

**FAMILY COURT AND MAINTENANCE PROCEEDINGS  
BY DIVORCED MUSLIM WOMEN**

*By*

—**SYED ISMAIL**, B.A., B.L.,  
Advocate

The Muslim divorced women are initiating proceedings in the Family Court under Section 125 Cr.PC for maintenance. The Family Court is entertaining their petitions. On the receipt of summons when the former husband appears in the Court the Family Court is persuading the former husband to take back the divorced wife and to lead family life with her. If the former husband does not agree the Family Court is granting interim maintenance initially and permanent maintenance ultimately by allowing the main petition with the result the former husbands at large are put to great hardship. Therefore it is quite essential to examine the legal position pertaining to the maintenance proceedings of divorced Muslim women.

The Family Court has to apply the personal law of the parties in deciding the maintenance proceedings initiated by them. The Hindu Law has to be applied to the Hindus. The Muslim Law has to be applied to the Muslims. No other law is prescribed for the Family Court for deciding the maintenance cases entertained by it.

The Muslims are governed by the Muslim Personal Law (Shariat) Act of 1937 in matters of marriage, dower, divorce, maintenance, guardianship, succession, inheritance, *etc.* So far, these matters are concerned the Muslim Personal Law has to be applied to the Muslims and no other law.

Section 55 of the said Act empowers a Muslim husband to divorce his wife by pronouncing triple Talak. The husband need not prove the form of Talak adopted by him - 1975 Cr.LJ 1884. The presence of the wife is not necessary - AIR 1932 PC 25; AIR 1931 Mad 647; AIR 1933 Cal 27. The consent of the wife is not necessary - 33 Mad 22; 1975 MLJ 570 (Criminal). In the

maintenance petition filed by the wife when the husband states in his counter that he had divorced the petitioner it amounts to a valid divorce - 1975 (2)APLJ 20.

As per Section 69 of the said Act the consequence that flow from Talak are (1) the parties cannot remarry unless the divorced wife complies with the provisions of Section 21; (2) the parties cannot lead marital life and beget children who will be illegitimate; (3) the amount of dower becomes payable; (4) the wife becomes entitled to maintenance to the extent provided under Section 82(2) and (5) the mutual rights of inheritance between the parties cease. Therefore it is not proper to persuade the husband to lead marital life with the divorced wife which amounts to debauchery.

Section 82(2) of the Act provides that the divorced wife is entitled to maintenance till the expiry of the Iddat period only. She is not entitled to maintenance beyond the Iddat period. Maintenance for a divorced Muslim women is barred beyond the period of Iddat - 1992 Cr.LJ 1823 (AP High Court).

Section 21 of the said Act provides that a Muslim cannot marry a woman whom he has divorced by triple Talak unless (1) the divorced woman marries another man, (2) the second marriage is actually consummated, (3) the second husband gives Talak, and (4) the second Iddat period is completed. The law prescribed such a severe condition in order to dissuade the parties from exercising their right capriciously.

After the decision of the Supreme Court in *Shah Banu's* case, 1985 Cr.LJ 875, there was Muslim agitation all over the country. The Government was pleased to enact the Muslim Women (Protection of rights on Divorce) Act of 1986. Section 3 reads

notwithstanding anything contained in any other law for the time being in force a fair and reasonable maintenance be paid to a divorced woman within the Iddat period by her former husband. Therefore the former husband is not liable to pay maintenance to the divorced wife beyond the Iddat period.

Section 3(2) provides that a divorced Muslim woman can submit an application to the Magistrate if the maintenance or dower is not paid to her or if the properties referred to in clause (d) of sub-section (1) are not delivered by the former husband. The Magistrate is empowered to grant the relief if he is satisfied as per Section 3(3).

Section 3 of the 1986 Act itself recognises the rights of divorced Muslim women, prescribes a forum for redress thereof, and prescribes the manner of execution of the order made in that behalf. This makes the Act complete in itself and does not depend for support on any other enactment. The Section begins with a non-obstante clause and it overrides all other provisions of the then existing laws. All provisions contrary to what is contained in Section 3 of 1986 Act, including the Family Courts Act of 1984, shall stand superseded by its provision. A

comparison of the provisions of 1984 and 1986 acts would also show the purpose and scope of the two acts is somewhat different. An application under Section 3 of 1986 Act can lie only before the Magistrate concerned and the Family Court established under the 1984 Act cannot exercise jurisdiction. AIR 1922 All 322 para 12 & 13; 1993 Cr.LJ 1118 (1112) DB (Ker).

After passing of the Act of 1986 a divorced Muslim woman cannot claim maintenance from her former husband under Section 125 Cr.PC - 1990 Cr.LJ 1364 FB (AP). The provisions of Sections 125 to 128 Cr.PC will have no application to the Act of 1986 except in case of option exercised by the parties under Section 5 of the Act to any such claim of maintenance made by a divorced Muslim woman under Section 125 Cr.PC - 1992 Cr.LJ 1823 (1825) (AP).

It is thus clear that a divorced Muslim woman is entitled to maintenance for the Iddat period only, that the Judicial First Class Magistrate alone is competent to entertain the application for maintenance, and that the Family Court has no jurisdiction to try maintenance cases pertaining to divorced Muslim women.

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## HOW TO REDUCE THE SPAN OF LITIGATION

*By*

—**MOHD. OSMAN SHAHEED,**  
Advocate, A.P. High Court

**Justice Delayed is Justice Denied:** Much has been spoken, written on this point. The Bar and the Bench both have expressed their concern on the delayed justice and put forth various suggestions to shorten the life of the litigation since the lengthy or delayed litigation not only over burden the litigants financially, cause them mental torture and agony but also force them to lose faith in the present system of administration of justice, which is of course a sad state of affairs.

That is the reason why Sri *J.S. Verma*, Ex-Chief Justice of India, addressing a function held on 27-9-1997 at Allahabad, while releasing a Book, said that the backlog of cases in the Courts has been engaging the attention for which it is felt that there cannot be an improvement in the justice delivery system till a remedy is found for speedy disposal of the case. He warned that when the disposal starts taking long, Society resorts to extrajudicial remedies which leads to