

## IDDAT: IS IT BOON OR BANE FOR A MUSLIM WOMAN?

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### *Abstract*

*A general rule for a woman belonging to the Muslim community is that she must undergo a period of Iddat upon dissolution of her marriage due to either death of her husband or divorce. During this period the Muslim woman is not allowed to re-marry. It is often commonly known as a period of seclusion which must be undertaken by a woman while not by a man if his wife dies or he is divorced. This period protects her from being criticised in society for re-marrying someone or consummating with another man. Even though there are boons of practicing Iddat there are banes overshadowing it when it comes to equality amongst the genders. The woman should be allowed to lead her own life. To be able to move onto the next phase of her life without being limited in any way from living her life according to her liberty. The fact that the Muslim husband after divorce is allowed to consummate with his other wives while the wife, he has divorced is not allowed to show that Muslim law favours men over women. Further while being in an existing marriage a muslim man is allowed to have up to three wives and even after the death muslim men are allowed to re-marry while for a woman she is constrained and treated unequally. Women belonging to other religious communities do not have similar practices. This paper seeks into the legal, socio-religious aspects/implications of the practice of "Iddat" with a bring introduction into what Iddat is and when it is to be followed delving into the boons and banes of Iddat, concluding with an objective perspective regarding the subject.*

**Keywords:** *Iddat, Women, Inequality, Seclusion, Muslim.*

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## INTRODUCTION

Iddat or Iddah is a period of seclusion observed by a Muslim woman for a specific period after her marriage has dissolved due to death of her husband or divorce from her husband. During this period the Muslim woman is not allowed to re-marry.

In the words of Justice Mahmood, Iddat is a period observed by a Muslim woman on the completion of which her new marriage will be seen as lawful.

The duration of Iddat depends on the way the marriage had been dissolved by them. Under s. 2(b) of the Muslim Women Act 1986 the statute defines as well as differentiates the different types of observing Iddat. The period of Iddat varies depending on the circumstances of the case:

In case of divorce from her husband, as per s. 2(b) of the Muslim Women Act 1986<sup>1</sup>

- If a woman has been divorced, she has to observe Iddat for a period of three menstrual cycles if she still goes through menstruation, if she no longer goes through menstruation then she will have to observe Iddat for a period of three lunar months.
- For a woman who has been divorced but was pregnant at the time of divorce she is to observe Iddat till the date she gives birth to her child or if she has an unfortunate miscarriage before four months and 10 days, she no longer must observe Iddat then
- If she has not consummated with her husband during the marriage and if her husband is divorcing her, she will not have to observe

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<sup>1</sup> The Muslim Women (Protection of Rights on Divorce) Act, 1986.

### Iddat

- In case of death of her husband:
- While if her husband has dies, she must observe Iddat for a period of four lunar months and ten days after he dies, immaterial if she had consummated or not
- If the woman is pregnant at the time when her husband dies, she must observe Iddat for a full year which includes nine months of her pregnancy and the mandatory three months of Iddat.
- The wife will start observing Iddat on the date on which her husband divorces her, but during that period if her husband unfortunately dies, she again must observe Iddat.

Iddat is observed as a way of respecting the death of the husband and the wife does not move on too quickly. This period protects her from being criticised in society for re-marrying someone or consummating with another man. She is strictly not allowed to have a sexual-physical relation with any man. The normal duration is of Iddat for a widow is four months which gives her enough time to grieve the loss of her husband without being criticised by society or looked at poorly. It also helps the woman to establish who the real father of her child is. So that there is no scope of confusion. If her husband dies or he divorces her observing three months of Iddat would give her clarity as to who the father of her child is.

This period is observed due to the following reasons by the wife: To make sure that the pregnancy of the widow or the divorcee is by the deceased husband or the divorced husband. It is a means to determine the paternity of the child. if there is no Iddat period observed by the Muslim woman she may marry another man or consummate hence being pregnant. Due to the

fact it would be hard for the child to determine who his/her father is, observing this period would help the child in knowing who his/her father is.

In case of a divorce, it would give a chance to either revoke or dissolve the talaq, Divorce is to be avoided at all costs, the institution of a family is of great value. This break would give a chance to the husband to think over his decision to divorce his wife and rekindle their marriage. Preventing a family from breaking up if the husband and wife try to get back together.

In case of the death of the husband, it gives a chance to the wife to mourn for her deceased husband. She is not allowed to marry another man during this period to show respect to her husband and not mock the institution of the society.

Iddat starts on the day right after the husband dies or the day she has been divorced by her husband and it does not start on the day she gets to know about the death of her husband or that her husband has divorced her.

If she does not receive the information about the death of her husband till the expiration of the period of Iddat that she is to observe, she is not bound to observe it then.

## **BOONS**

The paternity of a child is of extreme importance. The child has the right to know who his/her father is, so that he/she does not fallback not knowing who his/her father is. To avoid unnecessary confusion about paternity, when the wife gets pregnant just before she gets divorced, or her husband dies. This period bars her from consummating or remarrying another man. So as for her child to be acknowledged as legitimate and not illegitimate out

of the “zina”. In Muslim law acknowledgement of the paternity of the child is “iqrar” which is of extreme importance when it comes to determining the legitimacy of the child. it was held in *Muhammad Allahabad v. Mohammad Ismail*<sup>2</sup> that paternity cannot be proved by just saying that the child was born out of the valid marriage of the parents. The Muhammadan law recognises “acknowledgement” as a method of proving legitimacy of the child as established by substantive law for the purpose of inheritance.<sup>3</sup> From the view of parentage, Iddat must be observed. As held in the case of *Khurshid Khan v. Husnabannu Mahimood*<sup>4</sup> the court ruled that Iddat had a peculiar feature since it was observed by to avoid any confusion of parentage of the child and to establish that a certain man was his father.

This period of Iddat gives a chance to husband to reconsider his decision of taking a divorce from his wife. The society is always in the hope to preserve marriage and is not of the opinion to take divorce unless it is extremely necessary. It was held in the case of *Ahamadalli Mahamad Hanafi Makndar v. Rabiya alias Babijan Hasan Shaikh*<sup>5</sup> that depending on the form of divorce the husband has the chance to rethink his option as to get divorced. If the divorce is done by the husband by Talaq Ahsan, the parties can revoke it, it does not become irrevocable till the expiration of the period of Iddat. Therefore, the parties can go over the period and this go over their decision.

- The Muslim wives have the right to receive deferred dower as well as they are entitled to ask for prompt dower to be paid immediately to them.

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<sup>2</sup> 1888 ILR 10 All 289.

<sup>3</sup> Ibid.

<sup>4</sup> (1976) 78 BOMLR 240.

<sup>5</sup> (1978) 80 BOMLR 238.

- It gives a chance for the wife to mourn the death of the husband and to grieve him which is an important part of healing. It prevents from making any mistake by consummating with another man or marrying someone else which would lower her prestige in society.
- “*The Muslim personal law, it is the husband’s liability to provide for the maintenance of his divorced wife till this expiration of this period.*” As held in *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*<sup>6</sup>. The boon in this is that it is mandatory for the husband to provide for maintenance for his wife during this period without any form of controversy involved.

## BANES

Iddat is to be observed only by woman. The Muslim Law is silent about the fact whether men to have to observe Iddat. The only thing that the law says that the Muslim man must not marry during this period. Which shows gender inequality. Why should women compulsorily observe a period of three months on getting divorced. No other religion prescribes a period like this when they cannot re-marry or have a physical-sexual relation with another man.

The rule which says that if the husband has divorced the wife, she will have to observe Iddat but if the husband dies during the period of Iddat she will have to again observe Iddat. Which is kind of a curse for the woman to again stay in seclusion.

The time ranging from three months to four months depending on the manner of the dissolution of marriage. I feel it is a curse because it should

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<sup>6</sup> AIR 1985 SC 945

be up to the Muslim wife as to how long she requires to mourn over the death of her husband or adjust with her surroundings after a divorce. No law should be prescribed as to how long she must wait before she can remarry or consummate with another man. The time should not be fixed different women grieve their loss differently. The wife should be given the time to fix the time herself.

One of reasons to observe Iddat by a woman is to not disrespect or ridicule society. How is leading one's life according to their own wishes ridiculing society. Article 21 gives the freedom to every person to lead their life according to their wishes. In *Kharak Singh v. State of Uttar Pradesh*<sup>7</sup> it was held by the court that the term life which was used in Article 21 meant that the individual should be allowed to live a life and “*not just mere animal existence*”<sup>8</sup>. Hence it gives the right to every individual to be with whoever she likes and lead her life. She should be allowed to have sexual or a physical relationship with a man. If she feels she can move on from grieving her husband, it should be her choice. She should not be restrained.

Muslim law recognises polygamy; hence a Muslim man is allowed to have four wives at a time, but a Muslim woman is not allowed to have more than one husband. It was held in *Itwari Plff v. Smt. Asghari and ors*<sup>9</sup> that Muslim law permits polygamy by a Muslim law but does not encourage it. If she does, she will be liable for bigamy. This means if he is divorcing one wife, he can go live another wife and consummate with her. Though the law bars the woman from having more than one husband therefore if her husband dies or divorces her, she cannot consummate which again shows that men

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<sup>7</sup> AIR 1963 SC 1295.

<sup>8</sup> Ibid.

<sup>9</sup> AIR 1960 All 684.

are favoured and they have far less regulations. Men are not seen poorly in the eyes of society since they are having relations with their other wives. While if a woman is seen having relations with men other than her husband during the Iddat period it is wrong.

Earlier if she married another man during this period her marriage would have been seen as a void form of marriage. It was in the case of *Lila Gupta v. Laxmi Narain*<sup>10</sup> the position was clarified by the court by saying it would not be a void marriage but an irregular form of marriage.

While what if a Muslim woman is not pregnant at the time of divorce but she has consummated the marriage before, she still has to observe three months which is completely unfair.

The other curse would be that Muslim woman could only receive maintenance during the Iddat period and not afterward. Nor could they ask for maintenance to look after themselves. It is a curse as to why should the Iddat period be the benchmark till when she can be maintained by her husband. The same is not prevalent in other religions. But several developments have been made regarding this. The Shariat Law said that Muslim Women only have the right to receive maintenance from their husband after divorce during the Iddat period and not beyond that. It was only in 1985 The Supreme Court ruled in the *Shah Bano*<sup>11</sup> judgement that Muslim Women have the right to receive maintenance after the Iddat period by availing the secular provision of section 125 of the CrPC. It further held that section 125 of the CrPC imposes an obligation upon “individuals to maintain close relatives who are indigent as their obligation towards society

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<sup>10</sup> AIR 1978 SC 1351

<sup>11</sup> AIR 1985 SC 945



in order to prevent destitution and vagrancy 'This is the moral edict of the law and morality cannot be clubbed with religion.'"<sup>12</sup> This judgement led to a nationwide controversy and agitation within the Muslim community leading the government in power, Rajiv Gandhi to enact and enforce the Muslim Women (Right to Protection on Divorce) Act 1986. Which nullified the Supreme Courts Shah Bano judgement by curtailing the rights of Muslim Women to avail maintenance on the grounds of section 125 CrPC. This vaguely act said that the Muslim Man was only to provide maintenance to his divorced wife during the Iddat period. After the Iddat period is over if the wife is unable to maintain herself, she can seek maintenance from the Wakft Board or her relatives or her divorced husband. in 2001 Daniel Latifi challenged the validity of the Muslim Women (Right to Protection on Divorce) Act 1986 as it violated the right to equality of a Muslim woman as compared to a woman belonging to another religion. The Supreme Court used its "*exemplary exercise of judicial creativity in conferring equal maintenance rights to Indian Muslim women, at par with Indian women following other religions.*"<sup>13</sup> It did not hold the act to be unconstitutional but entitled a Muslim woman to maintenance. She is to receive maintenance after the Iddat period but such an amount which would allow her to maintain the same standard of living during the marriage. The amount she was to get during the Iddat period she will be able to maintain herself for her entire life or until she gets remarried. The law of the land now says, a divorced Muslim woman is entitled to provision for maintenance for a lifetime or until she is remarried, which

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<sup>12</sup> Dr. G.S. Rajpurohit & Dr. Nitesh Saraswat, *Need and Challenges to Uniform Civil Code in India: A Special Reference to Muslim Ethos*, Vol-IV, 20-44, Journal of Law and Public Policy, Uniform Civil Code (2017).

<sup>13</sup> Pranusha Kulkarni, *Multi culturalism or malestreamism: A feminist Jurisprudential Critique*, Vol-IV, 66-88, Journal of Law and Public Policy, Uniform Civil Code, (2017).

shall be made within the period of Iddat.<sup>14</sup> Again in *Shamim Ara's*<sup>15</sup> the Supreme Court held its position on Daneil Latifi's judgement by strictly barring the injustice meted out by the whimsical acts of the husband by holding that Talaq shall not be valid unless preceded by an effort at rapprochement and strict rules of evidence about the pronouncement itself.<sup>16</sup>

## CONCLUSION

Hence, the author would see the Iddat period as more of a curse than a boon. The only reason the author feels the Iddat period is a boon is that it helps the child know who his or her father is and makes sure that he or she is legitimate or not; otherwise, she will not receive her due inheritance from her father. Illegitimate children are not accepted in Muslim law.

While the author feels the Iddat period is a curse because it should be the right of a woman to decide when she should grieve her husband and when she is ready to move on from him, she has been unequally treated as compared to women in similar circumstances in other religions. Hindu or Christian women do not compulsorily have to observe Iddat, a period of seclusion, after the death of their husband or after the divorce. The woman should be allowed to lead her own life and be able to move on to the next stage of her life without being restricted in any way from living her life according to her liberty. The fact that a Muslim husband is permitted to have other wives after divorce while his wife is divorced does not demonstrate that Muslim law favours men over women. As a result, the

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<sup>14</sup> Danial Latifi v. Union of India, (2001) 7 SCC 740.

<sup>15</sup> (2002) 7 SCC 518

<sup>16</sup> Ibid.

author believes that Iddat is a curse and that women in Muslim Law, as well as women in other religious communities, do not have equal standing as men.