

**IN THE COURT OF**  
**1<sup>st</sup> ADDITIONAL MUNSIFF/JUDICIAL MAGISTRATE**  
**1<sup>st</sup> CLASS, SRINAGAR**

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Filing No.: 2260/2025  
Date of Institution: 25.01.2025  
Case Number Record: JKSG03-002260-2025  
Date of Order: 24.07.2025

***Memo of Parties:***

**1. Toiba Farooq**

*W/o Nadeem Bashir Pracha*  
*D/o Syed Farooq Shah*  
*R/o Iqbal Colony Naikbagh, Natipora,*  
*Nowgam, Srinagar*  
*A/P Madina bagh, Channapora, Srinagar*

**2. Hadeel Nadeem**

*D/o Nadeem Bashir Pracha*  
*Through her mother*  
*Toiba Farooq*

***(Applicants)***

***Through: Mueed Ul Islam Shah,***  
***Mufti Muhtashim, Mohd.***  
***Khalid Shah, M. Haseeb***  
***Shah Bandy, Faizan***  
***Zahoor & Shahrukh***  
***Ishaq (Advocates)***

**VERSUS**

***Nadeem Bashir Paracha***

S/o Bashir Ahmad Paracha  
R/o Iqbal Colony Naikbagh, Natipora,  
Nowgam, Srinagar  
A/p Riyadh, Saudi Arabia

**(Non-Applicant)**

**In the matter of:      Application under section 5 of  
Muslim Women (Protection of Rights  
on Marriage) Act, 2019 seeking  
Subsistence Allowance for the  
Applicants.**

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**CORAM: ZIRGHAM HAMID**

**U.I.D No. JK00356**

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**ORDER**  
**24.07.2025**

**One thing that drives children mad**  
**Is to go through that really bad,**  
**Experience of having to live,**  
**Without father or mother,**

**The feeling is really weird,**  
**To live and feel all alone,**  
**With none to meet and talk to,**  
**Who'll hear and share your sorrows.**

**Marriage is such a great gift,**  
**That to every couple God gives,**  
**To meet, live, grow, and enjoy,**  
**The life to each one given.**

**Once to every couple comes,**  
**The crisis that each man strikes,**

**They may even bug one down,  
Seeming to breach the marriage bond.**

**Cowards soon want to break off,  
Get papers quickly prepared.  
So they could sign and park off  
From court to their little cells.**

**What of the little children?  
Their small minds are torn apart,  
Half to mum and half to dad,  
But at long last misery.**

***By: Michael Mbuwir***

1. As I go through the contents of this application which is sought to be adjudicated through the medium of this order, each and every word of the afore-mentioned poem resonates in my mind and it seems that these words put question marks and ask me as to what might have landed this family into such an excruciating crisis! The word “coward” as penned down in the poem makes me pensively question who the victim of that cowardice is. A mere child of five, brought into this world to rejoice in familial love, is exposed to the brutality of bearing those indelible emotional scars which have made their colossal way into the pious fabric of this family and have torn it asunder.
2. The situation is so unfathomable and enigmatic, to be looking at the applicants living in what is known as the ‘Heaven on Earth’, suffering at the hands of the one who is living an allegedly opulent lifestyle in one of the deserts on the earth. It builds quite a connection that these deserts, known for their dust-storms have blown an emotionally insensitive dust-storm into the heart of that person in the form of an instantaneous Talaq notice which has led

- the peaceful lives of the applicants living inside the serenity of lakes and beauty of valleys into living a life of tragedy and turmoil.
3. In view of this disruption to the applicants' peaceful life, it becomes imperative to analyse the factual matrix of the application. Therefore, let's briefly discuss the facts enumerated in the application.
  4. The Applicant No.1 is the legally wedded wife of Respondent Nadeem Bashir Paracha, married on August 1, 2019, and mother to their five-year-old daughter (Applicant No.2). She seeks subsistence allowance for herself and her dependent child.
  5. From the outset of marriage, Applicant No.1 endured emotional, physical, and financial abuse by the Respondent and his family, including coercive dowry demands. In September 2019, she moved to Riyadh with the Respondent, hoping for change, but the abuse intensified, leading her to contemplate self-harm.
  6. While pregnant, she was assaulted upon resisting a forced abortion after the Respondent learned the foetus was female. Medication was also administered to induce miscarriage. Eventually, the Respondent expelled her from his Saudi residence, forcing her to return to Kashmir in February 2020. She was denied shelter by his family and repeatedly thrown out, ultimately seeking refuge with her parents, where she gave birth in May 2020.
  7. Despite continuous harassment, she attempted reconciliation when the Respondent returned to Kashmir in June 2020 and again in July 2022. Each time, the cycle of abuse resumed. In September 2022, the Respondent deceitfully brought her back to India, then abandoned her.

8. In June 2024, he again promised to take her and their daughter back but failed, resuming his dowry demands and abuse. On September 14, 2024, Applicant No.1 received a divorce notice, which is void under the Muslim Women (Protection of Rights on Marriage) Act, 2019. The notice further illustrates the Respondent's pattern of coercion and abuse.
9. Applicant No.2 suffers from multiple serious health conditions, including kidney disease, intoeing gait, anemia, and stomach ailments, requiring approximately ₹20,000/month for treatment. She studies in KG-1 at JK Public School, with education-related costs amounting to ₹6,000/month. Despite earning approx. ₹3,68,000/month as a Finance Manager in Saudi Arabia, the Respondent has failed to support either her medical or educational needs, leaving all responsibilities to Applicant No.1.
10. The Respondent's neglect extends beyond finances to a complete emotional abandonment of his daughter. His consistent refusal to fulfill legal and moral duties has caused immense suffering to both Applicants.
11. Applicant No.1 is unemployed, buried in debt, and solely responsible for the child's survival. She was also left to bear all childbirth, education, and daily expenses alone. The Respondent's conduct especially after the birth of a girl child exposes his discriminatory mindset and deliberate cruelty.
12. The Respondent's actions violate basic principles of family law and parental responsibility. The Applicants, without independent income, are entirely dependent and require Rs. 50,000/month to live with dignity. Given the Respondent's substantial income, this request is reasonable and just.

13. The applicant has prayed that this Court may be pleased to provide immediate monthly subsistence allowance of Rs. 50,000/- per month to the applicants.
14. Ld. Counsel for the applicant has placed on record, a copy of FIR registered against the non-applicant/ respondent wherein an FIR has been lodged in P/s Chanapora under Case FIR No. 26/2025 following the directions of this Court of lodging the FIR.
15. After this application was filed, notice was sent to the non-applicant/ respondent to his local address as well as on his WhatsApp number on 27.02.2025, since the non-applicant/ respondent resides in Saudi Arabia.
16. This court issued fresh notice to the non-applicant including his Email ID's on 04.04.2025 and further the Ld. Counsel was directed to furnish service-affidavit and the same was furnished by the Ld. Counsel on 19.04.2025.
17. As a mark of precaution, the non applicant was also sent a VC link on his Email ID through E-Court. Despite that, he chose not to attend the call. This clearly highlights the fact that the non-applicant/ respondent was duly served, however, he chose to remain absent and not appear before this Court either physically or through any other means such as electronic media. It seems that the non-applicant has full awareness of the court proceedings against him.
18. **Heard and perused.**
19. Now, let us discuss the legal provisions involved in the adjudication of this application:
20. In Section 5 of The Muslim Women (Protection of Rights on Marriage) Act, 2019, it is hereby stated that:

**Subsistence allowance:-Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.**

21. This ruling is a significant step towards ensuring the economic security of Muslim women who have been illegally divorced through Triple Talaq. It provides them with a legal recourse to seek maintenance and subsistence allowance, and emphasizes the importance of providing adequate remedies to women from economic deprivation that may result from marital discord. It aims at providing adequate financial support to help them meet their basic needs like shelter, food, and other unavoidable expenses.
22. In order to adjudicate this application effectively, I deem it proper to discuss certain points of determination.

**Points of Determination**

- (i) **Is the Applicant No. 1 a victim of Instantaneous Talaq i.e. Talaq-e-Biddat?**
- (ii) **Is it mandatory for this court to grant subsistence allowance? If yes:?**
- (iii) **Quantum of subsistence allowance.**

23. These points of determination will be deliberated in explanation under the following heads:

- (i) **Is the Applicant No.1 a victim of Instantaneous Talaq i.e. Talaq-e-Biddat?**

Section 2 (C) of The Muslim Women (Protection of Rights on Marriage) Act, 2019 defines Talaq as “Talaq-e-Biddat” or any

other similar talaq having the effect of instantaneous and irrevocable divorce pronounced by a muslim husband.

The notice annexed with the application bears the title “Talaq-e-Ahsan”, but, careful perusal of the contents of the notice reveals that its effect is instantaneous and irrevocable. Therefore, Applicant No. 1 is the victim of Instantaneous Talaq.

Moreover, Ld. Counsel for the applicant has placed a copy of FIR on record, wherein FIR against the non-applicant has been registered upon the directions of this court earlier, in an application filed under Section 173 (4) BNSS, wherein the same reasoning has been given that the non-applicant has prima facie committed cognizable offence.

**(ii) Is it mandatory for this court to grant subsistence allowance?**

Ld. Counsel for the applicants has argued that Section 5 of The Muslim Women (Protection of Rights on Marriage) Act, 2019 contains the word “shall” which puts an obligation on the court to grant subsistence allowance mandatorily to the applicants. The legislation has used the word “subsistence” and not “maintenance”. Maintenance is a matter of parity and rights. While, on the other hand, subsistence as the name suggests, means realizing the needs of mere survival. Thus, The Muslim Women (Protection of Rights on Marriage) Act, 2019 is a social and protective legislation.

The intent of the Parliament is clear: it seeks to provide adequate remedies to women from economic deprivation that may result from marital discord, irrespective of their status as married or divorced women. This legislation provides for

an effective and summary remedy for appropriate food, clothing and lodging for wife and dependent children.

In the case of **Mohd. Abdul Samad v. State of Telangana and Another [2024] 7 S.C.R 1236**, the Hon'ble Supreme Court has held that:

**Section 5 extends to Muslim women upon whom talaq is pronounced. Talaq is defined in Section 2(c) as talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband which is void and illegal as per Section 3 of the said Act. 'In other words, married Muslim women can seek subsistence allowance if talaq, as defined in the 2019 Act, is pronounced on her.**

**In case a woman has been divorced in a valid manner, she can approach the Magistrate under the 1986 Act but if she has been the victim of the mischief under the 2019 Act, then her right to subsistence allowance is secured through Section 5 of the 2019 Act. The intent of the Parliament is clear: it seeks to provide adequate remedies to women from economic deprivation that may result from marital discord, irrespective of their status as a married or divorced woman. Therefore, prior to a divorce in accordance with law, a married woman has access to maintenance under the general law, i.e., Section 125 of the CrPC and under a special law, i.e., 2019 Act. When divorce is void and illegal, such a Muslim woman can also seek remedy under Section 125 of the CrPC.**

Further, in the case of **Vidarbha Industries Power Limited Vs Asis Bank Limited (2022) 8 SCC 352**, the Hon'ble Supreme Court has held that:

**Ordinarily the word “may” is directory. The expression “may admit” confers discretion to admit. In contrast, the use of the word “shall” postulates a mandatory requirement. The use of the word “shall” raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing through the construction.**

In **Hiralal Rattanlal v. State of Uttar Pradesh**, the court has held:

**4 (2014) 2 SCC 1 (para 14) 5 (1973) 1 SCC 216 “22. ... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say?**

**If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.**

The intention of the legislation is very clear. It is a protective legislation which protects women and the

dependent children from Instantaneous Talaq and ensure financial security and security of residence.

Ld. Counsel for the applicant has filed Assets and Liabilities Affidavit wherein the applicant has mentioned her occupation as a housewife.

In the case of **Mohd. Abdul Samad v. State of Telangana and Another [2024] 7 S.C.R 1236**, the Hon'ble Supreme Court has held that:

**Thus, both 'financial security' as well as 'security of residence' of Indian women have to be protected and enhanced. That would truly empower such Indian women who are referred to as 'homemakers' and who are the strength and backbone of an Indian family which is the fundamental unit of the Indian society which has to be maintained and strengthened. It goes without saying that a stable family which is emotionally connected and secure gives stability to the society for, it is within the family that precious values of life are learnt and built.**

Therefore, the word "shall" used in Section of The Muslim Women (Protection of Rights on Marriage) Act, 2019 is of mandatory action and casts duty upon this court to grant Applicant No. 1 and her dependent child i.e. Applicant No. 2, subsistence allowance.

**(iii) Quantum of Subsistence Allowance:**

The legislation involved in this application i.e. The Muslim Women (Protection of Rights on Marriage) Act, 2019, nowhere provides as to how to decide on the quantum of subsistence allowance to be paid to the applicants. This is a

new legislation and there is very less material available on it. As such, it becomes very challenging to decide the quantum of subsistence allowance unlike the legislations like Domestic Violence Act or Section 125 CrPC. In such circumstances, this court can take hint from the procedures followed in Domestic Violence Act as well as for granting of maintenance under Section 125 CrPC.

On the directions of this court, Ld. Counsel for the applicant has filed Assets and Liabilities Affidavit which is required as per the mandate judgment of Hon'ble Supreme Court in the case of **Rajnesh v. Neha (2021) 2 SCC 324**. In the case titled **Rajnesh v. Neha (2021) 2 SCC 324**, the Hon'ble Supreme Court has observed:

**At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded.**

24. Hon'ble Delhi High Court in the case of **Bharat Hegde v. Smt. Saroj Hegde [140] (2) (2007) DLT 16**, laid down certain factors which are required to be concerned for determining the maintenance which inter-alia includes status of the parties, reasonable wants of the claimant independent income and property of the claimant, payment capacity of the non-applicant, some guess-work is not ruled out, provisions for food, clothing and shelter, education, medical attention and treatment, etc of the claimant. While these are the factors which are relevant for determining the quantum of maintenance, this court has no hesitation in seeking the

guidance for determining the quantum of subsistence especially in a situation where this court is lacking the guiding precedents.

25. Learned Counsel for the Applicant has filed Assets and Liabilities Affidavit wherein the applicant has disclosed herself as a housewife. Further, it has been mentioned that Applicant No. 2 is suffering from intoeing gait and other ailments which require medical attention. Applicant No. 1 in her Assets and Liabilities Affidavit has also disclosed the income of non-applicant as Rs. 3.68 lakhs per month (16,000 Saudi Riyals). Furthermore, it has been disclosed by the applicant in her Assets and Liabilities Affidavit that she is getting Rs. **10,000 per month** as interim maintenance and the same has been granted by the Hon'ble Court of Judge (Small causes), Srinagar. While the grant of interim maintenance by the said Hon'ble Court does not act as a bar against the grant of subsistence allowance but in light of various judgments and judicial proceedings, this may be taken as one of the factors in deciding the quantum of subsistence allowance.
26. In the case of **Mohd. Abdul Samad v. State of Telangana and Another [2024] 7 S.C.R 1236**, Hon'ble Supreme Court has held that:

- In case of an illegal divorce as per the provisions of the 2019 Act, then,**
- i) **relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the CrPC could also be availed.**
- ii) **if during the pendency of a petition filed under Section 125 of the CrPC, a Muslim**

woman is “divorced”, then she can take recourse under Section 125 of the CrPC or file a petition under the 2019 Act.

- iii) the provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CRPC.

27. Thus, what can be inferred from the above said judgment is that when already the applicant is getting interim maintenance either under Section 125 CrPC or under any other legislation especially Domestic Violence Act, it shall not act as a bar to seek subsistence allowance under Section 5 of the 2019 Act.

28. **Therefore, after careful perusal of contents of application, legal provisions touching the scope, judicial precedents guiding in effective adjudication of this application and after hearing the arguments of Ld. Counsel for applicants, this application is allowed and the non-applicant is, therefore directed to pay an amount of Rs. 7,000/- per month to the applicants from the date of filing of this application.**

29. This application needs no further adjudication and is disposed of. The application be consigned to records after its due compilation.

**Dated:  
24.07.2025**

**ZIRGHAM HAMID  
1<sup>st</sup> Additional Munsiff/  
Judicial Magistrate 1<sup>st</sup> Class  
Srinagar**