

CASE ANALYSIS – MOHD AHMAD KHAN VS SHAH BANO BEGUM AND OTHERS (1987)

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INTRODUCTION

Mohd. Ahmad Khan vs Shah Bano Begum is a landmark case. This case is also known as the “Shah Bano Case”. It was a very controversial case that caused conflict in India due to the difference between Muslim Personal laws and Section 125 of CrPC¹. Shah Bano took a bold decision and raised her voice against the Triple Talaq which is commonly known as irrevocable talaq and also against the rules of maintenance to ex-wife after divorce which is only limited to the iddat period. This case law has its own significance as it illustrates the need to bring changes in a male-dominated society for the upliftment of women's status.

FACTS OF THE CASE

Shah Bano Begum was a Muslim woman and her husband Mohd. Ahmad Khan was an advocate by profession. They were the resident of Indore, Madhya Pradesh. Mohd. Ahmad Khan (petitioner) was a well-known advocate having a monthly income of Rs. 60000 and Shah Bano Begum (respondent) was a housewife with three sons and two daughters. After 14 years of marriage Mohd. Ahmad Khan married another woman who was younger than him². He gave Rs. 200 per month to Shah Bano as maintenance but in 1973 she was disowned by her husband at the age of 62 along with her children. Mohd. Ahmad Khan had stopped giving Rs. 200 as maintenance to Shah Bano.

In April 1978, Shah Bano (Respondent) filed a petition, before the court of Judicial Magistrate (First Class), Indore. She prayed to provide maintenance to her as she was disowned by her husband and also to increase the amount of maintenance as she was living with her 5 children. The Magistrate gave a decision in the favour of the Respondent and directed the husband to pay Rs.25 per month.

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¹ CODE OF CRIMINAL PROCEDURE 1973, s 125

² Shifa Qureshi, ‘MOHD. AHMAD KHAN v SHAH BANO BEGUM AND OTHERS (1995) (iPleader, 25 September 2024) <https://blog.iPLEaders.in/case-law-summary-mohd-ahmed-khan-v-shah-bano-begum-others-1985-air-945/> accessed 6 October 2025

Shah Bano was dissatisfied with the amount of maintenance directed by the Judicial Magistrate (First Class). Therefore, she filed an appeal to the Madhya Pradesh High Court in 1979. Madhya Pradesh High Court ordered her husband to pay Rs.179.20 per month as she was living along with her children.

Mohd. Ahmad Khan aggrieved by the decision of the High Court of Madhya Pradesh then filed a special leave petition in the Supreme Court of India in 1981. He contended that as per the provision of Muslim Personal law, a husband's liability to maintain the wife after divorce is only limited to the iddat period.

MUSLIM PERSONAL LAW

Muslim Personal law has its own customs and practices which are based on the principles of the Quran or upon the interpretation of Muslim jurists or scholars. There are two sectors of Muslims; the Sunnis and the Shias. Both have their own laws regarding marriage, divorce, adoption etc.

Both marriage and divorce are interrelated to each other and are integral parts of society. In Muslim marriage to fulfill the socio-religious duties marriage is contracted. It is for the purpose of the procreation of children. During the Nikah, the verses of the Quran were read. Muslim marriage is considered as a contract. In the case of *Abdul Kadir v. Salima* (1886)³ Justice Mahmood held that marriage is not a sacrament but purely a civil contract. Because all essentials of the contract are present in marriage, such as consent of both parties, consideration, parties have reached the age of majority, sound mind.

Divorce on the other hand requires the consent of the husband and after divorce wife is entitled to maintenance. Under Muslim law, the husband has the unrestricted power to pronounce talaq. Dower (Mahr) acts as a deterrent towards this unrestricted power of the husband. It acts as a security to the wife. A dower is the sum of money or property given by the husband to the wife at the time of marriage or anytime afterwards as a mark of respect to the wife. In Islam wife has to observe iddat and the iddat period lasts for 3 months but if the wife is pregnant then the period of iddat lasts up to 9 months. According to Muslim law, the husband's liability to maintain the wife after divorce is limited only to the iddat period after the completion of the iddat period husband is not under the obligation to maintain the wife.

³ ABDUL KADIR v SALIMA AND ANR (1886) ILR 8 ALL 149

Section 125 of CrPC

According to Section 125 of CrPC ⁴Judicial Magistrate First Class can order a person to make monthly allowances for the maintenance of the following person, if the court gets proof of neglect that the man with sufficient means refusing to maintain

- Wife. Unable to maintain herself
- Legitimate or illegitimate minor child
- Legitimate or illegitimate major child with physical or mental injury due to which he/she is unable to maintain himself (married daughter not included)
- Father and mother are unable to maintain themselves

JUDGEMENT OF SUPREME COURT

5 judges bench of Y.V Chandrachud (CJ), Rangath Misra, D.A Desai, O. Chinnappa Reddy, E.S. Venkataramiah. Supreme Court delivered a judgement saying that a woman has a right to claim maintenance under Section 125 of CrPC as the code is criminal and not civil law. According to the Supreme Court, there was no conflict between Section 125 CrPC and Muslim Personal Law because Section 125 applies to all regardless of caste, creed, or religion and it is criminal in nature, unlike Muslim Personal Law which is civil.

Section 125 is a secular provision governing maintenance laws across personal laws. This judgement made by the Supreme Court in Shah Bano's case was criticized by many Muslims and they are of the opinion that this judgement is against the principles of Muslim law. According to Muslim scholars Muslim Personal law is divine law and is not man-made law. Thus it cannot be changed. This led to many protests and conflicts in India to discard the decision passed by the Supreme Court.

Due to these conflicts, the parliament of India passed the Muslim Women (Protection of Right on Divorce) Act in 1986 in order to avoid these conflicts which will ultimately affect their votes in elections. In order to appease and gain the support of the Muslim Community and to protect the rights of Muslim women this Act was passed. This Act diluted the judgement passed by the

⁴ *Ibid*

Supreme Court in *Mohd. Ahmad Khan vs Shah Bano Begum*⁵. This Act limited the liability of the husband to pay the maintenance till the iddat period only and after the period of iddat if the woman is unable to support herself, her relatives who would inherit the property of the woman would maintain her and if she has no such relative then Waqf Board will pay for the maintenance of that woman.

However, courts have interpreted both section 125 and the Muslim Women (Protection of Rights on Divorce) Act 1986 in many cases. One such important case in this aspect is *Danial Latifi vs U.O.I (2002)*⁶. In this case, the court held that the Muslim husband's liability under this Act is not limited to the iddat period. The husband has to make arrangements for her wife's maintenance. So the maintenance would also account for after the iddat period but the husband must arrange it before the end of the iddat period.

But the court also held that the Muslim Women (Protection of Rights on Divorce) Act 1986 was constitutional.

CONCLUSION

Mohd. Ahmad Khan vs Shah Bano Begum case throws a light on the situation of women who were disowned by their husbands and the need to change laws in Muslim Personal Laws in order to uplift the condition of women. Though the judiciary took time to reach the decision they established a precedent for the future maintenance of the wife. This case also depicted that Section 125 is secular law and it will apply to all regardless of caste, creed, or religion. It also created awareness among woman to fight for their rights and move to court for the enforcement of their right.

⁵ Muslim Women (Protection of Right on Divorce) Act 1986

⁶ *Danial Latifi and ANR v UNION OF INDIA* (2002) WP (C) 868/ 1986