Who is not aware of the Shah Bano controversy of the mid-eighties of the last century? It shook the whole country. Shah Bano, an elderly woman from Indore in Madhya Pradesh was divorced at the age of seventy by her husband who was an advocate. She sued him for maintenance under Criminal Procedure Code (Cr.P.C.), section 125 according to which the former husband of the divorced woman has to maintain her, if she is destitute and has no means of her own for her survival and he has to maintain her until she remarries or she dies. However, Shah Bano’s husband refused to pay her maintenance beyond the period of iddah (i.e. three month’s waiting period after divorce before which she cannot remarry). He maintained that according to the Muslim personal law he is obliged to pay her maintenance for the iddah period only and nothing beyond that. However, the Indore High Court and later the Supreme Court decided in her favour granting her (i.e. Shah Bano) maintenance for life under section 125 of Cr.P.C. The Supreme Court argued that since Cr.P.C. is common for all citizens she can claim maintenance under Cr.P.C. and that Muslim personal law will not be applicable in this matter. 

The Muslim leaders, particularly the Ulama, took great offence and opposed the Supreme Court Judgement tooth and nail and maintained that it is blatant interference in the Muslim personal law. According to them the Shari’ah law is divine and cannot be interfered with. The Supreme Court, however, in its support had quoted Abdullah Yusuf Ali’s translation of the Qur’anic verse 2:241 “ For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty ;on the righteous.” The Supreme Court argued that the provision of Cr.P.C. section 125 is supported even by the Holy Scripture of Islam. However, the Ulama maintained that the Supreme Court has no right to interpret the holy scripture. 

The controversy snowballed into a major political problem as thousands of Muslims took to street and demonstrated against the Supreme Court decision. Ultimately the Rajiv Gandhi Government bowed down to the pressure and enacted a law exempting the Muslim women from application of Cr.P.C. section 125. The new law enacted was known as The Muslim Women (Protection of Rights on Divorce) Law. It was enacted in 1986. The progressive Muslims and others dubbed this enactment as a great set back for Muslim women. They felt that the provision of Cr.P.C., section 125 was not essentially un-Islamic. This Act, as against section 125 of Cr.P.C., provides for one time payment as the Muslim theologians argued that the Qur’anic verse 2:241 uses the word matal which means (one time) provision at the time of divorce.

Hence the Muslim Women’s Act makes one time provision only as against recurring payment until she remarries or dies as provided for in Cr.P.C. According to the Muslim Women Act, the husband, at the time of divorce, should pay the mehr amount (if not already paid), should make one time provision for her as provided for
in the Qur’an and should give three months’ maintenance. Thus a Muslim divorcee will get a lump sum amount at the time of divorce. The very first judgement under this Act was given by the District Magistrate of Lucknow Ms. Rekha Dixit who awarded Rs. 80,000 to a Muslim divorcee. Rs. 60,000 were awarded as one time provision and remaining amount was for mehr as well as for three months’ maintenance. The amount awarded was not so bad after all. But it seems Muslim women were not satisfied and number of cases continued to be filed in various courts for maintenance under section 125 of Cr.P.C. despite the enactment to the contrary.

However, many women’s organisations challenged the Muslim Women’s Act in the Supreme Court after its enactment but the Supreme Court is yet to take up those petitions. In the meanwhile some high courts have already pronounced their judgements on various petitions for maintenance. A couple of years ago the Bombay High Court had awarded the Muslim divorcee maintenance for life under the provisions of the Muslim Women’s Act. The Honourable Judge of the Bombay High Court so interpreted the Act that he felt a Muslim divorcee should be given enough within the iddah period to maintain herself for life.

Similarly the Calcutta High Court too while deciding Ms. Shakila Pervin’s case opined that she should be given within the iddah period sufficient amount to last her for life. This judgement was given by Justice Basudev Panigrahi of Calcutta High Court on the petition for maintenance by Shakila Pervin against her husband Haider Ali. However, Haider Ali did not contest the case and remained absent from the Court. The District Magistrate, however, had in its judgement, awarded her, besides her mehr amount of Rs. 2500 a maintenance of Rs. 800 per month until the iddah period. This judgement was given in 1993. Ms. Pervin, however, was not happy with this judgement and she filed an appeal against the lower court’s judgement. The Judge tried to interpret section 3 of the Muslim Women’s Act very broadly which says, “a reasonable and fair provision and maintenance to be made and paid to her within the iddah period by her former husband.”

Justice Panigrahi maintained that the Supreme Court had unequivocally held that the provisions of section 125 of the Cr.PC procedure override the personal law and it necessitated the enactment of the Act in Parliament in 1986. The judge said that “A divorced Muslim woman is entitled to maintenance after contemplating her future needs and the maintenance is not limited only up to the iddat period. The phrase used in Section 3 (I) (A) of the Act, 1986 is reasonable and fair provision and maintenance to be made to see that the divorced woman get sufficient means of livelihood after divorce and that she does not become destitute or is not thrown out on the street.”

Now the full Bench of the Bombay High Court has given similar judgement on 11th of July 2000. The full Bench of the Bombay High Court also held that a Muslim husband must make a “fair and reasonable provision” for his divorced wife within the ‘iddat’ period to last her for her life time or till such time that she remarries or incurs any other disability under the Muslim Women (Protection of Rights on Divorce) Act, 1986. As Muslim husband’s liability to pay maintenance to his divorced wife ceases the moment the ‘iddat’ period gets over, the Court said he has to provide within that period a reasonable amount to her which should take care of her beyond the iddat period. The Bench came to this conclusion after debating whether a Muslim woman is entitled to get maintenance after the iddat period. The Court also
had to resolve the controversy about the scope and effect of the provisions of section 125 to 128 of Cr.P.C. The question before the Court was whether the Muslim husband’s liability under Section 3(A) of the MWA to make a reasonable and fair provision and pay maintenance is only restricted to the ‘iddat’ period or whether it extends beyond the iddat period. The Court also held that while deciding the amount of the provision, several factors including the standard of life enjoyed by the divorced woman during her marriage and the means of income of her former husband will have to be taken into account. If the husband, the Court said, is unable to arrange such a lump sum amount he can ask for instalments and the Court shall consider granting him instalments.

Thus it will be seen that all courts now have been interpreting the Section 3 (a) of MWA, 1986 such as to give benefit of maintenance to Muslim divorcees beyond the iddah period which is in fact the intention of the section 125 of the Cr.P.C. Instead of giving maintenance every month as provided for in Cr.P.C the husband under MWA, 1986 will have to pay lumpsum within the iddah period so as to benefit the divorcee beyond iddah period. The Muslim theologians too were insisting during the Shah Bano agitation that the Qur’an provides for one time provision only as in the verse 2:241. There were of course different interpretations of 2:241 by the companions of the holy Prophet. But some companions like Abdullah bin Abbas did hold that the provision (mata’) has to be substantial and not merely symbolic.

Seen in this light the Calcutta and Bombay High Courts’ judgement is quite in keeping with the spirit of the provision of the Holy Qur’an. In fact it is the Qur’an which made this provision for divorcees much before any modern enactment. It is regrettable that this was not projected by the leaders of the Shah Bano movement. Instead they gave impression as if they are against the just rights of women. The Shah Bano movement has to be seen in the backdrop of eighties when Muslims, like the Christians today, were facing major threat to their security. Many major riots had taken place during that period in which hundreds of people were killed. The Shah Bano movement could gather such momentum only because of feeling of acute insecurity among the Muslims. Today despite these landmark judgements by two leading high courts of India there is no sign of protest from Muslim leaders. The Supreme Court judgement in case of the Shah Bano case of 1986 also would not have evoked much protest had there been not much feeling of insecurity due to major riots. The Shah Bano movement was basically a political movement in response to the prevailing political situation in the country.

The Muslim women had feared that the enactment of MWA, 1986 has taken away their right of maintenance beyond the period of iddah. But these court judgements have given them the benefit which perhaps they did not expect. The Muslim leaders are not likely to protest against these judgements as they did after the Supreme Court judgement and even if they do, they will not get the kind of response from Muslims as they did in mid eighties. Muslims are not in a mood for confrontation at all. They want to give priority to their basic economic and educational needs rather than take up emotional issues which take them no where. And with the increased awareness among Muslim women of their rights, they will not succeed even if they protested against such judgements. After all it is Muslim women who have gone to the courts for these benefits.