

# Muslim divorcee's right to maintenance

From Our Legal Correspondent

NEW DELHI, April 23.

In a judgment of "far-reaching importance" the Supreme Court today ruled that a divorced Muslim woman was entitled to maintenance from her former husband as long as she remained unmarried and could not maintain herself. The five-judge constitution Bench held that Section 125 of the Criminal Procedure Code (Liability of a person of sufficient means to maintain his wife, children and parents etc) "is truly secular in character" and that the clause "which defines wife as including a divorced wife contains no words of limitation to justify exclusion of Muslim women from its scope."

The Chief Justice, Mr. Y. V. Chandrachud (who delivered the judgment of the Bench) dismissed a criminal appeal from a Muslim husband (a practising advocate) against a judgment of the Madhya Pradesh High Court enhancing the amount of maintenance payable to his divorced Muslim wife to Rs. 179.20 from a " princely Rs. 25" awarded by an Indore First Class Judicial Magistrate. He said "the religion professed by a spouse or spouses has no place in the scheme of these provisions" (Section 125 and 127 of Cr. PC) which deal with "alteration of allowance in specified circumstances" and "whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in the application of these provisions".

The Bench, which included Mr. Justice D. A. Desai, Mr. Justice O. Chinnappa Reddy, Mr. Justice E. S. Venkataramiah, and Mr. Justice Ranganath Misra, affirmed the judgment of the High Court and directed the husband to pay Rs. 10,000 towards the cost of the appeal.

**A moral edict:** The Chief Justice noted that "the liability imposed by Section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution" and that "it is the moral edict of the law and morality cannot be clubbed with religion".

The Bench regretted that Article 44 of the Constitution (mandating the State to secure for its citizens a uniform civil code throughout the country) was "a dead letter" and that there was no evidence of any official activity for framing a common civil code. It noted that a beginning had to be made if the Constitution had to have any meaning.

**Common civil code:** "A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies and no community is likely to bell the cat by making gratuitous concessions on this issue", the Bench pointed out and added that "a belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal laws".

"Unquestionably" the State "has legislative competence" to bring in a uniform civil code, and "we (Court) understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform", the Bench noted.

**Court as reformer:** In this context, it added that inevitably the role of the reformer was to be assumed by the courts because it was beyond the "endurance of sensitive minds to allow injustice to be suffered when it is so palpable".

"But", the Bench commented "piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common civil code" and "justice to all is a far more satisfactory way of dispensing justice than justice from case to case".

Explaining why the religion professed by a spouse had no place in the scheme of Sections 125 and 127, the Bench pointed out that Section 125 was a part of the code of criminal procedure and not of civil laws which define and govern the rights and obligations of parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act and the Shariat, or the Parsi Matrimonial Act.

Section 125 was enacted to provide a quick and summary remedy to a class of persons who are unable to maintain themselves, the Bench said and asked "What difference would it then make as to what is the religion professed by the neglected wife, child or parent? These provisions do not supplant the personal law of the parties but, equally, the religion professed by the parties or the state of personal law by which they are governed cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes".

**Plea rejected:** The Bench rejected a plea of

the husband that, according to Muslim personal law, his liability to provide for maintenance of his divorced wife was limited to the period of "iddat" despite the fact she was unable to maintain herself.

The Bench noted that the true position was that if the divorced Muslim wife was able to maintain herself, only then the husband's liability to provide maintenance for her ceased with the expiration of the period of iddat.

The Bench also negated a plea that a Muslim wife was not entitled to maintenance under Section 125 because of Section 127 (3) (B) which empowers a magistrate to cancel the order of maintenance if the divorced wife received "the whole of the sum (like 'mahr' or dowry in the case of a Muslim husband) which, under any customary or personal law applicable to the parties, was payable on such divorce".

The Court held that "mahr is not a sum which, under the Muslim personal law, is payable on divorce" and that if 'mahr' was an amount which the Muslim wife was entitled to receive from her husband in consideration of the marriage, that was the very opposite of the amount being payable in consideration of divorce. "No amount which is payable in consideration of the marriage can possibly be described as an amount payable in consideration of a divorce", it declared.

In disposing of the appeal, the Court said it would be open to the wife to make an application for increasing the allowance of maintenance granted to her in proof of a change in the circumstances.

**UNI reports:**

The appeal arose out of an application by Mrs. Shah Bano, an advocate, for maintenance under section 125 of the Cr.P.C.

Mrs. Shah Bano was married to Mr. Mohammad Ahmed Khan in 1932 and they had three sons and two daughters. In 1975, Mr. Khan drove his wife out of the house.

On a petition filed by Mrs. Shah Bano against the husband under section 125 Cr.P.C. asking for maintenance allowance of Rs. 500 a month, a judicial Magistrate of Indore had directed Mr. Khan to pay her Rs. 25 a month by way of maintenance, in August, 1979.

Mr. Khan had alleged that his wife had a professional income of about Rs. 60,000 a year.