

## CASE COMMENTARY- MOHD. AHMED KHAN V. SHAH BANO BEGUM, 1985

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### Abstract

The Indian Constitution incorporates provisions (Articles 14-18) that mandate equality and the absence of gender-based discrimination. However, certain laws, particularly within the personal laws of specific communities, appear to contradict these principles by perpetuating discriminatory clauses against women. The State's primary focus is to protect the rights of all individuals, ensuring equal and fair treatment for every citizen. To achieve this goal, the government introduces laws, initiatives, and nationwide programs to safeguard and support women. The judiciary also plays a crucial role in promoting this cause through its interpretations of the law. Unfortunately, women from various religious backgrounds often experience discrimination and exploitation within their families and society. Thus, it becomes the State's duty to shield women from such challenges, empowering them to enjoy equal status within society. Within the Muslim community, women frequently encounter issues like Triple Talaq and Maintenance.

**Keyword:** Constitution, Personal laws, Judiciary, discrimination, Gender

<b>Case Title</b>	Mohd. Ahmed Khan V. Shah Bano Begum	<b>Acts and Sections Involved</b>  <a href="#">The Muslim Personal Law (Shariat) Application Act, 1937</a>  <a href="#">The Essential Services Maintenance Act, 1968</a>  <a href="#">The Code Of Criminal Procedure, 1973</a>  <a href="#">Section 125 in The Code Of Criminal Procedure, 1973</a>  <a href="#">Section 127 in The Code Of Criminal Procedure, 1973</a>
<b>Equivalent Citations</b>	1985 AIR 945, 1985 SCR (3) 844	
<b>Date of the Judgment</b>	23 April 1985	
<b>Jurisdiction</b>	Supreme Court of India	
<b>Quorum</b>	CHANDRACHUD, Y.V. ((CJ) MISRA RANGNATH DESAI, D.A. REDDY, O. CHINNAPPA (J) VENKATARAMIAH, E.S. (J)	
<b>Author of the Judgement</b>	Y Chandrachud	
<b>Petitioner</b>	Mohd. Ahmed Khan	
<b>Respondent</b>	Shah Bano Begum and Ors.	

### I. INTRODUCTION

As our society continues to advance and embraces the principles of equality while actively combating gender discrimination, several laws have been enacted to eliminate such disparities. Even personal laws like the Muslim Personal Law aim to grant equal status to both Muslim men and women. However, the

prevalence of patriarchy and adherence to orthodox beliefs still present challenges in effectively implementing these laws within society. A pivotal moment in the fight for women's rights among Muslims in India was the Shah Bano case, officially known as Mohd. Ahmad Khan vs. Shah Bano Begum & Ors. (1985). This case served as a significant milestone, allowing numerous women to assert legitimate claims that were previously denied to them.

## II. FACTS OF THE CASE

In 1932, Mohd Ahmed Khan, a lawyer, married Shah Bano Begum, and they had three sons and two daughters together. However, in 1975, when Shah Bano Begum was 62 years old, her husband abandoned her and forcibly evicted her and their children from their shared home. In 1978, Shah Bano Begum appealed to the Judicial Magistrate seeking maintenance of Rs. 500 per month under Section 125 of the Criminal Procedure Code (CrPC). Around the same time, her husband pronounced irrevocable triple talaq to avoid paying maintenance, asserting that they were no longer married. He claimed to have provided a monthly maintenance of Rs. 200 for about two years and also paid Rs. 3000 as a dower during the iddat period. In response, the Magistrate ordered the husband to pay maintenance of Rs. 25 per month. Shah Bano was dissatisfied with this ruling and filed a revisional application in the Madhya Pradesh High Court in 1980, seeking a higher maintenance amount. The High Court then increased the maintenance to Rs. 179 per month. The husband was not content with the High Court's decision and filed a special leave petition in the Supreme Court to challenge it.

## III. ISSUES OF THE CASE

1. Under Sec. 125 CrPC, does the definition of wife include a divorced Muslim woman?
2. Whether a Muslim husband is obligated under Sec. 125 CrPC to provide maintenance for a divorced wife if there is a conflict between section 125 and Muslim Personal Law?

3. Under Section 127(3)(b) CrPC, what is the sum payable on divorce, and whether the meaning of Mehar or dower is not summed payable on divorce?

## IV. ARGUMENTS BY THE PETITIONER

1. As per the petitioner's claim, the responsibility of providing maintenance to Muslim women rested with the Muslim Personal Law Board, and they asserted that civil courts did not have the jurisdiction to grant maintenance to Muslim women based on the Muslim Personal Law.
2. The petitioner contended that the Muslim Personal Law Board's understanding of Shariah Law prohibited Muslim husbands from providing maintenance to their divorced wives beyond the iddat period, which lasts for three months after the divorce.
3. According to the petitioner's statement, the Quran did not impose an obligation on Muslim husbands to offer maintenance to their divorced wives beyond the iddat period.
4. The petitioner argued that Section 125 of the Criminal Procedure Code, which mandates the payment of maintenance to wives, children, and parents, violated the principles of personal law and was thus unconstitutional.
5. The petitioner claimed that requiring Muslim husbands to provide maintenance to their divorced wives beyond the iddat period would lead to discrimination against them, as husbands belonging to other religions were not subject to the same requirement.

## V. ARGUMENTS BY THE RESPONDENTS

1. The respondent's contention was that the 1986 Muslim Women (Protection of Rights on Divorce) Act, aimed at overturning the Supreme Court's decision, was constitutionally sound and indispensable in upholding the rights of Muslim women. They argued that the Act should be interpreted in a manner consistent with modern concepts of fairness and justice, while also considering the Quranic teachings on maintenance and divorce. Their belief was that the Act was in harmony with these teachings and aimed to prevent Muslim women from facing destitution after divorce.

2. The respondent asserted that the Act did not violate the principles of secularism outlined in the Indian Constitution. They maintained that its primary purpose was to safeguard the fundamental rights of Muslim women and not to exhibit bias against Muslim men.

3. According to the respondent's argument, Muslim men were still obligated to provide maintenance to their divorced wives in line with the instructions in the Quran.

4. The respondent contended that the 1986 Muslim Women (Protection of Rights on Divorce) Act was a necessary step towards advancing gender equality and justice for Muslim women. They emphasized that the Act neither contradicted the principles of secularism nor unfairly discriminated against Muslim men.

#### **VI. DECISION OF THE COURT/RATIO DECIDENDI**

1. The term 'wife' refers to a spouse, regardless of the religious beliefs of the woman or her husband. Hence, even a divorced Muslim woman, if not remarried, is considered a 'wife' under section 125. Her right to maintenance under this section remains unaffected by the provisions of her personal law. This understanding is reinforced by the Explanation to the second proviso of section 125(3) of the Code, which allows maintenance orders despite the husband's offer to support the wife if there are justifiable grounds for refusal.

2. According to Muslim Personal Law, the husband's obligation to provide maintenance for his divorced wife is limited to the iddat period. However, if the divorced wife is unable to support herself, she can seek maintenance under section 125 of the Code. There is no conflict between section 125 and Muslim Personal Law regarding the maintenance obligation of a Muslim husband towards his divorced wife who cannot maintain herself.

3. Mahr is a husband's obligation out of respect for his wife and cannot be construed as an amount payable on divorce. Divorce is not an act of respect, and therefore, any amount

payable to the wife as a mark of respect cannot be categorized as 'on divorce.' Even if the Mahr is deferred and payable upon divorce, it is not occasioned by the divorce itself, as meant in section 127(3)(b) of the Code.

In conclusion, the judges unanimously ruled that Muslim women are entitled to receive maintenance under Section 125 of the Code of Criminal Procedure, and this entitlement is not hindered by the Muslim Personal Law (Shariat) Application Act, 1937. This decision aligned with Islamic law and represented a significant step towards gender equality and the protection of women's rights in India.

#### **VII. CONCLUSION**

The case marked a significant turning point as it departed from the usual practice of resolving cases solely based on personal laws' interpretations. Instead, it emphasized the need for a Uniform Civil Code, highlighting its importance. Additionally, the case acknowledged the coexistence of diverse personal laws while emphasizing the urgency of addressing gender equality and religious principles with determination. Nevertheless, there is an ongoing need to reform and effectively enforce laws that safeguard women's rights, promote gender equality, and eliminate discriminatory practices. Alongside this, raising awareness, fostering dialogue, and cultivating a culture of gender equality are crucial in bringing about meaningful change and empowering women in all aspects of society.

#### **VIII. RELATED CASE LAWS**

Cited cases in the matter are:

- Farhan Haji Gafar Gudda vs Rijwanaben Usmanbhai Patel & on 8 March, 2013
- Shaikh Babbu S/O. Sk. Khutbuddin vs Sayeda Masarat Begum & Another on 23 July 1999
- Smt. Jaitunbi Mubarak Shaikh vs Mubarak Fakruddin Shaikh & ... on 4 May, 1999
- Danial Latifi & Anr vs Union Of India on 28 September 2001



- Agnes Alias Kunjumol vs Regeena Thomas on 18 May 2010

**IX. REFERENCES**

- I. Bare Act of Muslim Law
- II. Bare Act of Code of Criminal Procedure
- III. Supreme Court Cases/Indian Kanoon Case Study

