



**CASE COMMENT: MOHD AHMED KHAN V SHAH BANO BEGUM AND ORS:
DECRYPTING THE NUANCES OF RELIGIOUS FREEDOM AND
FUNDAMENTAL MARITAL OBLIGATIONS**

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INTRODUCTION

The Indian subcontinent is home to a variety of religions, communities and ethnicities. Since 1950, the nation has shaped its existence around liberty, equality and fraternity, as enshrined in the Preamble, essentially accepting this heterogeneity as a vital pillar of the country. Unfortunately, this acceptance of ‘unity in diversity’ makes the nation prone to issues of religious freedom and balancing these fundamental principles with orthodoxy. Article 25 of the Constitution of India explicitly dictates that “*Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*”¹ In support of Article 25, the Constitution makes provisions for other similar rights, facilitating eased functioning of religious groups within the boundaries of the nation. The conflicts concerning the nuanced interpretation of such fundamental rights arise with the operation of religious personal laws. History shows that the prevalence of Personal Law and State Law in harmony is seldom possible, predominantly due to their overlapping provisions and conflicting ideals. India has made efforts towards harmonising these two. The creation of Hindu Marriage Act (1955)², the Hindu Succession Act (1956), and the operational Christian, The Marriage Act (1872)³ is stark evidence of such endeavours. However, disputes persist, implying the fragility of India’s secular spirit and religious neutrality. Mohd Ahmed Khan v Shah Bano Begum and Ors.⁴ is a landmark judgement that toppled the initial Indian understanding of religious legal codes and liberty. The case deals directly with the above-mentioned nuances between Personal law and

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¹ Constitution of India, Art.25

² Lakshmi Parameswaram, History of Personal Laws in India (1st edn)

³ Ibid

⁴ Mohd Ahmed Khan v Shah Bano (1985) (2) SCC 556

State law. Specifically, it deals with the concept of maintenance, divorce and marriage rights in lieu of Muslim Law, with consideration of Section 125⁵ of the Code of Criminal Procedure. This judgment is a stark example of how judicial interpretation of statutes and other constitutional rights plays a significant role in ensuring that religion does not impede any person's access to their inalienable rights of equality and liberty.

HISTORICAL CONTEXT

The origins of the case date back to 1932⁶, when Shah Bano Begum and Adv. Mohammed Ahmed Khan got married and raised five children. According to Islamic Sharia Law, a Muslim man is allowed to remarry and conceive children with another woman. With this law in place, Ahmed Khan exercised polygyny. Notably, this was a time when maintenance had become a crucial part of the Code of Criminal Procedure, penned in Section 125 of the same, dictating that *"If any person having sufficient means neglects or refuses to maintain any recipient noted within clauses (a) to (d), a Magistrate of 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, and so on at such monthly rate as such Magistrate thinks fit."*⁷ Thus, partly due to dissatisfaction, Shah Bano filed a plea for maintenance under the said section in 1978, three years after leaving her husband's dwelling. In the same year, Ahmed Khan exercised 'triple talaq' to divorce Shah Bano. After a series of hearings, the court ruled in favour of Shah Bano, directing a maintenance fee of 50 INR to be paid on a monthly basis.⁸ This amount was further raised to 179.60 INR by the Madhya Pradesh High Court. The case ultimately gained national significance after Ahmed Khan appealed to the Supreme Court, beginning an impressive landmark case India had never seen before.

JUDICIAL INTERPRETATION OF THE CASE: THE FINAL CALL

The 5-Judge Bench, headed by CJI V.Y Chandrachud, was met with several arguments presented by both parties. Through this, issues concerning Section 125 of the CrPC and its applicability were raised and considered deeply. After an equitable interpretation of the positions of both the petitioner and defendant, the bench ruled in favour of Shah Bano Begum. Thus, the Hon'ble Court mandated the husband to pay the maintenance determined by the

⁵ CrPC 1973 Section 125

⁶ Vidhi Chetnani, Int Journal of Law Management and Humanities (Vol 6 Issue 2) ISSN 2581-5369

⁷ CrPC 1973 Section 125

⁸ Vidhi Chetnani, Int Journal of Law Management and Humanities (Vol 6 Issue 2) ISSN 2581-5369

previous MP HC. The Apex Court also highlighted that the Islamic legal rule that ended the husband's responsibility to handle his divorced wife ends after the Iddat period, is incorrect and illogical, making Muslim women eligible to apply for alimony through Section 125, CrPC.

RATIONALE OF THE BENCH

The Five-Judge Bench highlighted that religious law cannot come in the way of basic human rights⁹. As per the court, Section 125 of the CrPC applies to any individual in India, irrespective of religion, if read in the literal sense. Thus, a Muslim husband has an obligation as equal as a non-Muslim husband when it comes to supporting his financially dependent spouse. The bench acknowledged the sanctity of Islamic law, but noted that even if the religious code relieves a husband of their responsibility after the end of the Iddat period, they are still obliged to give alimony if their erstwhile spouse is financially dependent on them. Moreover, payment of Mehar during divorce, which is “a contractual dowry paid during an event of divorce or death”, cannot be an alternative to paying maintenance. Hence, the following are the points noted by the bench to justify their ruling:

Universality of Sec 125 CrPC: CJI Chandrachud highlighted that Section 125 of the Code of Criminal Procedure does not apply selectively based on any specific social aspect such as religion. Hence, Islamic Personal Law cannot hinder a woman's ability to apply for maintenance through the section.

Post-Divorce Rights of a Woman: No woman in India can be deprived of post-divorce rights, such as alimony, irrespective of the religious codes followed. This position is justified by the rights given by the Constitution of India and the legal language of Section 125 of the CrPC.

Balancing Religion with Human Rights: The Hon'ble Court indicated that India's secular spirit implies the need to balance religious beliefs with the inalienable rights of individuals. Fundamental rights such as Equality (Art. 14), Religion (Art. 25), and Freedom (Art. 19) cannot be compromised in the name of religious freedom.

⁹ Vidhi Chetnani, Int Journal of Law Management and Humanities (Vol 6 Issue 2) ISSN 2581-5369

CRITICAL ANALYSIS OF THE JUDGEMENT

With the judgment in favour of Shah Bano Begum, the court adopted a progressive approach to the scenario at hand, positively impacting the idea of religious freedom and the need to ensure smooth use of essential constitutional and statutory rights.

Greater understanding of Article 25:¹⁰ The judgment understood Article through a deep analysis of its intricacies. With the ruling, the judiciary realised that religious freedom cannot be at the expense of common rights of individuals, irrespective of their relation with that belief. This understanding changed the way courts would perceive religion-related cases in the future.

Acknowledgement of Martial Rights: The judgment aided in shining a light on the essential marital rights given to divorced women. This was especially seen with Section 125 of the CrPC. With the ruling in favour of Shah Bano, the initial insignificance given to alimony, as evident in the meagre maintenance charge Ahmed Khan was obliged to pay, was pointed out, helping future cases of maintenance to be judged equitably and fairly.

Shift from Orthodoxy and Religious Dominance: The judgment broke the orthodox beliefs carried by muslim couples. Initially, muslim law restricted the amount of support a husband could give to his wife, essentially working against the latter. However, the idea of giving alimony a common meaning and universal applicability changed that perspective greatly, ensuring that Muslim women are not deprived of any legal entitlements that all women are expected to enjoy. Overall, the judgment seems to be of deep value for the nation, upholding the spirit of the Constitution and the principles of India enshrined in the Honorary Preamble.

MAJOR DISPUTES FACED BY THE CASE

Despite the Shah Bano case being a positive progression towards bringing inalienable human rights to all Indians, it has faced vast hatred and faced many disputes, especially from the Muslim community of the nation. In the aftermath of the judgment, the ruling faced severe protests and criticism from orthodox Muslims, predominantly followers of Sharia law. In fact, this hatred towards ruling against Islamic law forced the Rajiv Gandhi Government to bring out the Muslim Women (Protection of Rights of Divorce) Act, 1986. This statute countered the Supreme Court's judgment so as to suit the desires of the Muslim crowd in India. This law mandated that the husband has a financial obligation for supporting the wife only till the end

¹⁰ CrPC 1973, Section 125

of the Iddat period or two years. Moreover, the wife has the right to ask for her 'Mehtar' alongside such alimony. This law diminished the value of the judgment by the Supreme Court, making it futile in its implementation. This act by the government was denigrated by the judiciary and seen as a violation of the Constitution's federal structure. Thus, despite working in favour of the rights of Muslim women, political actions and religious extremism seemingly overwhelmed the ruling, creating a complex scenario that could not be easily solved.

PROGRESSIVE IMPLEMENTATION OF THE CASE: An Aftermath

The Shah Bano case exercised its influence in various cases that the courts had to handle after it (post-1985). Moreover, questions regarding religious freedom did not cease until the late 2010s.

Daniel Latiffi v Union of India¹¹ is one such case. The case was a complex situation where concerns were raised questioning the Muslim Women (Protection of Rights of Divorce) Act, 1986, with the petitioners seeing the act as a violation of Article 14¹² of the Constitution through the denial of maintenance to Muslim women. Instead of invalidating the Act, the Supreme Court attempted to strike a balance between the two contentions. This was done by clarifying that the Muslim husband's obligation will not be limited to the Iddat period, and will be required to pay alimony until the wife remarries.

Jubair Ahmed v Ishrat Bano¹³ is a much more modern case. It reignited the crucial question of whether Section 125 of the CrPC applied to Muslim women in India, further opposing Daniel Latiffi in 2001. Fortunately, the Hon'ble Allahabad High Court upheld Lattifi 2001 and the applicability of Section 125 to Muslim women, reasoning that the section was a path through which women could receive constitutional rights relevant to marriage law in India. Thus, this case finally ended the long-lasting battle concerning a Muslim husband's obligation to pay maintenance to his wife beyond the limit denoted by Islamic Law.

CONCLUSION

In conclusion, Mhmd. Ahmed Khan v Shah Bano Begum¹⁴ (1985) is a landmark judgement that deeply impacted Muslim women's access to rights they are entitled to in the nation. India

¹¹ Daniel Latiffi v Union of India (2001) SCC 740

¹² Constitution of India, Art 14

¹³ Jubair Ahmed v Ishrat Bano (2019) SCC 4065

¹⁴ Mohd Ahmed Khan v Shah Bano (1985) (2) SCC 556

is an inclusive region that not only respects the essential religious practices of major communities, but also ensures that the rights given to one group are not restricted to another. Such a selection of groups would violate the Fundamental Rights to Equality¹⁵ and Life¹⁶. Keeping this in mind, the Shah Bano case is a step ahead towards a peaceful and people-oriented India, empowering women who have long been oppressed by the male-dominant society of the country. Besides this, the Shah Bano case acts as a reminder that the Indian judiciary will always remain the protector and enforcer of the rights given to the people of India through the Constitution. Moreover, it highlights the power of judicial review when it comes to balancing two equally acceptable ideals and beliefs.

Finally, the case gives citizens a chance to reflect on the relevance of certain religious practices in the present era of modernism and liberalism. With concepts of gender equality and women's justice becoming concrete global goals that the world seeks to achieve, it is worth reflecting on whether such restrictive ideas are truly still applicable. Overall, the Shah Bano judgement will continue to inspire India to strive for equality, liberty, quality of life, and gender justice, making it worthy of recognition and acclaim.

¹⁵ Constitution of India, Art 14

¹⁶ Constitution of India, Art 21