

# Indian Muslim Women Can Claim Alimony From Husband After Divorce

## Why In News

- **Supreme Court** ruled that all **married and divorced women**, including Muslim women illegally divorced by **pronouncement of “triple talaq”**, are entitled to claim maintenance from their husbands **under Section 125 of the Code of Criminal Procedure (CrPC), 1973**, “irrespective of her personal law”. [**Mohd Abdul Samad vs State of Telangana and Another**].



- In separate but concurring judgments, a Bench of **Justices B V Nagarathna and Augustine George Masih** held that the right of Muslim women to seek recourse to Section 125 will not be eclipsed by the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, enacted by the then Rajiv Gandhi government after the landmark Shah Bano judgment of 1985.



## The Present Case

- **Petitioner Mohd Abdul Samad** challenged a 2017 family court order directing him to pay maintenance of **Rs 20,000 per month** to his former wife. The Telangana High Court, on appeal, refused to set aside the order of the family court.



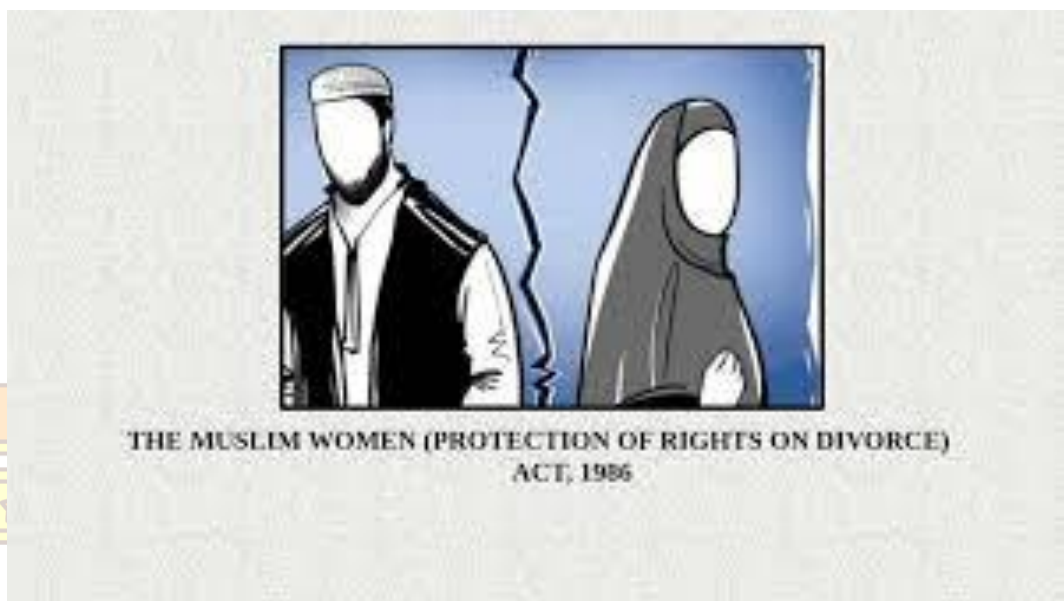
- **Section 125 CrPC** places an obligation on “any person having sufficient means” to maintain “his wife” or “his legitimate or illegitimate minor child” if they are unable to maintain themselves — typically through monetary support at regular intervals. The explanation in the section clarifies that the word “wife” also includes a divorced woman who has not re-married.

## Judgement

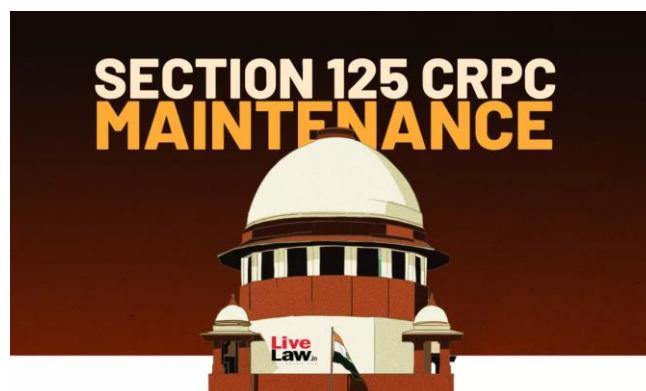
- A bench of **Justices BV Nagarathna and Augustine George Masih**, which pronounced a separate but concurrent verdict, said section 125 of the erstwhile CrPC which deals with wife’s legal right to maintenance, covers Muslim women.



- “We are hereby dismissing the criminal appeal with the major conclusion that **Section 125 CrPC** would be applicable to all women and not just married women,” Justice Nagarathna said, pronouncing the verdict.
- **The top court held that the Muslim Women (Protection of Rights on Divorce) Act 1986** will not prevail over the secular law. The counsel appearing for the man said that in view of the Muslim Women (Protection of Rights on Divorce) Act, 1986, a divorced Muslim woman is not entitled to claim benefit under Section 125 CrPC.



- **‘Not charity but right of women’**
- The **bench said maintenance** is not charity but the right of married women and it is applicable to all married women irrespective of their religion.
- “Some husbands are not conscious of the fact that the wife, who is a homemaker, is dependent on them emotionally and in other ways. The time has come **when the Indian man must recognise a homemaker’s** role and sacrifice,” Justice Nagarathna further said.



- **The SC also specified that if during the pendency of application** under Section 125 CrPC, the concerned Muslim woman gets divorced, then she can take recourse to Muslim Women (Protection of Rights on Marriage) Act, 2019 which provides remedy in addition to the remedy under Section 125 CrPC.
- **In a landmark judgment in the Shah Bano Case**, the apex court had held that Section 125 CrPC is a secular provision applicable to Muslim women too.
- The same was, however, nullified by the Muslim Women (Protection of Rights on Divorce) Act, 1986 and the validity of the law was upheld in 2001.

## Shah Bano decision

- **In 1978, a woman named Shah Bano Begum** filed a petition seeking maintenance from her husband under **Section 125 for herself** and her five children. Divorcing Shah Bano via **'irrevocable talaq'** later that same year, her former husband, Mohammed Ahmad Khan, argued that he is only required to provide maintenance during the iddat period following divorce — three months under ordinary circumstances during which she cannot marry another man — according to Muslim personal law.



- **After Shah Bano's plea** was granted by Madhya Pradesh High Court in 1980, the matter reached the Supreme Court. The All Indian Muslim Personal Law Board argued that the court was bound to apply Muslim personal law as per The Muslim Personal Law (Shariat) Application Act, 1937.

- **A five-judge Constitution Bench** upheld the High Court's decision. Then Chief Justice of India Y V Chandrachud held that provisions such as Section 125 CrPC "cut across the barriers of religion", and "whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant".

## WHAT IS IDDAT

- **The court also held that the divorced wife** was entitled to maintenance under Section 125 even after the iddat period "if she is unable to maintain herself".
- **The government of Prime Minister Rajiv Gandhi** then enacted the MWPRD Act, which effectively overturned the Shah Bano verdict. Under the Act, the obligation to pay maintenance after the iddat period was placed on the relatives or children of the divorced wife and, in their absence, on the State Wakf Board.

### Challenge to 1986 Act

- Soon after the **MWPRD Act** was enacted, Shah Bano's lawyer, Danial Latifi Nafess Ahmad Siddiqui, challenged its constitutionality before the Supreme Court. He argued that Section 125 is meant to protect women of all religions from "**destitution or vagrancy**", and that the MWPRD Act discriminates against Muslim women, violating their right to equality (Article 14) and right to life with dignity (Article 21).
- Centre argued that **personal law is a legitimate basis** for discrimination and does not violate the right to equality.
- The All India Muslim Personal Law Board argued that the Act takes care of Muslim women and prevents "vagrancy" while being in tune with Muslim personal law, which only places an obligation for maintenance on the husband during the iddat period.



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

- In an endeavour to uphold the **constitutionality of the law** while securing maintenance for a divorced Muslim woman beyond the iddat period, the five-judge Constitution Bench in its judgment creatively interpreted Section 3(a) of the MWPRD Act, which requires the former husband to provide “a reasonable and fair provision and maintenance to be made and paid to her within the iddat period”.
- **The court interpreted this to mean that the husband** “is required to contemplate the future needs (of the divorced wife) and make preparatory arrangements in advance for meeting those needs” within the iddat period. In contrast, the actual payment would not be limited to this period and could “extend to the whole life of the divorced wife unless she gets married for a second time”.