

## Right to maintenance

### Why in news?

The Supreme Court has decided to examine if existing personal laws debar divorced Muslim women from availing maintenance under Section 125 CrPC.

#### Section 125 of CrPC

- **Application** - It provides for the maintenance to the wife, child, and parents.
- It applies to all women, regardless of their religion, who have been divorced by or have obtained a divorce from their husbands and have not remarried.
- **Authority** - It empowers magistrate of first class to order a monthly allowance for their maintenance, based on the husband's means and the wife's needs.
- The magistrate has the discretion to determine the monthly allowance based on various factors such as the needs and resources of the person responsible for maintenance.
- **Duration of maintenance**- Maintenance can be ordered until the wife remarries or in the case of children, until they attain majority.

### What is the issue?

- The dispute arose after a Muslim man challenged a Telangana High Court direction to pay Rs.10,000 interim maintenance to his former wife.
- He contended that maintenance in this case will instead be governed by the provisions of the ***Muslim Women (Protection of Rights on Divorce) Act, 1986***.

#### Muslim Women (Protection of Rights on Divorce) Act, 1986

Key aspects	About
Origin	It is a religion specific law that was enacted to override the Supreme Court's judgement in the <b><i>Shah Bano case</i></b> , which upheld a Muslim women's right to seek maintenance under the CrPC.
Objective	To protect the rights of Muslim women by providing for a specific procedure for them to claim maintenance after divorce.
Applicability	To all Indian Muslims, regardless of sect or school of law to which they belong.
Maintenance during idaat period	<ul style="list-style-type: none"> <li>• Section 3 of the Act stipulates that a divorced Muslim woman is entitled to receive maintenance from her former husband during the iddat period.</li> <li>• Iddat is the <b><i>waiting period</i></b> (usually 3 months) that a woman must observe after the death of her husband or a divorce before she can remarry.</li> </ul>
Amount of maintenance	<ul style="list-style-type: none"> <li>• It is equal to the amount of mahr or dowry given to the woman at the time of her marriage or any time after that.</li> <li>• The woman can approach a <b><i>First-Class Magistrate</i></b> to procure maintenance during idaat period.</li> </ul>

<b>Maintenance after iddat period</b>	After the iddat period, if the divorced woman has not remarried and is unable to maintain herself, she can approach a First-Class Magistrate for maintenance.
<b>Relationship with CrPC</b>	The Act operates in conjunction with Section 125 of the CrPC.

### What did the Supreme Court say?

- The Supreme Court has clarified that the 1986 act does not say that a divorced Muslim woman cannot file a petition under Section 125 of the CrPC, 1973, seeking maintenance from her former husband.
- The Supreme Court reserved decision on the question as to which of these two laws would prevail.

### Judgements by Court on right to maintenance

- **Danial Latifi v. Union of India (2001)** -The Supreme Court upheld the constitutional validity of the 1986 Act by extending the right of a Muslim woman to get maintenance till she re-marries. It, however, reduced the period of maintenance to the completion of iddat.
- **2009** - A Division Bench of the Supreme Court reiterated a divorced Muslim woman's right to claim maintenance under Section 125 of the CrPC as long as she does not remarry and such a relief would be extended even after the expiry of the iddat period.
- **Patna High Court**- In 2019, it set aside a family court order rejecting a Muslim woman's plea for maintenance by underscoring that she has the option to avail of maintenance both under the CrPC and the 1986 Act.
- If she chose the CrPC, she could not be said to be debarred from seeking maintenance on account of being a divorced Muslim lady.
- **Allahabad High Court**- In various cases, it has said that a divorced Muslim woman's right to claim maintenance under Section 125 of the CrPC even after the completion of the iddat period as long as she does not marry.
- **Mujeeb Rahiman vs Thasleena (2022)**- Kerala High Court observed that a divorced Muslim woman can seek maintenance under Section 125 of the CrPC until she obtains relief under Section 3 of the 1986 Act.
- Such an order will remain in force until the amount payable under Section 3 is paid.
- **Noushad Flourish vs Akhila Noushad (2023)**- Kerala High Court ruled that a Muslim wife who effected her divorce by the pronouncement of **khula** (divorce at the instance of, and with the consent of the wife) cannot claim maintenance from her husband under Section 125 of the CrPC.

### References

1. [The Hindu | Divorced Muslim women's right to maintenance](#)
2. [Indian Express | Maintenance for Muslim women](#)