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 ***Shah Bano case,*** 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	• Section 3 of the Act stipulates that a divorced Muslim woman is entitled to receive maintenance from her former husband during the iddat period. • Iddat is the ***waiting period*** (usually 3 months) that a woman must observe after the death of her husband or a divorce before she can remarry.
Amount of maintenance	• 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. • The woman can approach a ***First-Class Magistrate*** to procure maintenance during idaat period.

Maintenance after iddat period	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.
Relationship with CrPC	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

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