

Protecting Divorced Women's
Rights by the Application of
Islamic Principle of *Mata'a*: A
Case Study of India, Pakistan
and Bangladesh

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Part 1: Concept of *Mata'a* in Islamic Legal Discourse

- ▣ *Qur'anic* verses 236, 240, 241 in Chapter II and verse 49 in Chapter 33.
- ▣ *Qur'anic* verse 241 Chapter II “*For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.*”

- ▣ Verse 242, Chapter II: *“Thus doth God make clear His signs to you: in order that ye may understand”*.
- ▣ *“And we have indeed made the Qur’an easy to understand”*
- ▣ Verse 121 Chapter II the Qur’an states *“Those to whom We have sent the Book study it as it should be studied; they are the ones that believe therein”*

- ▣ Classical view on *Mata'a*
- ▣ Sunni Schools of thought
- ▣ Contemporary Islamic Scholars

- ▣ Use of *Mashaqah, Darura and Takhayyur*

Part 2: India

- ▣ India: Section 488 Criminal Procedure Code later amended and Sections 125-128 CR PC dealt with payment of post-divorce maintenance
- ▣ *Shah Bano vs Mohd Ahmad Khan*
AIR 1985 SC945

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

- ▣ Section 3(1)(a) a divorced woman is entitled to “reasonable and fair provision for maintenance after divorce only within the *Iddat* period. After the expiry of *Iddat* the husband is not bound to pay maintenance to his wife”.

Danial Latifi vs Union of India, *AIR2001 FLC 513, 2001 SC3958*

- ▣ Constitutional Validity of the Act upheld
- ▣ Wording of the section 3 (1)
 - (a) imposes two distinct duties on the husband;
 - 1) to make a reasonable and fair provision for the divorced wife
 - 2) to provide maintenance for her.

Pakistan

Commission on Marriage and Family Laws

- ▣ Matrimonial Courts should have jurisdiction to order a husband to pay maintenance to his divorced wife for the rest of her life, or till she remarried.
- ▣ “ ... a large number of middle aged women who are being divorced without rhyme and reason should not be thrown on the streets without a roof over their heads and without any means of sustaining themselves and their children. Of course it would be open to a matrimonial court to refuse to sanction any maintenance if the woman is at fault”.
- ▣ Reinterpreting the *Shariah* “as no progressive legislation is possible if Muslim assemblies remain only interpreters and blind adherents of ancient schools of law”.

Pakistan Law and Justice Commission

- ▣ Parting gift, consolatory gift or indemnity
- ▣ Provisions of *Mata'a* are in force in various other Muslim countries
- ▣ *Qura'nic* revelations are neither time or space limited but universal and eternala need for fresh *Ijtehad* on current and emergent issue

Council of Islamic Ideology

- ▣ Responsibility of awarding post-divorce maintenance on the *Aulia* or the relatives of the wife and in their absence on the **state**
- ▣ Refused to accept payment of *Mata'a* after the expiry of *Iddat*
- ▣ Imposing any such obligation on the husband would be against *Shariah*.

Pakistan Law and Justice Commission 2009

- ▣ Column in marriage contract and an amount may be fixed as *Mata'a* at the time of Nikah.
- ▣ No time limit or period may be specified for *Mata'a* , and an interim *Mata'a* may also be awarded
- ▣ Draft bill Muslim Family Law (Amendment) Act 2009

Bangladesh

- ▣ *Hafizur Rehman vs Shamsun Nahar Begum* 4MLR (AD) 1999
- ▣ Division Bench of the High court by *suo motu* considered the legal query of whether the divorced wife could claim maintenance beyond the *Iddat* period.
- ▣ After establishing their jurisdiction to interpret the Quran in light of various *Qura'nic* verses the court held “maintenance is applicable not only for the *Iddat* period, but also for the rest of Shamsun Nahar Begum’s life, unless she marries again.”

Decision overruled by the Appellate Division of the Supreme Court of Bangladesh.

- ▣ “Parting gift” falls under the category of a voluntary act, and cannot be judicially enforced.
- ▣ On the basis of section 2 of the Muslim Personal Law (*Shariat*) Application Act, 1937, no change could be made to Muslim Personal law, and the husband was liable to pay maintenance only during the *Iddat* period.

Part3: Concluding Observations

- ▣ Judicial activism can bring social change and provide social justice to the vulnerable sections of the society.
- ▣ *Mata'a* to be interpreted by adopting an inclusive approach which includes looking at the wider Islamic principles of justice, fairness and compassion vis-à-vis constitutional norms and commitments under international human rights treaties.

- ▣ *‘A comprehensive, well-informed and reasoned exposition of judicial activism and creativity in the interpretation and application of Muslim Family law in South Asia is necessary and important, both in its own right as a social study and as a mean of understanding and addressing the problems arising out of confrontation between traditional and modern values’.*