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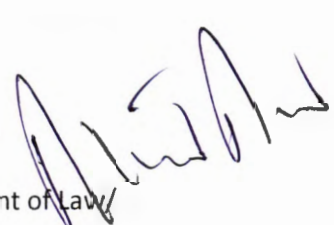
### **TITLE OF THESIS:**

# **The Issues of Maintenance after Divorce under Islamic Law & Indian Jurisprudence: A Comparative Study**

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## **DEDICATION**

***I DEDICATE MY THESIS TO MY BELOVED PARENTS, WHO ARE MY HERO, IDEAL AND  
REAL INSPIRATION OF LIFE,***

**Makhdoom Muhammad Ashraf Qureshi**

**And**

**Naseem Ashraf Qureshi**

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At the end I would like to thank all my teachers, colleagues, class fellows, friends, relatives and our faculty staff for their love, kind support, encouragement and prayers. I am really grateful to all my well-wishers.

## **DECLARATION**

**I, Zeeshan Ashraf, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.**

**ZEESHAN ASHRAF**



**THE ISSUES OF MAINTENANCE AFTER DIVORCE UNDER  
ISLAMIC LAW & INDIAN JURISPRUDENCE: A  
COMPERATIVE STUDY**

## ABSTRACT

Marriage is a contract between husband and wife, being a part of the contract both partners have some rights and duties against each other. There is one kind of rights and duties to be fulfilled during the contact but the other kind arises with dissolution of contact also termed as divorce. Being a part of marriage contract wife is obligated to manage the household while husband has the duty to bear all the expenditures of his wife and children. After dissolution of marriage a different kind of rights and duties arises, which is dependent on various factors i.e. whether they have children or not and financial setup of both parties. Maintenance of divorced women has been an important issue, as in most of the cases woman is left deprived after divorce and it is hard to meet her needs by herself, therefore man is supposed to support the woman even after divorce. The doctrine of Maintenance of woman after divorce is accepted in not only by Islamic law but also by the other religions and contemporary laws prevalent in this world. However, the concept of maintenance of woman after divorce is not uniform in all the systems of law and the said doctrine has been interpreted differently by each system of law. Therefore, the existing laws on the issue of maintenance are contradictory to each other. Laws are not capable of delivering delight in married lives but what they can do is to minimize the suffering in case of any adversity.

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# INTRODUCTION TO RESEARCH

The concept of divorce is to annul/terminate the marriage contract by one party or both with the consent. After the conclusion of marriage contract both the parties are known as spouses to each other. Therefore, both the husband and wife have rights and duties against each other including the conjugal rights. Such types of rights and duties have been recognized by Islamic as well as contemporary laws. According to these laws the wife has right of maintenance against her husband and all the expenditures about her maintenance are to be borne by him. While on the other hand it is also in the responsibilities of wife to manage the house of her husband, look after his children and be obedient to him to make their family life happy and successful. The reason behind it is that where there a law gives a right to any person it also creates a corresponding duty upon such person as rights and duties go side by side.<sup>1</sup>

When the said marriage contract is terminated by one or both the spouses with their consent, it is termed as divorce. The divorce given under different circumstances also creates some rights and obligations pertaining to both the parties in Islamic as well as in contemporary laws. One of these rights is “right of maintenance”.<sup>2</sup>

The issues regarding “maintenance” arises after separation between the spouses due to divorce. Under Islamic and contemporary marriage laws it is responsibility of the

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<sup>1</sup> Rowe, Kenneth E. *Methodist Women: A Guide to the Literature*. No. 2. General Commission on Archives and History, The United Methodist Church, 1980.

<sup>2</sup> Mir-Hosseini, Ziba. *Marriage on trial: A study of Islamic family law*. IB Tauris, 2000



husband to maintain his wife during their marriage tie. But on the other hand, after termination of marriage contract different types of rights and duties arise depending on various factors i.e. having children or not, social and financial circumstances of both the parties.<sup>3</sup>

In the contemporary world, maintenance of the divorced woman is considered to be a major issue. The human rights activists throughout the globe are striving hard for legislation about the maintenance of divorced women. Therefore, it is need of the hour to discuss and highlight the same issue in the light of Islamic law and at the same time in the Indian jurisprudence for the sake of a comprehensive legislation about the same issue because a large Muslim population resides in that country.<sup>4</sup>

The wisdom behind the concept of maintenance is that if, after separation, one spouse is unable to meet the necessities of his/her life then the other spouse help him to overcome this situation by financially supporting the former spouse. So that he/she can be able to live a happy and respectable life, after the separation which is caused by either divorce or any other way, in the way he/she was living before the marriage contract.<sup>5</sup> Ordinarily, it is the responsibility of the husband to maintain his wife so she can live her life comfortably whether during the marriage or after the

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<sup>3</sup> Goody, Jack. *The development of the family and marriage in Europe*. Cambridge University Press, 1983

<sup>4</sup> Adams, Jad. *Women and the Vote: A World History*. Oxford University Press, 2014.

<sup>5</sup> Onwunta, Ijeoma Esther. "Gender stereotyping in church and community: a Nigerian feminine perspective." PhD diss., Stellenbosch: University of Stellenbosch, 2009.

divorce or separation.<sup>6</sup> The main purpose of providing maintenance is that the wife might not be left destitute due to separation or divorce from her husband. In a laymen's term maintenance are those things which are indispensable for the survival of human being.

The right of maintenance arises when the spouse does not have any source of independent income. In this way, if the spouse has his moveable or immoveable property which does not yield any income then she can claim her right of maintenance.<sup>7</sup>

The Common law has recognized the right of maintenance of husband by his wife and vice versa keeping in view their respective financial position and it is enforceable after separation either by divorce or any other way. In the Common law, the said right of maintenance is termed as "Alimony".<sup>8</sup>

Post-divorce maintenance is the legally imposed allowance paid to one spouse by the other spouse for maintenance and support. Alimony arose in the English ecclesiastical courts at a time when divorce was not permitted and a married couple

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<sup>6</sup><http://www.lawteacher.net/family-law/essays/maintenance-of-wife-under-hindu-law-essays.php#ftn1>,  
Last visited on 12-09-2014

<sup>7</sup> Imber, Colin. *Ebu's-suud: the Islamic legal tradition*. Edinburgh University Press, 1997.

<sup>8</sup> Welchman, Lynn. *Women's rights and Islamic family law: perspectives on reform*. Vol. 4. Zed Books, 2004.

could obtain only a legal separation.<sup>9</sup> Although the parties may have been living apart, the husband still had a continuing legal duty to support his wife because they were still legally married.

This original alimony concept of support carried over to modern American divorce laws. In addition to a means of support, alimony was further justified as a way to award damages to an injured party or monetarily penalizes the person responsible for causing the emotional pain during the marriage.<sup>10</sup>

Divorce as it was recognized by courts in Canada, was initially wholly fault-based, and so a woman could collect alimony from her ex-husband only if he was found to be at fault for the divorce. In fault based jurisdictions, alimony decisions were awarded based on the degree of fault and maintenance of status. Alimony could also be temporary or permanent.<sup>11</sup>

"No system of law can produce material happiness, but human laws may at least alleviate sufferings. And when marital life is wrecked, the home utterly broken up by misunderstanding, jealousy, cruelty, infidelity, what greater boon can a spouse have to secure his/her liberty."<sup>12</sup> Divorce of course, a social evil in itself, but it is a

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<sup>9</sup> McCoy, Jennifer L. "Spousal Support Disorder: An Overview of Problems in Current Alimony Law." *Fla. St. UL Rev.* 33 (2005): 501.

<sup>10</sup> [http://nationalparalegal.edu/public\\_documents/courseware\\_asp\\_files/domesticRelations/Financial/Hist  
oryAlimony.asp](http://nationalparalegal.edu/public_documents/courseware_asp_files/domesticRelations/Financial/HistoryAlimony.asp)

<sup>11</sup> Weitzman, Lenore J., and Ruth B. Dixon. "The Alimony Myth: Does No-Fault Divorce Make a Difference?" *Family Law Quarterly* (1980): 141-185.

<sup>12</sup> *Shah Banu Case*, AIR(1985), SC, 945.

necessary evil. It is better to wreck the unity of the family than to wreck the future happiness of the parties by binding them to a companionship that has become odious. That's why '*Al-Qur'ān* permits divorce partly because to enable men to get rid of an odious union.<sup>13</sup>

## THESIS STATEMENT

There is an immense need to analyze and compare the existing regime regarding maintenance after divorce in Indian Jurisprudence with Islamic law because both the systems of law are contradictory, so that this deficiency in Indian jurisprudence can be removed by incorporating the provisions of Islamic law.

## SIGNIFICANCE OF THE RESEARCH

The importance of the topic can be realized from the very fact that the issues regarding maintenance after divorce have remained a major concern for human beings from centuries. Likewise, in the contemporary world, the said issues are recognized as burning issues due to the involvement of women rights. Islamic Law recognizes the rights and duties of both the spouses in matters relating to divorce and maintenance. But there is a vast difference between the Islamic law and Indian jurisprudence regarding the issues of maintenance after divorce. Since, a major portion of the Indian population consists of the Muslims. So it is need of the hour to highlight difference between two legal systems. So, that Islamic principles regarding the issue can be incorporated in the Indian

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<sup>13</sup>Ibid.

jurisprudence and make it possible for Indian Muslims to live their lives according to the principles of Islamic law.

## **RESEARCH PROBLEMS/QUESTIONS**

1. Whether or not the concept of maintenance after divorce prevailing in the Indian jurisprudence is compatible with the principles of Islamic law.
2. Whether or not the concept of alimony theory can be accommodated with the principles of Islamic law.
3. What is the scope of Mutta tul Talaq?
4. Whether or not the Islamic Law deals comprehensively with issues pertaining to maintenance after divorce.
5. Whether or not the Islamic Law recognizes the right of maintenance after divorce to both the spouses.
6. How and under what circumstances, Islamic law gives the right of maintenance after divorce to man and woman?
7. How the jurists of Indian as well as other legal systems can get the benefit from the traditional Islamic law relating to the issues of maintenance after divorce?

## **HYPOTHESES**

- 1) The principles of maintenance after divorce in Indian legal system are compatible with Islamic law.

- 2) The issues of maintenance after divorce in Indian jurisprudence are not compatible with Islamic law.
- 3) The principles of maintenance after divorce in Indian jurisprudence and precedents regarding said issues are partially compatible with Islamic law.

## **OBJECTIVES OF THE RESEARCH**

The main objectives of research are:

1. To trace the historical evolution of the phenomenon of maintenance after divorce in the Indian jurisprudence and its relation with Muslim society therein.
2. To highlight the different issues related to the maintenance after divorce in Indian jurisprudence which greatly affect the Muslims.
3. To explore the principles regarding maintenance after divorce in Islamic law.
4. To compare the principles of maintenance after divorce in Indian jurisprudence with Islamic Law.

## **LITERATURE REVIEW**

The Literature review does not specifically deals with the above mentioned topic rather it discusses different aspects of the topic. After making an analysis of the literature review this research has been able to comparatively study Islamic law and Indian jurisprudence.

- 1) Both classical and contemporary jurists have discussed the topic of maintenance. Explanation and commentaries of the Holy '*Al-Qur'ān*' have discussed the issue of Post-Divorce maintenance. The most consulted book of explanation in the research is *Tafseer Ibn Kaseer*.
- 2) Some of other book of commentaries of '*Al-Qur'ān*' being consulted in the present research are
  - "*Asrar at Tnzil*" by Amir Muhammad Akram Awan, volume 1. The commentator has defined and explained the term *Mut'ā*.
  - *Tafseer Al Razi* by Imam Muhammad *Al Fakhar-ud-Din Razi*, volume 1. The writer explained the concept of post-divorce maintenance in detail.
  - *Fath Al Bayan fi Maqasid-Al-'Al-Qur'ān* , volume 1. The writer has discussed the right of divorced women to maintenance till '*Iddah*' by giving view of different jurist.
  - *Fathul-Qadeer* by Muhammad bin Ali bin *Muhammad Ali Shawkaani*, volume 1. The author explained that divorced women are entitled to maintenance
  - *Al Jaame le Ahkaam 'Al-Qur'ān* , volume 3. In this commentary the writer has discussed the issue of maintenance of women after divorce in the explanation of verse 236 of *Al-Baqarah*.

- *Al-Mawsuwa Al-Fiqhiyya* by Imam abi Al-Hussain, volume 10. The issue of Residence and Maintenance of divorced wife is discussed in the book.
- *Al Hidayā* by Al-Marghinani, translated by Charles Hamilton, discussed the term *Nafaqah*.
- Maintenance of divorced wife is discussed in the book *Durrul Mukhtar*.

3) Some other books that have discussed the issue are:

- The book “Family Law in Islam, Theory and Application” by Dr. Muhammad Tahir Mansoori, discusses in its book about the “Issues of Maintenance after Divorce” from chapter 7-10. In the said book, he discussed only Islamic perspective on maintenance by mentioning the verses from the ‘*Al-Qur’ān*’, Prophetic Verses and also opinions of Islamic jurists and different Islamic countries laws on the Divorce and maintenance. Therefore, it is need of the hour to explain the Islamic point of view on the issues of maintenance after divorce with relation to Indian jurisprudence.<sup>14</sup>
- The Muslim Law of Divorce by K.N. Ahmed.
- Family law by P.M Bromley, the sixth edition.

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<sup>14</sup> Muhammad Tahir Mansoori, *Family Law in Islam, Theory and Application* (Islamabad: Shariah Academy, 2012), 97.



- International Family Law; An Introduction by Barbar Stark, chapter 5 of this book discussed the maintenance and Support for the divorced women in different countries.
  - Law of Marriage and Divorce in Islam by Tauqir Muhammad Khan, the detailed description of the maintenance of the women is discussed.
  - Chapter 5 of Islam and Women, author discussed the problems of Muslim women of India.
- 4) The thesis of LLM, written on “Post-divorce maintenance in Shariah & law: A comparative study” by Miss. Mariam Shafique at Faculty of Shariah & law, International Islamic university Islamabad. The main focus of the writer in the said thesis is only about the concept of post-divorce maintenance “*Muta’al Talaq*” in Shariah and law. This thesis is totally based on the concept of *Muta’ul Talaq* in Shariah and concept of alimony for spouses in western law. It is only the comparative study between these two legal systems.<sup>15</sup>
- This research is completely different from the above mentioned thesis because my research work will be based on Issues of maintenance after divorce under Islamic law & Indian jurisprudence as a comparative study.
- 5) An article on the topic “Maintenance of wife under Hindu and Muslims laws”. It describes only the system of the maintenance for Hindu and Muslim women according to the Indian legislation and precedents set by the courts in

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<sup>15</sup>Mariam Shafique, “Post-Divorce Maintenance in Shariah and law; a comparative study,” (LLM. Diss., Internaional Islamic University, Islamabad, 2014), 65.

India. This article does not cover the above mentioned topic relating to the issues of maintenance after divorce under Islamic law & Indian jurisprudence.<sup>16</sup>

- 6) The book "Rights of women in Islam" by Dr. Muhammad Shrif Chaudhery, discusses in its 8<sup>th</sup> chapter about the "Rights of Maintenance". In the said chapter, he discussed only Islamic perspective on maintenance by mentioning the verses from the '*Al-Qur'ān*', Prophetic Verses and also opinions of Islamic jurists and Pakistani laws on the maintenance. Therefore, it is need of the hour to explain the Islamic point of view on the issues of maintenance after divorce with relation to Indian jurisprudence.<sup>17</sup>
- 7) An article on "Post-divorce maintenance for Muslim woman in Pakistan and India" by Fayyaz ur Rehman. The author explains in his article the principles of Islam regarding the maintenance for the women in '*Iddat*' period. Similarly, he examines the literature of classical Islamic law regarding the post-divorce maintenance. This paper focuses on how the Islamic laws have gradually divested Muslim women of the '*Al-Qur'ān*'s protection from the post-divorce destitution. Author discussed also the laws and developments relating to the post-divorce maintenance in Pakistan and India. This article does not comparatively discuss the issues of maintenance after divorce under Islamic

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<sup>16</sup>Maintenance of Wife under Hindu and Muslim Law | Law Teacher <http://www.lawteacher.net/family-law/essays/maintenance-of-wife-under-hindu-law-essays.php#ixzz3CpTp1IEl> (last visited on 10-09-2014)

<sup>17</sup> Muhammad Sharif Chaudhry, *Women's Rights in Islam* (New Delhi: Adam Publishers, 1997), 74.

law and Indian Jurisprudence. Therefore, it is need of the hour to make a comparison between the two legal systems.<sup>18</sup>

8) Another article, "Post-divorce maintenance for Muslim woman and Islamist discourse" by the author Dr. Faustina Preera. In this article, the writer describes the need and importance of post-divorce maintenance for woman by incorporating the principles of *Mat'ā/Mutā*. He emphasized on the situation of south Asian countries and their judicial decisions regarding this issue. The issue of post-divorce maintenance is not clear in Islamic law. The author has tried to interpret the principle of *Mat'ā/Mutā* to justify the said judicial decisions.<sup>19</sup>

9) Leading case on maintenance in India "Muhammad Ahmad Khan vs Shah Bano Begum". Supreme Court of India had passed a judgment in the favor of Shah Bano on 23<sup>rd</sup> April 1985. This marriage was concluded in 1932 and in 1975 the husband divorced her. They had three children. Shah Bano filed a case in the lower court regarding maintenance, the court fixed Rs; 25/per month as a maintenance allowance with dower Rs: 3000/= for the 'iddat period. Muhammad Khan's appeal against the lower court order had been dismissed by the High Court and the High Court had fixed Rs: 179/per month as post-divorce maintenance. When appeal came to Supreme Court of

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<sup>18</sup>Fayyazur Rahim, "Post-Divorce Maintenance for Muslim women in Pakistan and India," *Bangladesh Journal of Law* 2 (1998): 197-215.

<sup>19</sup>Faustina Pereira, *Dossier 22: Post divorce maintenance for muslim women and the Islamist discourse* (Lahore: ShirkatGah Women's Resource Centre, 2000), 54.

India, The Chief Justice Chandrachud referred many verses from the Holy 'Al-Qur'an. "There is an obligation on Muslim husband to provide maintenance for his divorced woman". This development led to legislate for post-divorce maintenance for Muslim women in India. It is need of the hour to evaluate the said judgment according to the principles of Islamic law.<sup>20</sup>

- 10) An article "Post-divorce maintenance for Muslim women in Pakistan and Bangladesh: A comparative perspective" by Ayesha Shahid, in oxford law journals, vol#27. In this article the writer made a good comparison of two legal systems of different countries on the issue of post-divorce maintenance and its developments. There is need to critically evaluate the Indian legal system on maintenance after divorce in the light of Islamic law.<sup>21</sup>

All the literature which has been reviewed in this research is relevant to this research in certain ways. This research evaluate all the developments regarding maintenance after divorce in Indian Jurisprudence as an analytical study and its comparative study in the light of Islamic law so that this deficiency in Indian jurisprudence can be removed by incorporating the provisions of Islamic law.

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<sup>20</sup> Shah Bano Case, <http://www.angelfire.com/folk/indianlaws/shahbanoo.html> (last visited on 09-09-2014).

<sup>21</sup>Ayesha Shahid, Post-divorce maintenance for Muslim women in Pakistan and Bangladesh; A comparative perspective," *Oxford Law Journals*, 27 (2008): 197-215.

## RESEARCH METHADODOLOGY

This research is a descriptive, analytical and comparative study. Primary sources of Islamic law, *'Al-Qur'ān* and *Hādith* have been consulted. Secondary Sources such as books, articles and journals of western, Indian and Muslim writers have been analyzed in this research. Opinion of jurists and eminent scholars have also been mentioned in this research. Internet has also been used for the collection of data. Similarly, for the collection of data, libraries have been consulted as a tool of research.

The analysis of data that has been used in this research reveals that the concept of maintenance is in built in Muslim Family Laws. Classical Sharī'ah (*Fiqh*) is very clear about that there is no, legally binding, post *'Iddah* maintenance for ex-wife. Thus it is obvious that Islamic Law/ *Sharī'ah* is the only solution to all the problems faced by man in every age and civilization. While exact interpretation of the Injunctions of Islamic Law is needed and must be administered by legal procedure for the welfare of humanity.

**Chapter No. 1:**

**MAINTENANCE OF WIFE AFTER DIVORCE IN INDIAN  
JURISPRUDENCE**

This desertions chapter is focused on the particular personal law regarding the Muslim women in India. A comparative reference is made between Muslim Marriage Act of India and that of the laws applicable to Muslim women in other parts of world. A significant observation of this study is that in India matters such as, "divorce, marriage, maintenance, custody, adoption and so forth are governed by Muslim law for Muslims and by Hindu law for Hindus."<sup>22</sup> The matters of personal and family laws are not sheltered under the umbrella of any single set of rules they vary with religious beliefs hence Indian law also varies from religion to religion.

## 1.1 The Concept of Maintenance

The origin of word maintenance is from Old French "maintain" means upkeep; shelter; protection<sup>23</sup>, thus maintenance is 'the work of keeping something in proper condition; provision of support or livelihood.'<sup>24</sup>

In term of law maintenance is; a periodical payments or a lump sum amount, ordered by a competent court, after a divorce for a spouse.<sup>25</sup>

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<sup>22</sup>Esposito, John L., and Natana J. DeLong-Bas. *Women in Muslim family law*. Syracuse University Press, 2001.

<sup>23</sup> Hornblower, Simon, and Anthony Spawforth. *The Oxford classical dictionary*. Oxford University Press, 2005.

<sup>24</sup> Garner, Bryan A. *A dictionary of modern legal usage*. Oxford University Press, 2001.

<sup>25</sup> Garner, Bryan A., and Henry Campbell Black. *Black's law dictionary*. St. Paul, MN: Thomson/West, 2004.

The maintenance relief is secondary relief and is available to a woman after filing for the divorce.

The Supreme Court India: ruled in an order that a person is entitled to maintain the wife and children even born by an “illegally wedded” relationship. The intent of the said order is to bring relief to deserted women.<sup>26</sup>

## **1.2. Contemporary Developments on the issue of Maintenance**

In Indian law the issue of maintenance law did not become eminent until the mid-70s. Major developments have taken place in this field during the last ten years or so. The modern Indian maintenance law roots in the typical assumption about the issue. These were clearly focused on the wellbeing of women and children, seeking to protect them from misery.<sup>27</sup>

### **1.2.1. Law of Maintenance in India**

Section 125 of the Code of Criminal Procedure, 1973,<sup>28</sup> and the respective personal laws of the minorities' deals with the issue of maintenance in India. The concept of

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<sup>26</sup> The telegraph, Calcutta, India, 19.Oct.2013.

<sup>27</sup> Werner F. Menski, *Modern Indian Family Law*, 3<sup>rd</sup> ed. (New York: Routledge, 2001), 429.

<sup>28</sup> Section 125 of the Indian Penal Code, 1860.

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

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or



maintenance further expands its scope from Article 15(3)<sup>29</sup> reinforced by Article 39<sup>30</sup> of the Constitution of India, 1950 (the 'Constitution'). Under Indian law, the term

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(c ) 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

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof 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, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to 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 attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875 ); is deemed not to have attained his majority;

(b) " Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such

Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

<sup>29</sup> Article 15(3) in The Constitution Of India 1949

(3) Nothing in this article shall prevent the State from making any special provision for women and children

'maintenance' includes prerogative to food, clothing and shelter, being typically available to the wife, children and parents. It is an evaluated from social justice and considered to be a natural duty of a man to maintain his wife, children and parents, when they are not able to maintain themselves.<sup>31</sup> The main objective of maintenance is

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<sup>30</sup> Article 39 in The Constitution Of India 1949

"39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

<sup>31</sup> *Savitaben Somabhai Bhatiya v State of Gujarat and Others* (2005)

"Facts: the appellant was married to the respondent in 1994, initially all went well later the appellant was subjected to mental and physical torture. The reason for this change was the fact that he developed illicit relation with a lady named Veenaben. She filed an application for maintenance under Section 125 of the Cr.P.C. The husband opposed this application on the ground that the appellant was not his legally wedded wife. According to him, veenaben was his wife whome he had married 22 years back and two children also.

Order: the court refused to accept this plea of the husband court held that. Strict proof about a valid marriage is not the sine qua non for getting maintenance under Section 125 of the Code. The documents produced by respondent No.2 to substantiate the plea of earlier marriage with Veenaben should not have been given primacy over the clinching evidence adduced by the appellant to show that she was unaware of the alleged marriage. Since respondent No.2 is guilty of fraud and mis-representation, the equity should not weigh in his favour. Law is intended to protect destitute and harassed woman and rigid interpretation given to the word 'wife' goes against the legislative intent. In any event, nothing has been shown by respondent No.2 to show that there is any customary bar for a second marriage. Customs outweigh enacted law. That being the position, the order passed by the learned JMFC should be restored. It was residually submitted that when the amount was claimed as maintenance there was statutory limitation prescribed at Rs.500/- which has been done away with by omitting the words of limitation so far as the

to circumvent immorality and destitution and to upgrade the economic state of women and children.

### 1.3. Right of Maintenance

The proceedings regarding the Maintenance are civil in nature and can be claimed under the respective personal laws of people who are following different faiths. While the proceeding of section 125 are criminal proceedings, thus are summary nature and apply to everyone irrespective of caste creed or religion.<sup>32</sup> The sole object of such proceedings however, is not to penalize a person on his past neglect. But the said provision has been enacted to prevent vagrancy by bounding those who can provide support to those who are unable to support themselves and are vulnerable and have a moral claim to support.<sup>33</sup> Maintenance can be claimed at any stage it could be either at the interim stage, i.e., during the pendency of proceedings, or the final stage.

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amount is concerned by amendment in 2001 to the Cr.P.C. Therefore, taking into account the high cost of living the quantum of maintenance should be enhanced for the child."

<sup>32</sup> *Mohd Ahmed Khan v Shah Bano Begum and Others* (1985)

"In the *Mohd Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C 556, there was a Muslim women who was divorced by her husband when she was 68 years old and was the mother of five children. She filled a case in the court for granting of maintenance by the court. She was given maintenance by the Supreme Court under section 125 of the CrPC even after the *Idd'at* period was over. Under the Muslim personal law a divorced women could be awarded maintenance only during the *Idd'at* period and not latter."

<sup>33</sup> "The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat and Ors.* (2005 (2) Supreme 503)."

If the maintenance allowance is decreed by a *Qāzī* or Court to a wife at a time when the husband was poor but afterwards he becomes rich, wife can sue for an addition in her maintenance, and a decree must be given in her favor.<sup>34</sup>

*Mohammadan* Law also provides that if a man gives to his wife one year's maintenance in advance, and then dies before the end of the year, no claim lies against the woman for restitution of any part of it.<sup>35</sup>

### 1.3.1. Conditions for Claiming Maintenance

Mainly the burden is on wife who is a claimant of the present proceeding according to the provisions of Section 125, and for the grant of maintenance the wife has to prove that the husband or other party has sufficient means to support and has neglected or refused to maintain the claimant and also that the claimant wife is unable to maintain herself.<sup>36</sup>

If the individual is able to earn, then it would not be considered that he actually has means or not, it would be assumed that he has sufficient means. The burden then will

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<sup>34</sup> HUSAIN, A. (n.d.). MUSLIM PERSONAL LAW -- AN EXPOSITION. The All India Personal Law Bpard, Camp Office, Nawatu Ulama, Lucknow, India. Retrieved September 1, 2015, from [http://muslimcanada.org/muspersonallawpt2\\_4.html](http://muslimcanada.org/muspersonallawpt2_4.html)

<sup>35</sup> ibid

<sup>36</sup> Gupta Dashrath, R., and D. D. Dhamelia. "FEMI-JUSTICE THROUGH REMOVAL OF PREVAILING SOCIAL EVILS IN INDIA: AN ANALYTICAL STUDY WITH REFERENCE TO LAW AND LEGISLATIONS."

shifts to the husband, to prove his part that he is unable or he does not have sufficient means to afford the maintenance of the claimant.<sup>37</sup>

The phrase “unable to maintain her” refers to the means that were available to her while she was living with her husband. It does not mean to reduce or destitute the state of women before filling the suit of maintenance for herself and her children. The actual test is whether she is in position or able to maintain her and up bring her kids in a similar manner as they were in their fathers house.<sup>38</sup>

### 1.3.2. Issues of Maintenance

Like every women in the world, Indian women also faces challenging status in society. Status of women is defined vaguely everywhere irrespective any country where she lives or any faith she follows. But *Islamic Law* is very definite about the status of women and attributes a dignified status to every woman, with clear definitions of her rights allotted to her, and duties she is bound by, through injunctions of Islamic Law.<sup>39</sup>

Right of maintenance is the basic right of livelihood of every woman, it not only includes the source of survival but also emphasize on a right to have complete and settled life full of all necessary facilities. A woman in every time of her life as a daughter,

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<sup>37</sup> Goffman, Erving. *Interaction ritual: Essays in face to face behavior*. AldineTransaction, 2005.

<sup>38</sup> Ibid.

<sup>39</sup> Parveen Ara Pathan, “Idea of Right of Maintenance of Woman in Islam and Socio Legal Development in India,” *Available at SSRN 1945856* (2011).

mother, wife, widow, and divorcée has the unconstrained right to be maintained well in all these stages of her life.<sup>40</sup>

### **1.3.3. Person entitled to Receive Maintenance**

Man is assumed to perform the duty of maintaining needs of his family including children, parents and wife. Consequently women can claim their rights to maintenance. On the other hand in some of the situations Indian courts have granted this right to even the husbands. This right is not pertinent in all situations but it is confined to some situations such as if husband is undermined because of any ailment or calamity and is unable to make his living. This kind of compensation is not granted to a person who despite being capable does not work.

The section 125 grants quick and economical compensation as compared to personal laws. The maintenance under personal law is distinguishing and isolated from Section 125. No clash lies between these two legal provisions. A person is entitled to maintenance under Section 125 even after obtaining an order under the applicable personal law.

### **1.3.4. Quantum of Maintenance**

Maintenance is not only limited basic need including accommodation, clothing and nutrition but it also covers the other inevitable needs. The inevitabilities of maintenance are not the same for all cases variations are observed with financial

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<sup>40</sup> Ibid.

positions and the persons who are depending for maintenance and such other factors and it is the court's will. Before making an order under Section 125 the court acquires information regarding the maintenance ordered under personal law. The idea behind this concept is that a woman has live according to her husband's financial position.

### 1.3.5. Judicial Precedents

Various examples with the judicial background are available in the subject of maintenance. In the recent past description of 'wife' was inferred in highly contracted way. Judiciary was merely intended to shelter the rights of deprived and strained women. The Indian courts only acknowledged right of maintenance for those women who were legally married.

Indian mindset has been influenced by the changed of perception in respect of social relationship. Dehli High Court has decided in a personal law matter, <sup>41</sup> wherein the couple had lived for 14 years as a married couple and the man had hide the fact that he was married already. Besides that, the woman had served the house of husband with full responsibility and managed every household as a wife, treated the man as her legally wedded husband and had born and bred two of his children.<sup>42</sup> The court held that on description of the nature of the relationship the couple shared and the aforementioned facts, the woman should not be deprived of her right to maintenance.

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<sup>41</sup> *Narinder Pal Kaur Chawla vs M S Chawla* (2008).

<sup>42</sup> Ozment, Steven. *When Fathers Ruled: Family Life in Reformation Europe*. Harvard University Press, 2009.

The court further articulated that denying paying the maintenance on such circumstances would amount to rewarding the man for defrauding the woman by concealing the fact that he was married before.<sup>43</sup> Furthermore, "it was recorded that for the purpose of granting maintenance under the personal law, the women placed in the position of second wife, would be considered as legally wedded wives and are entitled to maintenance."<sup>44</sup>

The Apex court has recently decided in a case on 14<sup>th</sup>. Nov. 2008 that the maintenance essentially "encompasses a stipulation for the residence and has therefore ordered by the court that the woman be provided with a residential facility similar to that which she had been used to in the past at his husband house."<sup>45</sup>

#### **1.4. Issues of Maintenance of Muslim Women in India**

Subcontinent has a rich cultural and religious heritage. Owing to its diverse heritage constitution of India has large set of rules regarding marriage and divorce in various religions. An entire act is devoted to marriages among Muslims; this was formulated on the basis of traditional, social and religious rules of Islamic Law and named as Muslim marriage act.<sup>46</sup>

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<sup>43</sup> Abrams, Kerry. "Marriage Fraud." *California Law Review* 100, no. 1 (2012).

<sup>44</sup> Ibid.

<sup>45</sup> *Komalam Amma v Kumara Pillai Raghavan Pillai and Others* (2008).

<sup>46</sup> Werner, *Modern Indian Family Law*, 429.



#### **1.4.1. Maintenance Right of Muslim Wife:**

The law for Muslim divorced women is quite different from that of others. Within the authority of the general law (Section 125 of Cr. P.C.) too there is still a binding to fulfill the necessities of religious standings of the person. The divorced woman in Muslim law is not given the right of maintenance. Hence in general when a divorced woman used to approach the courts for maintenance, under section 125 of Cr. P.C., husbands mostly got advantage with the plea that after divorcing wife they are no more responsible for maintenance. Providentially the legal system helped Muslim women in this condition of misery.<sup>47</sup>

The consciousness displayed by judiciary helped empowering Muslim women, particularly the divorced women. The Muslim Women (Protection of Rights on Divorce) Act 1986 ensured the maintenance of divorced Muslim women, rather than leaving them in misery and deprivation.<sup>48</sup>

A revolutionary step in this respect was Supreme Court decision Danial Latifi case, where decision was made in favor of divorced Muslim women by recognizing her constitutional right to make living through maintenance. The enactment of The Muslim Women (Protection of Rights on Divorce) Act 1986 has opened gate to various debates. The consciousness from judicial system has empowered the Muslim women. Under The

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<sup>47</sup> Ibid.

<sup>48</sup> Ashok Wadje, "Maintenance Right of Muslim Wife: Perspective, Issues & Need for Reformation" (January 7, 2013). Available at SSRN: <http://ssrn.com/abstract=1266018orhttp://dx.doi.org/10.2139/ssrn.1266018>

Muslim Women (Protection of Rights on Divorce) Act 1986 gives space to Muslim women to get their right to be maintained even after divorce.<sup>49</sup>

#### 1.4.2. The Shah Bano Case

Shah Bano case<sup>50</sup> owns a momentous status as an of example Muslim women rights after marriage. The case started as an appeal was filed, against Madhya Pradesh High Court's judgment, in front of a bench of two members Mr. Justice S. Murtaza Fazal Ali and Mr. Justice A. Varadarajan. The complaint was filed against the decision on maintenance under the Cr. P.C. 1973.<sup>51</sup>

The case was between Mohd Ahmad Khan, advocate by profession, and his wife Shah Bano Begum at Indore, Madhya Pardesh, in 1932. Marriage contract was established at an amount of Rs. 3000/- as *Mehr* for wife. The two had five children, and later in 1946 Mohd Ahmad Khan exercised his right of polygamy and married again. After his second marriage he neglected his first wife's needs and after about 19 years of his second marriage he forced his first wife to leave house. In 1978 Bano went to court to get her right to maintenance. Husband who was earning nearly 60,000 annually was asked to give 500 a month as maintenance to Shah Bano. Mr. Mohd Ahmad Khan who was

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<sup>49</sup> Ibid.

<sup>50</sup> Mohd. Ahmed Khan v. Shah Bano, 1985 SCR (3) 844.

<sup>51</sup> Das, Pramod Kumar. *Famous murder trials: covering more than 75 murder cases in India*. (Universal Law Publishing, 2007).

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himself an advocate went for the solution get rid of paying thus maintenance amount and he divorced his wife, as according to Shari'ah husband is not bound to pay maintenance after the *'Iddat*. After divorcing his wife he asked the court to cease maintenance, and deposited the amount of *Mehr* and also plead that he was paying an amount of rupees 200 per month in form of maintenance to Bano. In 1979 the magistrate directed the husband pay an amount of Rs. 25 per month which was termed as princely sum by Supreme Court<sup>52</sup>. The mentioned ruling of magistrate was based on Supreme Court's decision in Bai Tahira and Fazlinbi case.<sup>53</sup> Later Shah Bano again went to high court, and there "amount of maintenance was boosted to Rs. 179.20 per month." On this decision husband went to Supreme Court and challenged the exactness of mentioned case<sup>54</sup>.

The Supreme Court addressed a few questions to reach a conclusion on Mohd Ahmad Khan's appeal.

- 1) Does the husband is on an obligation to provide for the maintenance of his divorced wife under the Muslim personal law?<sup>55</sup>
- 2) Does the Muslim personal law have any provision under which a sum is payable to the wife on divorce?<sup>56</sup>

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<sup>52</sup> Ibid.

<sup>53</sup> Bai Tahira A vs Ali Hussain Fissalli Chothia, 1979 AIR 362, 1979 SCR (2)75.

<sup>54</sup> Das, Pramod Kumar. *Famous murder trials: covering more than 75 murder cases in India*. (Universal Law Publishing, 2007).

<sup>55</sup> Ibid.

For better understanding of first question, the court reached the fact that *Al-Qur'ān* is the supreme authority in Shari'ah. From a deep study of *Al-Qur'ān* it was found out that Islamic Law does not stop husband from providing maintenance to divorced wife. In fact verse 241 and 242 of *Al-Qur'ān* show that husband is responsible for maintenance of wife after divorce too. Various English translations of *Al-Qur'ān* were studied and it was concluded that:

"These *ayats* have left no doubt that the *Al-Qur'ān* imposes an obligation of the provision provided to the wife who was divorced by her husband. The arguments opposing to the obligation of maintenance does less than fair dealing to the teachings of the *Al-Qur'ān*".<sup>57</sup>

For the second, court worked on husband's plea that after payment of *Mehr* he is free from the responsibility of maintenance. After a deep study this plea was also ruled out by Supreme Court. Husband's appeal was dismissed and high court's decision was restored and an amount of 10,000 was also awarded to the wife as costs of appeal.<sup>58</sup>

The ruling on Shah Bano case ignited a hot debate among Indian Muslim, who considered that their religion was in danger. There was appreciation as well as criticism on the judgment. Shah Bano was a heroine for a section of society while for the rest she was becoming a source of distortion in basic religious thoughts. The criticism against

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ghosh, Srikanta. *Muslim Politics in India*. (APH Publishing, 1987).

this judgment was needless. It was found that section 127 of Cr. P.C. was imperfectly portrayed as liberating Muslim men from giving maintenance under section 125 of Cr. P.C of 1973.<sup>59</sup>

An argument made against this decision stated that there was no need for such an interpretation from '*Al-Qur'ān*' as in case of the divorced women it is her grown children's responsibility to fulfill her needs but in absence of grown children the responsibility is shifted to the parents.<sup>60</sup>

In general understanding of the case it can be convincingly concluded that there was nothing wrong with the decision. Though the fundamentalists found it annoying and other parts of society also critiqued various aspects of this ruling still it was compatible with the rulings of Islamic Law. Islamic Law does not stop a man from providing financial assistance to divorced wife. The only confusion was that what made the judges to talk for the need of a uniform civil law, and this is still a question a mark.<sup>61</sup>

#### **1.4.3. Maintenance and "Women (Protection of- Rights on Divorce) Act, 1986"**

India unlike Pakistan is a secular State and after 1947, not only British laws were

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

reformed but also efforts were made to address the maintenance rights of women of Muslim community of India.<sup>62</sup>

On post-colonial and social welfare approach India developed its own Case Law on the CrPc 1898, and later created the frame work of personal law for other communities. The famous Shah Bano Case led to the discussion on the particular topic and enactment of the "Women (Protection of Rights on Divorce) Act, 1986."<sup>63</sup>

It appears to be a general consensus among Muslim Jurists on maintenance of divorced Muslim women during the period of their *Iddah*. Although the difference exists on the Quantum of maintenance allowance given to divorced wife.<sup>64</sup>

The welfare State; India has developed the "Women (Protection of- Rights on Divorce) Act, 1986". The Act coincides with the moral guideline of the *Al-Qur'ān*. In result, Indian divorced Muslim women are better sheltered against destitution than women of any other country.<sup>65</sup>

The Women (Protection of- Rights on Divorce) Act 1986 compact the divorced Muslim women's rights. This act is dedicated to the rights of women who are either divorced by, or have themselves attained divorce from, their husbands.<sup>66</sup> The act describes

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<sup>62</sup> Rehman, "Post-Divorce Maintenance for Muslim Women in Pakistan and India," 203.

<sup>63</sup> Shahid, "Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh," 197.

<sup>64</sup> Rehman, "Post-Divorce Maintenance for Muslim Women in Pakistan and India," 188.

<sup>65</sup> Ibid.

<sup>66</sup> Derichs, Claudia, and Andrea Fleschenberg. *Religious fundamentalisms and their gendered impacts in Asia*. Friedrich-Ebert-Stiftung, Department for Asia and the Pacific, 2010.

norms for women who are acknowledged for their right to maintenance under various sections. Section (a) of the said Act says, "That every divorced woman is entitled to have a reasonable and fair provision and maintenance from her the husband who divorced her, and the husband must do so within the period of *'Iddah* and his obligation is not confined to the period of *'Iddah*."<sup>67</sup>

#### **1.4.4. Cases under "The Women (Protection of- Rights on Divorce) Act 1986"**

The Muslim Women (Protection of rights in divorce) act, 1986 was not appreciated by various sections of society. The 1986 Act once notified was left upon judiciary for further interpretation and enforcement. Despite an apparent lack of acceptance and reluctance by judges in making decisions based on the 1986 Act it is nevertheless a significant part of the country law. The petitions against status of this act are yet pending in the Supreme Court for decisions. The 1986 Act is a functional part of law and the court denied the provision of stay against the act.<sup>68</sup>

A woman magistrate of Lucknow<sup>69</sup> was the first get the integrity of getting published her decision under 1986 Act. Woman's right inferred by the magistrate was as (i)

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<sup>67</sup> Ibid.

<sup>68</sup> Kusum, *Family Law: Cases and Materials on Family Law* (London: Universal Law Publishing, 2013), 166.

<sup>69</sup> "The very first judgment under this Act was given by the District Magistrate of Lucknow, Ms. Rekha Dixit, who awarded Rs. 80,000 to a woman - Rs. 60,000 was the one-time provision and the rest the Mehr as well as three months' maintenance."

‘reasonable and fair provision’, and (ii) maintenance of *Iddat* thus, “ the divorced wife was awarded a large sum of money. The magistrate held that the two reliefs are separate from each other, simultaneously available to all divorced women under the Act Of 1986”.<sup>70</sup>

After this remarkable decision various other courts around the country made decisions ensuring large amounts provided to women in the form of maintenance during *Iddat*. Previously husbands were not bound to pay any maintenance after divorce so this law was not acceptable for most men as they assumed it as an extra burden. Section 125 of CrPC was depriving women from the right to maintenance after divorce and hence men could conveniently discard their wives after divorce. Therefore men were not willing to accept this Act and started appeals to high courts.<sup>71</sup>

In decisions based on the 1986 Act Kerala High Court is a leading example.<sup>72</sup> There is large number of cases with decisions based on the 1986 Act including Ali<sup>73</sup>, Alyar<sup>74</sup>, and Shamsudden.<sup>75</sup> In Ali vs Sufaria, the husband showed contentment under section 3 of 1986 Act for “reasonable and fair provision”, which means the maintenance within the period of *Iddat* and not afterwards. This construction of the section 3 was not approved by the court and it was indicated that. “U/s 3(1) of the act a divorced Muslim woman is not only granted with maintenance for the period of *Iddat* from the ex-husband but she

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<sup>70</sup> <http://pr.hc.gov.pk/Thesis/2565H.pdf>, last visited 12.10.2015.

<sup>71</sup> Ibid.

<sup>72</sup> Werner, *Modern Indian Family Law*, 447.

<sup>73</sup> Ali vs. Sufaira, 1988(2) KLT 94.

<sup>74</sup> Aliyar v. Pathu, 1988(2) KLT 446.

<sup>75</sup> Shamsudden v. sabhiya, 1988(2) KLT 392.



is also entitled to a reasonable and fair provision for her future". Another example is the case of Ali yar v. Pathu<sup>76</sup>, the argument presented in front of the court was that by the term fair provision and maintenance it is meant the period of *Iddat* only. The court took guidance from the interpretation made for section 3(1) in Ali, and articulated: "if there is no dissimilarity between the two ideas and they denote the same thing, one of the terminology is unnecessary; there is no validation to take a view that the preface of the words reasonable and fair provision by the parliament was intended to a dissimilar implication."<sup>77</sup>

Despite the chaos created by various Muslims after the Shah Bano judgment, which was based on 1986 Act, the courts still showed contentment with the 1986 Act and the argument given was following:

*Parliament dissociated itself from the observation uttered by the Supreme Court in Shah Bano's<sup>78</sup> case that "provision" and "maintenance" mean the similar article and, consequently, separated woman is permitted, according to the personal law, to maintenance even after end of 'Iddat period. Parliament wished to make it obvious and apparent that the divorced woman is not entitled to maintenance only for the 'Iddat period but is entitled to a different, fair, logical and reasonable stipulation for the post-'Iddat period.<sup>79</sup>*

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<sup>76</sup> Aliyar v. Pathu, 1988(2) KLT 446.

<sup>77</sup> <http://pr.hec.gov.pk/Thesis/2565H.pdf>, last visited 12.10.2015

<sup>78</sup> Mohd. Ahmed Khan v. *Shah Bano* Begum, 1985 SCR (3) 844.

<sup>79</sup> <http://pr.hec.gov.pk/Thesis/2565H.pdf>, last visited on 12.10.2015

Hence the court held that “S 3 of the Act will not relive the former husband of all his responsibilities for the post-*’iddat* period. He has to make a reasonable and fair provision for the divorced wife for the post-*’iddat* period”.<sup>80</sup>

The third example is *Shamsuddeen v. Sabhiya*<sup>81</sup> case, where the Muslim husband plead that the implementation of 1986 act has is in contradiction with that of section 125 of code of 1973, the plea was overruled by the court.

One of the most prominent judgement was from Gujrat High Court, in *A.A. Abdulla v. A.B. Mohmuna Saiyad bhai* case.<sup>82</sup> In this example the court discoursed the tenacity of the Act and produced the following remarks:

*In the language of common understanding the parliament has stated that the Act is for shielding and defending the rights of Muslim Women. It does not provide that it is enacted for taking some rights which a Muslim Women was having either under the Personal Law or UNDER THE GENERAL LAW I.E. Sc. 125 to 128 of the Cr. P. C.*<sup>83</sup>

In the above mentioned statement the court has clarified the misconception that the 1986 Act deprives a divorced woman from her rights. It was said that the Act does not abolish the rights of women after divorce in fact it was meant to protect their rights.

The course of marriage in Islamic Law restricts the husband to fulfill the basic needs of his family. Wife is husband’s responsibility but the problem arises when both partners

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<sup>80</sup> Ibid.

<sup>81</sup> *Shamsudden v. sabhiya*, 1988(2) KLT 392.

<sup>82</sup> AIR 1988, Gujrat 141.

<sup>83</sup> <http://pr.hec.gov.pk/Thesis/2565H.pdf>, last visited on 12.10.2015

separate either with or without divorce. Everyday courts encounter cases of maintenance in varying nature. By considering different examples of maintenance cases it can be concluded that the courts in India are more modest. The major confusion in these cases is that whether the woman is only having the right to maintenance during the course of marriage and not after divorce<sup>84</sup>. The decisions that were made in regard of the section 125 have a clear stance that the maintenance can only be claimed by the legal wife.<sup>85</sup>

## Conclusion

After analyzing the above discussion, it is concluded that every divorced women is legally entitled to get maintenance from her ex-husband, even after the waiting period, according to the Indian Jurisprudence. The right of divorced women to claim post-*Iddah* maintenance is protected not only by the Indian legislature but also by the Indian judiciary.

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<sup>84</sup> Shahid, "Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh," 200.

<sup>85</sup> Ibid.

## **Chapter No.2**

### **MAINTENANCE OF WIFE AFTER DIVORCE UNDER SHARĪ'AH**

**(ISLAMIC LAW)**

This chapter deals with the issues of maintenance of divorced women according to the principles of Muslim personal law. The verses of *Al-Qur'ān* and traditions of Holy Prophet (PBUH) which deals with the issues of maintenance of women after her divorce are analyzed. Furthermore, the recent developments, by the jurists, in the area of maintenance of the women after divorce have been analytically examined. Likewise, the work modern scholars has also been discussed in this regard. The matters regarding the family laws are not sheltered under the umbrella of any single set of rules. Instead, they vary from one religion to the other.

## 2.1. Maintenance in Islamic Law

Traditionally, Muslim woman's right of maintenance is towards her husband once she starts cohabiting and places herself at the disposal of her husband. The Arabic term for such maintenance is *Nafaqah*, which in general terminology means to make provisions for one's necessities of life by another in consideration."<sup>86</sup> *Nafaqah* generally includes provision of "food, raiment, and accommodation." However, there are divergent views among the different schools of thoughts in Islamic Law on the quantum of maintenance. Without going further "into the differences of the above schools on the issue of maintenance during and after marriage, it becomes clear that the amount of maintenance starts from the bare minimum of food, clothes and shelter"<sup>87</sup> and can

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<sup>86</sup> Mir-Hosseini, Ziba. "Towards Gender Equality: Muslim Family Laws and the Shari 'ah." *WANTED* (2009): 23.

<sup>87</sup> Ibid.

further depend upon the financial circumstances. A Muslim husband, thus, is responsible for "maintaining his wife during the marriage, but he also has the absolute power to suspend the contract of marriage any time he desires. A Muslim male can terminate the marriage contract in any of the three different modes,"<sup>88</sup> that is, *Ṭalāq-i-ahsan*<sup>89</sup>, *Ṭalāq-i-hassan*<sup>90</sup> and *Ṭalāq-i-bidat*.<sup>91</sup> According to the sayings of the Prophet Muhammad, "In the eyes of Allah it (divorce) is the most hateful of the lawful things."<sup>92</sup>

Constitutes the financial obligation of a husband toward his wife during marriage and for a time after he divorces her. While married, a husband is expected to pay for housing, food, and his wife's clothes according to her social class or their agreement at the time the marriage was contracted. He generally is also expected to pay for all her medical expenses, although schools of legal thought differ on this point. Depending on social class and agreement, *nafaqah* could also include servants and a standard of living

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<sup>88</sup> Ibid.

<sup>89</sup> "Ta'laq Ahsan or the most laudable divorce is where the husband repudiates his wife by making one pronouncement within the term of Tahr (purity, when the woman is not passing through the period of menses) during which he has not had sexual intercourse with her, and she is left to observe her 'Idda."

<sup>90</sup> "Ta'laq Hasan or laudable divorce is where a husband repudiates an enjoyed wife by three sentences of divorce, in three Tuhrs."

<sup>91</sup> "Ta'laq Bid'a or irregular divorce is where a husband repudiates his wife by three divorces at once. According to the majority of the jurists, the Ta'laq holds good, but it is against the spirit of the Shari'ah, and, therefore, the man who follows this course in divorce is an offender in the eye of Islamic Law."

<sup>92</sup> "A muttasil (connected) isnad from Mu'arrif ibn Wasil, from Muharib, from Ibn 'Umar (may Allah be pleased with him) from the Prophet (peace and blessings of Allah be upon him)."

This was narrated by Muhammad ibn Khalid al-Wahabi, from Mu'arrif, like this with an isnad, as recorded by Abu Dawood (2178), and via al-Bayhaqi in al-Sunan al-Kubra (7/322), and Ibn 'Adiy in al-Kamil (6/2453).

consistent with that of the wife's peers. If divorce takes place, the husband is expected to pay her the same financial support for the first three months following the divorce, a period known as '*iddah*', during which the wife continues to live in her home and may not remarry; this is to ascertain that there is no pregnancy and to allow for a period in which the couple could reconcile. *Nafaqah* can also include support for family members such as father, mother, sisters, brothers, and children if they cannot support themselves.<sup>93</sup>

### 2.1.1. Importance of Maintenance

Religion Islamic Law being introduced 1400 years ago came up with various laws which revolutionized the social lives of that era. Laws introduced by Islamic Law also included rights related to families. Islamic Law gives a great worth to family system. A complete code has been provided to help initializing the family life, bringing comfort and relaxation in the bond, and also guarding the future generations. Though Islamic Law has provided guidance for each step of family life but this research is only concerned with maintenance.<sup>94</sup>

In Islamic Law women is free from the burden of financial support, it is men's responsibility to provide their families with the material needs. According to Sharī'ah financially strong woman is also not bound to spend on her children, she may spend by her choice but not as a duty. This relaxation for women is in regard of their natural

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<sup>93</sup> Tucker, Judith E. *In the house of the law: Gender and Islamic law in Ottoman Syria and Palestine*. Univ of California Press, 1998.

<sup>94</sup> El-Guindy, Mohsen A. "Muhammad the Best of Creation."

duties such as pregnancy, child birth and feeding and raising their children, besides looking after their houses.<sup>95</sup>

The right of maintenance sets with the marriage and is accomplished by the husband. A husband, according to Islamic Law, is bound to fulfill his wife's needs. The right of maintenance is not only limited to those women who are unable to fulfill their needs by themselves but the wealthy women also own this right.<sup>96</sup>

The rights given to Islamic Law by women were not acknowledged by west and other religious groups it took a long time to give right of maintenance to women. Though women are given right of maintenance in other laws too but financial independence given by Islamic Law is still superior to the rest. The rights in Islamic Law strengthen family bond while that of Europe leads to destruction of family system.<sup>97</sup>

The origin of word maintenance is from Old French "maintain" means upkeep; shelter; protection<sup>98</sup>, thus maintenance is 'the work of observance of somewhat in proper condition; provision of support or livelihood.'<sup>99</sup>

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<sup>95</sup> Zakia A. Siddiqi, Anwar Jahan Zubari, *Muslim Women Problems and Prospects* (New Delhi: MD-Publications pvt Ltd, 1993), 5-8.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Susan Pedersen. *Family, dependence, and the origins of the welfare state: Britain and France, 1914-1945*. Cambridge University Press, 1995.

<sup>99</sup> Swiderska, Krystyna, Dilys Roe, Linda Siegele, and Maryanne Grieg-Gran. *The governance of nature and the nature of governance: policy that works for biodiversity and livelihoods*. Vol. 8. IIED, 2008.



In term of law maintenance is; stipulation controlled and ordered by any competent authority to be made by way of periodical payments or a lump sum, for a spouse after a divorce.<sup>100</sup>

Maintenance indicates all those things which are compulsory to the carry life, such as eatables, clothing and accommodation; many confine it exclusively to food.<sup>101</sup>

Maintenance are those provisions, which a man is obliged to provide to his wife or wives equitably according to the resource of the payer and needs of recipients.<sup>102</sup>

### 2.1.2. Authority of Maintenance in *Al-Qur'ān*:

*Al-Qur'ān* is very obvious about the distribution of rights and duties of husband and wife, all the financial needs of the family had to be borne by husband and there is no financial burden on wives. Injunctions of the *al-Qur'ān* on the subject of the rights of woman in respect of maintenance are enclosed in the following verses:

On one place Allah Almighty says;

"وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّ الرُّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ  
وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ" (البقرة: 233)

This verse means:

*"The mothers shall give suck to their offspring for two whole  
years, if the father desires, to complete the term. But he shall bear*

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<sup>100</sup> Ringrose, Hyacinthe, ed. *Marriage and Divorce Laws of the World...* No. 6930. Musson-Draper Company, 1911.

<sup>101</sup> Charles Hamilton, *the Hidayat: A Commentary on Musalaman Laws* (Lahore: Al-Mecca Press, 1975), 140.

<sup>102</sup> Tahir Mansuri, *Family Law in Islam Theory and Application* (Lahore: Izhar Sons, 2006), 97.

*the cost of their food and clothing on equitable terms."*

*(2:233)<sup>103, 104</sup>*

In and other verse Allah Almighty says:

” لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ عَلَى  
الْمُوسَعِ قَتْرَهُ وَعَلَى الْمُقْتِرِ قَتْرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ ” (البقرة: 236)

This means;

*"There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means, - a gift of a reasonable amount is due from those who wish to do the right things." (2:236)<sup>105, 106</sup>*

In the same chapter after few verses Allah Almighty rules;

”وَالْمُطَلَّاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ” (البقرة: 241)

This is translated as;

*"For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous". (2:241)<sup>107, 108</sup>*

In *al-Nisa* Allah Almighty declares;

”الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ” (النساء: 34)

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<sup>103</sup> Al-Quran, (2:233).

<sup>104</sup> English translation by Mufti Taqi Usmani, <http://www.quranrecites.com/quran-translation-english>, last visited on 11.09.2015

<sup>105</sup> Al-Quran, (2:236).

<sup>106</sup> English translation by Usmani.

<sup>107</sup> Al-Quran, (2:241).

<sup>108</sup> English translation by Usmani.

"أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجُوْهِكُمْ وَلَا تُضَارُوهُنَّ لِيُضْحِیْنَ عَلَيْهِنَّ وَإِنْ كُنَّ  
أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ  
وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَمَسْئِرٌ لَّهُ أُخْرَى" (الطلاق: 4)

This means;

*"Let the women live (In 'Iddat,) in the same style as ye live, according to your means; annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your. substance) on them until they deliver their burden: and if they. suckle your (offspring), give them their recompense; and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf". (65:6)<sup>112, 113</sup>*

In the next verse Allah Almighty says;

"الَّذِينَ يُنْفِقُوا مِنْ سَعَتِهِمْ وَمَنْ قَتَرَ عَلَيْهِمْ رِزْقَهُ فَلْيَنْفِقُوا مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ  
نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا" (الطلاق: 7)

This means;

*"Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what he has given him.*

<sup>112</sup> Al-Quran, (65:6).

<sup>113</sup> English translation by Usmani.

*After a difficulty, Allah will soon grant relief".*

*(65:7)<sup>114, 115</sup>*

### 2.1.3. Authority of Maintenance in *Sunnah*:

Legitimacy of maintenance can also be traced from *Sunnah*. The Traditions of the last Messenger of the Allah Almighty, about the rights of woman for maintenance are:

1. Jabir ibn Abdullah reported: The Messenger of Allah, peace and blessings be upon him, said, "Fear Allah regarding women. Verily, you have taken them as a trust from Allah, and intercourse has been made permissible by the word of Allah. Your rights over them are that they do not let anyone in the house you dislike. If they do so, then you may strike them without causing pain. Their rights over you are that you provide for them and clothe them in a reasonable manner."<sup>116</sup>

2. One the Authority of *Sulaiman bin Amr bin Ahwas* It is narrated that he said:

"عن سليمان بن عمرو بن الأحوص حدثني أبي أنه شهد حجة الوداع مع رسول الله صلى الله عليه وسلم . فحمد الله وأثنى عليه ونكر ووعظ ثم قال ( استوصوا بالنساء خيرا فبتهن عنكم عوان . ليس تملكون منهن شيئا غير ذلك . إلا أن يأتين بفاحشة مبينة . فإن فعن فاهجروهن في المضاجع واضربوهن ضربا غير مبرح . فإن أظعنكم فلا تبغوا عليهن سبيلا . إن لكم من نساءكم حقا

<sup>114</sup> Al-Quran, (65:7).

<sup>115</sup> English translation by Usmani.

<sup>116</sup> Sunan Al-Kubra Al-Bayhaqi 8849, Grade: *Sahih* (authentic) according to At-Tabari.

ولنسانكم عليكم حقا . فاما حاكم على نسانكم فلا يوطن فرشكم من تكرهون .  
ولا يائن في بيوتكم لمن تكرهون . الا وحقهن عليكم ان تحسنوا اليهن في  
كسوتهن وطعامهن )"

This *Hādīth* means;

"My father told me that he was present at the Farewell Pilgrimage with the Messenger of Allah. He praised and glorified Allah, and reminded and exhorted (the people). Then he said: 'I enjoin good treatment of women, for they are prisoners with you, and you have no right to treat them otherwise, unless they commit clear indecency. If they do that, then forsake them in their beds and hit them, but without causing injury or leaving a mark. If they obey you, then do not seek means of annoyance against them. You have rights over your women and your women have rights over you. Your rights over your women are that they are not to allow anyone whom you dislike to tread on your bedding (furniture), nor allow anyone whom you dislike to enter your houses. And their right over you are that you

should treat them kindly with regard to their clothing and food.”<sup>117</sup>

3. It was narrated from *Hakim bin Muāwiyah*, from his father, that: a man asked the Prophet (ﷺ): “What are the rights of the woman over her husband?” He said: “That he should feed her as he feeds himself and clothe her as he clothes himself; he should not strike her on the face nor disfigure her, and he should not abandon her except in the house (as a form of discipline)<sup>118</sup>.”
4. *Abu Huraira* reported Allah's Messenger (ﷺ) as saying: “Of the dinar you spend as a contribution in Allah's path, or to set free a slave, or as a *sad'aqa* given to a needy, or to support your family, the one yielding the greatest reward is that which you spent on your family.”<sup>119</sup>
5. *Ḥaẓrat Ayesha* reported that “Hind, daughter of *Utbah*, asked: O Messenger of Allah! Abu Sufiyan is a miserly fellow. He does not give what may be sufficient for me and my children, unless I take it from him without his knowledge. He said: Take what suffice you and your children according to means.”<sup>120</sup>

## 2.2. Entitlement of Post-Divorce Maintenance in Islamic Law

It is an obligatory duty on a husband to provide his wife with all she needs and is one of the important rights of the women. It is incumbent upon the husband to make

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<sup>117</sup> Sunan Ibn e Maja, Vol. 3, Book 9, Hadith 1851 (Grade: Sahih).

<sup>118</sup> Sunan Ibn e Maja, Vol. 3, Book 9, Hadith 1850 (Grade: Hasan).

<sup>119</sup> Sahih Muslim, book 12, Hadith 48 (Grade: Sahih).

<sup>120</sup> Sahih Muslim, Vol.7, Book 64, Number 272 (Grade: Sahih).

available all that she needs in terms of food, cloth, medication, housing, sanitization tools, furnishings and the like of what she wants and is regarded as traditional and usual duty of a husband. It is impermissible for a husband to refrain from providing survival or delay it<sup>121</sup>, as the Prophet (peace and blessing be upon him) said: *"The sin is enough for a man who abstains from providing those who are under his charge with subsistence."*<sup>122</sup> This ruling was mentioned when His renown was answering the questions on the rulings of the marital maintenance of a wife. "He also warned husbands of neglecting or delaying the fulfillment of wives' rights and debts."<sup>123</sup>

### **2.2.1. A Classification on Dissolution of Muslim Marriages:**

#### **DISSOLUTION OF MARRIAGES**

1. By Act of God (Death of husband or wife)
2. By Act of Parties (Divorce)
  - I. Extra-Judicial Divorce
    - a. By Husband
      - Ṭalāq
      - Īlā
      - Zihār

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<sup>121</sup> Latif, Nazia. "Women, Islam and human rights." (2002).

<sup>122</sup> Khan, Muhammad Zafrulla. *Wisdom of The Holy Prophet*. (London: Mosque), 1971.

<sup>123</sup> Siddiqui, Abdul Hameed. *The Life of Mohammad*. Adam Publishers, 1994.

**b. By Wife (Delegated Ṭalāq)By Mutual Agreement**

**c. By Mutual Agreement**

➤ **Kḥulā**

➤ **Muba'rāt**

**II. Judicial Divorce (By wife under the Dissolution of Muslim Marriages Act, 1939)**

**2.2.2. Divorce:**

Divorce is repudiation of marriage. Every Muslim Husband carries an unrestricted right to divorce, his wife, without giving any reason or justifying the case. Muslim law does not necessitate the existence of any fault, blunder or matrimonial offence as a cause for divorce.<sup>124</sup> It is appropriate and valid according to Shari'ah where it is unfeasible or impossible for the spouses to live together they must part quietly with serenity.

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<sup>124</sup>Ali, Kecia. "Progressive Muslims and Islamic jurisprudence: the necessity for critical engagement with marriage and divorce law." *Progressive Muslims on justice, gender and pluralism* (2003): 163-189.

For Islamic Concept of Divorce, See

1. Auda, Jasser. "Purposes of the Islamic Law." (2008).

2. Leaman, Oliver. "Ibn Miskawayh." *History of Islamic Philosophy* 1 (1996): 252.

3. Tahir, Nasreen. "YOUNGSTER GUARDIANSHIP IN ESTABLISHED ISLAMIC LAW AND LAWS OF CONTEMPORARY MUSLIM WORLD."

4. Rehman, Javaid. "The sharia, Islamic family laws and international human rights law: Examining the theory and practice of polygamy and talaq." *International Journal of Law, Policy and the Family* 21, no. 1 (2007): 108-127.



However, a circumlocutory or "indirect check upon this right is the compulsion of husband to pay the dower upon the dissolution of marriage."<sup>125</sup>

The literal meaning of word divorce is to split or break-up.<sup>126</sup> In legal terminology divorce is dissolution of a marriage by a court or other competent body.<sup>127</sup>

The Arabic word used for divorce is *Ṭalāq* which means "freeing, releasing, liberating or undoing the knot" (*Imam Rāghib*). In the terminology of the jurists, *Ṭalāq* signifies "the dissolution of marriage or the cancellation or termination of its validity and legality by the pronouncement of certain specific words."<sup>128</sup>

The *Al-Qur'ān* says;

O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately), their prescribed periods: And fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation.<sup>129</sup>

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<sup>125</sup> Ibid.

<sup>126</sup> Instone-Brewer, David. "1 Corinthians 7 in the light of the Graeco-Roman Marriage and Divorce Papyri." *Tyndale Bulletin* 52, no. 1 (2001): 101-116.

<sup>127</sup> Ibid.

<sup>128</sup> Translation of Sahih Muslim, Book : 9.

<sup>129</sup> Al-Qur'ān, 65:1.

### 2.2.3. Kinds of Divorce:

Divorce is of three kinds: “the *Ahsan*, or most laudable, the *Hasan*, or laudable, and the *Bid'a* or irregular.”<sup>130</sup>

- *Talāq Ahsan* or the most laudable divorce is “where the husband repudiates his wife by making one pronouncement within the term of *Tūhr* (purity. When the woman is not passing through the period of menses) during which he has not had sexual intercourse with her, and she is left to observe her *'Idda*.”<sup>131</sup>
- *Talāq Hasan* or laudable divorce is “where a husband repudiates an enjoyed wife by three sentences of divorce, in three *Tūhrs*.”<sup>132</sup>
- *Talāq Bid'a* or irregular divorce is “where a husband repudiates his wife by three divorces at once. According to the majority of the jurists, the *Talāq* holds good, but it is against the spirit of the *Shari'ah*, and, therefore, the man who follows this course in divorce is an offender in the eye of *Sharī'ah*.”<sup>133</sup>

### 2.3. Maintenance of Women during *'Iddah* Period

*'Iddah* is the waiting period for which a Muslim woman is advised to stay at home.

The literal meaning of the word *'Iddah* means to count. The counting of the state of purification attained, after the monthly menstruation cycle.

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<sup>130</sup> Chaudhry, Muhammad Sharif. *Women's rights in Islam*. Adam Publishers, 1997.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Translation of Sahih Muslim, Book : 9.

*'Iddah* indicates the waiting period of "a woman in a house on the termination of her marriage after consummation or on the demise of her husband even if the marriage has not been consummated yet. She is not allowed to leave the house for this specific period."<sup>134</sup> And she cannot contract new marriage in this period. Any "marriage contracted by her during this period will be considered void."<sup>135</sup>

### 2.3.1. Objective of *'Iddah* period

The primary objective or the sole purpose of this waiting period; *'Iddah*, is to find out "whether the woman is pregnant so that the fatherhood of the child that may be born to her after the death of her husband or the dissolution of her marriage may be determined"<sup>136</sup> exactly. Another reason is due to the close, vital and very "important relationship among the husband and wife, in the case of a deceased husband the *shari'ah* has imposed upon the wife to observe grief and express mourning during the time of *'Iddah*."<sup>137</sup> This indicates the sign of value for the deceased husband.

The rules regarding *'Iddah* vary from case to case.

## 2.4. Muslim Jurists Perspective on *'Iddah* and the Post-Divorce Financial Support

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<sup>134</sup> Honor, Marriage. "The Certificate of Virginity: Honor, Marriage and Moroccan Female Immigration Theresa Thao Pham." PhD diss., Columbia University, 2011.

<sup>135</sup> Ibid.

<sup>136</sup> Patel, Ismail Adam. *Islam, the Choice of Thinking Women*. Ta-Ha Publishers, 1997.

<sup>137</sup> Ibid.

Muslim jurists hold two different opinions on post-divorce financial support;

The first ruling is *Wājib*<sup>138</sup> i.e. obligatory, And second ruling is *Māndub*<sup>139</sup> i.e. not obligatory.

Shari'ah recognizes the right of maintenance of divorced women till the period of *'iddah*. Hān'afi jurisprudential School, the oldest *sunni* school of *fiqh* has the prevailing opinion "that post-divorce financial support is mandatory in two cases." The first one is referred as *Al Muf'āwadah*<sup>140</sup>, women married without fixation of dower and marriage has been consummated. Second is when the dower has not been fixed but marriage has been consummated.<sup>141</sup> According to some *Hān'afi* jurists post-divorce maintenance is not mandatory just recommendable.<sup>142</sup>

Imam Malik and his disciples opine that the post-divorce maintenance is not mandatory for all divorces except those with fixed dowries.<sup>143</sup>

While Imam Shāfi holds the opinion that any divorced women who is not the direct reason for divorce is entitled to post divorce maintenance such as:

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<sup>138</sup> Necessary: "An act that is almost as compulsory as a Fard. The Messenger of Allah SallAllaho Alaihi wa Aalihi wa Sallam never omitted it. It is a graded second, below a Fard in its necessity."

<sup>139</sup> *Māndūb* and *mustahabb* are "terms that refer to the same ruling. This ruling means "preferable" or "recommended". It can be defined as that which we are requested to do without being obliged. It is something we are rewarded for doing, but we will not sinful for neglecting it. "

<sup>140</sup> Abraham Geiger, *Judaism & its History* (New York: The Balosh Publishing Company, 1911), 250.

<sup>141</sup> Mohamad Ayub, *Contemporary Approaches to the Qur'an and Sunnah* (London: International Institute of Islamic thoughts, 2012), 179.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid. 180.

- A women who is divorced but there is no fault on her part
- A women who is divorced before the consummation of marriage and fixation of dower
- A women who is divorced by an order of a competent authority i.e. court due to the husbands impotence
- A women who is divorced due to the bad attitude of the husband or his physical and mental cruelty
- A women who is divorced due to the desertion of her husband
- A women who is divorced on a failure to secure essential and necessary maintenance from her husband
- A woman divorced due to *Ilāa*<sup>144</sup> or *Zihār*<sup>145</sup> undertaken against her husband.<sup>146</sup>

## 2.5. Cases concerning Divorce

**First case:** the case whereas the dower of a women has not been fixed nor the marriage has been consummated.

**Second Case:** the case whereas the dower of a women has not been fixed but the marriage has been consummated.

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<sup>144</sup> A Choronis sickness.

<sup>145</sup> "An ancient Arab custom, where the husband foreswear any marital relations with his wife, declaring her to be "like the back of his mother".

<sup>146</sup> Ayub, *Contemporary Approaches to the Qur'an and Sunnah*, 181-182.

**Third Case:** the case whereas the dower of a women has been fixed and the marriage has been consummated.

**Fourth Case:** the case whereas the dower of a women has not been fixed but the marriage has been consummated.<sup>147</sup>

### 2.5.1. Divorce before consummation and fixation of Dower:

The Holy Prophet (saws) has said "Allah has not made lawful anything more hateful in His sight than divorce." (*Abu Daud*).<sup>148</sup> And: "Of all the things permitted by the Law, the most hateful in the sight of Allah is the divorce." (*Abu Daud*).<sup>149</sup>

*Allah Almighty Says in Surah Al-baqā'rah, verses 236:*

«لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى  
الْمُوسِمِ قَتْرَهُ وَعَلَى الْمُقْتِرِ قَتْرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ» (البقرة: 236)

This means;

*"There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means, and the poor*

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<sup>147</sup> Syed Anwar Ali, *Quran the Fundamental Law of Human Life*. Vol.3. (Karachi: Hamdard Foundation Press, 1984), 278.

<sup>148</sup> Sunan abu Daud, Grade: Sahih.

<sup>149</sup> Ibid.

*according to his means, - a gift of a reasonable amount is due from those who wish to do the right things".<sup>150</sup>, <sup>151</sup>*

The particular revelation is said to be on the incident of marriage of an *Ansari Sahab* with the women of *bani hanifa*. In their marriage the dower was not fixed yet and the Ansari Sahabi divorced his wife before the actual consummation of the marriage. Hence there was no compulsion on Ansari Sahabi to pay the dower but according to this verse the husband is duty bound to pay the dower or suitable gift according to his means as well as usage of society.<sup>152</sup> "There is no waiting period for the woman, marriage with whom has not been consummated; and who is divorced even before she is touched." According to Ibn Abbass, Tawus, Ibrahim and *Al Hasan Al Basri* "touched" prescribed in the verse signify sexual intercourse.<sup>153</sup> She can re-marry, if she likes, right after the divorce.

Although in the situation of divorce before consummation and fixation of dower, the person has not got any benefit from the marriage still, but as the gesture of kindness the *Sharī'ah* demands from the men to give a consolatory gift to their wives in the event of divorce before consummation and fixation of dower.

Therefore husband should not act tightfistedly in making such payment. *Ḥaẓrat Hasan* paid twenty dinar to divorced wife, and *Qazi Shaheer* paid five hundred Dirhams.<sup>154</sup> Ibn

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<sup>150</sup> Al-Qur'ān, 2:236.

<sup>151</sup> English translation by Usmani.

<sup>152</sup> Muhammad Shawkani, *Fath Al Qadeer* (Bairut: Dar ul Fiqr, 2008), 87; Syed Anwar Ali, *Quran The Fundamental Law*, 278.

<sup>153</sup> Ibn Kathir, *Tafsir Ibn Kathir*. Vol.1. (Riyadh: Darusslam, 2000), 664.

<sup>154</sup> Ibid.

Abbas opines the least a husband should give in such a case would be a pair of clothes. *Madarij* also character the pair of clothe as *mustaheb* for every divorced women.<sup>155</sup> Al Bukhari reported in his *Sahih* that *Sahl bin Sa'd* and *Abu Osaid* said that "Allah's messenger (S.A.W) married *Ummayah bint Sharahil*. When she was brought to Prophet (S.A.W) he extended his hand to her, but she did not like that. The Prophet (S.A.W) then ordered *Abu Osaid* to provide provision for her along with a gift of two garments.<sup>156</sup>

## 2.5.2. Divorce before Consummation of Marriage but after Fixation of Dower:

The situation where the divorce happens before consummation but after fixation of dower the husband has the right to give half of the dower to the wife but *Shari'ah* suggest him to give her the full dower instead. This regards as the *Shari'ah* considers the emotions of the divorced women and thus the intention of this teaching is to facilitate people.

"يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمِنْ غَوْهُنَّ وَسِرْخُوهُنَّ سِرَاحًا جَمِيلًا" (الأحزاب: 49)

This means;

*"O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning*

<sup>155</sup> Ali, *Al-Qur'an the Fundamental Law of Human Life*, 279.

<sup>156</sup> Ibn Kathir, *Tafsir Ibn Kathir*, 664.



them. So provide for them and give them a gracious release<sup>157, 158</sup>

**Allah Says in the 'Al-Qur'an Chapter 2 Surah Al-baqā'rah verses 237:**

"وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يُغْفِرَ أَوْ يُغْفَرَ الَّذِي بِيَدِهِ عَقْدَةُ النِّكَاحِ وَأَنْ تَغْفِرُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَسْأُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ"

This means;

*"And if ye divorce them before consummation, but after the fixation of a dower for them then the half of the dower (is due to them), unless they remit it. Or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget liberality between yourselves. For Allah sees well all that ye do"*<sup>159, 160</sup>

The half of the dower should be paid to the women in case if the dower is fixed and the marriage has not been consummated. Further it has also been provided that the woman has a right to forgo even the half dower and similarly the husband has the option to pay the dower in full.<sup>161</sup>

The words "he forgoes", "you forgo", in the verse have been used for the husband particularly in a situation in which dower has already been paid at the time of

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<sup>157</sup> Al-Qur'an, 33:49.

<sup>158</sup> English translation by Usmani.

<sup>159</sup> Al-Qur'an, 2:137.

<sup>160</sup> English translation by Usmani.

<sup>161</sup> Ali, Al-Qur'an the Fundamental Law of Human Life, 279.

performance of marriage. And the amount of dower is only half in case of divorce before consummation of marriage, therefore the husband has the right to claim refund of half of dower amount already paid, and said that if he forgoes that right, and does not claim refund, it is an act of goodness in his part.<sup>162</sup>

### 2.5.3. Divorce after fixation of Dower and Consummation of Marriage:

*Allah Almighty Says in Surah Al-baqā'rah, verses 241:*

"وَلِلْمُطَلَّاقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ"

This means;

*"And for divorced women is a provision according to what is acceptable - a duty upon the righteous"<sup>163, 164</sup>*

Women is entitled to dower when it is fixed at the time of marriage and the marriage is consummated, because it is the right of women as she submitted herself at the disposal of the husband. Regarding the fixation of dower in this case jurists have varied argument. According to *Saeed bin Jubair* and several others among the *Salaf*, *Mat'ā/Mutā*. (reasonable gift) at the time of divorce is required for every divorced

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<sup>162</sup> Ibid.

<sup>163</sup> Al-Qur'ān, 2:241.

<sup>164</sup> English translation by Usmani.

women, whether she had a dower fixed for her or not on the verse 241 of *surah Al-baqā'rah*.<sup>165</sup>

#### 2.5.4. Divorce before Fixation of Dower and after Consummation of Marriage:

*Allah Almighty Says in Surah al-baqā'rah, verses 236:*

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً

*"There is no blame on you if ye divorce women before consummation or the fixation of their dower"*<sup>166</sup>

On the basis of this verse jurists concluded that a marriage contract is considered to be valid even without fixed and declared dower. According to Hān'afi jurists if dower is not fixed at all, then proper dower or *mēhr-e-mīthl* will be paid to the women.<sup>167</sup> But in Maliki School of thought if the dower is denied expressly than the marriage will be considered invalid.<sup>168</sup>

In case where the husband divorces the wife whose dower has not been fixed and marriage has been consummated then the husband is suggested under verse 241 of *Surah Al-baqā'rah*:

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<sup>165</sup> Ibn Kathir, *Tafsir Ibn Kathir*, 89.

<sup>166</sup> Al-Qur'ān, 2:236.

<sup>167</sup> Mansuri, *Family Law in Islam*, 75.

<sup>168</sup> Ibid.

“And for divorced women is a provision according to what is acceptable - a duty upon the righteous.”<sup>169170</sup>

## Conclusion

To sum up the above discussion, Islamic Law recognizes the right of divorced women to claim maintenance from her ex-husband during waiting period. But, Islamic Law does not recognize maintenance to divorced women after waiting period because after that period the women becomes free and she can marry to any other person her choice. Similarly, she can claim maintenance from her parents. Likewise, she can also inherit from the estate of her deceased relatives. So, she has other options as well for her maintenance. Islamic Law, by not recognizing post-*Iddah* maintenance from her ex-husband, honors the women because it will be disgraceful for the women to claim maintenance from a person whom she neither nor lives with him.

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<sup>169</sup> Al-Qur’ān, 2:241.

<sup>170</sup> English translation by Usmani.

### **Chapter No.3**

## **THE COMPARSION OF RULINGS REGARDING MAINTENANCE OF WIFE AFTER DIVORCE IN ISLAMIC LAW & INDIAN JURISPRUDENCE**

This chapter focuses, in particular, on the personal law of Muslim women in India. Moreover, a comparison has been carried out between the Indian jurisprudence and Sharī'ah on the issues of maintenance of Muslim women after divorce. The study of facts reveal that matters pertaining to Muslim personal law e.g. Divorce, Marriage, Maintenance, Custody, and Adoption...etc. are governed, in India, by the precedents set out by the Indians (Non-Muslims). Therefore, in this research an effort has been carried out to effectively make the comparison between Indian jurisprudence and Sharī'ah on the issues of maintenance of women after her divorce. Similarly, Scholarly views of different jurists and modern scholars have also been referred in this regard.

### 3.1 MARRIAGE

Legally or formally recognized union, of a male and a female as partners in a relationship.<sup>171</sup>

As the marriage is one of the ritual, Allah swt called it **ميثاقا غليظا** (a sacred convent) so a minor can entire into a contract but that would be a contingent one, and the guardian of the minor would do on the behalf of the minor, but the marriage could not executed till the age of puberty. If the girl after attaining puberty wants to rescind the contract

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<sup>171</sup> Nock, Steven L. "A comparison of marriages and cohabiting relationships." *Journal of Family Issues* 16, no. 1 (1995): 53-76.



**a. By Husband**

➤ **Ṭalāq**

(I) *Ṭalāq-i-ahsan*

(II) *Ṭalāq-i-hassan*

(III) *Ṭalāq-i-b'iddat*.<sup>174</sup>

➤ **Īlā**

➤ **Zīhār**

**b. By Wife (Delegated Ṭalāq) By Mutual Agreement**

**c. By Mutual Agreement**

➤ **Kḥulā**

➤ **Muba'rāt**<sup>175</sup>

**3.1.2. Maintenance provisions for wives under *Sharī'ah*:**

We need to look first at *Al-Qur'ān*, in reference to the classical interpretation of right of maintenance of Muslim wives, as *Al-Qur'ān* contains roots for all laws for Muslims.

In pre Islamic Law period at Arab, the concept of maintenance of the divorced wife was not well known, because remarriage was a common practice for those women.<sup>176</sup> Society

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<sup>174</sup> Fyze, *Outlines of Muhammadan Law*, (London: Oxford University Press, 1949), 129.

<sup>175</sup> See for these terms, Wahbah al Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol.7 (Damascus: Dar-al-Fikr, 1989), 320-321. *Al-Hidayah Fi Sharh Bidayat Al-Mubtadi* الهداية شرح بداية المبتدي By Burhan Uddin al-Farghani al-Marghinani (d. 593 A.H.)

<sup>176</sup> Nabia Abbott, *Aishah beloved of Muhammad* (Chicago: University of Chicago Press, 1942), 22.



at time was clan-based therefore it was presumed that the clan will be responsible and will look after such women. It also seems to be no reason for men to support their ex-wives. When they were their chattels, once rejected, they could simply be sent away, rather than being supported.<sup>177</sup>

### 3.1.3. Maintenance after termination of Marriage contract

In Islamic Law, Post-divorce financial support to women is termed as; *Mut'at-al-Ṭalāq*. The research is an attempt to draw attention of in order to resolve this issue. Islamic Law is the religion which recognizes women's rights hence it is now the duty of Muslim scholars and jurists to make sure that the women of Islamic Law are getting their rights.<sup>178</sup> The rights which are given to women of Islamic Law, as apparent from the teachings of *Al-Qur'ān* and applied by the Holy Prophet (P.B.U.H) must also be provided to today's Muslim women.<sup>179</sup>

In the present era women in Muslim societies particularly in Pakistan are not awarded with any maintenance after divorcee. Though, it is highly accepted fact, that maintenance of wife is the duty of a husband during the course of marriage.<sup>180</sup> Women are not bound to earn money and even if women are financially strong they are not compelled to spend on their husband or children. But once the tie is broken with

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<sup>177</sup> Ibid.

<sup>178</sup> Abdel Karīm Shabūn, *Sharh Mudawwanah al-Ahwāl al-Shakhsyah al-Maghribiyah*, vol.1. (Rabat: Maktabat al-Ma'ārif: nd), 109.

<sup>179</sup> Ibid.

<sup>180</sup> Engineer, Asghar Ali. *The Qur'an, Women, and Modern Society*. (Sterling Publishers Pvt. Ltd, 2005).

divorce there is a consensus among most Muslim scholars that women do not have any right on property and wealth that was acquired by husband during the course of marriage. As it is argued that woman was provided with all the basic needs of life during her husband's house. It is generally concluded that after divorce women can get financial support from the husband for the period of *'Iddat* only.<sup>181</sup>

### 3.2. Shari'ah and its Principles on Maintenance after Divorce

*Mut'ah* is an Arabic word has the literal meaning of happiness, this is the term interchangeably used for post-divorce maintenance. The purpose of this financial assistance after divorce is to help the women come out of the feeling of social disgrace and to build up their confidence and prestige. According to *Shari'ah* maintenance after divorce is one of the rights of women.<sup>182</sup>

#### 3.2.1. Post-Divorce Support (*Mut'at-al-talāq*) and Al-Qur'ān

*Mut'at-al-talāq* is strongly rooted in the heavenly scripture, as clearly mentioned in the following Qur'anic verses:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُ وَعَلَى الْمُقْتِرِ قَدَرَهُ  
مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُخْسِنِينَ (البقرة: 236)

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<sup>181</sup> Ibid.

<sup>182</sup> Shabūn, *Sharh Mudawwanah al-Ahwāl al-Shakhsyah al-Maghribiyah*. 215.

There is no blame on you if you divorce women before consummation or the fixation of their dowry; but bestow on them *Mut'at-al-ṭalāq*, the wealthy according to his means and the poor according to his means; (such *Mut'at* of a reasonable amount is due from those who wish to do the right thing (i.e. *Mut'at-al-ṭalāq*).<sup>183</sup> (2:236)

وَالْمُطَلَّاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ (البقرة: 241)

“And for divorced women is a suitable *Mut'at*. This is a duty on the righteous.”(2:241)<sup>184</sup>

يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ إِن كُنْتُمْ تُرِيدْنَ الْحَيَاةَ الدُّنْيَا فَرَغْتِ لَكُمْ مِمَّا فَرَّغْتُمْ وَأَسْرَحْتُمْ سَرَاحًا جَمِيلًا (الأحزاب: 28)

The Allah Almighty says; “O, Prophet, say to your wives: if you desire the life of this world and its glitter, then come! I will make a provision for you and set you free in a handsome manner (i.e. divorce you all).” (33:28)<sup>185</sup>

In another place in the *Al-Qur'ān*, Allah Almighty says;

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمِنْهُنَّ وَسْرَحُوهُنَّ سَرَاحًا جَمِيلًا (الأحزاب: 49)

“O you who believe! When you marry believing women and then divorce them before you touched them, no prescribed waiting period should be imposed on them, but grant them the *Mut'at* and set them free in a handsome manner.”(33:49)<sup>186</sup>

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<sup>183</sup> English translation by Usmani.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

### 3.3. *Muta't ul Talāq and The Commentaries of Al-Qur'ān*

The commentaries of the *Al-Qur'ān* are notably same, not only in term of sense and main concept but also on the explanation in many occasions in different commentaries the language and vocabulary used are also same.

#### 3.3.1 *Muḥammad b. Jarīr al-Ṭabarī's Opinion*

Imam *al-Ṭabarī* oldest commentator of *Al-Qur'ān*, in his commentary, strongly advocated and endorsed the women's right in *Mut'at*. He believed that the payment of *Mut'at-al-ṭalāq* to a divorced women is obligatory to a husband by virtue of the '*Al-Qur'ān* ic verses<sup>187</sup> and he also strongly defended the same belief. In his commentary on the present topic he reported the diverse opinions of jurist on this matter, and after discussing the opinions of them in detail he said, "according to my belief the arguments of those who say that post-divorce *Mut'at* is mandatory is for all divorced women, represents the truth among all of the above jurists' as Allah has said the same in the holly book: 'For all divorced women *Mut'at* as a duty on the *muttaqīn*."<sup>188</sup>

Imam *Al-Ṭabarī* unlike many other jurists was authoritative jurists who just did not retell what had been reported previously but also narrates his independent opinion up to his best intellect, rationale and faith and even sometimes he is uncompromising and un

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<sup>187</sup> *Al-Ṭabarī* Mohammad b. Jarīr, *Jāmi'al-bayān 'a ta'wīl āy Al-Qur'ān*, *Tahqīq* Aḥmad Shākīr, vol.2 (Mu'assasat al-Risālah: 2000), 80.

<sup>188</sup> *Ibid*.

convincing on the arguments of his opponents and disapprove them with solid words.<sup>189</sup>

He was quoted in his *Tafsīr* as saying:

“that his conviction on the same topic is that the post-divorce *Mut‘at* is an obligatory payment on the husband who divorced his wife, and he is bound to pay the amount of her *Mut‘at-al-ṭalāq* in the manner similar as he has to pay the due dower, and he will never be exonerated from such obligation until he pays her or her proxies or heirs, and that *Mut‘at-al-ṭalāq* is like other debts that are due, and the husband is subject to incarceration of those debts and even his property can be sold for the purpose of paying her post-divorce due *Mut‘at* to his wife.”<sup>190</sup>

### 3.3.2. *Muḥammad b. Aḥmad al-Qurṭubī's* Opinion

Mohammad b Ahmed *al-Ansārī al-Qurṭubī* a known *mufasīr*, was disciple of a Maliki School of Jurisprudence, but on the issue of maintenance he has given his independent opinion, different from other fetters of the Maliki School. According to *Imam Malik*, the post-divorce *Mut‘at* is not obligatory but to a certain extent is recommendable only. *Al Qurṭubī* had his own thought about the matter and did not endorse *Imām Mālik* on the particular matter.<sup>191</sup>

*Al-Qurṭubī* quoted *Abdullah ibn Omar*, ‘*Alī ibn Abi Ṭālib*, *Sa‘īd ibn Jubair*’, and other prominent scholars of the successors who told that the *Mut‘at-al-ṭalāq* is obligatory and

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<sup>189</sup> Ibid.

<sup>190</sup> Jarīr, *ḥāmi’ al-bayān ‘an ta’wīl āy Al-Qur’ān*, 80.

<sup>191</sup> *Al-Qurṭubī, al-ḥāmi’ li aḥkām Al-Qur’ān*, vol.3, 3<sup>rd</sup> ed. (Berlut: Dār-al-Kitāb al-‘Arabī: 1999), 200.

it came in the form of a command and therefore is a binding rule (*wājib*) and those successors hold that opinion very strongly.<sup>192</sup>

### ***3.3.3. Ismail b. Umar b. Kathīr's Opinion***

*Abū al-Fidā' Ismail ibn Kathīr* added a few very significant points in his famous *Tafsīr*.

At first, he defined the term *Mut'at-al-ṭalāq* and said that:

*"Mut'at is the is something what the husband paid to his divorced wife, according to his means of income, to compensate the loss of the wife what she has observed after divorce."*<sup>193</sup>

Then, he quoted *Abdullah ibn 'Abbās* he has determined the amount of *Mut'at-al-ṭalāq* for a divorced wife, saying,

*"If the husband is well off, and has good mean of income he should compensate his divorced wife according to his means and can provide her with a servant or the like, but if he is of limited resources and cannot afford the same then he should provide her with four pieces of clothing."*

<sup>194</sup>

He defined the clothing by quoting a *Shābī e Rasool*, one of the successor jurists, who determined the amount of *Mut'at al-talaaq* as "a vest, a head scarf, a blanket, and a

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<sup>192</sup> Ibid. 201.

<sup>193</sup> Booth, Charlotte. *In Bed with the Ancient Egyptians*. Amberley Publishing Limited, 2015.

<sup>194</sup> Ibid.

dress.” And further he elaborated the same that it should be kept in mind “that in our present time women need at least two sets of each item.”<sup>195</sup>

### 3.3.4. *Muḥammad b. Umar b. al-Ḥussāin al-Rāzī's* Opinion

*Imām al-Fakhr al-Rāzī* also favored of the opinion of the jurists who argued that the ruling of *Mut‘at-al-ṭalāq* is appropriately mandatory and is not an optional matter. According to his understanding, both *Imām Abū Ḥanīfa* and *Imam al-Shāfi‘* support the opinion “that *Mut‘at-al-ṭalāq* is obligatory on the husband.”<sup>196</sup> His explanation on verse 2:236 could sum up his inclination to consider divorced women into three categories:

- Those Women “who are divorced before the fixation of dower and consummation of marriages. For them the ruling is that the *Mut‘at* is mandatory on their divorcing husbands.”<sup>197</sup>

Those Women “who got the divorce after their dower has been fixed but before the consummation of marriages. For them there is no *Mut‘at*, but they are only entitled to 50 percent of the dower fixed before.”<sup>198</sup>

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<sup>195</sup> Ibid.

<sup>196</sup> Al-Rāzī, *Tafsīr al-Kabīr*, vol.5 (Berlut: Dar-al-Fikr: 1995), 150.

<sup>197</sup> Al-Rāzī, *Tafsīr al-Kabīr*, 151.

<sup>198</sup> Shahid, Ayesha. "For the Sake of Justice: Protecting Divorced Women's Rights in Pakistan by Re-Examining the Sharia Principle of Mutat (Post-Divorce Maintenance)." *J. Islamic St. Prac. Int'l L.* 6 (2010): 40.

Those Women who are divorced after the fixation of their dowries and their marriages are also consumed. For them the ruling of *Mut'at-al-ṭalāq* is obligatory to their divorcing husbands.<sup>199</sup>

Further he analyzed the quote of Abdullah ibn Omar as saying that *Mut'at-al-ṭalāq* is set for all divorced women. And he did not be uncertain to support his argument by the same points made by *al-Qurṭubī*, then added that the preposition letter of the holly verse '*Alā* in Arabic indicates "that the matter in question is neither optional nor recommendable, but rather is obligatory on its part."<sup>200</sup>

### 3.4. Assessment of Post-Divorce Financial Support

It is very important to note that our predecessors jurists worked on the same exclusively any left us with only limited legacy on the subject of assessment of post-divorce financial support for a divorced women, as almost every matter regarding post-divorce financial support of a women is reported by the very nearer "companions of the Holly Prophet, such as '*Abbās and al-Ḥasan ibn 'Alī*."<sup>201</sup>

*Abdullah ibn Abbas* was reported that the post-divorce financial support for women vary from case to case, a women could be entitled to slave man or women even if she was married to a wealthy man, who has the resources to provide her with the same and "that

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<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Muḥammad Ādam El Sheikh, *Post-Divorce Financial Support from the Islamic Perspective (Mut'at-al-ṭalāq)*, (Herndon, VA 20170 USA: International Institute of Islamic Thought).



a woman who was married to a man of low income would be entitled for three or four pieces of clothing."<sup>202</sup>

*Dr. Wahbah al-Zuhayli*, in his famous book<sup>203</sup> discussed the opinions of highly regarded jurists on a matter in detail and come to the conclusion that the issue is totally dependent on the social status of the couple.<sup>204</sup>

If the couple belong to the regarded class of the society, than obviously the divorcee shall be entitled to more than clothing and she can even be granted to a servant (slave), and if the couple belong to the low social class and has limited income, than the divorcee women shall be entitled to anything affordable to their status and income and it could be a piece of clothing if is of very low social status, hence the grant of maintenance to divorced wife would be according to the social and financial background of the husband.<sup>205</sup>

Al-Zuhayli holds the opinion of the famous *Īmā*, *Imam Abū Ḥanīfa*, *Imam Mālik*, and *Imām Shāfiʿī* on the matter of assessment of post-divorce financial support and he also told it is the discretion of the trial judge to determine or asses the amount of financial support keeping in view the social status of the man. And he also is very clear on the

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<sup>202</sup> Ibid.

<sup>203</sup> Al-Zuhayli, Wahbah. "al-Fiqh al-Islāmī wa Adillatuhu." *Dār al-Fikr, Damascus* 6 (1989): 756.

<sup>204</sup> Wahbah al Zuhayli, *al-Fiqh al-Islāmī wa Adillatuhu*, vol.7 (Damascus: Dar-al-Fikr,1989), 320-321.

<sup>205</sup> Ibid.

point that ceiling of the post-divorce financial is not possible in any case as the absoluteness of the matter is directly derived from the *Al-Qur'ān*.<sup>206</sup>

The strongest proof on the assessment of post-divorce financial support is the famous *ḥadīth* of Abdullah ibn Abbas, as he has reported from the holly Prophet that “the highest type of post-divorce support is to provide the divorced wife with a servant, the second is to provide her with sustenance or daily living, and the lowest of all is to clothe her.”<sup>207</sup>

*Ibn Kathīr* mentioned the *Ḥādīth* of *Ibn e Abbas* in his book and also made two very important points which were significant and a step forward in determining post-divorce financial support, and his finding were that the post-divorce financial support could be in variety and in cash; he also made a point after analyzing the rules of the matter mentioned in *Al-Qur'ān* and *Sunnah* and stated his findings according to the modern time as if the woman was wedded to a husband of good means who is able to provide him a servant after divorce who would serve her and her dependents for the rest of her life and be inherited by her children after her death, then keeping in mind the need of present time we can easily presume that “a divorced woman whose husband is wealthy should be entitled to no less than a house to shelter her and her dependents for the rest of her life and be inherited by her children after her death.”<sup>208</sup>

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<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibn Kathīr Abū al-Fidā', *Tafsīr al-Qur'ān al-'azīm* vol.1 (Dar al-Faiḥā' Library), 387.

In the process of determining the financial support, it should not be disregarded “the financial contribution made by the divorced woman to the household.”<sup>209</sup>

Socio-economical system of life in western world, which also includes few Muslim communities in it, there system, is based on family cooperation. Usually, both the spouses work in majority casa and share burden of the house. Most of the time the spouse used to keep the join bank account and share the burden of life holds in even manner. And in case if the marital life of the spouse ends for any the reason the principle is the subject of communal division of all the real and personal assets of the family.<sup>210</sup>

### **3.5. ARGUMENTS FOR COMPARATIVE STUDY ON MAINTENANCE OF WIFE AFTER DIVORCE**

Cultural and social practices of the Muslims of Pakistan and India are somewhat parallel. As both countries remained the part of a same unit hence share many similarities. The minorities of both sides also share various resemblances and have a long history of cultural sharing. Pakistan is an Islamic Republic where Muslims are majority but Indian Muslims are minority. The Muslims of India despite being a minority in their country have a population nearly equal to the total population of Pakistan. It is generally presumed that Muslim community of India, being a part of a diverse culture,

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<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

are more liberal as compared to that of Pakistan.<sup>211</sup> The said moderation in Indian Muslims is most probably owing to the fact that Muslims are a minority in India and they do not have much freedom to practice all their rituals freely. Being a part of diverse religious, cultural and social systems they have compromised on a few things. On the other hand Pakistan is an Independent Islamic state, founded under the vision to get freedom to practice their religion and also to provide a free environment to the minorities too. *Quaid Azam Muhammad Ali Jinnah* the founder of Pakistan was himself a moderate Muslim and laid the foundation of a moderate state. Though later Pakistan's moderate face was badly affected by Afghan war an influence of Taliban, yet the nation is again uniting itself under unanimous political and military leadership to get rid of militant groups and get back the soft image of the country.<sup>212</sup>

Unfortunately despite being an Islamic state Pakistan has not done much for improving their legal system in the perspective of Islamic Law. The law once formulated and later adopted by Pakistan fulfills many of the requirements. But the need of improvement never vanishes as in our particular instance the maintenance after divorce is a considerable social problem and if not considered seriously may lead to a various social evils. In India the famous Shah Bano case was a break-through in changing the life of Indian Muslim women. Judicial system of India took guidance from Islamic Law and they successfully figured out that Islamic Law does not deprive women from the right of

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<sup>211</sup> Tinker, Hugh. *South Asia: a short history*. University of Hawaii Press, 1990.

<sup>212</sup> Crabtree, Sara Ashencaen, Fatima Husain, and Basia Spalek. *Islam and social work: debating values, transforming practice*. Policy Press, 2014.

maintenance after divorce. Similar to that of Pakistan various Sharī'ah s do not have any ruling regarding provision of maintenance after divorce.<sup>213</sup> The reason behind could be that Islamic Law encourages remarriage of the divorced women unlike various other religions. Therefore after termination of *'Iddat* Muslim men do not pay any maintenance to their divorced wives, and responsibility of the maintenance is temporarily shifted to parents, bothers or grown children of the women and after remarriage the new husband takes this responsibility.<sup>214</sup> The Muslims of subcontinent have shared a long cultural history with Hindus and therefore they are usually reluctant in remarriage of a divorced woman. And this cultural issue is playing an important role in the need for maintenance after divorce. In Pakistan there is a dire need for judicious reforms regarding maintenance after divorce.<sup>215</sup>

### **3.6. LEGAL DEVELOPMENTS IN PAKISTANI MAINTENANCE LAW:**

The legal developments in maintenance laws of Pakistan generally deal with various interpretations of these laws by the higher courts of country. Pakistan's family law has experienced a few changes. Some of the changes suggested by 1956 commission were employed through MFLO 1961.<sup>216</sup>

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<sup>213</sup> Vehapi, Flamur. *"Conflict Resolution in Islam: Document Review of the Early Sources."* (2013).

<sup>214</sup> Kumar, Hajira. *Status of Muslim Women in India*. Aakar Books, 2002.

<sup>215</sup> Jeffery, Patricia, and Amrita Basu, eds. *appropriating gender: Women's activism and politicized religion in South Asia*. Routledge, 2012.

<sup>216</sup> Redding, Jeffrey A. *"Constitutionalizing Islam: Theory and Pakistan."* *Va. J. Int'l L.* 44 (2003): 759.

### 3.6.1. Maintenance and MFLO 1961

For maintenance related cases Pakistani legal system takes guidance from the customary Muslim family law. Advancement in Pakistan's family law was in the form of MFLO 1961. MFLO 1961 was not welcomed by the religious scholars as they found it contradictory of Shari'ah.<sup>217</sup> Despite a lack of acceptance and appreciation towards MFLO 1961, there was no significant opposition because of military rule in the country. As the martial law was left scholars with differing opinion started efforts to cancel out the MFLO. A bill against MFLO was introduced in the parliament but it not approved by the majority. Later the government of that time through the first amendment in 1962 constitution excluded the MFLO from review of the courts. This protection of the MFLO still continues under the article 8(3) of the constitution of 1973.<sup>218</sup>

MFLO 1961 was formulated to ensure that women's rights are protected. It also helped in settlement of family disputes through negotiation. The married partners were provided with the grounds and time to resolve their problems and avoid divorce.

According to Pearl:

Realizing the popular feeling that would be aroused against him if there was changes in their traditional way of life of the peasants and the town dwellers, Ayub linked his

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<sup>217</sup> Khurshid, Ayesha. "A Transnational Community of Pakistani Muslim Women: Narratives of Rights, Honor, and Wisdom in a Women's Education Project." *Anthropology & Education Quarterly* 43, no. 3 (2012): 235-252.

<sup>218</sup> [http://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20\(Article\).pdf](http://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20(Article).pdf), last visited 05.09.2015

reforms of the family law to the twin concepts both of them near to his heart of local administration and arbitral conciliation. The ex-peasant had confidence in the ability of locally elected. Men to understand the problems of their immediate community, and he saw no reason why the local leaders which he had created by the basic order, ought not to be provided with judicial functions on issues of family discord.<sup>219</sup>

It is largely recognized that with the interference of elders differences may be resolved while taking the issues to court may lead to publicize the personal matters. Family settlements may help the partners from future bitterness that may result from court based issues and it can also help in decreasing burden of the civil courts. MFLO 1961 was formulated to ensure the protection of women rights though there is only a little about the post-divorce maintenance.<sup>220</sup> Section 5 directs that every marriage under Shari'ah must be registered and the negligence made in this regard would be considered equivalent to an offence. *Moulaan Mohdoodi* also favored the registration of marriages. Section 6 of MFLO is regarding polygamy and it is stated that the person before marrying again must take permission from his wife or wives and also from the arbitration council. The noncompliance to this section May lead to an imprisonment of up to one year or fine of rupees up to five thousand or both. The man may have to pay the entire unpaid dower of his wife or wives.<sup>221</sup>

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<sup>219</sup> <http://www.manupatrafast.com/>, last visited 05.09.2015

<sup>220</sup> Ibid

<sup>221</sup> Haider, Nadya. "Islamic Legal Reform: The Case of Pakistan and Family Law." *Yale JL & Feminism* 12 (2000): 287.

The MFLO 1961 tries to resolve the issue and save the relation. After pronouncement of divorce it is suspended for ninety days during this period chairman makes attempts to resolve the issue and reconcile between partners. If the reconciliation efforts are not successful the divorce becomes effective. However MFLO 1961 remains silent on this aspect therefore the judiciary made different interpretations of section 7 in different scenarios.<sup>222</sup>

In the former line of cases, led by *Ali Nawaz Gardezi v. Mohammad*<sup>223</sup> Yusuf the court held that notice of divorce is obligatory. Though, in *Mirza Qamar Raza v. Mst. Tahira*<sup>224</sup> Begum the court figured out that section 7 of the MFLO 1961 is revolting to the rulings of Islamic Law in 1990, it became the ground for high court's decision in *Allah Baksh v. Khurshid Bibi*<sup>225</sup> that the divorce pronounced three times in a sitting is fully effective. In *Allah Dad v. Mukhtar and others*<sup>226</sup>, the *shāri'at* appellate bench of the Supreme Court held that notice of divorce to a chairman is not obligatory. In, *Mst. Kaneez Fatima v. Wali Muhammad*<sup>227</sup> and other the Supreme Court concluded that if divorce takes place with the mutual understanding of both parties then notifying chairman is nothing but a formality. The mentioned examples from section 7 of MFLO 1961 show reluctance of our judicial system in considering *Ṭalāq-al-bid'a* against the rules of Islamic Law. It indicated that our law is not showing kindness to women in cases

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<sup>222</sup> Ibid.

<sup>223</sup> *Ali Nawaz Gardezi v. Mohammad* (PLD 1963-SC-51).

<sup>224</sup> *Mirza Qamar Raza v. Mst. Tahira* PLD 1988 Kar.169.

<sup>225</sup> *Allah Baksh v. Khurshid Bibi* PLD 1967 SC 97.

<sup>226</sup> *Allah Dad v. Mukhtar* 1992 S.C.M.R. 1273.

<sup>227</sup> *Mst. Kaneez Fatima v. Wali Muhammad* PLD 1993 SC 901.



of divorce. MFLO 1961 is followed by the judicial system not as a source of comfort for women but merely a liberal sarcasm.<sup>228</sup>

### 3.7. RIGHTS OF MAINTENANCE IN INDIAN JURISPRUDENCE

#### 3.7.1. SHAH BANO TO SHAMIM BANO - Thirty Years of Judicial Intervention and Interpretation

Here is a brief discussion on beneficial interpretation on Muslim's women right of maintenance by Judicial Consensus.<sup>229</sup>

We will analyze the major decision of Supreme Court in Shah Bano case, the enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986 and the verdicts of several other High Courts on the enactment of the statute passed in 1986. And the Supreme Court's latest view in Shamim Bano v. Asraf Khan<sup>230</sup> pronounced on 16 April, 2014 and Shamima Farooqui vs Sahid Khan<sup>231</sup> pronounced on 6th April, 2015.<sup>232</sup>

Mr. Muhammad Hidayatullah in his book principles of Mulla's Mohammedan Law states that *Al-Qur'ān* Holy book of Muslims is *Al-furqān* and the meaning of *Al-furqān* is 'that is one showing or directing to the truth from falsehood and right hood from

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<sup>228</sup> Haider, Nadya. "Islamic Legal Reform: The Case of Pakistan and Family Law." *Yale JL & Feminism* 12 (2000): 287.

<sup>229</sup> Flavia Agnes, *Family Law: Marriage, Divorce, and Matrimonial Litigation* (Oxford: Oxford University Press, 2011), 123.

<sup>230</sup> <http://indiankanoon.org/doc/41104432/>, last visited on 11.10.2015

<sup>231</sup> <https://legalbloc.com/shamima-farooqui-v-shahid-khan-criminal-appeal-nos-564-565-of-2015-arising-out-of-slp-crl-nos-6380-6381-of-2014/>, last visited on 11.10.2015

<sup>232</sup> Agnes, *Family Law: Marriage, Divorce, and Matrimonial Litigation*, 123.

wrong.<sup>233</sup> This benevolent philosophy of Mohammedan law have been referred by Supreme Court while reasoning its judgments in favor of rights of Muslim women in Shah Bano Begum (1984)<sup>234</sup>, Danial Latifi (2001)<sup>235</sup> and the High Court of Bombay in the Karim Abdul Rehman Shaik Vs Shehnaz Karim Shaikh case (2000).<sup>236</sup>

The Courts while interpreting the cases, kept in view the Historic School of thought of Islamic Law. In a democratic system, the legislature uses its power and sets out its intent by passing of bill by majority members of parliament the Act of 1986 was passed. The Supreme Court in Shah Bano Begum (1984)<sup>237</sup> along with several High Courts by deciding such and such cases puts a realistic approach and gives a path way to law on the issue. The Constitution of India, its values and intentions have guided the courts through patches of political turmoil and religious uncertainty.<sup>238</sup>

### **3.7.2. 'Iddat and Muslim Women's Right to Maintenance:**

Muslim marriage is defined to be a contract with an object of reproduction and legalizing of children.<sup>239</sup> 'Iddat according to Muslim jurists is the period during which a

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<sup>233</sup>Rakesh Kumar sing, *Text Book on Muslim Law*. 2<sup>nd</sup> ed. (New Delhi: Universal law publishing, 2015), 218.

<sup>234</sup> Mohd. Ahmed Khan v. Shah Bano, 1985 SCR (3) 844.

<sup>235</sup> *Danial Latifi & Anr. Vs. Union of India*, SCC 740.

<sup>236</sup> Karim Abdul Rehman Shaik Vs Shehnaz Karim Shaikh, 2000 (5) BomCR 758, 2000 CriLJ 3560, II (2000) DMC 634

<sup>237</sup> Mohd. Ahmed Khan v. Shah Bano, 1985 SCR (3) 844.

<sup>238</sup> [http://commonlawchambers.com/newsread.php?\\_newsid=106](http://commonlawchambers.com/newsread.php?_newsid=106), last visited on 10.10.2015

<sup>239</sup> Islam, Md Zahidul. "INTERFAITH MARRIAGE IN ISLAM AND PRESENT SITUATION." *Global Journal of Politics and Law Research* 2, no. 1 (2014): 36-47.

woman is bound to remain in seclusion or refrain from marrying any other person in the event if she is divorced or her marriage is dissolved.<sup>240</sup>

*'Iddat* period comprise three lunar months or three menstrual cycles to ensure that the woman is not on the family way from her ex-marriage. Even in the case the husband is died, she is bound to observe the *'Iddat*.<sup>241</sup>

The Judiciary in religious justice, when Mohd Khan appealed before the Supreme Court in Mohd Ahmed Khan Vs Shah Bano Begum (AIR (1985) SC 945). The major questions that came up for considerations were can Section 125 of the Cr.PC apply to Muslim women? If yes, than the court can decide to provide maintenance to Muslim women beyond the *'Iddat* period?<sup>242</sup>

The Court was tilted in favor of Shah Bano adopted the philosophy of universal justice and equality that section 125 or the other section 488 in the old Criminal Procedure Code of India embodies. The court further observed that the principle of maintenance is universal justice and equality and 'is applicable to every citizen of the country no matter what religion they belong to or there is no relation of personal law of the parties in the matter.<sup>243</sup>

"The Court said that limiting the maintenance period to *'Iddat* period as found in *Mulla* and similar books, are insufficient to set up the scheme that the Muslim husband is not

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<sup>240</sup> D.F. Mulla, *Principles of Muhammadan law* 1st ed. (Lahore: Al-Qanoon Publishers, 2009), 210.

<sup>241</sup> Ibid

<sup>242</sup> Agnes, *Family Law: Marriage, Divorce, and Matrimonial Litigation*, 123.

<sup>243</sup> Diwan, Paras, and Peeyushi Diwan. *Human Rights and the Law: universal and Indian*. Deep and Deep Publications, 1996.

bound or under a compulsion to make the maintenance available for his divorced wife, who is not able to uphold herself. 'The learned bench looked at interpretations of the *Al-Qur'ān* and stated in para 25 of the judgment that the *ayāts* undoubtedly impose an 'obligation on the Muslim husband to make provision food and living for the divorced wife.' The learned Bench examined the decision that merely paying *Mehr* does not release a Muslim husband from his duties to pay periodic maintenance to the divorced wife.<sup>244</sup>

Justice Krishna Iyer particularly in *Bai Tahira*<sup>245</sup> relied on 'the teleological and conventional method of interpretation and explanation to progress the sole purpose of law. These are the constructive techniques which have been used in the interpretation of statutes to address the problems of the suffering sections of the society.' The learned bench comes on the conclusion that there is no escape for a Muslim husband not to maintain his divorced wife and "a divorced Muslim wife is entitled to apply for maintenance from his divorcing husband," under Section 125. *Mehr* is not enough 'Thus the maintenance amount should be paid even beyond *Iddat* period and a reasonable amount of maintenance must be paid under Section 125 Cr.PC The learned bench dismissed the appeal imposing a cost of Rs.10,000 / - on Shah Bano Begum's husband way back in 1985.<sup>246</sup>

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<sup>244</sup> Ibid.

<sup>245</sup> *Bai Tahira A vs Ali Hussain Fissalli Chothia*, 1979 AIR 362, 1979 SCR (2)75.

<sup>246</sup> Mody, Nawaz B. "The press in India: the Shah Bano judgment and its aftermath." *Asian survey* (1987): 935-953.

Honorable judiciary started the interpretation of provisions of the Act in special instructions and directions, but the Act seems imprecise, unclear and ambiguous.

### **3.8. Muslim Women (Protection of Rights on Divorce) Act 1986 and All India Muslim Personal Law Board**

The enactment of the Act of 1986 is a sign of the supremacy of the legislature (Parliament) in enacting laws and determining rights of its citizens. The Orthodox sections of the Muslim society in India, represented by organization All India Muslim Personal Law Board took the judgments as a hostile invasion into their personal laws<sup>247</sup> and pressurized the Government to consider their demands and invalidate the Shah Bano's judgment.<sup>248</sup>

The Act of 1986 demonstrates that Muslim customs and usages are equally sacred as other religions practiced in India. To this effect, the Muslim Women (Protection of Rights on Divorce) Act 1986 was passed out with the 2/3rd's majority of the Parliament. It was criticized by several political groups. But several courts imbibing the spirit of positivist school of jurisprudence started relying on the legislative intent and sections of the Act of 1986 for their decisions on the matter.<sup>249</sup>

In Allar Vs Pathu, The Hon'ble Kerela High Court held under Section 3, the former husband is liable according to the law "for the payment of maintenance for the *Iddat*

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<sup>247</sup> All India Muslim Personal Board, <http://aimplboard.in/index.php?language=english>

<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

period and also to make reasonable and fair provision for the post-*Iddat* period. If in spite of reasonable and fair provision made for the post-*Iddat* period, she faces destitution, Section 4 comes to rescue her.”<sup>250</sup> The maintenance should show the way to a narrow and technical interpretation of Section 3.

In *Usman Khan Bahmani Vs Fathimunisa Begum* AIR (1990) AP 225<sup>251</sup>, the Court restated the contents of the Act of 1986 and dismissed the reading of *Shah Bano Begum* Case in para 27<sup>252</sup> stating maintenance may be payable only for the period of *Iddat* of a Muslim woman. Further The Court stated that to extend the liability of a Muslim husband post to *Iddat* period is not logical as well is “clearly not sustainable in the light of the principles of *Mahomedan* law and under the provisions of Section 3 of the Act of 1986.”<sup>253</sup>

“The Court once again stated that the contents of *Mulla's Principles of Mahomedan Law* on *Iddat* were consciously not relied on by the Supreme Court in the case of *Shah Bano Begum*. The Hon'ble Court held that there is an agreement on the opinion among all the renowned authors on Muslim Law.”<sup>254</sup>

Article 141, of the constitution of India states as; “The law declared by the Supreme Court of India shall be binding on all courts within the Indian territory.” The said article stands weak with the enactment of Act of 1986. The High Courts were no longer

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<sup>250</sup> Ibid.

<sup>251</sup> *Usman Khan Bahmani Vs Fathimunisa Begum* AIR (1990) AP 225.

<sup>252</sup> *Mohd. Ahmed Khan v. Shah Bano*, 1985 SCR (3) 844, para 27.

<sup>253</sup> Singh, Ram. “Family Law under Stress and Judicial Perceptions.” *Int'l Surv. Fam. L.* (1995): 237.

<sup>254</sup> Ibid.

bound to look at the precedent set by the Supreme Court which was reversed by stroke of an enactment.<sup>255</sup>

Along with positive trends of High Courts to follow the Act of 1986, some High Courts took a view contrary to trends of other High Courts. A Full Bench of Punjab and Haryana High Court in *Kaka v. Hassan Bano* and other<sup>256</sup> have held that the provisions of Act of 1986 cannot dissolve the vested benefit of the section 125 of the Code. And the court stated that the claim of maintenance of a divorced Muslim Wife necessarily need not be restricted only to the '*Iddat* period. According to the Court husband is duty bound by law to show that "within the '*Iddat* period, he has provided, prepared and remunerated rational and fair provision and maintenance to the wife which is a sufficient stipulation for her life or till she decides to remarries."<sup>257</sup>

In *Ali v. Sufaira*, 1988 (3) DMC 147<sup>258</sup> A learned Single Judge of Kerala High Court has also held that a divorced Muslim wife is not only entitled to maintenance from her ex-husband for the period of '*Iddat* but is also entitled to a reasonable and fair provision for the future.<sup>259</sup>

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<sup>255</sup> Ibid.

<sup>256</sup> *Kaka v. Hassan Bano* another 1998 (2) DMC 85.

<sup>257</sup> [http://commonlawchambers.com/newsread.php?\\_newsid=106](http://commonlawchambers.com/newsread.php?_newsid=106), last visited on 10.10.2015

<sup>258</sup> *Ali v. Sufaira*, 1988 (3) DMC 147.

<sup>259</sup> Ibid.

In Arab Ahmadhia Abdulla v. Arab Bail Mohmuna Saiyadbhai ors., MANU / GJ / 0093/1988 :. AIR1988 Guj141<sup>260</sup>, the learned Single Judge of Gujarat High Court held in his decision that

A divorced Muslim women is allowed to maintenance to meet her future needs and the scope of maintenance cannot be limited only up to *Iddat* period only. He further held that the Muslim woman can demand her claims either under the personal law or under general law i.e. section 125 to section 128 of the Criminal procedure Code. He also ruled that the orders passed by any competent authority, the Magistrate under section 125 of the Code are valid and cannot be nullified on coming into force in the favor of Muslim Women Act.<sup>261</sup>

In case of K. Zunaideen v. Ameena Begum anr., 1998 (2) DMC 468<sup>262</sup>, the Division Bench of Madras High Court has given a broader construal considering the object of the Act and held that the maintenance is not limited to period of *Iddat* and future livelihood of the women has also to be taken into concern.<sup>263</sup>

The Verdict of re-affirmation and progressive change in Karim Abdul Rehman Shaik Vs Shehnaz Karim Shaikh<sup>264</sup> and Daniel Latifi Vs Union of India.<sup>265</sup>

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<sup>260</sup> Ahmadhia Abdulla v. Arab Bail Mohmuna Saiyadbhai ors., MANU / GJ / 0093/1988 :. AIR1988 Guj141.

<sup>261</sup> Vatuk, Sylvia. "3 The Application of Muslim Personal Law in India." *Adjudicating Family Law in Muslim Courts*(2013): 48.

<sup>262</sup> K. Zunaideen v. Ameena Begum anr., 1998 (2) DMC 468.

<sup>263</sup> [http://commonlawchambers.com/newsread.php?\\_newsid=106](http://commonlawchambers.com/newsread.php?_newsid=106), last visited on 10.10.2015.

<sup>264</sup> Karim Abdul Rehman Shaikh Vs. Shehnaz Karim Shaikh others, BomCR758, 2000 (102 (3) BOMLR105.

<sup>265</sup> *Danial Latifi & Anr. Vs. Union of India*, SCC 740.



In *Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh others* (Full Bench) 2000 (5) BomCR758, 2000 (102 (3) BOMLR105<sup>266</sup>, Justice Ranjana Desai furthered the beneficial purpose of law by expansively interpreting the Muslim personal laws rather than suppressing or modifying the same. In Para 25 the Court observed,

It is necessary to take in consideration the purpose of the statute and so as to read the same keeping in view the purpose and design of the statute to suppress the mischief. We must also not be unconscious of the fact that before us is a piece of helpful legislation and we shall bend over in support of the beneficiaries to help them to get the utmost which this legislation purports to give them. We would be cautious of intervening or overruling the personal law of Muslims, but we shall within its framework and without doing any aggression to it bring together it with the provisions of the Code if lawfully allowed. We shall also keep in mind the fact that our establishment strives to protect and improve the self-esteem of women and therefore laws will have to be interpreted as far as feasible, likely and acceptable with that end in view.<sup>267</sup>

The distinction between the word 'maintenance' and 'provision' was further elaborated by the Supreme Court in *Daniel Latifi Vs Union of India*.<sup>268</sup>

The Hon'ble Bombay High Court observed that if the husband who divorced his wife is not able to manage for such a lump-sum payment he may pay in the form of installments and the Court shall consider granting him installments. Moreover till the husband who divorced his wife makes the reasonable and practical provision, the

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<sup>266</sup> *Karim Abdul Rehman Shaikh Vs. Shehnaz Karim Shaikh others*.

<sup>267</sup> [http://commonlawchambers.com/newsread.php?\\_newsid=106](http://commonlawchambers.com/newsread.php?_newsid=106), last visited on 10.10.2015.

<sup>268</sup> *Danial Latifi & Anr. Vs. Union of India*, SCC 740.

Magistrate may have authority to direct periodical payment to be made to the wife even beyond the *'Iddat* period subject to the fixation of the amount of reasonable and practical provision.

Once the decision was voiced by the Bombay High Court, the advocate of Shah Bano<sup>269</sup> filed a writ petition in the Supreme Court questioning the constitutionality of the Act of 1986 in *Danial Latifi vs Union of India*.<sup>270</sup> A constitutional bench heard the matter and upheld the constitutionality of the Act.

Consequent to this development, in *Khatoon Nisa v. State of UP and OR's* 2002 (6) SCALE 165<sup>271</sup> decided soon after *Danial Latifi's* case, the apex Court upheld the decision in *Danial Latifi v. Union of India* AIR 2001 SC 3958, and decided that a magistrate is entitled to invoke his jurisdiction under Section 125 of the Code of Criminal Procedure (Cr. PC) to grant maintenance in favor of divorced Muslim women.<sup>272</sup>

The Supreme Court subsequently, in the case of *Iqbal Bano v. State of UP and Anr.* AIR 2007 SC 2215<sup>273</sup> decided that proceedings under Section 125 Cr.PC are civil in nature. Even if the Court notices that the question in case there was a divorced woman, the option is open to treat it as a petition under the Muslim Woman (Protection of Rights on Divorce) Act, 1986 considering the beneficial nature of the legislation.

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<sup>269</sup> Mohd. Ahmed Khan v. Shah Bano, 1985 SCR (3) 844.

<sup>270</sup> *Danial Latifi & Anr. Vs. Union of India*, SCC 740.

<sup>271</sup> *Khatoon Nisa v. State of UP and Ors* 2002 (6).

<sup>272</sup> *Danial Latifi*, women's rights... paper presented at the international conference of lawyer on changing scenario of human rights, New Delhi, February 20 and 21, 1993.

<sup>273</sup> *Iqbal Bano v. State of UP and Anr.* AIR 2007 SC 2215.

In *Shamima Farooqui Vs Shahid Khan* wherein a husband sought reduction of maintenance amount by 50% as he has retired was upheld by the High Court. Aggrieved by the said reduction, Shamima Farooqui approached Supreme Court. The Supreme Court held that only because the husband had retired, is no justification to decrease the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. Justice Dipak Misra wrote that husband having sufficient means must maintain his wife under Section 125 of Criminal Procedure Code. The Hon'ble Supreme Court stated that at times, a plea is developed by the husband that he does not have the means to pay the maintenance amount that he does not have a job or his business is not going well. These are only plain excuses and, in fact, they have no adequacy and acceptability in law. If the husband is in good health, able bodied and he is on a point to support himself, he is under the legal obligation to support the wife he divorced, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction.<sup>274</sup>

### **3.9. MUSLIM COUNTRIES OF THE WORLD AND LAWS REGARDING POST DIVORCE MAINTENANCE**

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<sup>274</sup> Maharaj, Jai. "BHARAT BECOMES YET ANOTHER MAJOR VICTIM OF RADICAL SUNNI ISLAM."

Here is the brief review of the Laws regarding post-divorce maintenance of some leading and developing Muslim countries.

### 3.9.1. Bangladesh

The law of maintenance in Bangladesh is a combination of different laws those are codified law, local traditions and Muslim personal law.

The development of law of maintenance in Bangladesh can be divided in three periods

- I. law of maintenance in British Indian period
- II. law of maintenance in Pakistan period
- III. law of maintenance in Bangladeshi period

*Hān'afi* school of thought is also applied in country. For *Hān'afi* women, the right to maintenance is on the whole is very difficult to determine and enforce. As the *Hān'afi* school has not recognized the concept of alimony, payable to the wife for an indefinite period of time. The prevailing point of argument is how the MFLO 1961 is based on *Māliki* laws.<sup>275</sup>

*Hefzur Rehman v. Shamsun Nahar Begum.*<sup>276</sup>

In the case the high court division of the supreme court of Bangladesh addressed the question whether the divorced wife can claim maintenance beyond the period of *'iddah*, by suo motu. The findings of the court on the matter were that the person who divorced

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<sup>275</sup> Tasleema Mansoor, Women's Rights in Islam – Modernising or Outdated – Part Two, <http://thepenwrote.com/womens-rights-islam-modernising-outdated-part-two/> last Visited on 23-10-2015

<sup>276</sup> 51 DLR, HCD.

his wife is bound to maintain her on a reasonable scale beyond the period of *'Iddah* for an indefinite period, and uses the words that; till she loses the status of a divorce by remarrying another person.<sup>277</sup>

### 3.9.2. Syria

In Syria the Syrian personal status law 1953 is follow, whereas in that law the husband is obliged to pay maintenance for the period of *'Iddah* after *Ṭalāq*. Further, “the divorced wife may be awarded compensation of up to three years maintenance, in addition to the maintenance during *'Iddah*, if the judge finds that the husbands exercise of *Ṭalāq* have been arbitrary.”<sup>278</sup>

If the husband does not comply with the law that payment will be debit on him, and under article 54/3 only payment of these debts can settle or discharge the liability.<sup>279</sup>

### 3.9.3. Jordan

In such case the Jordanian Personal Law is followed in Jorden. If the woman is divorced without any legitimate cause, the judge has the discretion to grant the maintenance for not more than a year to the wife.<sup>280</sup> And according to Jordanian laws if the divorce is

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<sup>277</sup> 47 DLR (1995) 54.

<sup>278</sup> Shahid, *Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh*, 195.

<sup>279</sup> Ibid

<sup>280</sup> Gabriel, Sawma, *Islamic Women Divorce Laws in Egypt*, Tuesday, September 20, 2011, New Jersey, United States

made by unilateral will of the husband than court will stipulate *mut'ā tul Ṭalāq*, in addition to the maintenance of the divorced wife.<sup>281</sup>

#### 3.9.4. Malaysia

Malaysia follows federal system where various states have jurisdiction in developing and applying family laws. In Malaysian Islamic Law family law act 1984<sup>282</sup> post-divorce financial support is established on the basis on chapter 2, verse 241 of the Al-Qur'ān. According to the act if the wife is divorced without just cause the wife may apply to the ṣhāria court for *mut'ā* and court after being satisfied, order the husband to pay such sum of *mut'ā* as *hokum e ṣhārai*.<sup>283</sup>

#### 3.9.5. Libya

According to the Libyan laws whoever at fault during the process of divorce, will pay the compensation to the other party.

#### 3.9.6. Egypt

Basically the family legal system is based on the Ḥān'afi School of law. But Egypt also adopted some of the principles of Māliki and Shāfi schools in cases of maintenance and some other matters.<sup>284</sup>

Further in country the maintenance for the divorced wives are deemed a debt against husband from the date he fails to maintain until the debt is paid.<sup>285</sup>

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<sup>281</sup> Ibid.

<sup>282</sup> Laws of Malaysia Act 303, Islamic Family Law (Federal Territory) Act 1984.

<sup>283</sup> Ibid.

<sup>284</sup> Arabi, Oussama. "The Dawning of the Third Millennium on Sharia: Egypt's Law No. 1 of 2000, or Women may Divorce at Will." *Arab Law Quarterly* 16, no. 1 (2001): 2-21.

### 3.9.7. Turkey

The old Turkish Civil Code of 1926 abolished, the Turkish parliament accepted 1030 amendments to Turkey's Civil Code.<sup>286</sup>

Article 41 of the constitution of Turkey states that "the family is the basic unit and foundation of the society and is based on equality between the spouses. The spouse who is deserted without rightful reason is accepted as the injured party in divorce case can demand alimony and damages."<sup>287</sup>

### 3.9.8. Iran

According to Iranian law of marriage the maintenance includes the home, foodstuff, clothes and reasonable household goods. In Iranian law, the duties and rights of the husband are not same. The husband is the head of the house, and has the entire duty of the house. The women have the duty of obedience. If she obeys her husband the husband has duty to maintain her and if husband is not providing her the maintenance she can claim *nafaqa* from the court.<sup>288</sup>

Two articles of the Civil Code of Iran 1199 and 1206 deals with the maintenance.<sup>289</sup>

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<sup>285</sup>Ibid

<sup>286</sup> The new legal status of women in turkey, women for women's human right (WWHR) new ways, April 2002, .3.

<sup>287</sup> Ela, canan, Turkish civil and penal code reforms a gender perspective; the success of two nationwide campaigns; women for women's rights (WWHR) new ways first edition Istanbul, (2005), 40.

<sup>288</sup> Moghadam, "Iran: Development, Revolution and the Problem of Analysis," *The Review of Radical Political Economics* 16 (1984):227-240.

<sup>289</sup> Ibid.

### 3.10. COMPARISON OF POST DIVORCE MAINTENANCE IN WESTERN LAW AND IN THE ISLAMIC LAW (SHARĪ'AH)

It is important to discuss the western perspective of post-divorce maintenance or spousal support. In this way we can evaluate and compare the causes and reasons on the basis of which these maintenance awards after the divorce have been granted in Western Societies by Man-made Law and in Muslim Societies by Sharī'ah principles. Somehow the reason behind the post-divorce maintenance is more or less the same and both the systems recognized the right to get maintenance of woman for her and her children after the divorce. The findings of both laws are based on the principle of self-sufficiency. Not only financial but also mental and physical stability is important and necessary for both the parties. Islamic Law as well as Western laws required from the men, who supposed to be stronger emotionally and physically than a woman, to solace the destitute women by providing her with gift or support, because the women are usually more sensitive and emotionally weak on such matters.

The point of divergence between the Sharī'ah and Western law arises, where the Western law encourages the alimony or the spousal support for the dissatisfied women for permanent tenure, which ends up as an overburden to the male counterpart. On the other hand Islamic Law encourages the men to provide relief to the dissatisfied women till the period of *'Iddah*, so that they can comfort their grief and make themselves able to be recomposed. Further *Sharī'ah* endorses both the spouses to forget the bitter incident of life behind and take a new start by contracting another marriage. So that the family unit



can be strengthen and protection can be given to the women without overburdening anyone. *Sharī'ah* provides the solutions to all the problems whereas the human brain create many problems in order to solve one problem.

Thus it is obvious that Islamic Law or *Sharī'ah* is the only solution to all the problems faced by man in every age and civilization. While exact interpretation of the Injunctions of Islamic Law is needed and must be administered by legal procedure.

## CONCLUSION

The analysis of data that has been used in this research reveals that the concept of maintenance is built in Muslim family laws. Classical Sharī'ah (*Fiqh*) is very clear about that there is no, legally binding, post *'Iddah* maintenance for ex-wife.

Similar to Indian law for Muslim women various other Muslim laws also in general recognize the right of maintenance only during the sustenance of marriage. It is assumed that once the marriage is over either by divorce or death of the partner the right to maintenance from women vanishes. The developments in Indian jurisprudence however protects the right to maintenance of the divorced woman. These developments take guidance from *Al-Qur'ān*, with the enactment of modern Indian law the debate on status of Pakistani and other Muslim laws. The question is whether law should remain as it is or amendments for protection of women's right after divorce should be made.<sup>290</sup>

It is clearly mentioned in Sharī'ah s that the husband is bound to fulfill financial needs of his wife. Now for a better understanding of the rights of a woman in Islamic Law even after divorce can be better understood by understanding rulings of *Al-Qur'ān*. As a matter of general understanding it is expected that woman is husband's liability as far as the marriage is sustained and even about three months after divorce. Later it is expected that the responsibility will be carried by brother or father and they may find another

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<sup>290</sup> Rahim, *Post-Divorce Maintenance for Muslim Women in Pakistan and India*. 196

man to remarry too. But still *Al-Qur'ān* does not abandon man from providing maintenance to women after divorce.<sup>291</sup>

A detailed study of rulings Shari'ah based on *Al-Qur'ān and Sunnah*, Caliphs of Islamic Law reveals that there were no significant cases regarding post-divorce maintenance. Probable reasons could be that remarriage of divorced women was not as difficult as nowadays.<sup>292</sup>

During the Muslim rule in subcontinent no cases of post divorcee maintenance were filed, but in British rule various laws for the betterment of suppressed women were made. Still in India and Pakistan the Muslim law is applicable for Muslim women. Unlike various other cultures the Indian and Pakistani society does not appreciate remarriage of divorced women therefore the need for amendment in this law is recognized in Indian law while suggested by various commissions in Pakistan too. Despite the rising public awareness and focus on post-divorce maintenance at various forums the government has not yet taken any significant steps for rights of divorced women.<sup>293</sup>

The modern Indian jurisprudence provides rights to divorced women while in Islamic Law republic of Pakistan a divorced woman is deprived of her rights. Maintenance after divorce is not just for the women but it will also help protecting her family from the burden of maintaining their divorced daughter. This issue is of great importance as it is

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<sup>291</sup> Ibid.

<sup>292</sup> Ibid. 212.

<sup>293</sup> Nabia, *Aishah beloved of Muhammad*, 22.

not only limited to one or two individuals or their families but it involves the whole society thus serious steps should be taken to deal with this problem.<sup>294</sup>

Divorce is hard reality, the phase of once life difficult to handle with. But the Islamic Law has taught Muslim men and women to end the knot of marriage in respectable manner if seems impossible to live together. In most of the cases women are the most vulnerable in the whole situation of divorce. Keeping the factor on note Sharī'ah has designed such remedies and solutions for the divorced women son that she can prevent herself from depending on others. In Sharī'ah the rights and duties are based on nearness and closeness. The women who divorced his wife could not get services of the same women after the divorce so is not responsible for the maintenance of the divorced wife. But the parents of the divorced girls are responsible to maintain her because of closeness of relationship.

The first problem that arises soon after the divorce is that who will be responsible for that woman, her essential expenses and living hood? This problem can efficiently and successfully be fixed by resorting to the Sharī'ah of share in Inheritance for woman at first instance, as the issue is arises when the women are deprived from their inheritance right.

But the exception always found during the cases as the situation varies from case to case. There must be focus on such cases where the women have left deprived and destitute,

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<sup>294</sup> Ibid.

her best part of life expertise and energy has been spoiled by the husband then keeping in view the circumstance she should be given maintenance as the matter of justice.

Along with every remedy and solution given by Sharī'ah to the divorced women, is the right to remarriage according to the prescribed manner of *Sharī'ah*. A divorced Muslim woman is free to remarry after the period of her *Iddah* according to Sharī'ah.

Thus it is concluded from the facts and findings gathered through the present research that if the rulings of the *Sharī'ah* on the rights and duties of the women are properly administered and followed, then there is no need left to stipulate lifelong maintenance grants for divorced women. And also there is no need to make such laws, which in return damage the honor, self-respect and dignity of the woman.

## RECOMMENDATIONS

In order to safeguard the divorced women the following steps are recommended to be taken.

- A legislation is needed to address this issue in the light of *'Al-Qur'ān* and *Ṣunnāh*, keeping in view the ground realities of Indian Muslim Society.
- As Islamic Law does not provide any maintenance after *'Iddah*, The precedents bounding husbands to provide maintenance even after *'Iddah*, must be discouraged.
- As proposed by Justice Mustafa Kamal, the state should take responsibility of destitute divorced women, in case where their maintenance is not possible from her relatives.
- A speedy legal mechanism should be made that would enable divorced women to obtain maintenance within the shortest possible time.
- An amendment in the section 7 of Muslim family law Ordinance 1961, should be made and the husband should bound to deposit, an amount sufficient for the *'Iddah* period to the Chairman for avoiding litigation.
- The common practice of deferred dower should be discouraged and prompt system should be adopted. Further, the dower must be paid to the wife not to her father. For the dower is purely right of wife.

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## *News paper*

- The telegraph, Calcutta, India, 19.Oct.2013

## Index of Verses of 'Al-Qur'ān

Sr. No.	Verse No.	Şurāh	Page No.
1	<p>"وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ" (البقرة: 233)</p> <p><i>"The mothers shall give suck to their offspring for two whole years, if the father desires, to complete the term. But he shall bear the cost of their food and clothing on equitable terms." (2:233)</i></p>	Al- baqā'rah 233	43
2	<p>"لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَنَرَهُ وَعَلَى الْمَقْتِرِ قَنَرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ" (البقرة: 236)</p> <p><i>"There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means,- a gift of a reasonable amount is due from those who wish to do the right things. (2:236)</i></p>	Al- baqā'rah 236	44, 57, 62 & 69
3	<p>"وَالْمُطَلَّقَاتُ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ" (البقرة: 241)</p> <p><i>"For divorced women maintenance (should be provided)</i></p>	Al- baqā'rah	44 & 70

	<i>on a reasonable (scale). This is a duty on the righteous".</i> <i>(2:241)</i>	241	
4	<p>"الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ" (النساء: 34)</p> <p><i>"Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means". (4:34)</i></p>	Al Nisa 34	44
5	<p>يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا" (الطلاق: 1)</p> <p><i>"Prophet! When ire do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: And fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness. Those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: Thou knowest not if perchance Allah will bring about thereafter some new situation".</i></p>	Al Ṭalāq 1	45
6	"اسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْهِكُمْ وَلَا تَضَارُّوهُنَّ لِيُضْطَبِّقُوا عَلَيْهِنَّ وَإِنْ	Al Ṭalāq	46

	<p>كُنْ أُولَاتٍ حَمْلٌ فَأَتَفَقُوا عَلَيْهِنَ حَتَّى يَضَعْنَ حَمْلَهُنَ فَإِنْ أَرْضَعْنَ لَكُمْ فَاتَوْهَنْ أَجُورَهُنَّ وَأَتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَزْتُمْ فَاسْتَرْضِعْ لَهُ أُخْرَى" (الطلاق: 4)</p> <p><i>(In 'Iddat,) in the same style as ye live, according to your means; annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense; and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf". (65:6)</i></p>	6	
7	<p>"الْيَتَفَقَ دُونَ سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيَتَفَقَ مِمَّا آتَاهُ اللَّهُ لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا" (الطلاق: 7)</p> <p><i>"Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what he has given him. After a difficulty, Allah will soon grant relief". (65:7)</i></p>	Al Talāq 7	46
	<p>"يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعِيَهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا"</p>	Al Ahzab 49	59 & 70

	(الأحزاب: 49)		
	<p><i>"O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release".</i></p>		
8	<p> <i>"وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَغْفِرَ الْوَلِيُّ أَوْ يَغْفِرَ الَّذِي بِيَدِهِ غَفْدَةُ النِّكَاحِ وَأَنْ تَغْفِرُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ"</i> </p> <p><i>"And if ye divorce them before consummation, but after the fixation of a dower for them then the half of the dower (is due to them), unless they remit it. Or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget liberality between yourselves. For Allah sees well all that ye do"</i></p>	<p>Al Baqrah</p> <p>237</p>	60
9	<p><i>"وَالْمُطَلَّقَاتُ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ"</i></p> <p><i>"And for divorced women is a provision according to what is acceptable - a duty upon the righteous."</i></p>	<p>Al-</p> <p>baqā'rah</p> <p>241</p>	61 & 70
10	<p> <i>يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ إِنْ كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأَسَرِّخْكُنَّ سَرَاحًا جَمِيلًا</i> </p> <p>The Allah Almighty says; "O, Prophet, say to your wives:</p>	<p>Al-ahzab</p> <p>28</p>	70

	if you desire the life of this world and its glitter, then come! I will make a provision for you and set you free in a handsome manner (i.e. divorce you all)." (33:28)		
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### *Index of the Ḥādith of Holly Prophet (S.A. W)*

Sr. No.	Ḥādith	Book	Page No.
1	Jabir ibn Abdullah reported: The Messenger of Allah, peace and blessings be upon him, said, "Fear Allah regarding women. Verily, you have taken them as a trust from Allah, and intercourse has been made permissible by the word of Allah. Your rights over them are that they do not let anyone in the house you dislike. If they do so, then you may strike them without causing pain. Their rights over you are that you provide for them and clothe them in a reasonable manner."	Al-Bayhaqi 8849	47
2	One the Authority of Sulaiman bin Amr bin Ahwas It is narrated that he said: " "عن سليمان بن عمرو بن الأحوص حدثني أبي أنه شهد حجة الوداع مع رسول الله صلى الله عليه وسلم . فحمد الله وأثنى عليه ونكر ووعظ ثم قال )	Ibn e Maja Vol.3, Book 9,	47

استوصوا بالنساء خيرا فإنهن عندكم عوان . ليس تملكون منهن شيئا غير ذلك . إلا أن يأتين بفاحشة مبينة . فإن فعلن فاهجروهن في المضاجع واضربوهن ضربا غير مبرح . فإن أظعنكم فلا تبغوا عليهن سبيلا . إن لكم من نساءكم حقا ولنساءكم عليكم حقا . فاما حقكم على نساءكم فلا يوطئن فرشكم من تكرهون . ولا يأذن في بيوتكم لمن تكرهون . ألا وحقهن عليكم أن تحسنوا إليهن في كسوتهن وطعامهن )"

This Hādhith means;

"My father told me that he was present at the Farewell Pilgrimage with the Messenger of Allah. He praised and glorified Allah, and reminded and exhorted (the people). Then he said: 'I enjoin good treatment of women, for they are prisoners with you, and you have no right to treat them otherwise, unless they commit clear indecency. If they do that, then forsake them in their beds and hit them, but without causing injury or leaving a mark. If they obey you, then do not seek means of annoyance against them. You have rights over your women and your women have rights over you. Your rights over your women are that they are not to allow anyone whom you dislike to tread on your bedding (furniture), nor allow anyone whom you dislike to enter your houses. And

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	their right over you are that you should treat them kindly with regard to their clothing and food.		
3	It was narrated from Hakim bin Muawiyah, from his father, that: a man asked the Prophet (ﷺ): "What are the rights of the woman over her husband?" He said: "That he should feed her as he feeds himself and clothe her as he clothes himself; he should not strike her on the face nor disfigure her, and he should not abandon her except in the house (as a form of discipline)."	Sunan Ibn e Maja, Hādith 1850	49
4	Abu Huraira reported Allah's Messenger (ﷺ) as saying: Of the dinar you spend as a contribution in Allah's path, or to set free a slave, or as a sadaqa given to a needy, or to support your family, the one yielding the greatest reward is that which you spent on your family.	Sahih Muslim, Hādith 48	49
5	Ayesha reported that Hind, daughter of Utbah, asked: O Messenger of Allah! Abu Sufiyan is a miserly fellow. He does not give what may be sufficient for me and my children, unless I take it from him without his knowledge. He said: Take what suffice you and your children according to means.	Sahih Muslim, Hādith 272	49

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