



[Table of Contents](#)

## WOMEN'S RIGHTS

### An inequitable proposal

**A proposed Bill on the removal of ceiling on monthly maintenance payable to wives and other dependents as laid down in Section 125 of the CrPC leaves Muslim women out of its purview.**

**T.K. RAJALAKSHMI**

*in New Delhi*

IN a move that could benefit women faced with the prospect of divorce and possible destitution, the Union Law Ministry has decided to introduce a Bill that would seek to amend Section 125 of the Code of Criminal Procedure (CrPC). The amendment would remove the existing ceiling of Rs.500 on the monthly maintenance payable for such women, and for dependents such as parents and children. The ceiling was fixed in 1955 and retained in CrPC, 1973. The amendment would also seek to expedite the grant of interim maintenance.

**A group of Muslim women. The issue of maintenance for them has to go beyond political considerations.**

An increase in maintenance has been a long-standing demand of women's movements and was articulated as early as in 1974 - in the Committee on the Status of Women in India report. The CSWI report, "Towards

Equality", stated: "The inclusion of the right to maintenance in the Criminal Procedure Code has the great advantage of making the remedy both speedy and cheap. The underlying principle is to prevent vagrancy, which usually leads to commission of crimes. From this point of view, it seems unjustified to limit the total amount of maintenance for all dependent persons to Rs.500."

Amendments to provisions in four acts, namely, Section 36 of the Indian Divorce Act, 1869, Section 24 of the Hindu Marriage Act, 1955 and Section 39 of the Parsi Marriage and Divorce Act 1936 and Section 39 of the Special Marriages Act, will be made so that applications to the court for interim maintenance are disposed of within 60 days of their filing.

However, once again there is silence on the issue of payment of maintenance to Muslim women. The Muslim Women (Protection of Rights on Divorce) Act, 1986 that became law in the wake of the Shah Bano judgment, had stirred a debate over its adequacy with regard to payment of maintenance for Muslim women. The Supreme Court in Mohd Ahmad Khan v Shah Bano Begam and



RAJEEV BHATT

others held that if a divorced woman is able to maintain herself, the husband's liability ceases with the expiry of the period of iddat (three menstrual courses after the date of divorce, that is, roughly three months), but if she is unable to maintain herself after the period, she is entitled to have recourse to Section 125 CrPC. This decision led to a controversy and in order to dilute the judgment in the Shah Bano case, the Muslim Women's Bill, later to become the Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed. Women's organisations are critical of the Act. They are opposed to it primarily because it denies Muslim women the option of exercising their rights under the provisions of secular legislation, which the CrPC is.

Women's groups and secular-minded people hold the view that it is unfair to continue to deprive Muslim women the benefits of the secular provisions of the Acts. The first time around, the Muslim Women's Act had deprived Muslim women, on grounds of religion, of the rights under Section 125 CrPC. The Act was seen as violative of the principle of equality before law. According to "Judgment Call", a document published by Majlis, a legal advocacy centre based in Mumbai, the Act provided two sets of remedies depending upon the jurisdiction of the High Court. While in some States she was entitled to a fair and reasonable provision, in addition to maintenance during the iddat period, in others her right to maintenance was confined to the iddat period. The 1986 Act has been challenged in the Supreme Court. The All India Muslim Personal Law Board (AMPLB) has, however, defended it.

Given the circumstances under which the Act came into being and the mixed support it received from members of the Muslim community as well as organisations of women and advocacy groups, it was evident that the issue would be resurrected. In fact the debate over a uniform civil code, reforms in personal laws and the applicability of secular legislation to everybody never really died down. When minority politics and issues took firm shape in the 1990s following the demolition of the Babri Masjid, the issue of providing for fair maintenance to divorced Muslim women was put on the backburner.

The Centre for Women's Development Studies (CWSD), while welcoming the removal of the ceiling on maintenance and other legal reforms, regretted the continued exclusion of Muslim women from "benefits under a law that they had enjoyed since 1898, particularly when these amendments are contemplated to be extended to the Hindu, Parsi, Indian Divorce and Special Marriages Acts." The Joint Women's Programme (JWP) and the Muslim Women's Forum wanted the benefits to be extended to Muslim women. JWP secretary Jyotsana Chat-terjee said that the organisation would make a representation to the Law Minister on this issue. The All India Democratic Women's Association has held that while the space for secular legislation should be expanded, existing personal laws should undergo reforms so as to become more gender-just. Indu Agnihotri of AIDWA recalled that a private member's bill in the Lok Sabha, moved some years ago by Sushila Gopalan of the Communist Party of India (Marxist), had sought the removal of the ceiling on maintenance.

AIDWA in a statement welcomed the Law Ministry's initiative and suggested that the law be strengthened by providing that, in the event of conflicting claims about a husband's income, the wife's statement should be accepted and the onus would be on the husband to disprove it. It suggested changes in the disqualifying norms for receiving maintenance.

Regretting the exclusion of Muslim women from the purview of the proposed amendments, Sona Khan, a Supreme Court advocate, questioned the constitutionality of the 1986 Act. One of the advocates who appeared in the Shah Bano case, she told *Frontline* that the denial to Muslim women of benefits available to other divorced women under secular provisions was discriminatory. She maintained that Section 127 (3) (b) CrPC ensured that if a woman received any relief after divorce, under any customary or personal law, "she shall not be entitled to the benefit of seeking maintenance under Section 125." Khan claimed that the dower or mehr (a consideration for entering into the contract of marriage and payable by the husband) that the Muslim woman had a right to receive either at the time of marriage or anytime later, has been unfairly equated with the right to maintenance under Section 125. The Shah Bano judgment had interpreted and justified the secular provisions by using the provisions under personal and customary law, and according to Khan the judgment is law even today as it has not been overruled by the Supreme Court. Even the dower, Khan held, was most of the time waived by the wife on the first night of marriage.

DEFENDING the Muslim Women's Act, 1986 is the AIMPLB. Hasina Hashia, member of the AIMPLB and an associate professor in Jamia Millia Islamia university, is categorical that Muslim women are not entitled to maintenance beyond the iddat period and that Section 125 CrPC cannot apply to them. Section 5 of the 1986 Act lays down that only if the divorced woman and her former husband exercise their option to be governed by Sections 125 to 128 of the CrPC will their case be considered under it.

Hashia told *Frontline* that accepting maintenance beyond the iddat period was haraam (illegitimate) under the Shariat as all relationship between a man and his wife would have ceased. After that she could be supported either by her relatives or the Wakf Board. She said that the AIMPLB was demanding a lower ceiling for maintenance for Muslim women and that if a lump sum could be decided depending upon the income of the man, it would not go beyond the tenets of Muslim personal law. The concept of Mata (a parting gift to serve a social purpose) as espoused by some sections of the Muslim intelligentsia could be explored. The Board is yet to have a final opinion on this concept, which finds mention in the Koran.

All solutions, Hashia maintained, are to be found within the parameters of the Shariat. She recommended the setting up of Dar-ul-Qaza or Islamic courts to resolve disputes of all kinds.

Sabiha Hussain of the CWDS, who has done a considerable amount of work relating to issues of Muslim women, said frivolous excuses were often given for divorcing Muslim women. She quoted a study conducted during 1998-99 involving 10 Muslim women from a mixed socio-economic background in Bihar. Some had been divorced for not cooking what they had been asked to cook, yet others were divorced for not possessing good looks and so on. Some of them did not get maintenance even for the iddat period and at the time of divorce, no witnesses were present. Only two got back their mehr after three months of the divorce.

A seminar in May organised by the CWDS and the Majlis on the issue of maintenance rights of Muslim women debated the provisions of the Muslim Women's Act, 1986 vis-a-vis benefits under Section 125 CrPC. While some like Flavia Agnes of the Majlis felt that a fresh look at the Act was necessary,

others felt that the Act needed to be interpreted in such a way as to make it more gender-just given the Indian social realities. The seminar, which witnessed divergent views, finally recommended that personal laws of all communities be strengthened in order to make them more gender-just and to weed out gender discrimination; that the Muslim Women's Act, 1986 be strengthened to uphold positive and gender-just interpretations and that the ceiling on the amount of maintenance payable under Section 125 CrPC be removed.

The issue of maintenance for Muslim women has to go beyond any political considerations and it is the executive's responsibility to ensure that no community is discriminated against in the formulation of a legislation. The silence on the issue of Section 125 CrPC vis-a-vis Muslim women's maintenance points to the fact that considerations other than respecting the personal laws of a community have been at play. It reflects the government reluctance to open what it sees as a veritable Pandora's box. What is surprising is that it does not seem to care much about the sentiments of the minorities while dealing with other issues concerning them.

---

[ [Subscribe](#) | [Contact Us](#) | [Archives](#) | [Table of Contents](#) ]

---

[ [Home](#) | [The Hindu](#) | [Business Line](#) | [Sportstar](#) ]

---

Copyrights © 2001, Frontline.

Republication or redissemination of the contents of this screen are expressly prohibited  
without the written consent of Frontline

---