for Mehr, reasonable and fair provision and maintenance to be resolved within one month.

The other problem is Muslim women's ability to divorce on their own. For this reason, the AIMPLE Board has advised that in each case, a formal Nikahnama be used, with specific restrictions included to provide Muslim women the right to divorce. All of these issues were reviewed in depth at a Board of Directors general house meeting in October of 2000. In this regard, Maulana Ali Naqi has proposed incorporating a provision in the Nikahnama itself, within the bounds of Quranic Commands, that the wife would be representative (Vakil) of her husband for the purposes of Talaq for the rest of her life.

In the event of a need, the wife could proclaim Talaq on her husband's behalf as his agent (Vakil). Apart from Khula, it could be a wife's additional right if she chooses to exercise it. In a Nikahnama or marriage contract, Fiqah does not prohibit such a condition. Aside from that, Fyzee has cited a Nikah document that he drafted; in which both parties to the marriage acknowledge that the wife has the right to divorce her husband under certain situations.

CHAPTER THREE

3. CONCEPT OF MAHR UNDER MUSLIM LAW: AN OVERVIEW

3.1 OVERVIEW OF MAHR

“In old pre Islamic Arabia, when the institution of marriage as we know it today was not developed, many form of sex relationship between man and women in vogue. Men after despoiling their wives often turned than out absolutely helpless and without any means. The ancient custom to settle certain sums for subsistence of the wife in the event she was turned out was often disregarded, as there was no organized system of law. A device was in vogue under the name of SHIGHAR in which a man would give his daughter or sister in marriage to the former. Thus, neither of the wives could get a dower. In Islamic law

Mahr belongs absolutely to the wife.”¹⁵ In chapter third we discuss about the concept of mahr, nature, essential condition, classification, and quantum of mahr.

Because a Muslim wife must surrender her person in marriage, the husband must likewise relinquish at least some of his property based on his means, giving rise to the dower rule (Mahr). A minimum dower is to be established, but it is not necessary to stay to the minimum, and it is encouraged that the parties operate with the utmost confidence and liberty in their new partnership. The Mahr (dower) has been divided into the following heads:

- (a) Concept of mahr
- (b) Nature of Mahr
- (c) Essential condition of Mahr

¹⁵ note 5, page no. 86.

3.1.1 Concept of mahr

The word mahr comes from the Hebrew and Syriac words "mahr," which means "bridal gift" and originally meant "buy money." The word implies a gift given voluntarily rather than as a result of a contract, yet it is defined as a present given by the bridegroom to the bride after the marriage contract is signed and which becomes the wife's property in Muslim religious law.

Because the historical context of Mahr has previously been addressed in detail in an earlier chapter, the study concludes that there were two types of marital gifts popular prior to Islam. In a 'Beena' marriage, the husband pays a visit to the wife but does not bring her home. The wife was referred to as Sadiqa, or female companion, and a present given to the wife on her wedding day was referred to as Sadaqa. Sadaqa is commonly used to refer to a dowry and is interchangeable with Mahr. However, the two words were originally extremely separate.

“The terms "dowry" and "bride price" are sometimes incorrectly used to translate *mahr*, but mahr differs from dowries in many other cultures. A dowry traditionally refers to money or possessions a woman brings forth to the marriage, usually provided by her parents or family; bride price to money or property paid by the groom or his family to the parents of a woman (but not to the woman herself) upon the marriage.

In the event the marriage contract does not contain an exact, specified mahr, the husband must still pay the wife an equitable sum. The requirement of a mahr is mentioned several times in the Quran and Hadith.

The mahr is often paid to the bride in parts. The mahr amount given to the bride at the signing of the marriage contract is called a Muajjal (which is paid at time of marriage, and the portion that is promised but deferred is called a ghaire Muajjal (which is paid after completion of marriage). A deferred promise to pay does not make the full amount of the mahr any less legally required. There are differences between the nature of *mahr*, definition of proper contract and conditions of enforceability depending on the regional Fiqh and school of Islamic jurisprudence”¹⁶.

¹⁶available at:<https://en.wikipedia.org/wiki/Mahr>(visited on 13 June, 2021).

When the author of Hedaya indicates that the payment of dower is only a mark of respect for its object (the lady), he means that the mention of it is not absolutely necessary to the validity of a marriage, and that a marriage is valid for the same reason.

In his work *A digest of Anglo-Muslim Law* (1932), Dr. M.U.S. Jung defines "dower" as "property or its equivalent vested in the husband either by virtue of being agreed in the marriage contract or by virtue of a separate contract, as special consideration of 'Buza' the right of enjoyment itself." The Islamic concept of the Mahr (dower) is unfortunately one of the most misunderstood concepts of Islam. Those who favour the contractual aspect of Muslim marriage tend to conflate it with consideration.

Those who are more familiar with the Indian concept of dowry, on the other hand, may confuse it with that idea. The truth is that Mahr (dower) is not a type of dowry; rather, it is presented to the wife by the husband as a show of respect and affection. As a result, it is a crucial institution in Islamic Law since it is presented to the wife as a gesture of respect and as a love gesture by the husband. As a result, it occupies a unique position in Islamic law. Mulla defines it as "a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage". Why the Muslim law givers used the term 'consideration', Mahmood J. explained it thus; "Mahr has been compared to the price in a contract of sale because marriage is a civil contract and sale is a typical contract to which Muslim jurist are accustomed to refer to by way of analogy".¹⁷

It is argued that the foregoing ruling, which declares Mahr as a factor for marriage, is incorrect since even if no dower is stipulated at the time of marriage, the marriage is not invalidated on that basis because the law mandates that some dower (appropriate) dower be provided to the wife.

3.1.2 Nature of Mahr

The Mahr is a word that invites debate and misinterpretation, and it has been the subject of bad debates; some associate it with the bride's price, or the consideration of the marriage contract, because Justice Mitter in *Saburunnisa's* case mistook it for dowry.

People are aware of the true image thanks to Quranic injunctions and pertinent Hadith, thus an attempt has been made here to understand the genuine nature of Mahr and the attitude of the Indian judiciary.

¹⁷ note 4, page no. 89.

Dower is an essential incident and fundamental characteristic of marriage, with the result that the wife is entitled to proper dower from her husband even if no dower is specified.

It is argued that treating marriage as a contract in the manner that is indicated in the traffic or transaction of goods and services is erroneous, and that dower cannot be viewed as a consideration of the kind found in the sale and purchase of things. The fact is that Islamic Law bestows some privileges on women as a result of their unique position and the role they play in a structured social structure. Mr. Justice Mahmood, who is widely regarded as the father of the opinion that Muslim marriage is solely a civil contract, is undecided on whether dower was identical to the consideration in a contract for the sale and purchase of goods.

Dower, under Mohammedan Law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage. The dower of Mohammedan Law bears a strong resemblance to the Roman *denatio propter*, which has survived in English Law under the name of marriage settlement. Dower can only be regarded as consideration for connubial intercourse in this sense, and the authors of Arabic text-books on Mohammedan Law have compared it to the price in a contract of sale because marriage is a civil contract under that law, and sale is the typical contract to which Mohammedan Jurists are accustomed.

The payment of dower is prescribed by the law solely as a symbol of respect for its object (the woman), and hence its mention is not absolutely necessary to the validity of a marriage; similarly, a marriage is legitimate even if the man entered into a contract on the express condition that no dower be paid. Though the Learned Justice declared marriage to be "a purely civil contact" by accepting a passage from Mr. Jadunath Sarkar's *Tagore Law Lectures* (1873), the passages quoted above from Abdul Qadir's case leaves no doubt that he did not mean that future judicial decisions would treat it as a contract of sale. If it is determined that he did not make perverse inferences from the resources cited in support of his conclusions, he will be found guilty. The exact type and location of the institution of dower are determined by a simple reference carrot. As is generally known, many analogies are utilized to clarify a phenomenon, but they cannot be given more weight than a convenience device or a tactic frequently employed by judges. The distinctive nature of some institutions necessitates extensive explanations and related phenomena, which are provided as instances.

It would be inappropriate to link an example to the organization that it is used to explain. Mr. Justice Mahmood's conclusion that he was not correctly understood and obeyed is without a doubt justified by his own previously expressed and pointed out perspectives, and it is possible that the obiter-dicta was accepted as its complete import without the effective reason. There has been a lengthy history of judicial decisions in which the two points mentioned are compared and contrasted in order to explain the characteristics of the marriage settlement known as dower.

In case of “*Nasra begum v. Rijwan Ali*”¹⁸ Allahabad high court observed, “no doubt under the Mohammedan law, Mahr or Dower means money or property which the wife is entitled to receive from the husband in consideration of the marriage. However, the expression “consideration” is not to be understood in the sense in which it is used in the contract act. In fact dower is an obligation imposed upon the husband as a mark of respect for the wife”¹⁹

3.1.3 Requisite of Mahr

The essential conditions of mahr are as follows :-

(1) Contractual capacity for mahr

(2) Subject of the mahr

3.1.3.1 Contractual capacity for Mahr

Right to make a contract of Mahr - A contract of Mahr can be entered into by anybody who has reached the age of majority and is of sound mind, either directly or through an authorised agent.

Agency for a contract of Dower - A guardian or his agent can enter into a Mahr contract on behalf of a minor husband or wife.

Mahr in writing is not necessary - A Mahr contract can be made verbally or in writing.

Right to make a contract of Mahr

¹⁸ AIR 1980 All 118: 1979 All WC 722.

¹⁹ note 6.

“A major and sound person can enter into a contract of Mahr. In Muslim Law when a person attains puberty, he becomes major to act in the matters of Marriage, Dower, and Divorce. According to Hedaya stated that the earliest age of puberty in respect to a boy is 12 and in respect to a girl is 9. In *Sadiq Ali v. Jaikishor*²⁰ the Privy Council observed that as per the Mohammedan Law, the age of puberty is 9 years. According to Abu Yusuf that "the age of puberty presumed to be attained at the age of 15 both for males and females" A report shows that Abu Handa and Shafei also agree with it. There are 129 numbers of cases in support of this view *Nawab Bibi v. Allah Ditta Mst. Ghulam Kubra v. Mohd. Shafi, & Atiqa Begum v. Mohd. Ibrahim*.²¹

In this regard, Shia Law states that puberty is believed to be reached at the age of 15 for males and at the age of 9 for females. It starts with menstruation, which is thought to begin between the ages of 9 and 10.

Hanafi and Shia are two different types of Muslims. In Mohammedan law, puberty is considered to be the age of majority for all purposes.

The age of majority shall be controlled by Mohammedan Law in all cases involving these issues. The following are the provisions of Sections 2 and 3 of the Indian Majority Act:-

Section 2 of the Act that nothing herein contained shall effect: -

- (1) To a person's ability to act in the following matters: marriage, dower, divorce, and adoption.
or
- (2) Any class of her Majesty's subjects in India; or the religion or religious rights and usages of any class of her Majesty's subjects in India; or
- (3) The capability of any person who has reached majority under the legislation applicable to him before this Act takes effect.

Section 3 of the Act states that any minor of whose person or property, or both, a guardian other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure has been or

²⁰ (1923) 30 Bom. LR 1346.

²¹ *Supra* note 3.

shall be appointed or declared by any Court of Justice before the minor reaches the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Justice before the minor reaches the age of eighteen.

It is now claimed that "acting in the matter of marriage" entails entering into a marriage contract. If a Muslim minor who is a major under his own law but a minor under the Indian Majority Act enters into a marriage as he is capable of doing, he must enter into a contract for dower payment, even if he does not do so. In the case of a Muslim girl, she reaches majority under Muslim Law when she reaches puberty or the age of 15, whichever comes first. It has been decided that, despite the provisions of Order XXXII of the Civil Procedure Code, a Muslim woman who is a major under her personal law but a minor under the Majority Act may seek for divorce, dower, and other matters without the assistance of a next friend.

Agency for a contract of Mahr (dower)

According to Ameer Ali, a guardian for marriage or his agent may contract a marriage for a minor or lunatic, while Mr. B.R. Verma writes in his commentary on Mohammedan Law that Section 100 (1) states that a guardian for marriage or his agent may contract a marriage for a juvenile or lunatic. and In Section 100 (2), a guardian may also enter into a dower contract that is binding on the portion; however, if the contract is made by any guardian other than the father or grandfather for insufficient dower on behalf of the wife or extravagant dower on behalf of the husband, the contract is not binding and proper dower is recoverable.

The contract by any other guardian would not be valid if it is in adequate or excessive.

Shia Law –

The only guardians are the father and grandfather. A dower contract, in better opinion, would be acceptable even if it was for a far less amount than proper dower.

Shafei Law

The husband's guardian cannot agree to a larger dower than the legal dower, and the wife's father or grandfather, who can arrange a marriage without her agreement, cannot agree to a dower less than the proper dower. In such instances, the wife would be entitled to proper dower.

(1) If either or both parties knew about the fraud before consummation, or if the husband knew but the woman didn't until after consummation, the entire dower would be payable.

(2) If the wife learns of it before consummation and the husband learns thereafter, only the authorized amount is payable.

Mahr in writing is not necessary

It is not necessary for a dower contract to be in writing. Strong evidence would be required in cases of substantial dower arrangements.

3.1.3.2 Subject of Mahr (dower)

Money, or any specific thing or right with monetary value, may be the topic of Mahr (dower), given that such items or rights exist and are not prohibited by religion or contrary to the Mohammedan Law's policy. It is not required that dower be simply a tangible asset. Anything that is associated with the name 'Mai' can be the subject of dower. Except for Carrion and Blood, everything corpora is referred to be 'Mai.'

Insurance policies, choses-in-action, earnings originating from land or business, debts owed to the husband from the wife herself or from others, and the sale-proceeds of some things of which the husband is a proprietor can all be considered 'Mai' and subject to Mahr. According to Bailie, anything that isn't 'Mai,' such as the husband's refusal to take her out of her hometown or conduct 'Hajj' with her, cannot be the topic of dower.

The wife would be entitled to proper dower in such instances. If the Mahr is mentioned for both the wife and the father, the husband is only obligated to the first and the specification in favour of the father is meaningless. Personal service, including Quran instruction, is a permissible venue of dower, according to Shia and Shafei, if the period is stated and there is no ambiguity.

Hedaya believes that the husband may be able to find someone to execute the job. It has been noted that Islamic matrimonial history shows that the Holy Prophet Mohammed was never willing to give a lady to a man without a dower payment. A woman approached the Prophet Mohammed and stood before him, saying, "O Messenger of Allah, accept me as your wife," according to Shia and Sunni accounts, with minor differences. The Prophet Mohammed in respect of the request of the woman, kept

silence and said nothing. In her place, the woman sat down. "O messenger of Allah, if you are not ready, I am prepared to accept her as my wife," one of his friends said.

"What do you submit as a dower?" the Holy Prophet Mohammed inquired. "I have nothing," the reply was. "This can't be right; go to your house and see what you can find to give as a dower to his wife." According to the Prophet Mohammed, a man went to his house and returned saying, "I couldn't locate anything in my house." "Go again and look properly," the Prophet Mohammed advised. "Even if you can get a metal ring, it will suffice," the Prophet Mohammed remarked. "I cannot find even a metal ring in my residence," he stated after returning repeatedly. "I'm prepared to present her with the clothes I'm wearing as a dower." "O Messenger of Allah, by Allah, this man has no other clothing than the ones he is wearing," another friend who knew the guy stated. As a result, the woman's dower may be allotted to clothing assistance. "If half of these clothes are to the dower of the woman, who would wear which half?" stated the Prophet Mohammed. The other will remain undressed if one of them wears them.

No, it's not going to be like this." The person who had made the request took a seat. In her place, the woman also waited. The talk shifted to a different issue, and it went on for quite a while. The man who had asked for the woman's hand began to walk away, but the Prophet Mohammed stopped him. "Speak, tell me, can you repeat some of the Sura?" he said as he approached. "Are you able to recite from memory?" "Yes, I am." "It's all right now. So, I'm marrying this woman to you, and her dower is for you to teach her the Quran. The man grasped the woman's hand and walked away. The fittings subject-matter of dower includes personal services and other things in addition to a quantity of money or property.

"A woman of the tribe of Bani-Fajarah married on a settlement of a pair of shoes," Aamir-Bin-Rabia recounted in a legend, "and the Prophet Mohammed said to her, "Are you delighted to sacrifice yourself and your property for those two shoes?" When she replied yes, the Prophet Mohammed gave his blessing to the marriage.

“The following were recognized as the subject of dower:-

A handful of dates (Abu Daud) T 1

A pair of shoes (Tirmizi)

If the husband is a slave, his services to his wife: (Mohit Sarkhsee)

The services of the husband slave to the wife (Fatwa -i Alamgiri)

Husband services rendered to the guardian of a minor wife (Darrul Muktar)

Teaching Quran to the wife (Tradition)²²

In fact, the Muslim Justice's major argument is that everything that falls under the concept of 'Mai' can be the subject of dower. If the dower is for "an animal" or "cloth," the wife is entitled to Mahr-ul-Misl (appropriate dower), as such dower is invalid due to doubt. Similarly, if you say "a house" or "the land" without specifying it, the court will decide. Nikah-us Shighar must be mentioned here.

In such instances, it is customary to fix suitable dower. This will not suffice in place of dower if a person contracts his daughter or sister in marriage to another on the condition that the other bestows as sister or daughter in marriage upon him, so that each contract will stand as a return for the others. Both marriages would be lawful in this situation, and each woman would be entitled to proper dower. The marriage contract would be void under Shia and Shafai law. However, following consummation, such marriages become lawful, and proper dower would be required in each case.

3.2 CLASSIFICATION OF MAHR

There are two types of dower in Muslim law and these are follows :-

(1) Specified dower

(2) Proper dower

3.2.1 Specified dower

“If the amount of dower is stated in the marriage contract, it is called the specified dower may be settled by the parties to the marriage either before the marriage or at the time of the marriage or even after the marriage. If a marriage of a minor or lunatic boy is contracted by a guardian, such guardian can fix the amount of dower. Dower fixed by the guardian is binding on the minor boy and he cannot on attaining the age of puberty take a plea that he was not party to it”.²³

²²*Ibid.*

²³*Supra* note 5, Page no. 186.

The Hanafi law states that the sum set by the father is binding on the son and that the father is not personally or as a guarantee for his son; nevertheless, the Shia law states that if the son lacks means, the father is liable. The wife is entitled to the minimum amount of dower under Hanafi law, even if she has agreed to accept less. According to Shia and Shafii law, the woman has sole ownership of the agreed-upon sum, regardless of its magnitude.

The specified dower are also divided into two parts that is :-

(1) Prompt dower

(2) Deferred dower

3.2.1.1 Prompt dower

The amount of dower is usually divided into two parts: immediate and delayed. A prompt dower is one that is paid on demand, whereas a deferred dower is one that is paid upon the dissolution of a marriage due to death or divorce. Prompt dower is dower that is due and payable on the day of the wedding, and it must be paid on demand unless a postponement is specified and agreed upon. Prior to or after consummation, prompt dower can be realized at any time. The presence of sex at the occasion isn't always required for its charge.

Unless the wedding has already been consummated, the husband will be able to assert his conjugal rights on charge of the spark off dower. The right of restitution, which was once a condition precedent to the price of active dower, now arises only after the dower has been paid.

“In *Rabia Khatoon v. Mukhtar Ahmed*²⁴, it changed into discovered that the spouse may refuse to live with her husband and to confess him to sexual intercourse, as long as the activate dower isn't always paid. If the husband sues her for restitution of conjugal rights earlier than sexual sex takes place, non-price of dower is an entire defense to the match, and the match might be dismissed.²⁷”

²⁴ AIR 1966 All 548

If the suit is delivered after sexual intercourse has taken place along with her loose consent, the right decree to skip is not a decree of dismissal, however a decree for restitution, conditional on fee of activate dower.

According to Sunni law, part of the dower is activated and part is deferred; the percentage is determined by the popularity of the parties and the amount of the dower agreed.

Difference between prompt dower and deferred dower

1. as to payment

Dower is due as soon as the marriage is consummated.

Deferred dower is only paid once the marriage is dissolved.

2. as to demand:

Only on the wife's desire is prompt dower paid.

The wife has no right to demand deferred dower unless it is agreed upon.

3. as to wife's right to realize:

The wife has the right to receive the immediate dower at any moment.

Deferred dower is only payable when it is due.

4. as to conjugal rights:

Only after the payment of the conjugal right does the

Right of restitution of conjugal right arise.

Restitution of marital rights is not an issue in postponed dower.

The immediate quantity is payable immediately after marriage at any time on the wife's request, whereas the deferred quantity is payable at such time, or on the occurrence of such contingency, to which it's miles deferred; however, it's far payable without delay at the dissolution of marriage, by way

of divorce or death of both parties. The contract, mahr-nama, or kaboolnamah, usually specifies which part of the dower is activated and which is delayed.

It's usual to designate 1/2 of the sum as activated and the other half as delayed. However, there is no hard and fast rule. It is customary to pay the spark off dower immediately after marriage, or at any time later, if the spouse so requests. Parties are likewise unrestricted in defining the immediate fee or postponement of the entire dower. When it isn't always clear whether part of the dower is due right away and which part is delayed, the Shias believe that the entire sum is due. The Sunnis follow the rule that one element must be viewed as a spark off and the other as postponed.

The Madras High Court believes that, regardless of whether the parties are Shias or Sunnis, the entire amount should be deemed to be spark off in the absence of any special settlement. The problem can be decided on the basis of usage or custom in the wife's family: in the absence of usage or custom, the assumption is that one-half is activated and the other half is delayed, according to a full bench of the Lahore High Court. It's also possible that the proportion will be different in each scenario. Even though the parties are Hanafi, the High Court of Bombay has the authority to give the entire dower as prompt dower, according to the court. The main distinction between the activate and delayed dowers is that the activate dower is realizable and payable immediately after the marriage is solemnized, and the wife has the power to refuse all conjugal rights to the husband until her activate dower is paid. Deferred dower, on the other hand, becomes payable upon the expiration of the stated term or the occurrence of the specified contingency, and in all other cases, it becomes payable upon the dissolution of marriage through divorce or the death of the partner.

3.2.2 Proper dower (Mahr-i-Misl)

Even though the wedding becomes contracted under the particular case that she should not claim any dower, the woman may claim a reasonable amount of dower if nothing is mentioned about dower at the time of marriage. The Court is informed in determining the right dower by the amount of dower awarded to various female members of the spouse's father's family, such as the father's sisters. In such cases, the husband's social function and financial resources are of secondary importance. According to the Hedaya, the wife's "age, beauty, fortune, know-how, and virtue" must be kept in mind when determining the proper dower. As a result, the Prophet permitted the marriage of a poor Muslim for a silver ring, and on other occasions, solely on the condition that the husband could teach his wife the Koran.

“Under Shia law, the proper dower should now not exceed 500 dirhams. (Baille, II, 71). In one case, a Muslim married a Christian girl in England. The Court observed that the marriage was governed through Muslim law, and therefore, the husband ought to divorce his wife by way of talak. The Court also held that the spouse, in turn can also claim dower, despite the fact that no dower changed into first of all constant on the time of the wedding²⁵. In such cases, right dower can be claimed, i.e. Dower which might be payable to a girl of similar repute and circumstances. (*Marina Jatoi v. Nuruddin Jatoi*²⁶). Nowadays, the dower has an aspect of a guarantee and undertaking that the man makes an agreement for a particular amount in the term of dower in favour of his wife, but the woman does not generally demand it, saves in the event of a disagreement or dispute between them. This type of dower can be turned into a security. According to the Quranic passages and pertinent Hadith, dower is an incident of marriage that is the backbone of society under Mohammedan Law, and later jurists separated dower into two sections. The difference between Mahi—i-Muajjal, which is instantly eligible or prompt, and Mahr-i-Muawjjal, which is deferred, is determined by the parties' contracts and the absence of any contract on the country's custom. To calculate the right dower amount, consideration must be given to her equality with the ladies whose dowers the rule is to be drawn, in terms of age, beauty, fortune, understanding, and virtue, because Mahr fluctuates depending on these factors. The dower chose her female paternal relatives. If there is no paternal aunt or full or consanguine sister, the dowers of the uterine sister's daughter or uncle's daughters may be considered.

3.3 QUANTUM OF MAHR (DOWER)

An adult wife has the legal right to deal with her Mahr in any way she sees fit under Islamic law. Prior to Islam, the dower sum, which was commonly paid or collected by the bride's father, was outlawed by Islam, and it was instructed by Almighty God that the right of dower should not be paid to the bride's father or other relatives, but should be paid to the wife. Quantum of Mahr is drawn from the Holy Quran. The amount of dower is determined according to no defined rule.

Dower is usually determined by mutual consent of the couple prior to the marriage ceremony. There is no requirement for a specific procedure or formal documentation. These factors are, in reality, determined by customs and usages. Different sects of Islam have their own set of laws about the amount of dower that is required by the legislation that governs them. Aside from the nature of dower, legal disputes abound over the

²⁵ *Ibid.*

²⁶ P.L.D. 1967 S.C. 580.

amount of dower, its division into prompt and postponed sections, the time and method of payment, revision of dower, and excessive dower.

All of these legal concerns will be discussed in the following sections. An attempt is made to examine judicial precedent in order to determine and express the controlling principles in each of these areas. However, when it comes to determining the amount of dower, Indian courts use sectarian legal standards, but they usually rely on universally applicable legal concepts. In addition to equity, the Law of Contract is the most important legal standard that governs this subject of law. This is because, in Indian law, marriage is still considered a civil contract. In India, the rules that govern civil contracts have had a significant impact on the legislation governing marriage relationships.

*“Mahr need not be sum of money, any type of property can be conferred by way of mahr. Anything, which falls within the meaning of mal, and has value, May according to Hanafi law, forms the subject of dower. Even instructions in the Quran may be the subject matter of mahr. It may, on the other hand, be immovable property, land or house. If immovable property of the value of rs. 100 or more is given by way of dower, and the wife is put into the possession, she cannot be dispossessed even if there is no registered deed, as Section 53-A, Transfer of Property Act, 1872, will apply”.*²⁷

Under Hanafi Law, the minimum amount of dower is equal to 10 Dirham’s, and there is no maximum amount. Where the dower is less than the minimal limit, the difference must be made up. It is ten dirham’s or an equivalent number that has been uniformly accepted by Indian courts in terms of the minimal amount of Mahr, but there is no general concept of universal applicability, and there is still uncertainty as to the actual amount that the courts may pronounce.

There is no such thing as a minimum amount for Mahr in Shafi or Shite law. However, according to Maliki Law, the minimal amount for Mahr is 3 Dirhams. The quantity of Mahr may be fixed or not; if it is fixed, it must be less than the minimum set forth by their respective school's law.

3.3.1 Value of 10 Dirhams

“The quantum of the value of 10 Dirham’s is matter of discussion and uncertainty. The value has not been finally decided. Amir Ali say, its value is amount 5 shilling. Macnghten says that the value of 10

²⁷ note 4, page no. 67.

Dirham's in *Asma Bibi v. Abdul Jamal*²⁸ is between Rs.3 and Rs 4. In *Sughra v. Masuma*²⁹. It was decided that the value of 10 Dirham's is Rs. 107. In the decision of Mst. Jaddo Begum v. Nawab Sharaf Begum the value of 500 Dirham's was fixed at Rs.110. The value is still uncertain. But it is a silver coin containing 2.97 Grams of silver and the best course would be seemed to be is to calculate the value according to price of silver of that quantity."³⁰

3.3.2 Maximum amount of mahr

Where the law establishes a minimum dower amount, there is no maximum dower amount; whatever sum exceeds the minimum will be payable. There are no limits to the number or value of dower in Shia Law, according to greater judgment. Moderation is praiseworthy, and fixing of Mahr (dower) in excess of Mahr-ul-Sunh (500 Dirham's) is deemed abhorrent but not prohibited. Two distinct tendencies can be noticed in Muslim society in India.

In other circumstances, such as the Sulaymani Bohras, the dower is Rs. 40, and it is considered a matter of honour not to stipulate for a value greater than the 500 Dirham's set by the Holy Prophet Mohammad for his favoured daughter Fatima, Ali's wife. Other groups have dowers ranging from Rs. 100/- to Rs. 1,000/-, whereas Ameer Ali mentions payments ranging from Rs. 4/- to Rs. 4,000/-. A completely contrary trend may be found in Uttar Pradesh, and to a lesser extent in Hyderabad, Deccan, where the ludicrous rule appears to be that the more noble the family, the higher the Mahr, independent of the husband's ability to pay or earn.

If the dower is not settled or expressed in the paperwork at or before witness and opinions dispute, the courts will decide on Mahr. The components that the court considers in such matters have been extensively discussed and addressed by the Patna High Court through Mr. Justice B.N. Raichand and Mr. Justice S.C. Raichand in "*Mohd. Shahabuddin v. Mst. Umator Rasool*"³¹, it is held that ordinarily the amount of dower is fixed by oral contract and this is valid. There is also no limit either to the maximum or minimum of the amount of the dower. Hanafi law had fixed ten dirham. This minimum has now become obsolete and the amount of dower depends entirely upon other consideration such as the circumstances of the husband and the wife, the position of the paternal family of the wife, her intellectual attainments or personal attractions and qualifications, wealth of the husband and the desire

²⁸ ILR 32 Allahabad (1910) 167.

²⁹ (1880) ILR 2 All 573.

³⁰ note 3.

³¹ AIR 1960 Pat 511: ILR 38 Pat 624.

of self-glorification and vanity of the part of their parties. All these considerations enter into the determination and settlement of the amount of dower”.³²

The following conclusions are very much relevant for consideration based on the above observation:

The situation of the husband and wife;

The necessity of a device to prevent the husband from arbitrarily exercising the power of divorce vested in him;

The woman's position and family pattern;

Her intellectual attainment, personal attraction, and qualification;

Her husband's riches and the state of society in which she lives, and

The parties' drive for self-glorification and vanity.

In today's India, all of these issues are significant and prominent. It is important to note that the circumstances of each case heavily influence the court's decision to award a specific amount of wealth as Mahr in favour of the wife. In order to determine the Mahr amount in a routine case, a set of regulations has been developed by the courts. The following are the guiding principles:

Using analogy, the amount of Mahr can be estimated. However, in order for this rule to be applied, they must be similar to the wife in terms of age, beauty, virginity, education, financial status, character, and the like;

The Mahr of a girl from the same family who is substantially unequal in terms of the above qualities will not be used to determine the Mahr amount; and

Except if the mother is an agnatic relation, the Mahr of the mother and the other girls in her family shall not be used as a benchmark.

³² note 6.

It is now imperative to discuss here, the concept of Mahr as Sunnat or Mahr Taljee, and the concept of Mahr as Sunnat or Mahr Taljee. Sunnat means 'sound' or 'fame,' as well as 'infinitive of the verb to be heard. In many circumstances, the parties privately agree on a minor amount for dower, but a huge quantity is indicated purely for show and family pride, even when the parties do not intend to pay or exact such a huge sum. If the parties have truly agreed to pay a large sum for a lesser quantity, and the larger value is paid out only to show off, the court has the authority to decrease the amount to the amount genuinely settled as payable. The court may rule that such a contract is fictitious and not valid. The burden of proof for showing the fake character of the dower rests with the person making the accusation. If the terms of a fictitious dower have been reduced to writing in the form of a deed, the question will arise as to whether the party who established the fictitious nature of the dower has the right to present evidence as to its true nature and to show that the dower actually settled was not the same as what was shown in the written marriage deed. Will the restrictions of Section 91 of the Indian Evidence Act prevent it? It is argued that it will not be dismissed.

3.3.3 Increase or Decrease of Mahr

The dower can be increased by the husband at any point after the marriage, and the dower can be remitted by the wife. With the pursuit of the Indian Majority Act, any Muslim female who has reached puberty is competent to abandon her Mahr, whether she has reached majority age of 18 years or not. In the event of a dispute over the amount of dower, the court may rule in favour of the wife, according to Indian decisional law. Local customs and the terms of the signed marriage deed appear to regulate the situation. According to Ameer Ali, the minimum and maximum customs varied between Rs. 4,000/- and Rs. 40,000/- among the upper middle class. The traditional dower in Bihar is Rs. 40,000/-, although there is none in lower Bengal. It ranged from Rs.50 to Rs.400/- amongst India's lowest classes. It was normally several lakhs of rupees in princely families. As a result of this finding, the upper middle and lower classes in India were divided into two distinct categories. In terms of the numerous factors, he mentions a consistent pattern, while in Bengal; he mentions the lack of a custom relating to the amount of dower. Finally, he stated that the princely family is a separate category in terms of dower. It is obvious that the amount of dower grows or reduces accordingly with the financial position of distinct groups.

Bihar is an exception to this general pattern, where the conventional dower is usually a single amount. In Bengal, there is no usual dower criterion, and the families involved use a varied scale of dower amount depending on the conditions of their home. When customary dower for a specific group of

persons exists, it becomes the most important factor in determining the amount of dower that can be or is usually decreed by the courts. The actual problem emerges when a custom does not exist or is not revealed in the marriage contract. Another element of this aspect of family connections worth noting is that dower was frequently paid in an amount disproportionate to the financial capability of the spouse. A distinct challenge arose in India's Oudh and Jammu Kashmir regions. Many princely families as well as former landed proprietors lived in these locations. The vicissitudes of time reduced them to a varying low financial level, yet they clung to their former status and provided for themselves in diverse ways. One of these methods was to fix a colossal sum of dower that was completely out of proportion to the husband's financial situation. As a result, all those occasions when the money so negotiated had to be paid were marred by various hardships and injustices.

The problem had grown to such dimensions that the then-Government felt compelled to interfere through law. The Oudh Laws Act, 1876, stated that if the agreed dower was excessive in comparison to the husband's financial capability, the court was not required to order such an amount of dower, but only a reasonable sum based on the husband's means. Excessive dower amounts will not be decided directly or indirectly, by enabling them to be set-off, lieu, or otherwise to the defendant, as an extra precaution. In the domain of regulatory legislation, Section 2 of the J&K state Muslim Dower Act, 1920, contains an analogous requirement. Only those with a local domicile are covered by the provision in both countries (Oudh and J&K). The Privy Council's comment is notable in this context. Though the Privy Council held in Zakaria Begum's case that if a man resides outside Oudh province and travels to Oudh and marries there, the provision of the Oudh Laws Act, 1876 could not be invoked, Lord Hannen (on behalf of Lord Macnaghten, Sir Richard Couch, and Lord Shand) argued that if a man resides outside Oudh province and travels to Oudh and marries there, the provision of Where dower was stipulated to be exorbitant, the civil courts were directed to determine an appropriate amount of dower.

Nowadays, no doubt, the dower has an aspect of a guarantee and an undertaking, in that the man agrees to pay a particular sum in the form of dower, but the woman does not usually demand it, unless there is a difference or conflict between them. This type of dower can be turned into a security. In the early days of Islam, it was customary for a man to offer as a dower everything he agreed to part with, whether in cash or in kind. In light of this, it is impossible to claim that Islam's goal in ordering the dower was to offer financial security to women. The Prophet Mohammed was never willing to hand over a lady to a man without the payment of the dower, according to Islamic matrimonial history.

Messenger of Allah, if you are not ready, I am prepared to accept her as my wife," one of his companions stated. "What would you submit as a dower?" questioned the Prophet Mohammed. The response was, "I haven't received anything." This cannot be, so go to your house and see what you can find to give as a dower to his wife, said the Prophet Mohammed. "I couldn't find anything in my house," the man remarked after returning from his house. "Go again and look properly," the Prophet Mohammed advised. "Even if you can locate a Mattel ring, that will enough," the Prophet Mohammed declared. "I cannot find even a metal in my house," he returned after going twice.

I'm ready to hand over the garments I'm wearing to her as a dower. One of his companions, who knew him, said: "By Allah, this man has no other clothing than the ones he is wearing, Messenger of Allah. As a result, the woman's dower may be assigned to half of the garments. According to the Prophet Mohammed, "Who will wear which half of these clothes if half of them are the dower of the woman? If one of them puts them on, the other will be left naked. No, it's not going to be like this." The person who had made the request took a seat. In her place, the woman also waited. The talk shifted to a different issue, and it went on for quite a while.

3.4 MAHR AS UNSECURED DEBT AND RIGHT OF RETENTION OF WOMEN'S

Marriage, according to the Quran, is a sharing between the two halves of society, and its goals, in addition to preserving human life, are emotional well-being and spiritual peace. It is built on the foundations of love and mercy. It was clearly decreed that a woman has the entire right to her Mahr, in addition to all other safeguards for her protection at the moment of marriage. The researcher has attempted to demonstrate in the above discussion of this topic that the concept of Mahr in Islam is not an actual or symbolic price for the lady, but rather a gift expressing love and affection. In Islam, the norms for married life are clear and in line with human nature. Both men and women, in terms of their physiological and psychological makeup, have equal rights and claims on one another. The Mahr is a woman's right, and she is free to use it in any way she sees fit. No one has the power to take it away from her. According to the Fatwa-i-Qazi Khan, Mahr is so important to marriage that if it is not specified at the time of the marriage or in the contract itself, the law will assume it by virtue of the contract. The Mahr isn't just a necessary occurrence or bride price; it's much more. Mahr is a form of expression of love between the bridegroom and the bride. "The payment of the Mahr is mandated by the law, just as a show of respect for the bride, but its mention is not absolutely needed for the legitimacy of a marriage, and marriage is legitimate for the same reason," writes the author of Hedaya.

Sure-Guidance declares that the married connection takes precedence over any monetary considerations, and Mahr is essentially a free gift. Its significance stems from the protection it provides to the woman against the husband's arbitrary exercise of the right of divorce. A Muslim husband has the right to divorce his wife at any time, and Mahr's goal is to prevent the husband from abusing his ability to tunicate the marriage at anytime. It shields her not just from his unbridled ability to divorce, but also from his excess in having more than one wife. A stipulation that he must pay a large Mahr on the occasion of his next marriage is enough to keep him from having two, three, or four wives. In *Abdul Qadir v. Salima*³³, Justice Mahmood observed that the marriage contract is easily severable, and that the freedom of divorce and the rule of polygamy lay power in the hands of the husband, which the law giver meant to control by enacting the rule of Mahr payment. As a result, the wife's right to her dower is a fundamental aspect of the marriage contract; it plays a crucial role in the domestic relationship, affecting the spouses' mutual rights at multiple points.

3.4.1 Wife's Right to Recover Mahr

In terms of a wife's right, it all relies on the kind of Mahr. The various types of Mahr have previously been addressed by the researcher on previous sections. The woman may refuse to pay the Mahr if it is a prompt dower and it is yet due to live with the husband; and

If the marriage has not been consummated, she has the right to refuse to cohabit with him as long as the dower is not paid promptly.

In the case of a minor or insane woman, her guardian has the power to refuse to bring her to her husband's house until the dower has been paid. During her stay at her guardian's house, the spouse is obligated to look after her." The wife's absolute power to demand immediate payment of the dower before granting him access to her was held to be forfeited after the consummation in this instance. However, when it comes to the subject of whether the wife has the right to decline conjugal relations after consummation, there is disagreement among the original authorities as well as among the decisions of the several High Courts.

According to Imam Mohammad and Abu Yusuf, a wife cannot claim non-payment of Mahr if the marriage was consummated with her agreement. However, if the consummation occurred against her choice, or while she was extremely young or insane, she can use the nonpayment of Mahr as a defense in a case of restitution of conjugal rights against her. In this case, Abu Hanafi believes that she has the right to avoid marital intercourse even if the marriage has already been consummated.

³³ (1886) ILR 8 All 149.

A husband does not have an absolute right to demand unconditional recovery of conjugal rights from his wife. In *Rabia Khatoon v. Mukhtar Ahmed*³⁴, the court held that if the claim is initiated after sexual intercourse with free consent, the right decree to issue is a decree for restitution conditional on early payment of dower. If the nature of Mahr is postponed and payable at a later date, the courts have the authority to make the decree conditional on the payment of her overdue dower obligation or impose other appropriate conditions that are equitable, fair, and required in the circumstances of each case.

In the case of *Syed Ahmed Khan v. Smt. Imrat Jahan Begum*³⁵, the court held that where the wife already had a decree in her favour for prompt dower recovery and the husband was not paying it, the court should have made the satisfaction of the decree for dower recovery a condition for enforcement of the decree for restitution of conjugal rights.

According to one school of Mohammedan law, a Muslim wife ruled by Hanafi Law has the right to refuse to give her dower to her husband even after the consummation of their marriage with agreement if her dower has not been paid. However, adopting his viewpoint at a nice time and in a modern state of life may be perilous. As Sir Suleman J.

pointed out, courts of law have some discretion in this regard because a suit for restitution of conjugal rights is in the nature of a suit for specific performance, and the court can place restrictions on the husband to safeguard the wife's entitlement to prompt dower. According to Abu Hanafi, a deferred dower is payable after a set period of time, and the wife cannot deny herself for the purpose of receiving dower money before or after the term. The most popular view among Shia scholars in this regard is that the woman is not permitted to reject conjugal relations in exchange for timely dower payment if the marriage has already been consummated.

3.4.2 Mahr as unsecured debt

“The place of Mahr in the field of marriage relationship is very essential. Dower is an unsecured debt which the wife, or widow, or divorcee, can recover from her husband, when alive, or from his estate when dead. Not merely the widow has the right to recover the dower debt, but, on her death her heirs

³⁴ AIR 1966 All 548.

³⁵ AIR 1982 All 155.

too, can recover it. Similarly, the dower debt can be recovered not only from the husband but also after his death, from his heirs. It has already been stated that when the prompt dower is not paid the wife can refused conjugal right to the husband, and nonpayment of the prompt dower is affirm defense against the husband suit for restitution of conjugal rights. Not merely this, if on account of nonpayment of the dower, the wife is living separately from her husband; he is bound to maintain her. Further, if the wife is a minor, then the guardian may refuse to allow the husband to take her to the matrimonial home, till the dower is paid the wife can also file a suit against the husband for the recovery of her dower death.”³⁶

“The Lahore High Court in *Mst. Nasiban Bi v. Mst. Iqbal Begum* through Mr. Justice Din Mohammad laid down that the dower amount can be fixed at any time before or after marriage and can also be increased during the continuance of marriage and where the husband promised to increase the dower was accepted by the wife, then the payment came to be binding on the part of the husband. The court referred with approval *lahurdan v. Sakina Bibi* and *Kamarunnissa Bibi's'* case to the same effect or the observations of the pronouncements of acting Chief Justice Wazir Hasan (as then he was) and Mr. Justice

Pullan in *Mst. Amina Bibi*" case. The Madras High Court in *Abi Dhunimsa Bibi'* laid down a proposition of farreaching consequences reflecting the true nature of dower³⁷. "Courts never took at it (dower) from the point of view of mere consideration and regard it as an obligation enjoined on the husband by the marriage contract”.³⁸

According to the above-mentioned legal ruling, dower is not a consideration, but rather an inevitable occurrence of marriage. Its presence or absence has no bearing on the legitimacy of a marriage. It can be corrected prior to or after the wedding. The wire has the right to relinquish or modify the value of the claim at any time throughout the marriage. The payment of dower is a charge against the husband's estate. It does not, however, take precedence over other obligations. However, if the wife has legitimately taken possession of the estate, she can keep it as long as her claim is unsatisfied.

In this respect, she has a stronger claim to the late husband's property than the other heirs. Another feature of the wife's entitlement to Mahr is that, according to the Madras High Court in *Abi Dhunissia Bibi v. Mohammad Fathi-ud-din*³⁹, the right to dower debt is heritable and transferable, and may be

³⁶*Supra* note 4.

³⁷*Supra* note 3.

³⁸*Supra* note 3.

³⁹ (1918) ILR 41 Mad 1026.

collected from the decreed husband's heirs. "The character of the objection to pay the dower is a debt," said Mr. Justice Sashgiri Ayyar.

The widow's claim for dower due from the estate of her decreed husband commences equally and suitably with the claim of other creditors the instant the dower is adjusted to possess from precept into an enforceable obligation." Mahr is a well-established tenet of Muslim law, and all significant scholars believe that it is an obligation put on the husband as a token of respect for the wife. The wife can reclaim the Mahr by filing a legal action as if it were a debt owed to her. The duty to pay Mahr to his wife results in a debt owed to her. A Mahr can be immediate or delayed, according to Muslim law. If it is postponed, it will be discharged when the specified event occurs and on the wife's demand.

Mahr, like any other debt, takes precedence over inheritance and legacies. Dower, like any other debt, must be paid before the heirs can take anything. It is an obligation that is owed to the deceased husband's general estate. The dower is owed by the entire estate. It affects both portable and importable attributes. If one of the heirs files a claim for a piece of the estate, the widow may file a claim for dower if she is a party. Dower debt is a single debt, and a succession certificate cannot be issued for the sole purpose of recovering a portion of it.

Even if the dower, like any other debt, goes unpaid, the heirs of a deceased Muslim have the right to sell their interests in the land. Of course, the widow will have the right to enforce the claim, and if she already has possession, she will have the right to keep it from unsecured creditors.

Nothing prevents a widow from filing a suit for her dower in order to obtain a simple money decree against all of her husband's assets, including the property in her possession, at least by surrendering possession of such property in her hands, and it prohibits a legal practitioner, among others, from purchasing any actionable claim. It, like any other debt, can be taken in execution of a decree. It does not fall under the exclusion granted by Section 6 (e) of the Transfer of Property Act of 1882⁴⁰ for assignable property.

⁴⁰ The Transfer of Property Act, 1882 (Act No. 4 of 1882).

The nature of this privilege is heritable, and the heirs have the right to claim it even though the wife did not demand dower during her lifetime. In contrast to apostasy before consummation, the right is not forfeited if the woman commits suicide before consummation. If both the husband and the wife die, the wife's heirs can claim from the husband's heirs according to all, if the dower is defined, but there is a disagreement about proper dower, it would be recoverable according to Abu Yusuf and Mohammad but not according to Abu Hanifa. The right is also one that can be transferred. It is up to the woman to assign it to anyone she wants. This is likewise true in the situation of deferred dower, which the transferee may reclaim from the husband or his estate when it becomes due. The failure of the wife to submit a claim for early dower under Section 13 of the Act will not discharge the debt if the husband submits an application under the U.P. Encumbered Estates Act and there has been no demand by the wife and no refusal by the husband.

“Once her claim of deferred dower arises, she can recover it against the husband, or his estate, like any other creditor of the husband. In *Kapoor Chand v. Kadar-unnissa*⁴¹ the Supreme Court laid down the following three propositions:

- (1) The widows are like any other creditor of the husband and cannot, therefore, claim any priority for the dower debt over other creditor;
- (2) The widows claim for dower debt has priority over the claim of heirs (but it seems, if she omits to put up her claim for dower and allows a person to take the amount of his legacy from the estate of the deceased husband, she cannot afterwards retract her assent); and
- (3) The heirs of the deceased husband are not personally liable for the dower debt of the widow; the amount can be realized ratably from their share in the estate.”

Mahr is paid. It cannot be stated that the Mahr debt was repaid by payments given from time to time in varied amounts if there is no evidence that the husband designated any of these payments to the dower debt or that there was any attempt at the trials to establish that the lady accepted them as such. On the other hand, the stipulation that payments made by a Shia husband to his wife during the course of their marriage should be deemed to be payments of her Mahr obligation unless she can prove otherwise is incorrect. However, this is dependent on the facts of each instance, and it is possible to infer from the circumstances that the payment was paid in consideration of dower.

⁴¹ 1953 AIR 413; 1950 SCR 747

The passage of time since the marriage and the fact that the husband has been able to pay the dower generate no suspicion that the Mahr has paid. The onus is on the individual who claims that the Mahr was paid to prove it. An effective discharge could be obtained by paying the guardian of a juvenile or the father or grandpa of a virgin. By mutual agreement, a payment may be given for Mahr's satisfaction, or a family arrangement could be arranged, or a life-interest may be transferred. The Mahr surety ship contract was written specifically for Muslim Law. A parent may enter into a Mahr contract on behalf of a minor son (whether before, after, or at the time of marriage), and the contract would be enforceable on the son if entered into while the son was still a minor. It is incorrect to imply that a father instantly becomes a guarantor for the payment of the dower debt by consenting to the marriage. If the father, on the other hand, has contracted the marriage of a minor son who dies without leaving any property, he is liable for dower to the widow.

However, even if the wife is a minor, a person who is a guardian (whether for the husband or the wife or both) can stand a surety for the payment of dower. When a parent contracts his daughter's marriage and stands as a surety (whether she is a child, an adult, a virgin, or mad), the suretyship is legitimate, and she has the option of suing the husband or the guardian. He may have recourse against the husband if he becomes a surety at the instructions of the husband. When a parent contracts for his infant son's marriage and stands as a surety, the surety ship is legal if the woman or someone acting on her behalf accepts it. In this case, the wife can claim the dower from the guardian but she is not entitled to demand if from the husband till he attains puberty. The father has no right of reimbursement from the son unless there was a condition in the original security that he should be entitled to such reimbursement and as to a guardian standing surety while suffering from death-illness. A stranger may also make a contract of surety-ship for dower. When a parent contracts the marriage of an infant son and the child is destitute, the obligation falls wholly on the father, who must be fulfilled out of the entirety of his property in the case of his death, whether the child matures and becomes wealthy or dies before it.

3.4.3 Wife's Right of Retention of the Property in lieu of Mahr

It has been explained in previous pages that Mahr's right is identical to that of an unsecured creditor. In this case, Muslim Law grants and confers a specific advantage on women, taking into account their financial demands and the poor socioeconomic circumstances in which they find themselves. This privilege is known as the right to keep the husband's property, which by law became totally in the possession of the widow or divorcee.

A Muslim woman who has had her marriage dissolved by death or divorce has the right to hold custody of her husband's property until her obligation is justified. A wife's right to retain her husband's estate during the marriage is not attainable unless she can show that she earned it through a contract. Divorcees and widows have a legal right to obtain the dower money from the husband's property if it is due at the time of the deceased's death or the day the marriage tie is legally severed.

It's evident from the thesis's first few pages. The wife has the right to keep property if the following conditions are met: first, she must have taken into possession of the property properly and without force or fraud; second, there must be a debt owed to her in respect of her dower, for which she should file a claim. If these requirements are met, the wife is entitled to custody of the property until the debt is paid off. The personal law of Indian Muslims gave rise to this right.

The principle's legitimacy stems from public welfare demands, which, in order to be meaningful, must impose some additional legal benefits on those who, unfortunately, are forced to deal with situations that are mostly beyond their control. It is a specific right granted to a Muslim widow divorcee under Muslim Law that she has the right to custody of her deceased husband's property in lieu of dower debt. In lieu of dower debt, a Muslim widow/divorcee has the claim to her deceased husband's possession. The essence of the privilege appears to be related to the rule of pure Muslim Law, which states that any creditor of a deceased Muslim has the right to assist him to any money or chattels in order to repay him from the revenues.

This main rule of Muslim Law is still completely applicable today. The widow/right divorcee's to keep the house in lieu of paying her dower debt arose from this, not from the contract. Because this rule represents more equity than law, the essential normative concept is that possession must have been achieved properly and not through the use of any doubtful strategy. So, where fraud, coercion, or deception has been used, the right to keep the husband's inheritance until the dower-claim is satisfied is forfeited.

According to Muslim Law, a widow or divorcee has the right to remain in possession of her husband's property if she obtains it lawfully and without force or fraud, even if the dower has not been determined or has been left to be settled later, and she is entitled to keep it until her dower is satisfied. Unless the

dower debt is paid, her heirs, creditors, or living relatives have no right to disturb her possession. She has the right to keep possession until the usufruct is satisfied. The right of a divorced or widowed woman to keep ownership of her husband's inheritance in place of her dower is for a specific reason. It is by necessity that the dower, which is an unsecured debt, be paid quickly.

The debt and the slier are the tentative rights. Retention is the appropriate adjective. Despite the fact that she has no more rights than any other unsecured creditor, if she gains possession of the deceased husband's property properly and without force or fraud, she is entitled to keep it until her debt is paid.

The Peshawar High Court In *Ch. Shakar S.Dass v. Mahbub Jan*⁴² a Mohammedan widow who claims to have gone into possession of her husband's property on the basis of her dower is entitled to remain in possession until her dower is satisfied, according to Alnsond J.C. and Mr. Justice Mir Ahmed. "The right of a widow or divorcee to keep ownership of her husband's wealth in lieu of her dower, as stated in the previous paragraphs, is for a specific purpose. It is done under duress in order to gain prompt payment of the dower, which is an It is done under duress in order to gain prompt payment of the dower, which is an She cannot claim to have obtained anything if she does not have it or has lost it. It is carried out under duress in order to obtain early payment of the dower, which is a legal obligation. She can't say she got something if she doesn't have it or has misplaced it.

Because her right to keep is a personal claim against her deceased / former husband's heirs and creditors, rather than a charge on the property like a mortgage. The most persuasive argument on the subject is *Babee Bachun v. Hamid Hussain*⁴³. When it was decided that the wife's possession of the husband's fortune should have been obtained without force or fraud, that is, quietly and legally. A Division Bench of Patna High Court in *Abdul Rehman v. Wali Mohammad*⁴⁴ According to Muslim Law, a widow has the right to acquire her husband's property in lieu of the dower debt, and as long as her dower debt remains unpaid and she does not transfer the dower debt itself, she can transmit for her life time control of the property.

In the similar decision of *Mst. Bibi Makbul Unnisa v. Mst. Bibi Umat-un-Nisa*⁴⁵ Mr. Justice Court and Mr. Justice Das held that a widow's right to hold the property as a security for the dower debt and

⁴² AIR 1942 Peshawar 92.

⁴³ (1871) 14 MIA 377

⁴⁴ AIR 1923 (Pat) 72.

⁴⁵ AIR 1923 (Pat).

to remain in possession until the debt was paid was both heritable and transferable. Both of these rulings have authority; *Abdul Rehman v. Wali Mohammad & Mst. Bibi Ummatmiy*⁴⁶ have been shattered by a subsequent Privy Council decision in *Mst. Maina Bibi v. Vakil Ahmed*⁴⁷ In which the widow of a deceased Muslim was in possession of her husband's estate in lieu of unpaid dower, and the deceased's heirs obtained a decree against her to the effect that they should have possession of their share of the estate upon payment of a proportionate part of the dower debt within six months, and that their suit should be dismissed if they did not pay. A Muslim widow in possession of her husband's inheritance in lieu of outstanding dower claims, whether with the approval of the heirs or not, is not entitled to priority over his other unsecured creditors, according to the Supreme Court. In this case, Muin-ud-din, a Muslim, died in 1890 with immovable property, which is the subject of the current action. His widow, the appellant Maina Bibi, survived him and took control of his belongings.

The plaintiffs, who are the respondents in this case, sued the widow in 1902, claiming immediate possession of their estate interests. The widow claimed that her husband gave her the estate as a gift, or that she was entitled to possession until her dower was paid. In 1903, the Trial Judges issued a judgment for possession on the condition that the plaintiffs pay the widow Rs.25,387 within six months, and that the claim be dismissed if payment was not made. An appeal to the High Court was dismissed, and the payment deadline was pushed back to December 1906. The plaintiffs' respondents failed to pay the money, leaving the widow in possession. Maina Bibi executed two gift deeds to her husband's estate in 1907 in favour of the defendants' appellants, to whom she gave ownership. The contents of the deeds are revealed in the ruling; they purported to give an absolute title to the widow. The present claim was launched in 1915 by the plaintiff respondents against the widow, Maina Bibi, and her alienate, the defendants and appellants. According to the lawsuit, the widow could not transfer the possessions due to Muslim law. They demanded possession either unconditionally or in exchange for payment of the proportionate amount of the dower debt, less the property's profits. The defendants argued, among other things, that the 1902 decree, which was upheld in 1906, served as Res-Judicate, and therefore the claim was time-barred.

The right to keep possession cannot be separated from the dower debt and transmitted as a distinct interest, according to the court. Lord Atkinson noted in his Judgment, "It was contended as their Lordships understood that Mst. Maina Bibi had transferred both her dower debt and her right to keep possession of her husband's estate until that obligation was paid by the documents of assignment." It's debatable whether she could have done any of these things, but whatever the case may be, it's apparent

⁴⁶ AIR 1923 (Pat) 72

⁴⁷ (1924) 52 IA 145

that she never pretended or attempted to do either. On the contrary, she represents herself as the absolute owner of her deceased husband's property in those deeds, and she purports to pass that absolute ownership to her donee.

There is no ground for the contention, if it has been truly put forward, that because these deeds fail to effect a transfer of the absolute interest with which they purport to deal, they operate to transfer the widow's dower debt and her right to hold possession of the lands until that debt is paid, they operate to transfer the widow's dower debt and her right to hold possession of the lands until that debt is paid," their Lordships added. By giving up ownership of the lands, as she stated in her deeds, this right of retention arises for the first time upon the dissolution of the marriage, whether through death or divorce, and she is entitled to hold it until her dower debt is paid.

Ownership of the husband's property by the widow may be believed to be on the basis of a lien for dower, and when possession is achieved and continued after the husband's death, there is a presumption that it was achieved legitimately and peacefully. It is the responsibility of the heirs to show that possession is not in lieu of dower as it was held In *Mohd. Karimullah v. Amam Begum*⁴⁸. In *Cooverbai Nasarwanji Bulsara v. Hayatbi Budhan Bai*⁴⁹. Where Rahim-un-ownership Nisa's was not that of a co-tenant, but rather that of a co-widow in Muslim Law in lieu of her dower, it does not represent the possession of her heirs' other widow. The possession is assumed in her own right as an individual. The presumption that the Muslim Law has provided for the advantage of the widow as a method of protecting her right, which has been specifically protected in the Quran, is a presumption of law but a presumption of fact, based on the circumstances of each individual instance. If she has a lien on the property, she will keep it until her dower debt is paid off. This is well established and would be clear from decision of the Privy Council in *Mst. Bebee Bachun v. Hamid Hussain*⁵⁰ In this context; it would be useful to quote their Lordships of the Privy Council's observation. The following are Their Lordship's observations: "Whatever right it may be named, it appears to be based on the widow's power as a creditor for her dower to hold the property of her husband over which she has lawfully and without force or fraud taken possession until her due is paid. The Allahabad High Court through Mr. Justice M. Akbar in *Asia Khatun v. Amarendra Nath Babu*⁵¹ held that "The right to keep the husband's property arises for the first time on the demission of the marriage, whether by death or divorce, but there is no such right throughout the marriage's continuation. The Peshawar High Court in *Ch. Shankar*

⁴⁸ I.I.R. 17 All 93.

⁴⁹ AIR 1943 Bom. 374.

⁵⁰ (1870-72) 14 M.I.A. 377(PC).

⁵¹ AIR 1940 Cal. 578.

Dass v. Mahbub Jan⁵² "A Muslim widow who claims to have gone into possession of her husband's property on claim of her dower is allowed to remain in possession until her dower is satisfied," said Almond J.C. and Mr. Justice Mir Ahmed. A Muslim husband may settle any sum he wants as a dower debt on his wife, even if it is beyond his means and even if nothing is left to his heirs after the amount is paid, but he cannot settle less than 10 Dirhams.

In **Mirvahedali Kadumiya v. Rashidbeg Kadumiya**⁵³ It has been held that if a Mohammedan widow in possession of her husband's property still claims the dower debt owed to her, she has the right to keep possession of the property until the dower debt is paid, and it makes no difference how she came into possession of the property, whether as a creditor for dower debt or otherwise, as long as she did so lawfully. Her heirs can also utilize this right to keep possession when she dies. The widow does not have legal standing to take ownership of the property. She only has the right to keep possession if she gets into it. Except under Section 9 of the Societies Registration Act, there is no right to reclaim possession. However, if she obtains ownership lawfully and peacefully without any arrangement, she is entitled to keep it. Is it required for the widow to acquire the approval of the heirs before she becomes entitled to the propriety's retention? It's a difficult question to answer. On this issue, there is a split of view among the Indian High Courts. In the matter the Privy Council observed in **Hamira Bibi v. Zubaida Bibi**⁵⁴ at that However, she has no more rights than any other unsecured creditor, except that if she lawfully obtains possession of the whole or part of the husband's estate, with the express or implied consent of the husband or his other heirs, to satisfy her claim with the rents and issues accruing, she is entitled to retain such possession until it is satisfied." The dispute arises as a result of differing interpretations of the Privy Council's explication of law by different High Courts. The Allahabad High Court, dissenting from earlier rulings, decided that the Privy Council's observations in the aforesaid case were obiter dicta, and that the widow's possession should not have been secured by the assent of the heirs as a precedent. In other words, she has the right to keep ownership if she obtains it properly and without coercion or deception, even if the heirs do not consent. She has clearly forfeited herself right to own them, as he claims she has done.

The dower, according to Islamic Property Law, constitutes a woman's property right, and this right to property might pass to the widow's heirs upon her death if it is unpaid. The unpaid dower becomes due and enforceable, and it can be recovered by both the widow and her heirs. Because dower is a loan like any other debt, it passes to the widow's heirs when she dies. The researcher's quest for truth regarding

⁵² AIR 1942 Peshawar 92

⁵³ AIR 1951 Bom. 22.

⁵⁴ I.L.R. 38 All 58.

the contribution of Indian Judiciary is to be fulfilled by the variance of judicial opinion as to whether a widow's right to keep custody of her property in lieu of dower debt is heritable. In the pages that follow, the judicial perspectives are divided into two categories: right is heritable and right is not heritable.

When a widow who has taken possession of her deceased husband's property in place of her dower dies without recovering the dower, her heirs inherit her right of possession, according to one set of legal decision. Her privilege is granted by the law, not because she is the widow of her deceased husband, but because she is one of his creditors. When a widow dies, all of her property rights pass to her heirs under Muslim Law, and there appears to be no need to make an exception for this right of heirs, which is often a very valuable entitlement.

Widow's right to retention is the most effective method of enforcement of dower after the death of the husband. A widow, whose dower debt is pending, has a right to retain the properties of the husband till her dower debt is satisfied. This right is termed as the right to retention in lieu of unpaid dower and it is available to a widow, whether there is any agreement between the parties for this right or not. Right to retention is a right of Muslim wife to continue to be in possession of her husband's property in those cases where her dower has not been paid. However, the right of retention is available when the marriage has been dissolved by death or divorce. During the subsistence of marriage, the right of retention is not available to the wife, unless she has, under a contract, a right of lien or possession over her husband's property.

Under this right, if a wife has taken possession of her husband's properties lawfully (with free consent of the husband) in lieu of unpaid dower, then she is entitled to retain that possession after the death of her husband, until her dower is paid out of the properties retained by her. When a wife was in possession of her husband's property during his life and continued in possession after his death, the presumption is that her possession is lawful.

“Most authors discuss the subject under the title “widow's retention of rights”. It is submitted that the right of retention means that the women, whose marriage has been dissolved, by death or divorce, has a right to continue to hold the possession of her husband property till her dower debt is satisfied. The right of retention of the possession of her husband estate is not available to wife during the subsistence

of marriage, unless she proves a contract under which she has acquired a right of lien or possession over her husband's property"⁵⁵.

“In case of *Mst. Zohra Bibi v. Ganesh Parshad*, that when a mohammedan husband promises a certain amount of dower, the facts that under section 5 of the Oudh Laws Act, only a less amount have been decreed in the matter has come before the courts and that such amount had been already been realized by the wife and that even otherwise the claim to the balance of the amount had become barred at the time, cannot invalidated a transfer of property by the husband to the wife in lieu of a portion of the balance. Time barred debt can be validly support transfer of property”.⁵⁶

Mr. Justice Mullick, who delivered a concurring judgment, relied on the Allahabad High Court's decision, which was later affirmed by the Privy Council's the Learned Judge: "The widow has a right to transfer the debt along with the security, and that transfer will be binding upon her co-heirs until the debt is discharged." Mr. Justice Niamatullah, who shared the same viewpoint, made the following observation that if a widow also assigned her right to receive the unpaid dower, she could transfer her claim to possession. There is no legal reason why she should not be entitled to both her debt and her right to remain in possession. He cannot be deposed by the husband's heir if the right to receive the dower and the right to remain in possession are both vested in the same person. If, on the other hand, the widow transfers her right to possession of the property without also passing her right to dower, she will be unable to defend her claim to possession against her heirs.

Because the property is owned by the husband's heirs, the only person who can stand in his way is the person who is entitled to dower and possession of the property in lieu thereof." The disagreement concerns the difference between the two rights: the right to possess and the right to the dower debt. In some circumstances, these rights have been treated individually, while in others, they have been mixed up. The preceding explanation further clarifies that a widow's right to keep her husband's property is only transferable for the duration of the widow's life. Even if the dower debt was not transmitted, it was argued in this case that the widow held a lien or chare on the property as a security for the debt's enforcement, which she may transfer not only during her lifetime but also after her death for the advantage of the transferee. The widow was in possession of the estate left by her husband in lieu of dower, which was small, with the amount of unpaid dower being Rs. 4,000/-. She transferred the entire interest in the estate, to which she was entitled by inheritance to a 'Four Annas' share to which she

⁵⁵*Supra* note 4, page no. 104. ⁶¹ AIR 1925 Oudh 267.

⁵⁶*Supra* note 6, page no. 210.

could undoubtedly transfer. Sir Dawson Miller, C.J. found that he could not construe the agreement as purporting to transfer her dower debt since there was not a word, from first to last, pertaining to any transfer of her dower debt, and that he was unable to construe the document as purporting to transfer the dower obligation. Neither, in my opinion, was it possible for her to transfer the lien on the property so that it would be binding after her death, without also transferring the dower-debt; the lien on the property, which gives the widow the right to possession until the debt is discharged, is not a separate interest in the property that can be severed from the right to dower and transferred separately.

It is a right to possession of the property by the person entitled to be paid the dower, as long as the dower obligation is not cancelled by the property's revenue, payment by the heirs, or any other interest in the obligation being cancelled. It is clear that the widow has the right to possession, and it is reasonable to presume that as long as she does not transfer her dower-debt and the obligation remains unpaid, she may transfer or retain lifetime ownership of the property, the proceeds of which belong to her until the obligation is paid off.

She could dispose of the proceeds in any way she wanted for the rest of her life and until the debt was paid off, and she could transfer possession of the property in the same circumstances, with the transferee having usufruct, but if she died and her estate passed to her heirs or assignees, the transferee's right to possession would be lost because the debt and security could not be served. As a result, it appears that possession of the property, which serves as security for the obligation, will not assure the transferee's benefit after the widow's death, when the dower-debt passes to her heirs. "The widow may transfer the right of possession apart from the debt during her lifetime," Mr. Justice Mullick wrote in a separate concurring judgement, "but this is a matter between herself and the transferee, and the transfer will not be enforceable upon her co-heirs after her death.

The following conclusions are drawn from the above-mentioned judicial decisions :-

The right to hold and retain possession of property does not pass to the transferee simply because the dower is transferred.

If the right to receive the unpaid dower is also transferred, the right to hold and retain possession of the property can be legitimately transferred. If the right to receive the dower and the right to remain in possession are both transferred concurrently, the transferee cannot be removed by the husband's heirs until the dower is paid, and

The widow's right to keep ownership of the property if it is transferred will only be valid and effective for her lifetime.

The study of judicial trends reveals that there is a difference of opinion among the Benches that decided the various cases as to the power of a Muslim widow in possession of her husband's property in lieu of her dower debt to transfer the security, whether with or without the dower debt, and as to the effect of the widow's transfer of her entire interest in the property, without transferring the dower debt.

The idea that the widow's right to maintain possession of her husband's wealth in lieu of her dower obligation is transferable with or without the right to dower is supported by a balance of authority. However, given that their Lordships of the Privy Council have voiced doubts about whether the widow can assign either her dower debt or the right to maintain possession of her husband's estate until the debt is paid, this cannot be considered settled law. In several circumstances, the Privy Council's decision has been said to have weakened the power of earlier Patna High Court judgments.

However, following the Privy Council's ruling, the Mysore High Court ruled that a Muslim widow who is lawfully in possession of her husband's wealth can keep it until her dower duty is paid. That right, together with her portion, can be transferred if a suitable and legitimate deed of conveyance is used. The right to remain in possession must be included in the transfer, and the transferee must likewise be placed in possession. The widow or her transferee cannot claim for possession based on the right to keep possession if they are not in possession. As a result, the court analysis confirms that the conflict still exists.

This conflict cannot be resolved solely by the Supreme Court of India, either by rescuing the widow's transferee or by rescuing the husband's heirs; however, based on the true purpose of the case-law, the following conclusion can be drawn: In some cases, it has been held that the right of retention is not transferable at all, and on the other hand, judicial opinions have held that the right of retention is transferable.

Although the balance of authority favors the idea that it is a transferable right, the Privy Council ruling has left some doubt as to whether the widow can assign her personal right or right to retention,

notwithstanding the fact that the question has not been decided definitively. The only relevant judicial decision supports the idea that, while the right of retention in lieu of unpaid dower is transferable, it can only be done in conjunction with the dower obligation, not separately.

Contrary to popular belief, a legal ruling exists that a widow can transfer her right of retention without having to pay her dower bill. One question that has yet to be answered by the courts: if the widow's right of retention in lieu of dower debt is transferable, and she transfers the property and delivers possession to the transferee, will the transfer be presumed to be valid in respect of the retention right, or will the transferee be entitled to keep possession? In some circumstances, it has been concluded that the transfer will operate on a valid basis in terms of lien rights.

Contrary to popular belief, a succession of court decisions have held that if a widow transfers the property retained in lieu of unpaid dower without directly or impliedly transferring the lien, the right of retention will be lost. In conclusion, the position of transferee of the widow's right of retention is still unclear. While it is true that in Islamic law, Mahr (dower) refers to a sum of money or other property that a wife is entitled to receive from her husband in exchange for marriage, the Learned Judges point out that this is not the case in this case. Normally, the scope of such a duty is governed by the contract signed by the husband and wife prior to or during their marriage. However, it may be resolved even after the wedding has taken place.

The woman is entitled to timely dower from her husband if the amount of dower is not established or if the marriage is made on the express provision that the woman will not claim any dower. After the Trial Court's position was rejected, the High Court's Learned Judges decided that in a case where the parties agreed at the time of their marriage on the amount of dower payable by the husband, the sum becomes recoverable under the agreement. The agreement between the husband and wife for the payment of dower is unquestionably an element of the cause of action for maintaining a suit for its recovery, and the place where such agreement was made would be a component of the cause of action for such suit.

As a result, the Learned Judges confirmed Nasra Begum's ability to file her claim in Bareilly. While there is no reason to disagree with the Learned Judges of the Allahabad High Court's judgment in the matter at hand, it is suggested that they have taken an overly cautious and restricted reading of the

relevant statutory provision establishing the venue of a claim in light of the applicable Islamic Law. Conceding interest and its rights to a widow in possession of the property in lieu of dower-debt on an equitable basis is an incursion on Islamic Law, and hence a violation of the authority of the Quran, the first and supreme source of Islamic Jurisprudence. As a result, the judiciary has failed terribly to grasp Islamic Law in its proper context. The fact that a marriage has been contracted is a substantial fact that must be established in all dower proceedings. As a result, a major component of the cause of action for each such claim has inevitably developed at the time and location of the marriage contract.

A suit may be brought under Section 20 (c) of the Code of Civil Procedure, among other things, whenever the cause of action arises entirely or partially. The solemnization of marriage between the plaintiff and the defendant is clearly the prima fact that the plaintiff must claim and prove in any complaint for dower. As a result, in all situations, part of the cause of action originates in the location of marriage. This is one of the reasons why the bride and groom insist on marrying in their parents' home. This advice may be valuable to people other than Muslim brides.

Mahr is a kind of security given to Muslim women's at the time of marriage. So that when the Muslim man want to give divorce his wife she can claim the mahr money as her right so she can maintain herself after the divorce and it's an obligation of her husband to give that money to wife after the pronouncement of divorce. But the question is that, that money is enough for her survival? Of course not. And on the ground level husband are not able to give the mahr to his wife so at that time the wife is helpless, so if she files a case for that then she going through the legal procedure and it's so costly. Then how can she maintain herself. In the name of security she suffers a lot. Mahr is a security but many women are not able to have it.

CHAPTER FOUR

RIGHT TO MAINTENANCE OF MUSLIM WOMEN'S: A

STUDY

4.1 GENERAL CONCEPT OF MAINTENANCE

This chapter deals with the provision of maintenance given to Muslim women after divorce also that what is the effect of Cr. P C to Muslim women's. What are the changes are takes place after the shah bano case, all are mentioned under this chapter. The Islam religion has built a wonderful architecture of socially beneficial religion-legal concepts and structures for its adherents. The Quran and Hadith are the primary sources of Muslim law. All of their laws, norms, and principles must be compatible with their spirits.

According to Islamic Law, anything that contradicts the Quranic laws or contradicts Hadith is not acceptable. This is the reality that can be defined as the foundation of all laws governing the Muslim society. The fundamental right guaranteed under Article 29 (1) of the Indian Constitution to preserve one's culture is now a part of the Muslim culture. Muslims retain their distinct identity because of their religion and religious laws, so Muslims also have the fundamental right guaranteed under Article 29 (1) of the Indian Constitution to conserve their culture. Muslim culture is connected with Islam, and family rules are distinctive components of Islamic culture, hence keeping family regulations is an important part of Indian culture.

The infrastructure of Islamic Corpus-Juries is built on revealed rules, and wife maintenance falls within the category of 'God made Law,' and hence deserves to be protected under religious freedom and independent identity as contained in Articles 25 and 26 of the Indian Constitution. True, women in pre-Islamic society were subjected to open discrimination in all aspects of life. Males exploited, used, and tortured them in a variety of ways, and they were denied equality in all aspects of life. The Holy Quran, which is unquestionably the words of 'Allah,' mandated a fundamental shift in which the two sexes were rendered equal in all aspects of activity and bound together by a bond of coordination.

Furthermore, another Surah of the Quran, Surah Nissa, lays out principles, structural elements, and operational guidelines for the control and regulation of man-woman relationships. The most significant fact, according to Taqi Mohammed Amini, is that "Islamic Law is based on 'Divine Revelation,' and there is very little opportunity for human invention in this sphere of human activity. As Tyabji puts

it⁵⁷, The Law of Maintenance suffers from a lack of definiteness because the Muslim writings had no intention of distinguishing legal rights from moral obligations. The powers of a Qazi differ from those of an Indian court of law, to the point where norms sufficient to govern Muslim courts can barely be articulated in specific terms without causing harm to some required but just implied reservation or qualification. However the law as a whole cannot be regarded to be of only defective obligation. *In Jusab v. HajiAdem*⁵⁸, the Bombay High Court drew a clear distinction between legal and moral obligation to preserve. The Mohammad Law on Maintenance has been argued to be a law of imperfect obligation, establishing a moral rather than a legal requirement. Mr. Abdur Rahim discusses the difference between laws of perfect and imperfect obligation in his book Principles of Mohammad Jurisprudence, where he describes the laws of domestic relations as laws of perfect and not imperfect obligation. Later, he claimed that the upkeep of children is a right against their father. Furthermore, Mr. Wilson has treated maintenance rights as rights enforceable under Anglo-Mohammad Law, and has asserted the right of minor sons to maintenance from their father on the authority of Baillie's Digest, so there appears to be no reason to doubt that maintenance rights are enforceable under Anglo Mohammedan Law.

As a result, the right to enforce them in civil court under Section 9 of the Civil Procedure Code is unaffected by the fact that they can also be enforced in criminal court under Section 488 of the Criminal Procedure Code, as stated in *Ghana Kanta Mohania v. Gereli*⁵⁹. It is important to note that, while Muslim jurists left legal and moral obligations to overlap, they compensated for this "deficiency" by giving the Qazis expanded authority. The challenge persists, however, because today's law courts lack such vested authorities. While it is true that the Muslim Law of Maintenance imposes a legal obligation, "the details in the text about the quantum of necessitous the rules for determining when a person must be considered necessitous, and for fixing the standard of means, the possession of which imposes the obligation to provide maintenance, are hardly applicable to our times and conditions.

In general, upkeep refers to things like food, clothing, and accommodation. "Nafqah" is the Arabic word for "maintenance," which literally means "what a person spends over his family." Maintenance, in its legal definition, refers to and involves three things: food, clothing, and accommodation. "Maintenance" is defined by Hedaya as "all those things that are necessary to the sustenance of life, such as food, cloth, and lodging, yet many limit it to food." "Maintenance encompasses food, ailment,

⁵⁷ Faiz Badrudin Tyabji, *Muslim Law: The Personal Law of Muslims in India and Pakistan* 78(M.N. Tripathi, Bombay, ed. 4, 1968).

⁵⁸ (1911) 37 Bom 71.

⁵⁹ (1904) 32 Cal. 479.

and accommodation, according to Fatwa-i-Alamgiri, "but in popular language it is restricted to the first.

Durr-al-Mukhtar maintains her importance since the wife comes first in the natural order of events because she is the Asl (root) and the child is the far (branch). The wife is entitled to maintenance from her husband even if she has the means to sustain herself and her husband does not. The most important component is that no one, including her spouse, is responsible for her upkeep.

He is solely responsible for his wife's upkeep. So long as his wife is devoted to him and follows his reasonable directions, the husband is obligated to support her. A husband owes it to his wife to care for her, whether she is a Muslim or a Kitabiyya, rich or poor, happy or unhappy, young or elderly. If the wife is too young for matrimony, she has no right to maintenance from her husband, regardless of whether she lives with him or with her parents. It makes no difference that she is poor in this situation.

The marriage must be regular; but, for maintenance purposes, a marriage that is irregular only due to the absence of witnesses is considered regular.

This right to maintenance is provided on the following terms:

The wife must be able to perform marriage intercourse; if she is under the age of 18, she will be denied support. Whether she lives with him or with her parents, a wife who is too young for nuptials has no right to maintenance from her husband. If the wife is a minor and the marriage cannot be consummated, she is not entitled to maintenance under both Hanafi and Shia Law; but, in Shafei Law, it makes no difference whether the lady is a minor or not.

The woman must be available for conjugal intercourse - In the absence of any mental or physical infirmity, the husband is bound to maintain his wife if she is always available for her husband at the right time and location. As long as the woman is submissive and allows him unfettered access at all reasonable times, the husband's commitment to maintain begins when she enters puberty, not before.

Starchy and Justice Badruddin Tyabji concluded in an intriguing case⁶⁰ that a disobedient wife does not need to be maintained. J. Stracliy, J. The husband's duty to maintain his wife is conditional on her obedience, and he is not obligated to maintain her if she disobeys him by refusing to live with him or otherwise (in this case, the wife only paid occasional visits to his (husband's) house, staying for a night on each occasion, and returning on each occasion to her mother's house I am clearly of the opinion that in such circumstances A Muslim husband is not obligated to maintain his wife. It is impossible to accept that a Muslim wife can claim to be maintained separately at her husband's expense despite opposing her spouse, refusing to live with him, and filing scandalous allegations against him," Justice Tyabji remarked. However, neither the books nor the courts identify the level of disobedience that can result in a wife's entitlement to maintenance being taken away. In some cases, determining where cooperation ends and disobedience begins might be difficult. A Muslim wife's right to maintenance is revoked in the following circumstances. Exceptions to the refusal to offer free access on the basis of discrimination may exist. Similarly, there are exceptions to the lack of consummation ground, such as her age at puberty, illness, old age, or inability to consummate. She preserves her entitlement to maintenance in these circumstances. It is not a fundamental right of a Muslim to have four spouses under Islam. Because it is purely permissive, it cannot be stated that any legal measure in favour of monogamy constitutes a breach of Article 25 of the Indian Constitution. The provisions of the Criminal Procedure Code are unaffected by the Shariat Act of 1937. So, a Muslim wife who lives separately from her husband after he enters into a second marriage is not barred from pursuing her statutory right to maintenance under the Criminal Procedure Code for refusing to live with him, and she can pursue separate maintenance against him if he has taken a second wife or keeps a mistress. This is an independent statutory right, U/s.125 of the Criminal Procedure Code and is not affected by any provision of the wife's personal law. The Allahabad High Court ruled in *Badruddin v. Aisha Begum*⁶¹ that if a husband has married a second wife or kept a mistress, the wife might refuse to live with him and still claim maintenance. He is responsible to assist her if the husband has not paid the due portion of the dower or she refuses to remain with him because of his cruelty. The wife has the right to sue if her husband refuses to pay maintenance. She can sue under Section 125 of the Code of Criminal Procedure, which empowers the court to order her spouse to pay her a monthly allowance, or she can claim under substantive law. In determining the amount of maintenance, the Hedaya and Fatwa-i-Alamgiri establish the rule that the court should examine the rank and circumstances of both spouses while exercising his discretion, a regulation that appears to be eminently fair and right.

⁶⁰ A. v. 8. (1896) 21 80m. 71.

⁶¹ 1957 All LJ 300

4.1.1 Agreement on Maintenance

The husband and wife, or their guardians, may reach an agreement under which the wife is entitled to maintenance from her husband if certain events occur, such as mistreatment or disagreement, or the husband's second marriage, and so on.

A stipulation in the marriage contract, however, declaring that the woman is not entitled to assistance, is void. The most crucial thing to keep in mind is that the agreement should not contradict public policy or Muslim law. In an intriguing case, the Allahabad High Court decided whether ante-nuptial agreements between husband and wife or their guardians are valid or not. The plaintiff's spouse, Mehdi Hasan, had married twice before, and each time he appeared to mistreat his wife," the Court stated. As a result, the plaintiff's father was naturally worried that something be done to protect his daughter from such cruelty and to secure a maintenance allowance for her in the event that she and Mehdi Hasan were unable to cohabit harmoniously.

The agreement in question stipulated that in the event of dissension or disunion, the prospective husband and his father would be obligated to pay the lady an allowance of Rs. 15 per month for the rest of her life, in addition to the dower debt; and certain property was hypothecated to secure the payment of that allowance. The plaintiff was divorced by her husband on August 14, 1917, and a formal deed of divorce was executed. Differences between them had obviously arisen long before that period.

In 1912, the lady returned to her father's house, and the husband sent a notice to the plaintiff's father on the so-called "so-called" of October, 1912, expressing his displeasure with the plaintiff and demanding that she be sent back to his house with her jewellery. On the basis of that evidence, the lower courts awarded the plaintiff the allowance specified in the agreement from the so-called "the month of October, 1912.

The learned counsel for the appellants claims that the agreement was unenforceable based on the decision in *Bai Fatima v. Ali Mohammed Aiyeb*⁶² however, that was a case in which a man who had a living wife and wanted to marry another had entered into an agreement with his first wife that if there was a disagreement between her and him, he would pay her a certain amount as maintenance. Because

⁶² (1912) 37 Bom. 280.

it supported a separation between the husband and his wife, the agreement in that case was deemed against public policy.

The agreement in this instance was signed prior to marriage to prevent the prospective husband from mistreating his wife, acting inappropriately toward her, or casting her out on the spur of the moment. We do not believe that the agreement in the current instance of Tended against the provisions of Section 23 of the Indian Contract Act, 1872, or that it encouraged or aided a separation between the plaintiff and her husband, given the circumstances. As a result, the appeal is denied and dismissed with costs. The case of *Nansur v. Azizul*⁶³ stands in stark contrast to the previously mentioned case of *Bai Fatima v. Ali Mohammed Aiyeb*.

On the basis of public policy, an agreement between a Muslim and his first wife, formed after his marriage to a second wife, providing for some maintenance for her if she could not get along with the second wife in the future, was found not void. In the eyes of the law, a future separation agreement between husband and wife and the provision of maintenance to the wife is illegal. An agreement that the wife will not be entitled to support is similar.

The maintenance by agreement is a monetary part of the larger subject of marriage conditions. Conditions that do not violate any specific provision of law, public policy, or Muslim Law principles are enforceable in this respect.

Thus, following types of conditions are valid:

If the husband is cruel to the wife, she has the right to a separate residence and maintenance to suit her needs.

If the former wife cannot adjust to the new wife, she will be given a maintenance payment to live apart or even at her father's home.

The husband consented to settle specific property on his first wife during their second marriage in the case of *Mydeen v. Mydeen*⁶⁴ He later divorced her and filed a lawsuit to reclaim the property they had

⁶³ (1928) 3 Luck. 603.

⁶⁴ AIR 1951 Mad 992.

agreed to split. Despite the fact that they were divorced, the court dismissed his lawsuit, ruling that she was entitled to the property's income. If her father brings his second wife into the married family, she will live with him.

4.1.2 Maintenance of Widow

A widow is not entitled to maintenance if the marriage is dissolved by death. He will pay her maintenance if they disagree, he will pay her maintenance for a separate dwelling if they disagree, and he will pay her maintenance even if they divorce.

According to "Ameer Ali," a clause stating that the wife is not entitled to maintenance under any circumstances is void. However, such a stipulation can be made in a Khula or Mubarat divorce. Section 23 of the Indian Contract Act also nullifies an agreement that, in the event of a future separation, the husband will pay her a maintenance allowance at her request. Even if she chooses the best option, she is not entitled to maintenance for the duration of Iddat. A clearer understanding of Shia Law is that a widow is not entitled to maintenance during the Iddat, even if she is pregnant. The wife's claim to maintenance stops when her husband dies, even though she has the right to live in the house until the baby is born, because the right of inheritance takes precedence. As a result, during Iddat, the widow is not entitled to maintenance. A widow is not regarded part of the Ayal, which comprises the wife, children, and other dependents, as decided in *Rashid-un-Nissa v. Ata Rasool*

Whether the divorce is reversible or permanent, it is said that if a man divorces his wife, he is liable for her subsistence and loading for the duration of Iddat. The term "subsistence and loading" is broad enough to include proper and equitable provision and upkeep. According to the Shafi Law, a woman who has been divorced irreversibly is not entitled to support unless she is pregnant. In verse, the Holy Quran states, "Divorced women shall wait for three monthly periods respecting themselves." According to Mulla's Principles of Mohammedan Law, U/s.279, the woman is entitled to maintenance for the duration of the Iddat. She is entitled to support until she is informed of the divorce after the time limit has passed. Tyabji, Ameer Ali, Fyzee, and other notable authorities on Mohammedan law believe that a divorced woman is only entitled to maintenance throughout the era of Iddat.

Therefore, it is patently clear that under the Principles of Mohammedan Law, the divorced wife is entitled to a provision or maintenance only for and during the period of Iddat. Ameer Ali on Mohammedan Law has stated in his classical work that "The husband's liability to support the wife

continues during the whole period of probation, if 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 his wife during the Iddat if the separation is can by her misconduct." It is stated that under Hanafi Law, on divorce a wife is entitled to maintenance during her Iddat, whether the divorce is revocable or irrevocable, whether the 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. The woman is entitled to maintenance during her Iddat under Shia and Shafie Law if the divorce is revocable, but not if the divorce is irrevocable, unless the irrevocable divorce is declared during the wife's pregnancy, in which case she is entitled to maintenance till delivery.

In any event, the wife's entitlement to maintenance ends when the Iddat after Talaq expires of a man to maintain a wife whom he had divorced." The statements in textbooks are insufficient to prove that a Muslim husband is not obligated to care for the upkeep of a poor wife who has been divorced by him. In the case of a pregnant divorcee, she is obligated to observe until the child is delivered, and her husband is obligated to support her throughout this Iddat time, but only until the child is delivered, Iddat period ends then and there, and ex-responsibility husband's for maintenance ends instantly, putting exhusband in the position of having to compensate for sucking. This brief examination of Islamic matrimony demonstrates that the majority of scholars believe that the divorcee is entitled to support until the period has expired.

There is no proof in the history of Islamic Jurisprudence that even a single jurist has approved that a divorcee may claim maintenance allowance beyond the Iddat period. It is quite apparent in Islamic matrimony, and a Muslim marriage establishes a specific relationship between husband and wife, for which the husband is regarded responsible as long as the marriage remains. Divorce ends the marriage between husband and wife, and after the Iddat period, the divorcee is free to remarry, with her ex-husband ordered not to hinder her from doing so. As a result, the divorcee's right to maintenance ends. Because both (formerly husband and wife) stand strangers to each other after divorce and the completion of the Iddat period, any property of ex-husband allotted to her becomes prohibited (Haram).

4.1.3 Daughter's Maintenance.

As can be seen from the previous pages of this thesis, all Hadith on correct nutrition, education, training, marriage arrangements, and equal treatment of daughters and sisters bring good news of salvation from Hell and attainment of Heaven. The value of these Traditions is lost on those who do

not believe in God and the everlasting day, and who place all of their emphasis on the current world alone. However, the believer's ultimate purpose is to succeed on the Day of Judgment. This goodness contains everything he desires for a believer. With the enticement of adequate care for the daughter, it is also established that she is not worthless or valueless in the eyes of the world, but rather the most valuable boom of nature. U/s.125 Cr.P.C. protects a daughter's rights extremely well. Article Section 3 of the Act of 1986, commonly known as Sub-clause 3 (b), compels the father to support even married minor female children if his husband lacks sufficient means. "An article published in the Journal Section of All India Reporter, 1993 "Shariat Provides Maintenance to Unmarried Daughter," the view has been reiterated that whether the daughter is minor or major the obligation to maintain her until her marriage rests with the parents. Maintenance under "Shariat" is enforceable under the Muslim Personal Law (Shariat) Application Act, 1937. Therefore, unmarried daughter can claim maintenance until she is married. A daughter of 10 years of age can also claim maintenance Under Section 125 Cr.P.C. In *Naseem v. State of U.P*⁶⁵, the facts were like these: The husband had divorced his wife. On application by her for maintenance allowance for herself and to her daughter 10 years, the Magistrate had rejected the claim of the wife but accepted the claim for her daughter Under Section 125 Cr.P.C"⁶⁶.

The present appellant claimed before the Allahabad High Court that a child was only entitled to maintenance up to the age of two years under Section 3 (b) of the Act. The Allahabad High Court ruled that this interpretation of Section 3 of the Act of 1986 violates all civilized society norms and cannot be upheld. Section 3 does not preclude the application of general and secular maintenance laws, such as those set forth in Section 125 of the Cr.P.C. The latter pays for the upkeep of minor children.

When a youngster is older than two years old, Section 3 of the Act cannot stand in the way of a claim. The Supreme Court has now confirmed that, if they are unable to support themselves, the children can seek maintenance from their father under Section 125 Cr.P.C., which is separate from their mother's right under Section 3 (1) (b) of the Act. In *Noor Saba Khatoon v. Mohd. Khatoon*⁶⁷, The Supreme Court ruled that children's rights under Section 3 (1) (b) can run concurrently with Section 125 of the Criminal Procedure Code. The issue was whether Muslim children were entitled to maintenance under Section 125 Cr.P.C., up to the age of majority or ability to support themselves, or for daughters until marriage, or whether their right was limited to two years under Section 3 (1) (b) of the Act, despite

⁶⁵ AIR 1993 SC 2592

⁶⁶ *Supra* note 3.

⁶⁷ AIR 1997 SC 3280.

Section 125 Cr.P.C. In summary, the appellant was married to the respondent and had three children with him. Her husband forcibly removed her and her children from the house.

When the trial court granted her and the children maintenance allowance on her application, the husband divorced her and claimed exemption with regard to the wife, and the Iddat period ended. The case was taken to the High Court, where it was also decided that, despite Section 125 Cr.P.C., the Act limited maintenance allowance for divorced women to Iddat and for children to the age of two years for each child. The Supreme Court ruled that the Act's right belongs to the mother on behalf of her children. It has nothing to do with the minor child's right to self-determination.

Maintenance under section 125 of code of criminal procedure

“If any person having sufficient means neglects or refuses to maintain-

His wife, unable to maintain herself, or

His legitimate or illegitimate minor child, whether married or not, unable to maintain
itself, or

His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

His father or mother, unable to maintain himself or herself

A magistrate of the first class may upon prove of such neglect or refusal order such person to make a monthly allowance for the maintenance of his wife or such child father or mother as such monthly rate as such magistrate thinks fit, and to pay such person as the magistrate may from time to time direct.

Provided that the magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attain her majority, if the magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Further provided that the magistrate during the pendency of the proceeding regarding monthly allowance to the maintenance under this sub section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the magistrate considered reasonable, and to pay the same to such person as the magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible be disposed of within 60 days from the date of the service of notice of the application to such person”⁶⁸.

Under Section 126 of code of criminal procedure

“Proceeding under Section 125 may be taken against any person in any district :-

Where he is, or

Where he or his wife resides, or

Where he last resided with his wife,

Or as the case may be, with the mother of the illegitimate child.

All evidence in such proceeding shall be taken in presence of the person against whom an order for payment of maintenance is proposed to be made, or when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed summons cases.

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

The court in dealing with applications Under Section 125 shall have power to make such order as to costs as may be just”⁷⁵

⁶⁸ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

Section 488 of the Criminal Procedure Code in British India is a legal step to govern the institution of wife maintenance. Under Section 488 [as amended by Act XXVI of 1995], a husband may be forced to pay his wife a monthly amount of not more than Rs.500 as maintenance. However, the husband could defeat the wife's right to maintenance under this clause by obtaining a divorce under personal law. In *Baddruddin v. Aisha Begum*⁶⁹ and *Sarwari v. Shaf Mohammad*.⁷⁰ The Shariat Act of 1937, it can be stated with authority, has no bearing on the legality of Section 488 of the Criminal Procedure Code. This is a separate right from the wife's personal law, and it is unaffected by it. This statutory entitlement only lasts as long as the marriage lasts. When the marriage ties are broken, the claim is broken as well. As a result, the husband may use the authority of Talaq to avoid paying the maintenance allowance.

4.2 MUSLIM DIVORCE WOMEN RIGHT OF MAINTENANCE AND THE CODE OF CRIMINAL PROCEDURE

Following India's independence, the parliament took a bold step forward, amending the Criminal Procedure Code in 1973. Previously, the husband may deny the wife's entitlement to maintenance under section 488 of the Criminal Procedure Code⁷¹ by declaring divorce under personal law.

The joint committee recommended that the criteria be extended to a woman who has been divorced by her husband as long as she has not remarried after the divorce, and therefore clause (b) of Explanation to Section 125 (1) of the Code was adopted to lessen this burden. As a result, Chapter IX of this Code sets a uniform maintenance norm for all Indian nationals and Sections 125 and 127 (3) (b) of the Code apply to the current investigation. However, a divorced woman's maintenance claim remains a difficult issue.

Section 127 (3) (b) of the Code, on the other hand, was added to preserve Muslim rights and Muslim Personal Laws. A divorcee is entitled to maintenance provisions under Islamic law, but only until the term of Iddat has expired. Now, Section 125 of the Code gives those who have been divorced or obtained a divorce from their husbands the right to maintenance until they remarry or die, as Explanation (b) of Section 125 of the Code states that "Wife" includes a woman This definition of wife

⁶⁹ 1957 All LJ 300

⁷⁰ Criminal Revision No. 255 of 1955

⁷¹ *Supra* note 74.

is novel and surprising to an Islamic law professor. Women has been divorced by or obtained a divorce from her husband and has not remarried.

The Muslim community took the matter very seriously. On the Muslim community's dissatisfaction with the "Wife" explanation presented A vague and ambiguous clause of subsection (3) (b) of Section 127 of the new Code, 1973 was added to Section 125 of the new Code on the grounds that it encroaches on their personal law, which appears to exempt Muslims from the enforcement of the order of maintenance awarded or to be awarded under Section 125 of the Code. This new section gave the Magistrate the authority to rescind the support order if the divorcee had received the entire amount due to her under customary or personal law.

People who believe that the Quran, the supreme source of Islamic law, justifies and legitimises Section 125 of the Code, believe that paying Mahr and Maintenance allowance for the Iddatperiod will not relieve a Muslim husband of his obligation to support his divorced wife under Section 125 of the Criminal Procedure Code.

In *Umar Hayat Khan v. Mahabubunnisa*⁷². Mr. M.S. Nesarigi J. expressed his belief that any additional benefit granted by statutes did not breach the classical law norm governing it. "By virtue of Section 125's interpretation, a divorced wife has a right to maintenance as long as she does not remarry." According to Mohammad Law, a divorced wife has the right to seek support from her husband only until the time of Iddat expires, and not after that. The benefits provided under Section 125 of the Code take precedence over those conferred under personal law. The additional benefit does not contradict with her right under Islamic law. A statute can bestow rights and benefits on individuals that are greater than what they are entitled to under their own personal law. The Learned Justice has gone too far because the Quran and Hadith, which are the fundamental sources of Islamic Law, stipulate a temporal limit that cannot be extended by government legislation. The related clause on maintenance payment is a component of Muslim Personal Law, and religious freedom protects it under Articles 25 and 26 of the Indian Constitution⁸⁰.

⁷² 1976 Cri LJ 395

Therefore, to grant of additional benefit by the statute is an encroachment on Muslim Personal Law. Again, the Bombay High Court, in the case of *Khurshid Khan Amin Khan v. HusnaBano*⁷³ conceded the super enacting power of the Parliament and held that "The Principle of Muslim Law that a divorced wife is entitled to maintenance only during the period of Iddat is not relevant when considering the provisions of Section 125 of the Code enacted by the Parliament for all unprovided wives, irrespective of their religion or caste. The Parliament has the power to make an enactment that even a divorced Muslim woman shall be entitled to maintenance so long as she remains unmarried MrJustice Krishna Iyer whose revolutionary approach in the domain of 'Social Justice' is well-recognized, took the enactment of the Section 125 of the Criminal Procedure Code as a measure to provide social justice to the weaker section of the society.

“The Kerala High Court Mr. Justice Khalid in *Kunhi Moyin v. Fathumma*⁷⁴ held that the payment of maintenance during Iddat or the payment of due Mahr Section 127 (3) (b) would not 'exonerate' the Muslim husband from the liability towards wife U/s.125 of the Code speaking on behalf of the Division Bench, Mr. Justice Khalid highlighted the 'social purpose of the legislation' in these words " In considering the social welfare legislation, the court will be justified in straining the language a little to achieve the object of the enactment. If the object of enactment can be achieved only by the martyrdom of few husbands, we will boldly do so and would not shirk our duty in effectuating the object of the enactment”⁸³

Allahabad High court through Mr. Justice Deoki Nandan got an opportunity to decide the Constitutional validity of Sections 125 and 127 (2) (3) and (4) of the Code in *Iqbal Ahmad Khan v. State of U.P.*⁷⁵ it was held that "The Constitutionality of Section 125 of the Code cannot be questioned on the basis of right to freedom of religion as contained in Articles 25 and 26 of the Constitution of India. The history of the applicability of Mohammedan Law shows that payment/non-payment of maintenance to one's wife could never be regarded as a matter of religion.

“In *Mst. Zohra Khatoon v. Mohd Ibrahim*⁷⁶ in this case the issue was whether she was allowed maintenance in term of section 125(1) explanation clause (b) and section 127(3) of the act 1973. Women obtained decree of divorce under the dissolution of Muslim marriages act, 1939. She is wife within section 25(1) explanation clause (b) and hence she is allowed maintenance. The order of the

⁷³ (1976) 78 BOMLR 240

⁷⁴ 1976 KLT 87

⁷⁵ 1998 (1) AWC 288

⁷⁶ 1981 SCR (2) 910

high court is set aside. The apex court explained the meaning of “has otherwise obtained a divorce and has not re – married.”

The apex court discussed various forms of divorce and also divorce under the dissolution of Muslim marriages act, 1939. Divorce under this act is also a legal divorce under the Mohammedan law by virtue of the statute and thus she is entitled to maintenance under the provisions – section 125(1) explanation clause (b) and section 127(3) of the code of criminal procedure”⁷⁷.

As a result of the immediate pronouncement, a wife who has obtained divorce through 'Khula' or 'Mubarat' and under any provisions of the Dissolution of Muslim Marriage Act, 1939 is entitled to maintenance under Section 125 of the Code, as the definition of 'wife' very much includes those women who have obtained divorce; within the ambit of 'wife' are those women who have obtained divorce. After considering the past legal decisions, it is clear that the courts are required to interpret the law as expressed in the statute. The legislature has provided an unfavorable definition of wife in section 125 of the Code.

When the "Iddat period" passes, the marital links are completely severed, and the divorced wife is no longer entitled to support, according to traditional Islamic law. A wife who has divorced her husband and has not remarried is still the wife as defined by Section 125 (1) (b) of the Code, notwithstanding the fact that she is divorced. When the wife isn't the one who suffers from her husband's arbitrary unilateral divorce, but instead initiates and later obtains divorce through her own persuasion, why should the poor husband, who is not responsible for the divorce, be held liable for the payment of maintenance to such a wife under Section 125 of the Code?

However, the judiciary can be criticized for failing to take into account the dark ground history and spirit of Section 127(3) (b) of the Code, despite the fact that it was required to treat Section 127(3) (b) of the Code as a proviso of Section 125 of the Code. The law is religion, and religion is law, because both are contained in the Quine Revelation and have the same meaning and power. "Islamic thought is the most characteristic embodiment of the Islamic way of life, the core, and Kernel of Islamic itself," writes J. Schacht in his work "an introduction to the Islamic Law." The Muslim Personal Law has legislative (U/s.2 of the Shariat Act, 1937) and constitutional (Art.25 and 26 of the Constitution)

⁷⁷*Supra* note 6, page no. 164.

recognition and protection because it is an integral part of the Islamic religion. "The Indian Muslims have their personal law, constitutionally recognized and judicially enforceable, states Dr. Tahir Mahmood in Muslim Law of India. It is an essential component of Indian civil law. Muslims have strong feelings for their law, which they see as one of their religion's most distinguishing possessions. The infrastructure of Islamic corpus-judges is based on revealed law, and maintenance of a divorced wife likewise falls under the category of "God made Law," and hence deserves to be protected under Articles 25 and 26 of the Indian Constitution. In 1980, Mr. Iqbal Ahmad Khan filed a petition in the Allahabad High Court challenging the constitutionality of Section 125 of the Code, invoking the constitutional protection of religious freedom. The Allahabad High Court, on the other hand, did not see the legitimate challenge in the appropriate light, concluding that "payment or nonpayment of maintenance to one's wife could never be considered an issue of religiosity.

There is a conflict between the Muslim personal law and the code of criminal procedure because in Muslim personal law the maintenance provided only for the period of Iddat but in code of criminal procedure the maintenance is provided beyond the Iddat period. Now the question arises that which law should prevail. The most controversial case related to maintenance is *Mohd. Ahmed Khan v. Shah Bano Begum*⁷⁸, The facts of the case are that in April 1978, Shah Bano, a 62-year-old Muslim woman from Indore, Madhya Pradesh, filed a petition in court seeking support from her divorced husband, Mohammed Ahmed Khan, a well-known lawyer. Later in November, Khan issued her an irreversible talaq. They married in 1932 and had five children together. After a long period of living with Khan and his second wife, Shah Bano's husband requested that she move to a separate apartment three years ago. "Khan's argument was supported by the All India Muslim personal law board which contented that courts cannot take the liberty of interfering in those matters that are laid out under Muslim personal law, adding it would violate the Muslim Personal Law (Shariat) Application Act, 1937. The board said that according to act, the court was to give decision of matter to divorce, maintenance and other family issues based on Shariat"⁷⁹.

Shah Bano went to court and requested maintenance for herself and her five children under section 123 of the 1973 Code of Criminal Procedure. The clause imposes a legal obligation on a husband to provide for his wife both during and after the marriage, if she is unable to support herself. Khan, on the other

⁷⁸ AIR 1985 SC 945.

⁷⁹ available at: <https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/> (visited on 23 June 2021).

hand, was satisfied on the grounds that Muslim personal law in India only compelled the husband to provide maintenance for the Iddat term after the divorce.

This historic judgment ushered in a revolution in Muslim personal law by judicially clarifying the scope of section 125 of the Code of Criminal Procedure's applicability to Muslim women and dispelling many misconceptions. The Supreme Court ruled as follows:

Clause (b) of the explanation to section 125(1), which defines wife as include a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope, as long as they have not married. As a result, her statutory entitlement under that section is unaffected by the provisions of the personal laws that apply to her. The explanation to section 125(3)'s second proviso, which gives the wife the right to decline to live with her husband if he contracts another marriage or lives alone three or four previous marriages, clearly establishes that section 125 overrides personal law in the event of a conflict. The correct position is that if the divorced woman is competent to support herself, the husband's obligation to provide support ends after the Iddat term expires. She has the right to use section 125 if she is unable to care for herself. As a result, there is no conflict between the requirements of section 125 and those of Muslim personal law when it comes to the Muslim husband's obligation to give maintenance for a divorced wife who is unable to support herself. Mehr is not the sum paid by the husband to the wife upon divorce, and the Muslim wife has the right to seek maintenance under section 125.

In light of Article 44 of the constitution, the Supreme Court has urged that an unified civil court be established throughout India. This landmark decision created ripples in general and violent waves in the thinking of Muslim fundamentalist who had their sway and resultantly. The Muslim women (protection of rights on divorce) act, 1986 was passed nullified the decision made in shah's bano case.⁸⁰

4.3 THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

The Muslim Women (Protection of Rights on Divorce) Act was enacted by India's parliament in 1986 to protect the rights of Muslim women who have been divorced by, or have won divorce from, their husbands, as well as to provide for matters associated with or incidental to such divorce. Rajiv Gandhi's

⁸⁰*Supra* note 6, page no. 278.

government passed the Act in order to overturn the Shah Bano judgment. The Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed by the Rajiv Gandhi administration with an overwhelming majority, amending the Supreme Court's secular verdict.⁸¹ Any magistrate of the first class with jurisdiction under the Code of Criminal Procedure of 1973 administers it. A divorced Muslim woman is entitled to reasonable and fair support and maintenance from her former husband, according to the Act, and this must be provided within the Iddat term.

According to the Statement of Objects and Reasons of this Act, if a Muslim divorced woman is unable to support herself after the iddat period that she must observe after the death of her spouse or after a divorce, during which she may not marry another man, the magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property. The court may order the State Waft Board to provide support if a divorced woman has no such relations and does not have the financial resources to do so. As a result, the husband's 'duty' to pay maintenance was only for the term of the iddat.

The act's preamble states that the act's goal is to protect the rights of Muslim women who have been divorced by their husband or have won divorce from them. The act includes provisions for topics related to or incidental to it. It is clear that the act makes no mention of any of the rights that were accessible to Muslim women at the time of its implementation being annulled, taken away, or reduced. Sections 3 and 4 of this act are the most essential sections, as stated below. -

Section 3(1) lays down that a divorced Muslim woman is entitled to-

Her ex-husband must make and pay her a reasonable and equitable provision and maintenance during the iddat term;

Where she maintains the children born to her before or after her divorce, her former spouse must make and pay a reasonable and fair provision and maintenance for a period of two years from the respective dates of birth of such children.;

According to Muslim law, an amount equal to the mahr or dower agreed to be paid to her at the time of her marriage or at any time subsequently.; and

⁸¹available at: [https://en.wikipedia.org/wiki/The_Muslim_Women_\(Protection_of_Rights_on_Divorce\)_Act_1986#:~:\(visited in 25 June 2021\)](https://en.wikipedia.org/wiki/The_Muslim_Women_(Protection_of_Rights_on_Divorce)_Act_1986#:~:(visited%20in%2025%20June%202021)).

All the properties granted to her before, during, or after her marriage by her relatives, the husband, or any of the husband's relatives or friends.

In the event of a divorce, the husband has failed to provide for any of the aforementioned. By filing an application for appropriate orders with the magistrate, the wife or her authorized agent can sue the husband. If the magistrate is satisfied that the husband has failed to comply with the aforementioned, he will issue an order within one month of the date of the application directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of life enjoyed by her during her marriage.

Action can be taken against the defaulting husband under section (4). The magistrate may issue a warrant for levying the amount of maintenance or mahr due in the manner provided for levying fines under Cr. P. C., 1973, and may sentence such person to imprisonment for the whole or part of any amount remaining unpaid after the execution of the warrant, for a term that may extend to one year or until payment is made if payment is made sooner, for the whole or part of any amount remaining unpaid after the execution of the warrant.

Section 4 deals with maintenance provided by the waft board or relatives, and states that a divorced woman is entitled to file an application for maintenance from her relatives or the waft board if she is unable to support herself and has not been able to obtain any fair and reasonable maintenance from her husband, notwithstanding anything contained in section 3. The following two requirements must be met in order for section 4 to be applied.

If she is unable to support herself after the iddat period, she may apply at any time after the iddat period, even if it is 10 or 20 years later, and

After the iddat time, she had not remarried.

Constitutional validity of the act

In the landmark case of *Danial Latifi v. Union of India*⁸², the constitutional legitimacy of this statute was questioned. The Supreme Court's judgment in the Shah Bano Begum case appeared to be overruled

⁸² (2001) 7 SCC 740.

by the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRDA, 1986). A Muslim husband was only liable for keeping his divorced wife during the iddat period, according to prima facie reading of the MWPRDA, 1986, and after that term, the onus of maintaining the lady shifted to her relatives. The matter resurfaced before the Supreme Court in *Danial Latifi v. Union Of India*, when the constitutional validity of the MWPRDA, 1986 was challenged on the grounds that it was discriminatory and violated the right to equality guaranteed by Article 14 of the Indian Constitution by depriving Muslim women of maintenance benefits equivalent to those provided to other women under Section 8 of the Indian Constitution. Further, it was argued that the law would leave Muslim women destitute and thus was violative of the right to life guaranteed under Article 21 of the Indian Constitution.⁸³

The facts of the case were that the husband appealed against a Madhya Pradesh High Court verdict ordering him to pay his divorced wife Rs.179/- per month, an increase from the Magistrate's modest sum of Rs.25 per month. The couple had been married for 43 years when the ailing and old wife was ejected from her husband's home. For almost two years, the husband paid Rs.200/- each month in maintenance to his wife. She filed a petition under Section 125 of the Criminal Procedure Code once the payments stopped. By pronouncing a triple talaq, the husband effectively ended the marriage. He gave Rs.3000/- as deferred mahr, as well as a payment to cover arrears of maintenance and maintenance for the iddat period, and he then sought to have the case dismissed on the grounds that she had received the money due to her on divorce under the Muslim law applicable to the parties. The key characteristic of the case was that the wife had managed the matrimonial house for more than 40 years, had given birth to and raised five children, and was unable to work or support herself independently at that late stage of her life - remarriage was out of the question. The divorced wife, who had shared his life for half a century and mothered his five children, was in desperate need of money to survive. The husband, a successful Advocate with an approximate monthly income of Rs.5,000/-, provided Rs.200/- per month to the divorced wife, who had shared his life for half a century and mothered his five children and was in desperate need of money to survive.⁸⁴

In summary, the Court claims that the Act, as written, would violate core constitutional rights such as Article 21's "right to live with dignity" and Article 14's "right to equal treatment under the law." The Court examines the issue of divorced women's inability to support themselves, as well as the issue of Muslim women's rights differing from those of non-Muslim women. The Court assumes that financial stability is required for dignity in this case. In addition, the Court believes that Section 127 of the Code

⁸³available at: https://www.law.cornell.edu/womenandjustice/resource/danial_latifi_v_union_of_india(visited at 26 June 2021).

⁸⁴available at: <https://indiankanoon.org/doc/410660/>(visited on 26 June 2021).

of Criminal Procedure is good public policy since it protects women who may become vagrants. The Court cites arguments to the effect that the Act's provision for obtaining support from relatives and the State Wakf Board is illusory, and that leaving Muslim women as vagrants is undesirable, especially given India's patriarchal culture. The Court is concerned that the Act will “undermine the secular character” of the Indian Constitution.

The exact language of the Act is taken into account by the Court. The Act provides, in part, that "a Muslim divorced woman shall be entitled to a reasonable and fair supply of maintenance by her former husband during the term of iddat." Women's options for help are limited to relatives and the local State Wakf Board. The Court recognizes that the Act's simple meaning would abolish shah bano, but believes the contrary interpretation is correct. The Court concludes that a feasible alternative reading of the Act is that it is genuinely intended to assure reasonable and fair maintenance provision, effectively removing the "during the time of iddat" restriction. The Court justifies ignoring the plain meaning by claiming that the word "provision" incorporates the Court's conception of maintenance into the Criminal Code, and by applying a canon of construction that requires the Court to choose any plausible constitutional interpretation over any unconstitutional interpretation, even if the latter is more plausible.

The Court appears to be attempting to achieve its purpose of unifying divorced women's rights across communities while vehemently avoiding any hint of contradiction with Islamic law in this issue. More broadly, the Court's decision can be seen as part of a political push for India to adopt a Uniform Civil Code, as the Court makes strong reasons for women's equality in general, which could be applied outside of the context of divorce. The case also highlights the risk that courts in post-colonial governments will simply alter Islamic law to fit within the colonial legal framework, even at the cost of ignoring consensus among Islamic law scholars and jurists. In other words, countries like India may strip Islamic law of its content, while maintaining its status formally⁸⁵.

In *Arab Ahemadhia Abdullah v. Arab Bail Mohmuna Saiyadbhai*⁸⁶, After considering her future needs, it is held that a divorced Muslim woman is entitled to maintenance, which is not restricted to the Iddat term. The phrase reasonable and fair is used in section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, to ensure that the divorced woman has sufficient means

⁸⁵available at: <https://islamiclaw.blog/2020/11/10/the-danial-latifi-case-shah-bano-redux/>(visited on 27 June 2021).

⁸⁶ AIR 1988 Guj 141.

of livelihood after the divorce and that she does not become destitute and is not thrown out on the streets without a roof over her head.

The word "provision" implies that something is made available ahead of time to suit a specific need. This indicates that when a Muslim husband gives his wife a divorce, he must envisage or consider the magnitude of future needs and make preparations in advance to meet those needs. Therefore, it cannot be said that under section 3(1)(a) divorced women is entitled to provision and maintenance only for Iddat period. Similarly, the court explained the meaning of the word used "within" which does not mean "for" or "during" but it means, "on or before", "not beyond", "not later than"⁸⁷.

The Hanafi School recommends that male children be kept in custody until they reach the age of seven, and female children be kept in custody until they reach puberty. Males are held in captivity until they reach the age of two years, and females are held until they reach the age of 07 years, according to the Ithna Ashari School. There are various schools in the Sunni stream of thinking, in addition to the Hanafi School mentioned above, that maintain varied periods of custody, and the same is true for the Shia stream of thoughts. Until the end of the custody period, there is almost universal agreement among Islamic jurists that the mother (custody-holder) is entitled to be maintained by the former husband, whereas the father is solely responsible for the maintenance of the child (who is in custody). This indicates that a Hanafi divorced mother with a son is eligible to visitation. Prof. Tahir Mahmood offers the following observation in light of the former husband's adherence to this guideline as long as he does not reach the age of seven.

Prof. Tahir Mahmood makes the following observation in light of this principle: "The Act does not take into account the Islamic Law's norms. Given the fact that small children in many divorce cases in this nation remain with the divorced mother, including the restoration of all assets [popularly known as Jahez (dowry) to the divorcee is treated and enforceable as her entitlement 'is obviously a pro-woman clause and, if properly enforced, will be extremely beneficial to woman.

When it comes to the enforcement of divorcees' rights, an application must be filed with the magistrate, who is required to rule on it within one month of receiving it and is empowered to order the former husband to allow the wife to have each of these statutory rights enforced in full. As a result, a single

⁸⁷*Supra* note 6, page no. 156.

provision in Section 3 establishes the mechanism for judicial enforcement of a divorcee's statutory rights. The Magistrate might, however, extend the one-month time set forth in Section 3 if there is a good basis for doing so. Prof. Tahir Mahmood also commented on this point, saying, "Clearly, almost every Magistrate will find it impracticable to dispose of an application U/s.3 within one month, and thus the fate of this statutory limitation of one month is most likely to be the same as a similar provision relating to interim injunctions under the provisions of the Civil Procedure Code.

The Criminal Court's jurisdiction to order and ensure the payment of Mahr and restoration of Jahez, etc. to the divorcee is particularly noteworthy; as such procedures were formerly assigned to Civil Courts, where experience shows that greater time and expense were involved. If a criminal court was suddenly engaged, it would be armed with additional time and resources. This statutory provision can be a major windfall for Muslim divorcees if the criminal court, now armed with this power, acts quickly. It's worth noting that the current Act emphasizes fast solution in order to provide divorcees a fair chance. The Act establishes standards for the Court to use in determining the amount of support to be paid and does not impose any maximum or minimum limits, as does the Criminal Procedure Code of 1973. This is up to the Magistrate's discretion. This rule is in accordance with the fundamental principles of Islamic Law. Without a doubt, this legislative Endeavour aims to unify the principles of different schools of thought propounded by Islamic schools through this Act, and the same is applicable to all Muslims, but it would have been more advantageous and compatible with Islamic Law as different schools are in operation in India on this point, and the phrase "as prescribed by Muslim Law had been used in the defiant.

Muslim individuals are regulated by their own personal laws, which include provisions for maintenance. In general, maintenance entails the provision of food, clothing, and accommodation. The wife, children, and parents are entitled to maintenance under Islamic law. If a woman is divorced, she is entitled to support under Islamic personal law. If her husband refuses to divorce her before the divorce is finalized, she will be unable to receive support. In Muslim law, maintenance is only supplied for the term of iddat; after that, her husband is not required to provide maintenance to the Muslim women. However, the provision for maintenance in the criminal procedure statute is secular in nature. Maintenance is supplied beyond the iddat term, according to the Code of Criminal Procedure.

However, in my opinion, some revisions to the legislation are required for the advantage of Muslim women, as she will be unable to seek support beyond iddat and from the Waft Board if her husband does not maintain her. So this is unjustifiable since if she marries a man, it is his responsibility to

support her after they divorce because she is his wife. And the statute was only passed to override the Criminal Procedure Code's provisions. This is a secular country, and the provisions of the Cr. P. C. are also secular, thus discriminating against women's rights only on the basis of religion is wrong. Why should the wife suffer as a result of her husband's actions if he did anything wrong? So, in my opinion, the husband is responsible for his wife's maintenance beyond the iddat time. Because she is reliant on her spouse, and if she is divorced, who would support her? As a result, it is her husband's responsibility to support her after the divorce.

4.4 THE LEGISLATIVE AND THE JUDICIAL VIEW ON MAINTENANCE

A Judge's Opinion on Maintenance During the turbulent years of 1985-86, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted in response to agitation by dominant sections of Muslims against the express or implied denigration of Islamic religious law by those who had come out with an overly zealous reaction to the celebrated Shah Bano's decision. Shortly after it was enacted, the Act of 1986 was challenged in the Supreme Court for its unconstitutionality. While its fate remains uncertain, all 24 Writ Petitions against it that are still pending before the courts, relating to the interpretation of its various provisions and exploring its impact on and interaction with the maintenance law under the Criminal Procedure Law, 1973, have been decided by courts all over the country, and a score of cases have been remanded until the end of 1988. After this case, the High Court adopted paradoxical lines of reasoning on the question of the applicability of Sections 125 to 128 of the Criminal Procedure Code even after the Act had come into force, except in cases of option exercised by the parties, particularly from 1986 to 1990 in a number of cases.

It was held by Kerala High Court in *Ali v. Safaria*⁸⁸ that a divorced woman is entitled to maintenance from her former spouse for Iddat period as well as a reasonable and fair provision for her future under Section 3 (1) (a) of the Act. Thus it would appear that a divorced Muslim lady is entitled to support from her former husband solely for the term of Iddat, Justice K. Shreedharan stated in this case, disagreeing with the Mulla's line of reasoning.

The previous husband's liability is undeniable. The former husband is also obligated to fulfill this commitment, according to the Quran. The Supreme Court in Shah Bano's decision extended this requirement to divorced women who are obligated to support themselves till death or remarriage. By passing this Act, Parliament hoped to relieve the former husband of that responsibility. However, the

⁸⁸ (1988) 2 K.L.T 94.

Act of 1986 now specifies that they must pay Iddat maintenance as well as make a reasonable and fair provision for her. The provision should be for the woman's future.

Even after the former spouse has made the provision, if the lady becomes unable to support herself, the condition described in Section 4 of the Act comes into play. 1986 does not exonerate the former spouse of making a suitable and fair provision for the women's life, according to Section 4 of the Act." Furthermore, J.K. Sreedhar distinguished the satiating word 'provision' from the word 'maintenance' and stated, "The phrase 'provision' refers to an amount set aside for a known liability that cannot be defined precisely. He must begin preparing for that goal.

That provision will be substantially different from the Iddat support payable to the divorced Muslim woman." The Holy Quran's Sura II; versus - 236 & 237 validated the Learned Judge's position. Section 3 (1) (a) of the Act clearly envisions two different and separate concerns, namely I establishing a reasonable and fair provision and (ii) payment of Iddat period maintenance. The payment of maintenance for the Iddat period, on the other hand, is not a point of contention. In regard to the first, the High Court has used illogical reasoning. In *Yunus v. Bibi Phenkani Tabnun Nisa*⁸⁹, The court further held that the right of a divorced Muslim woman to receive maintenance from her husband under Section 3 (1) (a) of the Act of 1986 was limited to the period of Iddat only, and that the right to receive maintenance from her husband under Section 125 of the Criminal Procedure Code until she marries was impliedly governed by the provisions of Section 3(1) (a) of the Act of 1986 in the case of a divorced Muslim wife.

The Rajasthan High Court has taken the similar view in *Abid Ali v. Mst. Raisa Begum*⁹⁰ The Division Bench was asked to evaluate the impact of the Act of 1986 provision on maintenance orders issued under the Code of Criminal Procedure Code, and whether orders issued under Section 125 of the Code remain valid after the Act of 1986 takes effect. In *Ali Yar v. Puthu*⁹¹, the Kerala High Court Division Bench concluded that under Section 3 (1) (a) of the Act, a divorced wife is entitled to reasonable and equitable provision and maintenance to secure her living.

⁸⁹ (1987) 2 Crimes 241.

⁹⁰ 1988 (1) Raj. L.R.104.

⁹¹ 1988 (2) KLT 446

This does not have to be in the form of money. It could take the form of a grant of immovable property, and the grant must be made during the Iddat era. It must be just and reasonable. She must undoubtedly be capable of realizing or securing provision. She is also entitled to maintenance during the Iddat period, in addition to the provision to be made. It is impossible to interpret the phrase "reasonable and fair provision and maintenance to be made and paid" in a disjunctive manner.

'Or' cannot be used in the 'context'. The two expressions convey two distinct thoughts and have two distinct implications. Clause (a) relevant part cannot be construed as 'reasonable and fair provision or upkeep.' One of the expressions is redundant if there is no distinction between two notions that signify the same thing; there is no reason to believe that Parliament's insertion of the words 'reasonable and fair provision' was intended to be a useless exercise. It has to have a different connotation.

Furthermore, Justice Bhat had relied on the Shah Bano ruling and subsequent implementation of the Act, which demonstrate Parliament's purpose to protect the interests of divorced Muslim women. "Opportunity has been taken, therefore, to establish the rights that a Muslim divorced woman is entitled to at the time of divorce and to protect her interests," he said. Because the fundamental goal of the statute is to protect the interests of divorced Muslim women, even if the act's text is ambiguous or two interpretations are equally plausible, the court must choose the reasonable reading that best protects the interests of divorced women. There is no ambiguity or confusion in Section 3 (1)(a) in this circumstance. The languages employed are straightforward, clear, unequivocal, and unambiguous, and they plainly entail the statement of two different and distinct rights: obtaining support for the period of Iddat, and having a reasonable and fair provision.

Without a doubt, the Kerala High Court was adamant that Parliament should use this occasion to establish the rights to which a Muslim woman is entitled in order to safeguard her interests rather than to limit her rights. However, Justice Bhatt erred in his conclusion that "in addition to paying maintenance to the divorced wife during the Iddat period, the former husband had to provide reasonably and fairly for the divorced wife's future needs, i.e. use of the divorced wife after the Iddat period or until her marriage or death." Parliament did not intend for this to happen. The spouse, on the other hand, is only responsible for providing maintenance and fair provision during the Iddat time and not afterwards. The court determined that Section 4 of the Act is an enabling clause after interpreting the other components of the Act.

If the divorced wife has not remarried and is unable to support herself after the Iddat term, the Magistrate may order her relatives, who will be her heirs upon her death, to pay her reasonable and equitable maintenance. There is an unique provision regarding the children's sole duty to the parents in the event of their absence or incapacity to pay. The state and the Wakf Board bear the ultimate responsibility. Section 4 does not allow for a court order for the former husband to pay support for the period following the Iddat.

Articles 38 and 39 of the Constitution demand that measures be taken to prevent women from becoming destitute. The Parliament has established a policy to provide extra safeguards for divorced women's interests. If she risks destitution notwithstanding the reasonable and equitable provisions made for the post-Iddat period, Section 4 comes to her rescue. As a result, the court disagrees that the scheme of provision imposing support duty on relatives of divorced women should lead to a restrictive and technical interpretation of Section 3 of the Act, 1986. Both Sections 4 and 3 are part of the legislative structure created to protect the rights and interests of divorced women, and they must be read together. Justice Baht erred in assuming that Section 4 must be read in conjunction with Section 3, notwithstanding the fact that both sections are part of the legislative plan. Both sections, it is claimed, have a separate purpose.

Section 3 of the Act of 1986 begins with a no obstinate clause, stating that a divorced woman is entitled to the rights stated therein "notwithstanding anything contained in any other legislation for the time being in force." The responsibility to provide maintenance to a divorced woman if she is unable to maintain herself after the term of Iddat is devolved upon the relatives, and if the relatives are unavailable, on the Wakf Board, according to Section 4 of the Act. For and during the term of Iddat, the husband's liability is strictly circumscribed. If a divorced woman is unable to support herself beyond the Iddat period, the former husband has any responsibility for payment of maintenance. Ali Yaar's judgment appears to be incorrect and even incompatible with the intent of the Parliament and Islamic Law.

After the Iddat period, a Muslim divorced woman is no longer entitled to maintenance from her former husband, according to the above statement. In this example, however, Justice Sinha's approach is logically coherent and formally valid. He had cited the "Sarwan Singh Case," in which the Supreme Court correctly concluded that when two or more laws operate in the same field, each containing a non-obstinate clause standing, the provisions of the first legislation will take precedence over the provisions of the second, the law's intent and purpose must be considered while resolving the problem.

When the terms of the current Act render the newly presented Act null and void, the newly introduced Act takes precedence. The latter enactment must take precedence over the earlier one.

In the case of *Rizwana Begum v. Motiullah*⁹² held that the divorced Muslim women cannot claim maintenance under section 125, the Cr. PC after passing-of the act of 1986. That the provisions of sections 125 to 128 of the Cr. PC do not apply when the Act of 1986 takes effect, except where the parties exercise their opinion under section 5 of the Act to be regulated by the provisions of sections 125 to 128, the Cr. PC.

That the husband's responsibility to provide fair and reasonable provision and maintenance under section 3(1)(a) is limited to the period of iddat, and that the husband's liability to make any provision or maintenance after the term of iddat does not arise.

On the first two arguments, Bhaskar Rao J (minority opinion) concurred with the other two hon'ble judges, but disagreed on the third point, holding that legislation intended payment of maintenance that is fair and reasonable provision has to be made for future during the term of iddat.⁹³

It is vital to clarify the concept of 'reasonable and equitable provision of support,' which is derived from Quaranic verse-241, where the word 'Mata' is utilised. It does not imply 'upkeep' or a constant supply. It means and denotes something that is immediate and not significant. Unlike maintenance, the Arabic word 'Mata' refers to a single or one-time business transaction. Imam Razi defines 'Mata' as a gain that occurs quickly and does not lead to further gain. Mohammad Akbar translates the word 'Mata' as 'something' in his translation of Maulana Abdul A. Maudoodi's 'Tafheem-ul-Quran. The word 'Mata' appears several times in the Quran and Abdullah Yusuf Ali has translated it with a variety of English words. In only two times has he read it as 'Maintenance.' In verse-39; Sura-40, his translation of the term 'Mata' as 'temporary convenience' is also crucial. 'O my people,' it says. This life of the present is nothing but temporary convenience. Recently, the Kerala High Court in *Syed Fazal P.T v. Union of India*⁹⁴, for the first time, the Wakf Board has been directed to pay maintenance to divorce Muslim women under Section 4 (2) of the Muslim Women [Protection of Rights on Divorce] Act, 1986. The court stated that if a divorced woman is unable to support herself and does not have sufficient financial resources to pay the maintenance, the Wakf Board created under Section 9 of the Wakf Act, 1954 may

⁹² 1989 Cr. (NOC) 155 Ori 15

⁹³ *Supra* note 6, page no. 197.

⁹⁴ AIR 1993 Ker. 308.

be ordered to pay the maintenance amount. It will not be in violation of India's Constitution's Article 26. The Wakf Board is not required by Section 4 (2) to contribute to the payment of maintenance to any poor woman, according to the Court. The Wakf Board has its own finances, and the upkeep is to be paid from those funds.

Bombay High Court raised interesting question in *Hafijabi v. Suleman Darwajkar*⁹⁵ whether a maintenance claim standing before the court prior to the 1986 Act would be regulated by the new Act's provisions or by Section 125 of the Criminal Procedure Code. In this case, the trial court found the husband guilty of failing to provide maintenance despite having sufficient means and ordered him to pay Rs.100 per month as a maintenance allowance in 1984, The husband filed a revision application with the Appellate Court, contending that the current application is not maintainable in light of the Muslim Women [Protection of Rights on Divorce] Act, 1986, and that the provisions of Section 125 of the Code are not applicable in the case of a Muslim wife, and that the case should be decided by the Act of 1986. After considering the relevant provisions of the Act, the Learned Appellate Court came to the conclusion that, in light of Section 3 of the Act of 1986, it is clear that the application under Sections 125 and 127 of the Criminal Procedure Code in respect of divorced Muslim women is to be decided in accordance with the Act of 1986 and not by the Code's Sections 125 and 127. After reviewing the relevant provisions of the Act, the Appellate Court came to the judgement that, in light of Section 3 and the Act of 1986, it is obvious that the application of Sections 125 and 127 of the Code. The Appellate Court's decision was appealed to the Bombay High Court on the grounds that the Act of 1986 does not apply retroactively. Since the trial court dismissed the motion for maintenance in 1984, the same will not apply to the current case.

The judgment of the Supreme Court in the case of *Noor Sabha Khatoon v. Mohd. Qasiru*⁹⁶, The question before the Supreme Court was "Does Section 3 (1) (b) of the Muslim Women [Protection of Rights on Divorce] Act, 1986, in any way affect the right of minor children of divorced Muslim parents to maintenance under Section 125 of the Code?" The Supreme Court has decided in paragraph 7 of this judgement that a plain reading of the foregoing section clearly shows that it deals with "Mahr" or other property of a Muslim woman to be granted to her at the time of divorce. Section 3(1), clause (b), provides for additional maintenance to be paid to her for the fosterage term of two years from the date of the child's birth for the purpose of supporting that child during the fosterage. Maintenance for the prescribed period referred to in clause (b) of Section 3 (1) is granted on the claim of the divorce mother on her own behalf for maintaining the infant / infants for a period of 2 years from the date of birth of the child concerned who is / are living with her, and presumably is aimed at providing some extra

⁹⁵ AIR 1996 (Born) 80.

⁹⁶ AIR 1997 SC 3280.

amount to mother for the nourishment for nursing or taking care of the child concerned⁹⁷. It had nothing to do with the child's or children's entitlement to maintenance. When the requirements of Section 125 of the Code are met, Section 3 (1) (b) of the Act of 1986 has no bearing on the rights of minor children who are unable to support themselves. According to Section 125 of the Code, the father is responsible for the children's upkeep as long as he is financially able to do so and the children have no other means of support. It is still his exclusive responsibility to provide for them. There is nothing in Section 125 of the Code that exempts a Muslim father from his commitment to support his children if they are the children of Muslim parents. Clause (b) of Section 3 (1) of the Act, 1986 has no bearing on these provisions, and it would be irrational, inequitable, and even ludicrous to deny children the benefit of Section 125 of the Code solely because they are the children of Muslim parents.

Beneficial legislation, such as Section 125 of the Code, cannot be overturned until it is done so explicitly in a statute. The 1986 Act makes no mention of any such desire to deprive children of their right to claim maintenance on their own. Where minors are unable to care for themselves, Section 125 of the Code applies. Again, in paragraphs 10 and 11 of the judgement, which reads them, the proposition of law has been brought out. Thus, under both personal law and statutory law [Section 125 of the Code], a Muslim father with sufficient means is obligated to support his minor children who are unable to support themselves until they reach majority, and in the case of females, until they marry, despite the fact that the minor children are living with the divorce wife.

Thus, in response to the question posed in the preceding section of the opinion, children of Muslim parents are entitled to maintenance under Section 125 of the Code until they reach the age of majority or are able to support themselves, whichever comes first, and in the case of females until they marry, and this right is not limited, affected, or controlled by the divorced.

In *Patnam Vahedullah Khan v. Ashia Khatoon and another*⁹⁸, In this case, neither party has filed an application under Section 5 of the Act of 1986. In this case, Section 125 of the Code does not apply, and the Family Court lacks jurisdiction to issue the order at issue in this revision. As a result, the order is cancelled and the amendment is permitted. It was decided that divorced Muslim women's right to claim and adjudication by a Family Court order is not acceptable when neither party has taken the option of litigating for the application of Section 125 of the Code in terms of Section 5 of Act 25 of 1986. As a result, Family Court has set aside the order, and the modification is permitted.

⁹⁷*Supra* note 3.

⁹⁸ (2000) Cr. L.J. 2124.

The similar controversy was recently sparked by two landmark rulings issued by the Bombay High Court and the Calcutta High Court. In *Sakila Parveen's case* The Times of India reported on June 16, 2000, that the Calcutta High Court had decided that divorced Muslim women would be entitled to support till they remarried. Sakila Parveen, a divorced Muslim lady, filed a revision petition, which was heard by Justice Basudev Panigrahi. Haidar Ali, her spouse, abandoned her in 1993. Sakila petitioned the Saddah Court for a maintenance stipend. Though Haidar was served with a copy of the petition, no one represented him in court, and he did not respond to the trial court in any way, and the trial court granted Saki la maintenance allowance of Rs.800 for a customary three month Iddat and den Mahr of Rs.2500. Unhappy with the judgement, Saki la moved to the Calcutta High Court, requesting its revision. After a lengthy hearing, Justice Panigarhi found that the trial court had interpreted Section 3 of the Muslim Women [Protection of Rights on Divorce] Act, 1986 incorrectly, and that phrases like "all reasonable and fair provisions and maintenance to be made and given to her" should be interpreted broadly. The Supreme Court had firmly concluded that the provisions of Section 125 of the Code trump personal law, which prompted the introduction of the Muslim Women Act in Parliament in 1986, according to Justice Panigrahi.

"According to the requirements of Section 125 (1) (b) of the Code, the right to receive maintenance payment cannot be restricted to the term of Iddat just in case of divorced women," he added, referring to a 1994 Allahabad High Court judgement. The Family Court does not impose any such restrictions. The appellant should be entitled to maintenance payments until she remarries.

The Bombay High Court's decision in July 2000, re-energizing the light of hope for indigent Muslim women and advocating the path of judicial activism for the establishment of social justice, re-energizing the light of hope for indigent Muslim women and advocating the path of judicial activism for the establishment of social justice, stated that "while interpreting a beneficial legislation, we should lean in favour of the beneficiaries to help them get the We would be hesitant of overriding Muslim personal law, but we would harmonise it with the Code's requirements within its framework. Our constitution aims to protect and improve women's dignity, and laws should be construed in that light." The Bombay High Court's Single Bench had found it just and equitable for the husband to pay the divorced wife maintenance payment even after the Iddat period, but felt it necessary to refer the case to the entire bench for a decision in the interest of justice. Therefore, this revision application of *Karim Abdul Reluman Shaikh v. Shehnaz Karim Shaikh*⁹⁹ Shah J., Smt. Ranjana Desai J., and Patil J.

⁹⁹ (2000) (3) MILJ 555.

appeared before the full bench. The following were the four main questions presented to the Court, along with their answers:

Whether the Muslim husband's obligation to make a reasonable and fair provision and pay maintenance under Section 3 (a) of the Act of 1986 is limited to the Iddat time or goes beyond the Iddat period"?

In response, the Court stated that a reasonable and equitable provision must be distinguished from maintenance in its decision. The word "provision" refers to anything that will happen in the future. It's a sum of money set aside to cover a recognised 'responsibility.' It would indicate an amount sufficient for a divorced Muslim woman to look after herself following the Iddat period in the context of Sections (1) (a). This could include money for her living expenses, food, clothing, medicine, and other similar costs. It is for this reason that, as with Section 125 of the Code, no maximum sum is set, but the quantum must be sufficient in relation to the woman's future needs.

"The husband's responsibility to pay maintenance to a wife ceases the minute the Iddat period ends," the court concluded on the first question. He must pay her during the Iddat period for the duration of the Iddat period. However, he must provide for her in a reasonable and equitable manner within the Iddat period, which should cover her for the rest of her life or until she becomes disabled under the Act of 1986. When determining this sum, consideration will be given to the divorced woman's requirements, her standard of living during her marriage, and her former husband's financial resources. If the husband is unable to make such a lump sum payment, he can request payments, and the court will consider giving them. In addition, until the spouse makes the provision, the magistrate may order a monthly payment to her, even if it is not Iddat, until the amount is determined.

(ii) On the second question, whether the Act has the effect of nullifying orders/judgments made under Section 125 of the Code prior to its enactment, i.e., whether the Act divests parties of vested rights/benefits by acting retrospectively, the Court held: "The orders made under Section 125 of the Code prior to the commencement of the Act of 1986 are not nullified by reason of the Act of 1986." These orders bind both parties and can be carried out under Section 128 of the Code. The Act does not take away a divorced woman's right to receive maintenance. Section 125 of the Code has been vested in her as a result of orders of a competent court issued prior to the Code's enactment.

(iii) Can a divorced Muslim woman petition for support under the terms of Chapter IX of the Cr.P.C after the Act of 1986 take effect? The court made a decision in response to this question. "After the

Act of 1986 went into effect, a divorced Muslim woman could no longer apply for maintenance under Chapter IX of the code. A divorcee and her husband can submit themselves to the authority of the magistrate under Sections 125 and 127 of the law and agree to be governed by the stated provisions (but not without such agreement), according to Sections 5 and 7."

(iv) The Court's final concern was whether the Family Court has jurisdiction to hear claims for maintenance from Muslim divorced women after the Act of 1986 went into effect. "If the Family Court's jurisdiction was wanted to be protected, there would have been an express clause making it clear that the Family Court had authority," the Court concluded. Sections 3 and 4 of the Act require that applications under Sections 5 and 7 of the Act be filed solely with the Magistrate. As a result, we hold that after the Act of 1986 takes effect, Muslim women can only petition to the First Class Magistrate who has authority under the Code under Sections 3 and 4. Such applications are ineligible for consideration by the Family Court.

"By enacting Section 3 (1) (a) of the Act, Parliament has accepted the traditional view that the right to maintenance ends when the Iddat following Talaq expires, after declaring and protecting the right of divorced women to receive a fair and reasonable provision for their livelihood during the post-Iddat period, as well as during the Iddat period, from their husband."

"The Apex Court's decision, has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorce wife. The opportunity has, therefore, been taken to specify the rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests," the statement of objects and reasons for bringing the Act reads. The major goal of the Act is to protect the rights of Muslim women when it comes to divorce. The enactment's title also includes the phrase "Protection of Rights on Divorce. In terms of the husband's need to pay maintenance, the Muslim Law, as well as the Supreme Court's judgement, limits it to the period of Iddat alone. Apart from the right to maintenance under Muslim Law, which a divorced Muslim woman has, as the Supreme Court concluded in the aforesaid Shah Bano case, a divorced Muslim woman only has a claim to maintenance under Section 125 of the Code of Criminal Procedure after the term of Iddat has expired.

If a woman is unable to care for herself, the personal law was settled on the topic of payment of support during the Iddat era, and there was no disagreement on the subject. Even after the Iddat term has expired, the right to maintenance is still valid. Section 125 Cr.P.C. only applies if a woman is unable to care for herself, and this right has been solidified following the Supreme Court's decision. In the statement of objects and reasons, there is no doubt. This ruling, which vests the right to maintenance under Section 125 Cr.P.C, has sparked some debate. This contentious situation had nothing to do with the husband's need to pay support during the Iddat era, and hence the Muslim woman's corresponding right did not require any protection because it had never been eroded.

The recently obtained right that the Muslim woman, if unable to maintain herself, is entitled to have recourse to Section 125 Cr.P.C, even after the Iddat period, was sought to be controverted or diminished through some controversy. This much crystallisation, though not in exactly the same form and under the same provision, but in substance something over and above the obligation to pay maintenance during the Iddat period, was under the need and warrant of protection, which the legislation intended to provide by enshrining in Section 3 (1) (a) of the Act the husband's obligation to make a reasonable and fair provision, apart from the obligation to pay maintenance during iddat period.

The question now is what "a reasonable and equitable provision and maintenance to be made paid" means. The contention that one had in that 'provision and maintenance' had to be read together in a compendious form, as it appears in the preceding passage. This claim is bolstered by citing Quranic verse 241, which contains the term 'Mata,' which means "maintenance" (should be provide). Because the Supreme Court has understood 'Mata' to include both maintenance and provision, the Legislature is obligated to prevent any ambiguity in the language of Section 3 (1) (a) by combining the words 'provisions' and 'maintenance' without implying that they are different and separate entities.

Ex-facie, the argument sounds far-fetched and is incompatible with I the Act's preamble, Section 4 of the Act, which only mentions "reasonable and fair maintenance" (the word provision is omitted), and (iii) Section 5 of the Act, which gives the parties the option of being governed by Sections 125 to 128 of the Code of Criminal Procedure. As a result, this is a law designed to defend the rights of Muslim women who are divorcing. Only when a right is newly acquired, and then only when it is threatened with eroding, does the topic of protecting it arise. There was never any disagreement about the payment of maintenance for the Iddat period because it was not a new acquisition and it was not under threat of erosion at any time prior to the enactment of the current legislation. The uproar, or debate, in the

Muslim community was over the husband's obligation to pay maintenance beyond the Iddat period (Section 125 Cr.P.C; if she can't take care of herself According to the Supreme Court's decision, this was a freshly crystallized right about which there was great debate.

As a result, this newly crystallised right was the subject of debate and, as a result, was under threat of erosion, necessitating or warranting preservation, which may be in the same form or a balancing different one. Section 5 of the Act, on the other hand, leaves the choice of form to the parties themselves. Sections 3 (a) and 5 of the Act are the resultant provisions, with the former imposing a duty on the husband to make a reasonable and fair provision aside from the payment of maintenance within the Iddat period, and the latter leaving the parties with the option of being governed by Sections 125 to 128 of the Criminal Procedure Code.

If Section 3 (1) (a) truly intended nothing more than the payment of maintenance for the Iddat period, neither the Legislature nor the courts would have wasted their time incorporating the liability of making a provision reasonable and fair, apart from paying maintenance, in Section 3 (1) (a), nor would they have allowed Section 5 to remain otiose on the statute because no Muslim would object.

The sentence "a reasonable and equitable provision and maintenance" is noticeably missing the word "provision." The legal responsibility Section 4 requires either the relatives or the Wakf Board to pay appropriate and equitable support. In contrast to Section 3, Section 4 contemplates the making of a fair and reasonable provision. As a result, the notion that provision and maintenance are interchangeable and should be interpreted together is unworthy of consideration.

The Learned Advocate General submitted these two or (are) separate and independent matters. Furthermore, the reasonable and fair provision intended by this section to be made during the Iddat period is for a time significantly longer than the Iddat period, but the Iddat period maintenance is for the Iddat period. It is also important to note that the Legislature cannot be said to have been unconcerned about this inconvenient situation in arriving at but also in making a reasonable and fair provision, having been unconcerned apply; it introduced Section 5 in the statute to allow the parties to choose by the Government by Sections 125 to 128 of the Code of Criminal Procedure.

While a wholly or predominantly Muslim legislature of an Islamic country was competent under the Islamic legislative principle of consensus (Ijma) to adopt the traditional cherish to the changed social conditions by the method of legislation, the All India Muslim Personal Law Convention, held in Bombay in December 1972, A similar Endeavour by a non-Muslim country's legislature, such as India, was diametrically opposed to the Islamic doctrine of immutable Muslim Law. The Shah Bano's judgment inflamed public sentiment against the Shariat's indifference to the condition of Muslim women. During the debate in the Lok Sabha on the controversial reform proposal" a bill for the Act of 1986, currently known as the Muslim Woman (Protection of Rights on Divorce) Act, was introduced.

The Law Minister reaffirmed the Constitution's provision for the promulgation of a Uniform Civil Code, but added the novel notion that it would henceforth be optional. Even the time-tested hollowness spruced loud Muslim fundamentalist leaders like Shah Abducing to declare that a Uniform Civil Code, rather than advancing the process of National Litigation, would serve as a dividing force at this juncture. The idea of codification is sometimes conflated with the idea of change in Shariat in public debate, and Muslims are concerned that leaving such codification to Parliament, which has a nonMuslim majority, would be dangerous.

The wealth of the Islamic Treasure points to a long-term solution to any problem. The solution must be discovered inside the Shariat fold and among Muslims, and after the Shariat practitioners have reached an agreement, the Legislature and the Judiciary must stamp their approval and legitimacy on it. In the current circumstances, the analysis suggests that a Uniform Muslim Code, rather than a Uniform Civil Code, would be a better solution. For Indians, who are famed for their religious and cultural variety, it appears to be a challenging task. Not only would the Uniform Muslim Code adapt to new circumstances, but it would also counteract anti-growth trends in Muslim personal law.

However, the establishment of such a comprehensive code necessitates the elimination of all frivolous and meaningless disparities in the meaning and content of Shariat that exist among the many sects within Islam, driven by various existing schools, particularly in areas of detail. The effort should be centred at determining the genuine spirit and irrespective substance of Muslim Personal Law in light of the Quran and Hadith augmented by secondary sources enlightened interpretations and academic thinking. The mentality of opposing reform for the sake of reform and its merits should be abandoned. What Indian Muslims require is a complete system of Islamic Personal Law for the modern day. It is

critical to update the erroneous textbooks that courts presently rely on, as well as to prevent the rising misuse of Muslim law by the general public.

The majority of Muslim women are uneducated, and they have been enslaved by habits and artificial traditions that are not sanctioned by Islam. They can easily break their chains if they obtain adequate Islamic education and become aware of their rights and responsibilities. In a secular democracy like India, religious or faith-related activities should be split into intrapersonal and interpersonal categories. In terms of intrapersonal activities, the state may enact legislation, while in terms of interpersonal contacts, India's various cultural and ethnic groups should be able to practise their own rites and rituals until that cultural or ethical group demands a change. The hair-splitting over Islamic institutions such as marriage, dower, divorce, and inheritance, as well as extending arguments to counter the protagonists, would have no end, and it would only add to the bitterness and widen the chasm between the country's major communities, which need to be bridged.

CHAPTER FIVE

CONCLUSION

5.1 CONCLUSION AND SUGGESTIONS

Virtuous and chaste ladies were praised by the Prophet Muhammad (peace and blessings be upon him). "The world and all things in it are valuable, but the most valuable thing in the world is a moral lady," he added. "Shall I not enlighten you about the best treasure a man can hoard?" he once asked the future

khalifah, 'Umar. It is a good woman who pleases him anytime he looks at her and keeps herself safe when he is not around." "The best thing a man can have is a remembering tongue (about Allah), a grateful heart, and a believing wife who helps him in his faith," the Prophet added on numerous occasions. "The world, the entire of it, is a commodity, and the best of the world's goods is a virtuous wife," he says again. Women were frequently treated worse than animals prior to the arrival of Islam. The Prophet wanted to put an end to all forms of violence against women. He urged them to be kind to one another. "Fear Allah in respect of women," he admonished the Muslims. "The best of you are those who treat their wives the best," he adds. "A Muslim must not despise his wife, and if he is dissatisfied with one of her poor qualities, let him be delighted with one of her excellent qualities. "A Muslim's religion is perfected the more respectful and courteous he is to his wife." When the Prophet (peace and blessings be upon him) delivered his famous khutbah on the Mount of Mercy at Arafat in front of a hundred and twenty-four thousand of his Companions who had come there for the Hajj al-Wada, he was explicit in enjoining Muslims to be kind to their women (Farewell Pilgrimage). In it, he commanded those present, as well as all Muslims who would follow, to treat women with respect and kindness. "Fear Allah when it comes to women," he stated. Indeed, you have wedded them in Allah's trust and made their bodies lawful in Allah's word. You have (rights) over them in terms of their food and clothing, and they have (rights) over you in terms of your means.

In Islam, a woman is a self-contained individual. In her own name, she can make any contract or bequest. In her capacity as a mother, wife, sister, and daughter, she is entitled to inherit. She is completely free to choose her husband. Pre-Islamic Arabia's pagan civilization had an illogical bias against female children, whom they used to bury alive. This practise was condemned by Allah's Messenger (peace and blessings be upon him). He demonstrated how nurturing their female children would serve as a shield between them and the fires of Hell. In Islam, a woman's status as a mother is highly regarded. In several verses of the Noble Quran, the mother's rights are mentioned. It commands Muslims to revere and serve their mothers, even if they are still infidels. The Prophet asserts unequivocally that the mother's rights are paramount. Women are spiritually and intellectually equal to males, according to the Shariah. Its primary differentiation is in the physical sphere, based on the equitable notion of fair division of labour. It assigns the more difficult task to the guy and makes him responsible for the family's upkeep. It assigns to women the responsibility of administering the home, as well as the rearing and training of children, work that is critical in the goal of creating a healthy and affluent society. Effective domestic administration, on the other hand, is impossible without a cohesive policy. As a result, the Shariah mandates a man, as the leader of the family, to confer with his family before making decisions that affect it. In doing so, he must not use his power to harm his wife in any way. Any violation of this concept puts him at risk of losing Allah's favour, for his wife is not his

subordinate, but rather "the queen of her house," as the Prophet (peace and blessings be upon him) put it, and this is the status a true believer is required to grant his wife. Western rhetoric of women's liberation or emancipation, in contrast to Islam's enlightened teachings on women, is actually a disguised form of exploitation of her body, denial of her honour, and degradation of her spirit!

Women account for over half of the world's population and play an important role in a country's development and economics. They are the ones who keep families together in order to care for the children, whether young and old. Unfortunately, their contribution goes unnoticed, and they are always at a disadvantage. Due to a lack of education, technical skills, and information, they are excluded from social resources. This is true of women everywhere, regardless of race, class, region, society, or nation; Indian women are no exception. It is a biological fact that sex differences are what distinguish a woman from a male. Society has produced further distinctions between men and women based on their gender. These disparities have been referred to as gender differences. Gender refers to the socially defined differences between men and women, as well as their relationships and social positions in society / community. In contrast, sex refers to the physical or biological differences that exist between male and females, while gender socialization impacts both girls and boys. Unequal treatment of girls and boys, unequal authority between men and women, and distinct roles taught to boys and girls are all examples of gender. Women and the social tasks they are expected to undertake are often regarded as low status in many civilizations. Women's rights to knowledge, appropriate nourishment, health care, education, economics, property, reproductive rights, and family planning are all denied as a result of their devaluation. Gender equality is a fundamental premise of the human rights nation. It is a broad term that encompasses many aspects of life, and we have lived in a patriarchal and feudal society that has assigned women a subordinate status for centuries, if not since the dawn of recorded history. Discrimination against women is defined as any distinction, exclusion, or restriction made on the basis of sex that has the effect or purpose of impeding or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on the basis of equality in the political, economic, social, cultural, civil, or any other sphere. In terms of the position of Muslim women in India, it is important to note that Indian Muslims number over 160 million people, making them the world's second biggest Muslim population after Indonesia. It is undeniable that modern Indian Muslim society is educationally and economically backward. More than half of them live in poverty, with a monthly income of Rs.150 or less, compared to the overall poverty rate of 39 percent in India. They have a high rate of landlessness (35%) among them. Literacy rates are low compared to India's overall data, at 42 percent versus 52 percent, with Muslim women having a rate of 21 percent. Muslims are underrepresented in government work, accounting for only 6% of State Government occupations, 4% of Central Government jobs, 3% of Indian administrative services, and fewer than 1% of high bureaucratic positions. Their presence in

political bodies is similarly insignificant. Because they are women, like their other sisters from many communities, Muslim women's situation in India is lower than that of their males; they are a considerably marginalized group because they are poor, illiterate, and economically dependent. They lack decision-making capacity and are not exposed to the outside world, resulting in a lack of information. They are not aware of their religious as well as constitutional safeguards. Poor health, patriarchal character of society, orthodoxy, and conservatism are all problems that Muslim women face. They also have to deal with other social ills including dowry, domestic violence, and divorce. Despite gender disparities in marriage, autonomy, and mobility across societies, Muslim women are not treated equally to Hindu women in certain critical areas. Socioeconomic position, occupational distribution, labour participation, and education are some of these factors. Across the country, Muslim illiteracy (59 percent) is greater than the national average, and just about 10% of Muslim women have completed high school. Women's autonomy and mobility, as well as the pattern of household decision-making, were deemed to be unfavorable in the poll. It is vital to learn about the status of women in Arabia, Islam's birthplace, prior to the rise of Islam. The Arab society, which was practically tribal in nature, did not value the individual. In pre-Islamic civilization, women had no recognized status. The women of Arabia were subjected to their nearest male relative or to their father, brother, son, or spouse, whose rights over them were recognized as their own property rights. The Arabs regarded the birth of a girl as a calamity and a source of shame for the family. If a daughter is not married before she reaches puberty, she may be disgraced. At the period, the Arabs practiced marriage through capture, purchase, and contract. Polygamy was prevalent and widespread among them. There appears to be no law or convention governing the number of spouses an Arab could have. A wife was seen as a piece of property. A woman could even be lent to a visitor as a sign of the Arab's famous hospitality. As a result, even when a girl was allowed to live, the practise of female infanticide was common; she was compelled to marry at the age of 7 or 8 years old.

The following point of unfairness deals with divorce. In pre-Islamic Arab civilization, a husband could divorce his wife whenever he wanted. There was no reciprocal right for the woman. As a result, it's often claimed that women in pre-Islamic civilization were viewed as second class citizen and property. Islam on the other hand aided them in a variety of ways. Both men and women are guaranteed the same reward for good behaviour and the same punishment for bad behaviour in their relationship with Allah. The Quran recognized women as a complete and equal companion of man in the propagation of humanity. He is the father, and she is the mother, and life cannot exist without them. According to the Holy Quran, Islam's greatest source of law, there is no distinction between men and women, and her role is equally as vital as his. She has an equal say in every aspect of the partnership; she has equal rights, equal responsibilities, and the same number of human attributes and levels as her spouse.

Furthermore, she is equal to men in terms of personal and social responsibility, as well as receiving reward for her deeds, according to the Holy Quran. She is seen as a self-contained entity with human characteristics who is worthy of spiritual aspirations. Her human nature is neither superior nor inferior to that of man. As a result, women in pre-Islamic civilization were seen as second-class people and treated as mere property, according to legend. Islam, on the other hand, aided them in a variety of ways. Prophet Mohammed's reforms resulted in a vast and considerable improvement in women's position. Islam improved women's status by limiting polygamy to four spouses, forbidding female infanticide, assigning a share of inheritance to women, recognizing Mahr as a gift to the bride, and reorienting marriage and divorce law in their favour.

We can see from the previous chapters that women are given various sorts of security; this is due to her perceived inferior status in society. But why are women treated as second-class citizens in our society? There is a notion that women are weaker than males. We discuss the protections provided to Muslim women in our society, such as mahr upkeep shares in property, and so on. Why are these things provided to her solely so that she can protect his life? But the question is, are those things truly secured in her life?

Mahr is a sum of money or other property that the wife is entitled to receive from her husband in consideration of marriage because marriage is regarded a civil contract under Muslim law, hence mahr is a consideration for that marriage, as mentioned in earlier chapters. It is a sign of respect offered to the wife under Muslim law. When his wife asks it, the husband is obligated to pay the mahr. There is a quick dower, which the woman can seek at any time after the marriage, and a deferred dower, which is handed to the wife after the divorce.

You could say that it provides some protection to Muslim women because the husband is obligated not to divorce his wife because if he does, he will have to pay the mahr that was agreed upon at the time of marriage. On the ground, however, the amount of mahr is insufficient for the lives of Muslim women; husbands give divorce when they feel it is necessary for no good reason, and the wife has no recourse; giving mahr is not enough; when Islam grants equal rights to men and women, why is it that men have the right to divorce their wives whenever they want? Even he gives divorce on telephone. Is this equality, or is this fictitious form of security known as mahr sufficient for her life? Obviously not. It is only in books that Muslim women are provided with social security, but this is not the case in

reality. In Muslim law, there is also a Pardah system in which Pardanashin women are not allowed to leave the house and are required to cover their entire body, including their face.

The most common bias held against women in society is that a Muslim woman cannot marry a non-Muslim, whereas a Muslim man can. Previously, the husband had the power to break the marriage by saying the word "Talaq" three times without giving any cause and even in the absence of his wife. Women have only a few generic rights when it comes to divorcing their husbands.

In Muslim law, mahr or dower is an amount payable by the husband to the wife at marriage, between the parties, or by operation of law. A wife cannot realistically seek her dower and keep good relations with her husband for an extended period of time. Though non-payment of mahr can be grounds for divorce, marriage is not seen as sacrosanct in this law as it is in other laws. However, the majority of wives do not receive Mahr owing to ignorance. In general, lack of education has been a fundamental flaw in personal laws, with Muslim women being instructed to stay at home. Pardah, polygamy, illiteracy, and other issues affect over 80% of the Muslim population. The current Muslim personal rules are gender prejudiced and contradict major fundamental rights guaranteed to women under the Indian Constitution, which guarantees equality to all citizens. Such laws go against secularism and national integration.¹⁰⁰ Now days the condition of women changes but only a little bit. There is huge difference between the man and the Muslim women's.

Maintenance is another form of protection provided to Muslim women by Islamic law. In Arabic, maintenance is referred to as Nafqah, which signifies that a person spends money on his family, but in a legal sense, it refers to food, clothing, and lodging. In Muslim law, it is the husband's responsibility to sustain his wife; hence it is a form of social security for Muslim women, as her general needs are met by her husband because she is completely reliant on him.

In Muslim law, maintenance to the wife is always a source of heated debate in Parliament, in judicial decisions, and among the general public. A Muslim husband is totally responsible and bound for the upkeep of his wife, regardless of his financial capabilities. As a result, Islamic Law is very explicit in

¹⁰⁰available at: <https://blog.iplayers.in/discriminatory-muslim-laws-women/>(visited on 30 June 2021).

this aspect. If her husband does not support her, a Muslim wife can file for divorce under Section 2 of the Act of 1939. When the issue of the divorced wife's maintenance comes up, this debate always emerges. The most important decision to make is about upkeep after the Iddat period. The High Courts have chosen two lines of reasoning in this thesis relating to the maintenance of Muslim wives and divorced Muslim wives. The first is a programmatic approach, and the second is a functional approach. However, both approaches have failed to recognise the social and economic theory of Islamic Law, according to which a Muslim husband has a duty to make an Islamic settlement in the form of a one-time transaction in favour of a divorced wife, and then the responsibilities fall to relatives or an Islamic trust, as the case may be. Between 1978 and 1988, the Supreme Court has expedited the pragmatic approach to divorce and Iddat maintenance periods. In instances involving maintenance, the Supreme Court made a direct attack on Islamic law, and in the meantime, the Act of 1986 was created to address the issues. Some significant pronouncements, such as Zohra Khatoun, Shah Bano Begum, Danial Latifi, and others, marked a turning point in Islamic Jurisprudence in terms of maintenance and divorce.

A divorcee is entitled to maintenance under ancient Islamic law; however this will only last until the Iddat term has expired. After the divorce on the expiration of the Iddat period, the husband and wife are treated as strangers to each other in the eyes of Islamic Law. Only when the Halala criterion is met is it possible to remarry. Husband and wife are two strangers of opposite sex, according to legal fiction. A lady is totally protected in the proper application of Islamic Law. Her parents are accountable before the marriage, and her spouse is responsible afterward. She, too, is completely free and has complete ownership of the property, whether she obtains it through her husband, through inheritance, or through any other means. Islam is a thorough and complete code in and of itself. It is capable of accepting all changes that benefit the Muslim community at any moment, even if these changes are incompatible with the Islamic spirit. Although it is possible to say that Muslims Ulemas "themselves" are to blame for this unfortunate state of affairs, this is not the case. From time to time, there have been adversaries both inside and beyond the Muslim community who have misinterpreted and maligned Islamic Law. One example is the practise of Talaq-ul-Biddat. On a first-come, first-served basis, Muslim Ulemas must draught an Islamic Law codification based on the Shariat's requirements. On several levels, Shariat Courts should be established to decide on relevant concerns, such as maintenance claims. In general, the community should labour with the utmost passion to promote the idea and win over as many individuals as possible to its side. It should not reveal its opponents in such a way that any reasonable person would have any doubts that they were adhering to an utterly incorrect position. It should also instill in them the courage necessary for the abolition of harmful practices and the creation of the Islamic way of life. Overall, Shariat can never be a burden to people's wellbeing, especially

women's welfare. The basic source is Shariat, and Islamic Law is founded on it. As a result, these structured and developed eternal principles have not been broken or amended.

So, rather than Islam discriminating against men and women, it is the Maulana and other Muslim jurists who constantly distort Islam. Talaq is considered a sin in Islam, although it is practised for the sake of pleasure. Having four wives is a Muslim man's norm, and they claim that even Prophet Mohammad did so, but only for the sake of the society's prosperity, not for personal enjoyment. The Quran never teaches us bad things; it is humans who interpret the laws incorrectly. Is this form of security provided to Muslim women in the name of religion customs? Muslim males have traditionally considered Muslim women as inferior to them in the name of religion customs. They constantly do what they want in the name of security. Muslim women are only given with maintenance during the period of iddat; after that, she is on her own. She was protected by her father before marriage and by her husband after marriage, but who can maintain her if her husband divorces her? The law states that relatives and the waft board are responsible for her maintenance beyond the iddat period, but she married with her husband, not the waft board or the relatives. What do Muslim women expect from society when laws are discriminatory? Although social security is only provided in literature, the situation of Muslim women is dire. I'm not suggesting she's insecure, but when it comes to equality, Muslim women are far inferior to Muslim men, as well as women of other religions.

The issues discussed here are not related to Islam. They are issues related to Muslims' lack of devotion, application, or misapplication of Islamic principles. The subjects I've attempted to discuss here show and exemplify the significant gap that exists between the actual teachings of Islam as derived from its original sources and its projected image in society, as well as how some Muslims act in defiance of those noble principles. The media, without a doubt, has played a significant role in promoting these myths. Destructive culture has distorted pictures of other religions in texts, particularly Islam. Prejudices are propagated through books, novels, and even scholarly circles, as well as sermons from the pulpit in houses of worship. There are honest and honorable people in the media who are open to correcting falsehoods and reporting the facts as they become apparent. It is to advise the media that, rather than relying on erroneous information about Islam, they should communicate with educated Muslims, and keep in mind that India has over sixteen million Muslims. The challenges can only be solved through accurate depiction and honest communication with Muslims. The media must provide a balanced view of current events and perform a valuable service to society.



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