

# Maintenance – A Moral Obligation or a Compulsion for Divorced Muslim Women

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## ABSTRACT

*The maintenance of a divorced Muslim woman has always been a debatable issue. As per the general rule a wife is entitled to maintenance till the iddat period and after that the husband is not liable to her even though she has no means to maintain herself. They are left, in most of the cases, to live a miserable life as if life after iddat is the facet for their sin of being divorced. The men upon whose shoulder the responsibility of a woman has been given are taking the defense of the Koran stating the maintenance to the divorced wives is against the will of Allah. However, it has been clearly laid in the Koran that a wife is entitled to maintenance even beyond the iddat period if they are unable to maintain themselves and this concept is termed as Talaq- ul-mutat or lifelong maintenance to the wife or until she marry. So its high time for the Muslim women to be educated and be aware of their rights and for the men, it's time to fulfill your responsibilities rather than escaping it in order to give real respect to the Koran.*

**Keywords:** Maintenance, Debatable, Koran, Iddat, Responsibilities.

## I. INTRODUCTION

The verdict of the holy Koran is considered as the final verdict of the Allah. Koran is the compilation of the preaching, behavior, ideologies, traditions and decisions of the Prophet as disobedience to the Islamic laws. Where a man is referred as "qawwamun" means protector/ guardian/ maintainer of the women because of his physical strength and abilities to protect her and earn to spend on her basic requirements and to give her a comfortable life, a woman on the other hand, is supposed to be devoutly obedient. Moreover, it is believed that whatever has been stated in the Koran is final and hence cannot be disobeyed. It has even laid down proper roles and duties for men and women and the ones doing the reverse of it will be considered as kafirs or sinner. However, it has been seen that after the divorce a Muslim husband escapes his divine duty to maintain her wife beyond the iddat period stating it to be in accordance of the Koran however, the Koran clearly states that it is the duty on the part of the husbands to maintain their wives even beyond the iddat period if she is not in a state to maintain herself. The Koran itself has provisions for providing maintenance to a divorced wife who is unable to maintain herself and termed it as "mutat- ul- talaq" where the maintenance is provided to a divorced wife unto her death or until she remarries.

So, in order to obey the holy Koran the provision of the maintenance must be included in the Personal Law rather than just making it a moral choice of the husbands. There is no doubt that there are provisions in the Cr.P.C. with regards to maintenance of a divorced Muslim woman beyond the iddat period and also in the Muslim Women Protection of Rights of Maintenance Act. However, when it comes to the filing of cases under these acts the people of their own community oppose them and try to suppress them declaring it to against the holy Koran. The

study stresses on the meaning and general rules mentioned in the Koran with reference to the maintenance of a divorced Muslim woman beyond the iddat period and also on what grounds it should be allowed beyond iddat period. This is a doctrinal research based on a descriptive study.

To overcome this defect in the interpretation of the Koran the people must be educated as well as the women must be aware about their rights of maintenance.

## **II. MAINTENANCE AND ITS RULE IN ISLAMIC LAW**

The Quran has defined men as the protector and maintainer of the women because of the greater physical abilities and strengths of men than women. Therefore, there is an absolute obligation on the part of a Muslim husband to maintain his wife (or wives) not only at the commencement of their marriage but also after the dissolution of the marriage tie between them.

Maintenance in the literal sense can be defined as” The provision of financial support for a person's living expenses, or the support so provided.” In the language of the Arabs maintenance or ‘nafaqah’ means what a man spends over his family. In the language of law, it signifies food, raiment and lodging, though in common parlance, it is limited to the first (i.e. food).

Similarly, maintenance of a wife can be defined as “The obligation of the husband to fulfill the basic financial requirements as well as requirements of food, clothing and shelter, where shelter also includes a separate apartment in case of a lawful excuse of the wife living separately from the husband) of the wife (or wives). As per the Sec 161 of the Law of Marriage (compiled by All Muslim Personal Law Board in ‘Compendium of Islamic Laws’). “The expenses which the shariat regards as necessary for the subsistence of some one’s life are nafaqah and for human beings items of food and drink, clothes and residence are nafaqah. A Muslim husband is obligated to maintain his divorced wife (or wives), children, parents or grandparents, and the other relatives. However, of these dependents the liability or obligation of maintaining one’s own wife is absolute and gets priority over the maintenance of the children also. This absolute obligation arises on account of:

- Status of a valid marriage or sahih marriage – it means that the absolute obligation arises only out of a valid marriage and not out of an irregular or void marriage except if the irregular marriage is for the want of the witnesses
- Pre- nuptial agreement between the parties to the marriage or between the parents if the parties are minor at the time of marriage – it means that there can be an ante- nuptial or post nuptial agreement between the parties to allow maintenance to the wife (or wives) by the husband upon the fulfillment of certain specified condition such as if the husband ill treats the wife or treats her with cruelty or if he keeps a concubine etc then such conditions the wife is entitled to claim maintenance as specified in the agreement.

The general rules governing the maintenance of a divorced wife under the Islamic Law are

- It is the absolute obligation on the part of the husband to maintain his divorced wife whether the husband is rich or poor, even if the husband is not in a state to support her or not
- The obligation to maintain ones wife commences at the time when she attains puberty and not at the commencement of the marriage
- The husband’s obligation to maintain his wife exists so long as she remains faithful to him and follows all his reasonable orders.

- A wife can claim for the arrears of maintenance if the amount has been fixed by an agreement or decided by the orders of the court.
- Ayat 242 states that the amount of maintenance must be allowed to the wife must be pious and fair in addition to her dower.
- A wife is allowed to claim for maintenance even if she is living separately from her husband under the following cases
  - If the husband keeps a concubine or treats her with cruelty
  - If at the time of marriage the husband has not attained puberty
  - His desertion from the wife without a lawful excuse or without any information

### **III. LEGISLATIONS PROTECTING THE MUSLIM WOMEN RIGHT TO MAINTENANCE BEYOND THE IDDAT PERIOD**

There is no doubt in the fact that there are Muslim Personal Laws safeguarding a Muslim women’s right to be maintained by her husband during the iddat period moreover, there is a spiritual obligation upon the husband to maintain his wife even beyond the iddat period if she is not in a state to maintain herself though there are men who run away from this obligation of maintain their wives. So to protect the rights of such women and to provide them with their right of maintenance the Indian legislature has made certain laws and regulations to protect the Muslim women right to be maintained such as the Sec 125- Sec 128 of the Cr.P.C. and the Muslim women Protection of Rights on Divorce Act, 1986.

Sec 125 Cr.P.C. states for the order of maintenance for the wives, children and parents however, under this study the focus is upon the provisions regarding the maintenance of a divorced Muslim woman. So the following sec reads as

- (1) if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself where wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried, then a Magistrate of the first class may order such to make a monthly allowance for the maintenance of his wife as the Magistrate thinks fit.
- (2) The allowance can be either interim maintenance also.
- (3) Upon the failure to pay the decided amount without sufficient cause the Magistrate can issue warrant against the maintainer or upon the person who has been such responsibilities.
- (4) If the wife is proved to be living in adultery then she will lose her right to maintenance
- (5) The Magistrate can cancel his order upon being satisfied that the wife was living in adultery or that both the parties are living apart from each other with mutual consent.

Sec 126 clarifies the places the case for maintenance can be filed

- 1) Where he is
- 2) Where he or his wife resides
- 3) Where he last resided with his wife

Sec 127 states about the alterations in allowances: the Magistrate on being satisfied with the change in the circumstances can change the amount of maintenance or interim maintenance as he thinks fit. The Magistrate

can even cancel the order of any of the competent Civil Court. The sum of maintenance that is due to the wife can be paid in full or in installments also. The orders can be cancelled if she remarries.

Sec 128 states that the orders of maintenance or interim maintenance will be enforced from the date on which such orders are passed. The Muslim women protection of rights on divorce act 1986 states that a Muslim husband having sufficient means ignores or neglects to maintain his divorced wife then the wife can file a case before the first class Magistrate and the Magistrate on being satisfied can order the husband to maintain his wife up to the period of iddat.

#### **IV.MAINTENANCE AS A MORAL OBLIGATION**

Maintenance in the specific sense means the fulfillment of the basic requirements of food, clothing, shelter and medical expenses. However, when it comes to maintenance of a divorced Muslim woman the maintenance would mean the fulfillment of the requirements of food, clothing and shelter only and too is limited up to the period stating it to be the wordings of the Allah. In reality, the Koran has clearly stated in Ayat 241 and 242 that maintenance must be provided to a divorced woman if it is reasonable and also the amount of maintenance must be fair and pious.no doubt that there is a general rule of providing maintenance to a divorced wife up to the period of iddat only however, it is equally justifiable to provide beyond the iddat period at least in those cases where the women is not a position to maintain herself by her own means.

When we look into the various cases that are being filed from the ancient time itself shows that the Muslim men have misinterpreted the personal laws mentioned in the Koran or rather it would be better to state that they interpreted it according to their usefulness. There have been many cases in which men have escaped their responsibility levied upon them by the Koran itself of maintaining their wives who is unable to maintain herself. For example in the famous case of Shah Bano Begum case, the husband left his wife at the age of 72 years along with their five children as he was attracted towards a young woman and wanted to her and also to disown his responsibility of maintaining her old aged wife and children. The husband at the same time alleged that he was no longer responsible to maintain his wife and children as it was beyond the iddat period. So, at the age of 72 years the woman was not even in a state to go out and earn bread for herself and her children and when she prayed the court to grant her right of maintenance and of her children she faced great agitation from her own community stating it to be disobeying the wordings of the Holy Koran. However, there wasn't any disobeying of the Koran rather it was the actual obedience to the ideologies of the Prophet as it is clearly stated in the Koran that a divorced wife must be provided with maintenance up to her death or until she remarries in case she is unable to maintain herself by her own available means and the same is termed as “mutat- ul- talaq”. The concept of mutat is included in the Koran because the Koran respects and tries to inculcate basic human values and also depicts the pious and great ideologies of the Prophet.

It is even more interesting to note that All India Muslim Personal Law Board submitted the Supreme Court that “the exhortation is to be more pious and the more God fearing, not to the general run of the Muslims. Taken its logical end the argument would mean that the sinners and the kafirs are free to avoid their obligations of providing maintenance or provision for their divorced wives.” So now why there is no issue or agitation upon the Board? It is high times that the Muslim men must take up their responsibility of maintaining their divorced wives at least when she is not in a state to do it if not for the sake of the wives then at least for the sake of the obedience of the holy Koran and for the pious teachings of the Prophet.

## **V. CASE LAWS**

1. Mohd. Ahmed Khan vs. Shah Bano Begum and others: the Supreme Court held that there is no conflict between the provision of sec125 of Cr. P. C and the Muslim Personal Laws with respect to maintenance of a divorced Muslim wife beyond the period. After referring the Quran regarding the same subject it was clear that the obligation of a Muslim husband is absolute if the wife is enable to her.
2. In Arab Ahemadha vs. Arab Bail: The Gujarat HC held that it is evident that Koran imposes an obligation on a Muslim husband to make provisions for maintenance even after the period of iddat as well as under section 125 Cr.P.C.
3. Mansur vs. Azizul : the court held that agreement with the first wife at the time of the second marriage of the husband stipulating that if she would not be able to live amicably with the second wife, she would be entitled to live separately from him and claim maintenance from him is valid and enforceable.
4. Danilal Latifi vs. UOI: it was held that sec3 of the Muslim Protection of Rights on Divorce Act entitles a Muslim for maintenance even beyond the iddat period.
5. In the case, Shamim Bano and Asraf Khan were married on November 17, 1993 in accordance with the Sharia law. But Shamim left his house alleging cruelty by him. Even as her application for grant of maintenance was pending, divorce took place on May 5, 1997. A magistrate, while rejecting her plea for maintenance taking into consideration that during the pendency of the case, the couple were granted divorce, directed Khan and others to pay her Rs.11,786 towards mahr (a form of dowry), to return goods and ornaments and Rs.1,750 towards maintenance only for the iddat period. This was upheld by the Chhattisgarh High Court. Allowing her appeal against this order, the Supreme Court Bench held that Shamim was entitled to maintenance even after divorce. It remitted the matter back to the trial court for fresh disposal in the light of this judgment.
6. In Mohammed Ali v. Fareedunnissa Begum, the marriage was contracted in 1950, and a son was born to the couple. But, thereafter, the husband neglected the wife and refused to maintain her. The trial court passed a decree in her favor. The wife was informed by written notices from the husband that she had been divorced by him on the night of their wedding. The first notice was served on 12.5.1960. The husband’s plea was that as the wife had been divorced on the very first night, he was under no obligation to maintain her. It was held by the court that when a Talaq is pronounced through notice, the wife is required to observe “Iddat of divorce” from the date on which the notice is served on her. The wife was therefore, entitled to maintenance during the period of Iddat which began from the date of the first notice i.e. 12.5.1960.

## **VI. CONCLUSION**

There are clearly laid down roles for the Muslim men and women in the Holy Koran. It has beautifully and piously created various personal laws however, when it comes to its interpretation people tends to interpret and formulate it according to their own benefits and using these man created interpretations of the Holy and Pious Koran various sins are being done. There is no doubt in the fact that the Koran states to provide maintenance within the period of iddat only but when it is clear that a person is not in a state to maintain herself then the person who has the abilities and capacities can help her lead a good life which exactly the Prophet believed in and he preached all his life. Moreover, the people must be aware enough to know their rights and about their responsibilities. It is better to keep these regulations simple and pious rather than further complicating it as it is

evident in the history as well that those societies who tried follow the old inflexible laws have perished. So, there is an urgent need to change the present legislation which regards to maintenance of a divorced woman beyond and in real sense respecting the Koran.

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