HEMANT PITHWA

EMPOWERED: Thanks to the new judgement

TAMING TALAQ

A Bombay High Court ruling seeking valid proof in Muslim divorces is lauded as a progressive step

TALAQ IS ONE OF THE MOST feared words in the lives of Muslim women. While it still continues to haunt women who face unilateral talaq, a series of judgements by Indian courts have diluted its stranglehold over Muslim women. The latest verdict of the Bombay High Court takes that giant step forward. This landmark judgement states that Muslim divorces will have to be "proved in a court of law under the Civil Procedure Code and the Indian Evidence Act".

If the wife contests the talaq, it will be termed valid only if there is proof of certain conditions being fulfilled. These include: concrete reasons for divorce, settlement of *mehr* (money given by the husband before marriage), maintenance during *iddat* (the three months of abstinence after divorce) and return of the wife's belongings. "Merely producing a talaqnama will not absolve the husband of his duty to pay maintenance," says Mumbai-based activist lawyer Flavia Agnes.

Earlier, the main grouse of women litigants was that some men tended to misuse the right to unilateral talaq accorded to them by Muslim personal law. Men could divorce their wives without their consent or intervention of courts. In the woman's absence, the personal law also accepts talaq by e-mail, post or telephone. However, women can ask for a *khulla* (divorce) only with the husband's consent.

No wonder then that women activists like Hasina Khan of the Mumbai-based group Aawaz-e-Niswan and Jamila Nishat of the Hyderabad-based women's organisation Asmita are jubilant. They view this judgement as yet another tool of empowerment, especially for women in ultra-conservative sections of Muslim society. Similar pronouncements of courts in Karnataka and Tamil Nadu in the past couple of years have given Muslim women litigants an added sense of security.

"This ruling adds to the safeguards for women who are already happy with the introduction of a marriage certificate now made compulsory in Hyderabad," says Nishat, citing the state law introduced in April this year by Andhra Pradesh Chief Minister N. Chandrababu Naidu. While Nishat wonders whether the preoccupation with the Gujarat issue makes this an inappropriate time for the judgement, Delhi socialite Sadia Dehlvi turns this doubt into a statement. Dehlvi, who recently got her divorce via e-mail from her Pakistani ex-husband, argues that Indian courts are not above Quranic law. "The Government is trying to involve Muslims in a non-issue. In the current communal crisis, anything it does against the personal law will be viewed with suspicion," she says.

What might come as a disappointment to Dehlvi is the view of Maulana Syed Nizamuddin, the Patna-based general secretary of the All India Muslim Personal Law Board, who feels the ruling doesn't interfere with Muslim personal law. "If a wife doesn't accept the talaq, it is all right for the man to prove it," he says. A ruling that benefits victims of unjustified divorce and arms the lawyers to counsel and defend their clients in a better way can only be viewed as a progressive step. Or, as Agnes says, "Unnecessary churning of emotions should not dilute a liberal step ahead."

—Shefalee Vasudev

COURSE OF LAW

- **1937: The Shariat Act and the Dissolution of the Muslim Marriages Act, 1939, makes Muslim marriages civil contracts.**
- **1985: Supreme Court ruling in the Shah Bano case makes maintenance mandatory.**
- **1986: Under the Muslim Women's Protection Act, women could get maintenance only during the *iddat*.**
- **2001: Supreme Court allows maintenance beyond the *iddat*.**
- **2002: Bombay High Court rules talaq must be proved in a court.**