

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

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**Country:** India  
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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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#### Questions

- 1. Please provide information regarding the treatment of separated Muslim women in India.**
- 2. Please provide information regarding the employment prospects of separated Muslim women.**
- 3. Please provide information regarding the level of state protection for separated Muslim women.**

#### RESPONSE

Little information was found among the sources consulted addressing the situation or treatment of separated Muslim women, apart from divorced Muslim women, in India. The information that was found indicates that, because “Muslim personal law does not recognise the concept of judicial separation”, separated Muslim women are not entitled to any rights under Muslim Personal Law. This fact may not be lost on Muslim men contemplating leaving their wives. Sylvia Vatuk, for instance, observes that many Muslim men “are somewhat reluctant to pronounce *talaq* on their wives” precisely for financial reasons – namely, the obligation to return the *mehr* (dower) and pay maintenance during the *iddat* (three months or menstrual cycles immediately after divorce). This conclusion is supported by some empirical studies on divorce and separation among Muslims in India; in particular, by those undertaken by Khan and Nishat (‘Are you planning to separate from your spouse?’ (undated) , Women Excel website <http://www.womenexcel.com/law/separation.htm> – Accessed 3 July 2006 – Attachment 1; Vatuk, S. 2003, ‘Muslim Women in the Indian Family Courts: A Report from Chennai’, Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, pp. 151-152 – Attachment 2; Khan, M. Z. ‘Mehr and Divorce among Muslims in Mirzapur District’, in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, pp. 339-340 – Attachment 3; Nishat, J. 2003, ‘A long way to go: Divorce practices among Muslim families of Hyderabad city’, Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi p. 308 – Attachment 4).

(**Note:** Under Muslim Personal Law a Muslim wife may file for divorce on various grounds. These include: “desertion for four years, failure to maintain for two years, husband’s imprisonment for seven years, husband’s failure to perform marital obligations for three years, husband’s continued impotence from the time of the marriage, husband’s insanity for two years or his serious illness, wife’s exercise of her option of puberty if she was contracted into marriage by any guardian before age of 15 and repudiates the marriage before the age of 18 (as long as the marriage was not consummated), husband’s cruelty (including physical or other mistreatment, unequal treatment of co-wives), and any other ground recognised as valid for the dissolution of marriage under Muslim law” – ‘India, Republic of’ (undated), School of Law, Emory University website <http://www.law.emory.edu/IFL/legal/india.htm> – Accessed July 2006 – Attachment 5).

### **Some Background Information**

There is a large body of literature on the topic of post divorce maintenance, most of it contextualised with reference to the *Shah Bhano* controversy and attempts by the Indian legislature to exclude Muslim women from the ambit of Indian civil and criminal law in matters relating to marriage, divorce and maintenance. A brief summary of that information is provided as a prelude to information on the treatment and actual situation of divorced or separated Muslim women.

In *Md. Ahmed Khan v Shah Bhano Begum* [1985], the respondent, an indigent Muslim woman, sustained a claim for maintenance under s 125 of the *Criminal Procedure Code 1973* – a law of general application, which the court held applied to all citizens irrespective of religion. Counsel for the appellant argued that under Muslim Personal Law, the liability of a husband to pay maintenance was restricted to the period of *iddat*. Rejecting that argument, the Court observed that s 125 “was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves”, and that:

The true position is that, if the divorced wife is able to maintain herself, the husband’s liability to provide maintenance for her ceases with the expiration of the period of *iddat*. If she is unable to maintain herself, she is entitled to take recourse to section 125 of the Code. (*Mohd. Ahmed Khan v Shah Bano Begum and Ors* [1985] INSC 97; [1985] 3 SCR 844; [1985] 2 SCC 556; AIR 1985 SC 945 (23 April 1985), Australian Legal Institute website <http://www.austlii.edu.au/~andrew/CommonLII/INSC/1985/97.html> – Accessed 4 July 2006 – Attachment 6).

As it stood at the time, s 125 of the *Code* provided that:

if any person, having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal order such person to make a monthly allowance for the maintenance of his wife at such monthly rate not exceeding five hundred rupees in the whole. Under Explanation (b) thereunder “wife” includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. (*Mohd. Ahmed Khan v Shah Bano Begum and Ors* [1985] INSC 97; [1985] 3 SCR 844; [1985] 2 SCC 556; AIR 1985 SC 945 (23 April 1985) Australian Legal Institute website <http://www.austlii.edu.au/~andrew/CommonLII/INSC/1985/97.html> – Accessed 4 July 2006 – Attachment 6).

Bowing to conservative Muslim pressure in the aftermath of the Court’s judgment, the government of the day negated the ruling with the enactment of the *Muslim Women*

(*Protection of Right on Divorce*) Act 1986. The new Act purported to restrict the liability of a husband to pay maintenance to the period of *iddat*; section 3(a) provided that a divorced Muslim woman shall be entitled to:

a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband. (*The Muslim Women (Protection of Rights on Divorce) Act*, 1986, Bare Acts website <http://www.helplinealaw.com/bareact/index.php?dsp=m-women> – Accessed 4 July 2006 – Attachment 7).

(Uma, S. 2005, 'Muslim women's right to maintenance in India', *The Daily Star* online edition, Issue No. 175, 30 January <http://www.thedailystar.net/law/2005/01/04/vision.htm> – Accessed 4 July 2006 – Attachment 8).

(For more information on the *Shah Bano* controversy, see: 'Shah Bano case' 2006, Wikipedia website, 11 June 2006 <http://www.hinduonnet.com/2001/09/29/stories/0229000m.htm> – Accessed 26 June 2006 – Attachment 9; 'The *Shah Bano* legacy' 2003, *The Hindu* online edition, 10 August <http://www.hinduonnet.com/2003/08/10/stories/2003081000221500.htm> – Accessed 4 July 2006 – Attachment 10).

Since being passed, the ostensible effect of *The Muslim Women (Protection of Rights on Divorce) Act* has not withstood close judicial scrutiny. In 2001, the Constitutional Bench of the Supreme Court concluded in *Daniel Latifi v Union of India* [2001] that s 3(a) did not "limit the liability of a Muslim husband" to pay maintenance to the *iddat* period. As the court observed:

A careful reading of the provisions of the Act would indicate that a divorced (Muslim) woman is entitled to a reasonable and fair provision for maintenance... Parliament seems to intend that the divorced woman gets sufficient means of livelihood, after the divorce and, therefore, the word 'provision' indicates that something is provided in advance for meeting some needs.

In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs...

[N]o where the Parliament has provided that reasonable and fair provision and maintenance is limited only for the "iddat period"...it would extend to the whole life of the divorced wife unless she gets married for a second time (Rao, T. 2001, 'Payment of maintenance not confined to "iddat" period', *The Hindu* online edition, 29 September <http://www.hinduonnet.com/2001/09/29/stories/0229000m.htm> – Accessed 4 July 2006 – Attachment 11).

In a landmark ruling in 2002, the Bombay High Court took similar steps in relation to Muslim Personal Law by ruling "that divorces between Muslim couples will now have to be 'convincingly proved in a court of law under the civil procedure code and the Indian Evidence Act'". The ruling sought to provide a safeguard against the practice of obtaining a divorce by arbitrary utterances of "talaq" (divorce) ('Safeguards against reckless divorces' 2002, People's Union for Civil Liberties Bulletin, People's Union for Civil Liberties website, June <http://www.pucl.org/Topics/Gender/2002/divorce.htm> – Accessed 4 July 2006 – Attachment 12).

Notwithstanding judicial statements, and the recent evolution of common law protections relating to divorce and post divorce maintenance as outlined above, country information still

observes that “most Muslim family law disputes in India...are settled extra-judicially”. And that, in many if not the majority of cases, divorced Muslim women fail to receive their entitlements (Pearl, D. and Menski, W. 1998, *Muslim Family Law*, 3<sup>rd</sup> Edition, Sweet and Maxwell, London, p. 45 – Attachment 13; Rafat, Z. 2003, ‘Divorce and Remarriage in Western UP’, in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 89-90 – Attachment 14).

### **1. Please provide information regarding the treatment of separated Muslim women in India.**

Information on the situation and treatment of divorced or separated Muslim women in India indicates that, while divorced or separated Muslim women are “not as socially stigmatised” as their Hindu counterparts, they nonetheless face a range of severe disabilities. Most of these appear to originate in the homes of their “kinsmen to whom they generally revert once they are divorced [or separated]” (Brown, J. & Chowdhury, S. D. 2002, *Women’s Land Rights in West Bengal: A Field Study*, Rural Development Institute website, November [http://www.rdiland.org/PDF/PDF\\_Reports/RDI\\_116.pdf](http://www.rdiland.org/PDF/PDF_Reports/RDI_116.pdf) – Accessed 4 July 2006 – Attachment 15; Brown, J., Ananthpur, K., & Giovarelli, R. 2002, *Women’s Access and Rights to Land in Karnataka*, Rural Development Institute website, April [http://www.rdiland.org/PDF/PDF\\_Reports/RDI\\_114.pdf](http://www.rdiland.org/PDF/PDF_Reports/RDI_114.pdf) – Accessed 4 July 2006 – Attachment 16; Rafat, Z. 2003, ‘Divorce and Remarriage in Western UP’, in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 93-95 – Attachment 14).

Writing about the “post divorce problems” faced by Muslim women in Western Uttar Pradesh, Zakiya Rafat notes, in particular, that:

while Islam invests Muslim women with rights to *mehr*, dowry and remarriage, social and cultural mores rather than Islamic principles exert a greater influence in determining their actual social status in the event of divorce and separation from their husbands ... (Rafat, Z. 2003, ‘Divorce and Remarriage in Western UP’, in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 99 – Attachment 14).

Commenting on the actual problems faced by divorced Muslim women, he also notes that:

[t]hese are generally day-to-day problems of adjustment within the families of their parents or brothers and of finding a suitable place to live if their parents or brothers are unwilling to keep them. Generally, parents are quite considerate towards their divorced daughters, though we did come across many instances where the father and mother were inclined to be unsympathetic towards their divorced daughters and blamed them for the predicament in which they had been placed. The situation is worse if her brothers and their families are also living in the same household or if she has to move to the home of a brother who is also married and has a complete family. In such situations the sister-in-law, and at her prompting even the brother, tends to treat the divorced woman as an unnecessary burden on the family and its meagre resources and expects them to do all the domestic chores: cleaning the house, washing clothes, cleaning utensils, cooking and looking after the children, etc. They are virtually made to work like maidservants in the household... If she needs to see the doctor or otherwise visit the market, the divorced woman faces the problem of finding an escort. If she goes alone, usually the entire neighbourhood, including her brothers and sisters-in-law point the finger of suspicion at her. She is accused of loose morals. Even divorced working women are obliged to do domestic work after getting back from work, in the homes of their brothers. Further, they are also subjected to taunts, all the more so as they are away from home for long

periods... (Rafat, Z. 2003, 'Divorce and Remarriage in Western UP', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 93 – Attachment 14).

Rafat provides a number of case studies in his paper. In some, divorced Muslim women reported being turned out by their kinsmen at the end of the *iddat* period and “looked down upon by neighbours” (Rafat, Z. 2003, 'Divorce and Remarriage in Western UP', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 94-95 – Attachment 14).

Other studies on the situation divorced or separated Muslim women in India likewise observe that, while many “return to their birth family’s home for shelter”, “some...have poor relationships with their brothers” and may not be allowed to return. According to a study conducted by Brown and Chowdhury in West Bengal, “[t]hese women become landless and destitute despite the fact that their birth family or in-laws own agricultural land” (Brown, J. & Chowdhury, S. D. 2002, *Women’s Land Rights in West Bengal: A Field Study*, Rural Development Institute website, November [http://www.rdiland.org/PDF/PDF\\_Reports/RDI\\_116.pdf](http://www.rdiland.org/PDF/PDF_Reports/RDI_116.pdf) – Accessed 4 July 2006 – Attachment 15).

The situation of separated Muslim women may be distinguished from that of divorced Muslim women in at least one crucial respect: the prospect of remarriage. In this respect, the information suggests that, while remarriage can remedy the socioeconomic hardships faced by divorced women, the option may practically be closed to separated Muslim women who have not filed for divorce or received their entitlements, including the return of the dower (*mehr*) (Khan, M. Z. 2003, 'Mehr and Divorce among Muslims in Mirzapur District', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 340 – Attachment 3; 'India, Republic of' (undated), School of Law, Emory University website <http://www.law.emory.edu/IFL/legal/india.htm> – Accessed 3 July 2006 – Attachment 5; Imtiaz, A. 2003, 'Introduction: Theology, Law and the Sociology of Muslim Divorce Practices in India', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 32 – Attachment 17; Jeffery, P. 2003, 'A “Uniform Customary Code”? Marital Breakdown and Women’s Economic Entitlements in Rural Bijnor', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, pp. 117-118 – Attachment 18).

Writing about the remarriage of separated Muslim women in western Uttar Pradesh, Jeffery also notes that a:

separated (...) woman is more likely to become a “bought bride”, when her new husband “takes a bride for a price” (*bahu mol-lena*), particularly if her brothers or another go-between organize her second match...

This is certainly not an approved method of marrying... The woman herself can expect little or no economic and social support from her natal kin. Bought brides come empty handed (*khali hath*), without a dowry or the other gifts associated with the typical bride. They rarely visit their natal kin or receive visits from them and are very poorly placed to protect themselves, whether from taunting neighbours or marital violence. Yet remarriage is the most likely outcome for the separated woman: in the four study villages, just three women had remained separated for several years without being remarried (Jeffery, P. 2003, 'A “Uniform Customary Code”? Marital Breakdown and Women’s Economic Entitlements in Rural Bijnor', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, pp. 117-118 – Attachment 18).

Information on divorced and separated women in India generally indicates that such women are vulnerable to sexual exploitation and human trafficking. Studies on the demography of female sex workers also indicate that they are overly represented in the industry ('India' 2005, USAID website, June <http://www.usaid.gov/policy/budget/cbj2006/ane/in.html> – Accessed 3 July 2006 – Attachment 19; Dandona, R. *et al* 2006, 'Demography and sex work characteristics of female sex workers in India', PubMed Central (PMC) website, 14 April <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1468426> – Accessed 6 July 2006 – Attachment 20; Refugee Women's Resource Project 2003, *Refugee Women and Domestic Violence: Country Studies*, 4th Edition, February at 5.5 <http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

Other information generally indicates a high prevalence of violence against women in India. With regard to the situation of separated or divorced women, the information indicates that, in the context of communal violence, "single women and women estranged from family face a higher risk of sexual abuse" (Refugee Women's Resource Project 2003, *Refugee Women and Domestic Violence: Country Studies*, 4th Edition, February at 51. <http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

Dr Purna Sen, quoted in a Refugee Women's Resource Project report on women in India, provides the following comments on the situation of divorced and separated women:

Marriage is socially and ideologically constructed as the only legitimate site for adult women in India (Mukherjee 1994) so that being outside a marriage is considered to place a woman in a questionable state, particularly sexually, as she is beyond the control of any man (Kumar 1993:121; Sen 1997). Calman has described unmarried women in India being regarded as 'culturally abhorrent' (Calman 1992:125) and evidence supports the view that divorced women are the targets of discrimination and 'eve-teasing' (Liddle and Joshi 1986) - which in the west is known as sexual harassment. This can involve degrading comments, propositions or demanding of sexual services (Liddle and Joshi 1986: 137-141). Divorced and separated women are more vulnerable to such abuse (Liddle and Joshi 1986: 140) and are fearful of harassment and rape (Sen 1997; Sen 1998)...

There is little available research or data on the experiences of separated women as a distinct group but their experiences can safely be taken to be similar to that of other adult women outside marriage - divorced, widowed, never-married, destitute and abandoned women. In general, it is safe to note that the similarities across these categories are substantial and provide a sound basis from which to consider them to be a distinct social group, for the purpose of description and analysis. There have been many legislative changes in India since Independence but legal changes have not been widely translated into changed social or cultural practices, so that progress is slow and uneven; remaining difficulties should not be underestimated. While divorce is legally obtainable, the overall situation of separated and/or divorced women is extremely negative.

A survey of divorced and separated women found that they all experienced psychological, economic and domestic problems and the vast majority also reported having social problems (Krishnakumari 1987: 177-185). Social attitudes and reactions to such women often centre on rejection, which compounds their tendency to isolation and withdrawal. In the family home divorced/separated women are not immune from the perception that they are without a proper place: it is common that such women are treated as a liability and a burden, even by their own families.

Divorce and separation are matters of great scandal generally (Calman 1992: 124-5) and a strong current in Indian popular (and journalistic) discourse views divorce as a practice opposed to Indian tradition and culture; a practice which is inherently western and therefore suspect (Pande 1988). It seems that separated/divorced women face severe difficulties in seeking community acceptance after breaking behavioural norms, built upon the ideological centrality and sanctity of marriage. Women outside marriage often find themselves without support from their natal families, facing difficulty in re-marrying (if this is possible at all), and face widespread social opprobrium (Calman 1992: 138)...

Women cannot rely on their own families to house them after marital breakdown: women commonly have intense difficulties in finding independent accommodation. Any form of housing is difficult for single adult women to secure and in addition to the practical problems of finding shelter women face the real threat of heightened vulnerability to male violence (Calman 1992:138; Sen 1997)...

An adult woman who has lived outside marriage is vulnerable to charges of adultery (see also House of Lords 1999) which is a matter not only of social importance but also with legal recognition. The Indian law codifies discrimination against women, contrary to the CEDAW: the Indian Penal Code (section 497) provides for a husband to bring a prosecution against a man who has sexual intercourse with his wife (see eg Arya 2000); a wife cannot bring any similar case against her husband or against any woman with whom her husband is having an adulterous relationship. The cultural mores which this provision demonstrates and supports will obtain regardless of the use (or not) of the law. The legal provisions on adultery (confirmed in a challenge on the grounds of equality, *Sowmithri Vishnu v. Union of India*, AIR 1985 SC1618) manifest the cultural attitude that women belong to their husbands once married and that this proprietorial relationship is offended by a man other than the husband having sexual relations with a married woman. The discriminatory nature of this provision is clear (Patel 1990) and it illustrates the limits of Indian legal reform in reflecting the modern international trends towards (and the Indian Constitutional provision on) equality for all citizens regardless, inter alia, of sex.

The power of allegations of infidelity or absence of chaperoning of adult women is considerable and can put women in a state of vulnerability to suspicion, allegation or abuse. A women [*sic*] in these circumstances may be subjected to ostracisation, isolation and sexual harassment, by virtue of being constructed as sexually immoral. Having engaged in social activities without male company can lead to a woman being deemed sexually available, and therefore at risk of sexual harassment or assault (Refugee Women's Resource Project 2003, *Refugee Women and Domestic Violence: Country Studies*, 4th Edition, February at 5.1, 5.3, 5.3.2, 5.3.3

<http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

## **2. Please provide information regarding the employment prospects of separated Muslim women.**

The employment and wider economic prospects of divorced or separated Muslim women in India are restricted. In Rafat's study of 53 divorced women in Western UP:

only 9 (16.9 percent) did not face any economic hardships as a result of their divorce. In one case the son was earning and took care of his mother. In another case the former husband paid Rs. 30 per day to her for the maintenance of his children who were living with her. Before they were divorced 3 women were economically independent. They were working as teachers. They have not faced any serious economic hardships. However, 44 women (83.5 per cent), mostly illiterate and from relatively poor economic background, have had to face

serious economic hardships after their divorce. These hardships were temporary in case of 20 women (37.7 per cent), because 17 women (32.0 per cent) remarried soon after and 3 (5.6 per cent) went on to complete their education and became economically independent. One of them is a bank manager. Facing acute economic problems are 25 women (45.2 per cent) because they found it difficult to remarry and the economic status of their families is low.

Economic hardships are generally more serious in the case of women who have children staying with them... Most of these women do not wish it to be known that they are working as they fear if the *biradari* [caste, endogamous group] comes to know of it the marital prospects if their daughters would be jeopardized (Rafat, Z. 2003, 'Divorce and Remarriage in Western UP', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, p. 97 – Attachment 4).

Rafat's work is complimented by others. Patricia Jeffery, for instance, provides the following information on the social and economic consequences of divorce and separation with respect to Muslim women. In this context, she notes that marital breakdown is far more than a "shameful matter" (*sharam ki bat*).

When marriages break down, they generally do so before the wife has sons of an age to support her. Irrespective of who initiated the separation, the woman must leave the home she has shared with her husband: it is his home, not hers. She cannot even remain in her husband's village. Separated women do not enjoy ownership or usufruct rights in their ex-husband's land (or other property), any more than they have rights in the marital home; nor do they receive maintenance from their ex-husband's family. Few women have the education to enable them to enter the labour force on favourable terms...

In other parts of the world, where women's property rights, agricultural work or educational levels permit economic independence, women may establish households headed by a female after separation of widowhood (Chant, 1997). South Asia as a whole, however, seems to be characterized by procedures that prevent such households from arising. The northern areas, in particular, are marked by low levels of female headed households. For women in rural Bijnor, separation usually entails returning to her natal kin, at least in the first instance (Jeffery, P. 2003, 'A "Uniform Customary Code"? Marital Breakdown and Women's Economic Entitlements in Rural Bijnor', in Imtiaz Ahmad, ed., *Divorce and Remarriage among Muslims in India*, Manohar, New Delhi, pp. 108, 113, 115 – Attachment 18).

Country information appears to indicate that the employment prospects of divorced or separated Muslim women in India are particularly bleak. Sociological studies on their situation in Uttar Pradesh, for instance, note that they depend either on familial support or "semi-skilled or unskilled work for survival". Studies from elsewhere in India also note, in many cases, that they are simultaneously expected to observe *pardah* (female seclusion) and exercise modesty (*laj/saram*). In Moinuddin's study on divorced and separated Muslim women in West Bengal, for instance, 89.84 percent of all respondents' surveyed favoured the practice of *pardah* and most refrained from going outdoors. Commenting, in particular, on *pardah* and divorced and separated Muslim women, Moinuddin observes that:

Divorced and separated Bengali Muslim women have been forced into a limited circle of interaction, which has denied them the opportunity to function as mature and confident human beings... It has rendered the divorced and separated Bengali Muslim woman incapable of contributing to a lot of activities which are suited to her interests and talents (Moinuddin, S.A.H. 2000, *Divorce and Muslim Women*, Rawat Publications, Jaipur, pp. 128, 130, 135 – Attachment 22).

Among his findings, Moinuddin observes that parents of divorced or separated Muslim women in West Bengal expressed a clear preference for allowing their daughters to work

“inside” their homes. (Moinuddin, S.A.H. 2000, *Divorce and Muslim Women*, Rawat Publications, Jaipur, p. 131 – Attachment 22).

The employment prospects of separated Muslim women may be assessed alongside findings that Muslim women have particularly low participation rates in salaried employment. As reported by Minority Rights Group International, for the period 1987-88:

Sixty per cent of Muslim woman are self-employed – the highest percentage among all three religious categories [Hindu, Muslim, Christian]. Figures for Muslim women’s employment as regular workers in urban areas, (15.7 per cent as compared to 27.7 per cent for Hindu women and 51.5 per cent for Christian woman) highlight their marginal presence in salaried jobs... The high self-employment rates and the corresponding low participation of Muslim women as salaried workers indicates their marginal presence as workers in the formal economy. This does not imply the absence of Muslim women as workers; rather it indicates their “invisibility” as informal workers (Kazi, S. 1999, *Muslim Women in India*, International website, sourced from Minority Rights Group International, pp. 24-25 – <http://www.iiav.nl/epublications/1999/MuslimwomenIndia.pdf> – Accessed 4 July 2006 – Attachment 23).

Their employment prospects of separated Muslim women may further be assessed alongside reports that women in India constitute the largest section of the population living in poverty (Refugee Women’s Resource Project 2003, *Refugee Women and Domestic Violence: Country Studies*, 4th Edition, February at 5.3.4

<http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

Dr Purna Sen, quoted in a Refugee Women’s Resource Project report on women in India, provides the following comments on the economic situation of divorced and separated women in India:

If separated, single or divorced women do not enjoy financial or housing support from their kin; they will need to provide for themselves and their children. They need to secure employment, which pays adequately to maintain the family and possibly pay for accommodation (which in itself is not easy for an unmarried woman to obtain). If legal action is required (for maintenance or divorce etc) women need to pay for this. The Indian state does not provide much in the way of legal aid and there are but few Ngos which are able to provide legal support [in] such cases. It is most likely that women will have to engage lawyers at commercial rates, which are likely to be prohibitive.

Research into prostitution has found that divorced, separated, widowed and abandoned women feature disproportionately in this industry (Sleightholme and Sinha 1996; Mukherjee 1994:122). There is no certainty that separated women in India can find paid work and the possibility that they are cajoled or forced into dangerous work, such as prostitution, is great. The UN has noted that it is difficult to find paid work in India, including for graduates and long-standing gender occupation segregation is slow to change (see eg UNDP, Bennett, Banerjee). While some employment opportunities for women are improving they tend to be in the poorer paid and more insecure sectors (Banerjee). Women who are most able to take these opportunities are either single/childless or have a family network to assist with childcare. For a single mother it is extremely difficult to be involved in the world of paid work, especially so in any professional sectors where it is not possible to have children accompany their mother to work.

It is safe to conclude that a single adult woman in India would have great difficulty in supporting herself financially and in the absence of familial support may be destined to destitution or prostitution (Refugee Women’s Resource Project 2003, *Refugee Women and*

*Domestic Violence: Country Studies*, 4th Edition, February at 5.3.4  
<http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

### **3. Please provide information regarding the level of state protection for separated Muslim women.**

Information was not found in the sources consulted on the level of state protection that Indian authorities provide to divorced or separated Muslim women; although, information of a general character indicates that the probable level of state protection is low. A combination of at least three types of information supports this conclusion.

Firstly, country information of a general character indicates that Indian women are afforded low levels of state protection. In a sample of sources compiled by the Refugee Women's Resource Project, there are documented reports "that the police have not only failed to protect women from violence but also played an active part in it". Among this sample, an Amnesty International notes as follows; its account is a typical one on the general absence of state protection in relation to women:

Often women will not approach police because they fear being dishonoured, dismissed or further abused. One activist working with Dalit women in Uttar Pradesh estimated that only five percent of cases of violence against women are registered. Many Dalits are not aware of their rights under special legislation designed to protect them, and it is rare that police voluntarily inform them of those rights.

Police are also accused of withholding and destroying evidence in many cases, usually at the behest of the accused, with whom they may have caste or other links. Witnesses often withdraw testimony after taking bribes or being threatened by the accused; medical evidence is lost because simple procedures are not followed. The discouraging length of time required to pursue torture cases through the courts often causes victims to make compromises or to withdraw their cases entirely. [Amnesty International, (March 2001), "Discrimination Against Women in India"] (Refugee Women's Resource Project 2003, *Refugee Women and Domestic Violence: Country Studies*, 4th Edition, February at 4.3  
<http://www.asylumaid.org.uk/.../WRP%20Refugee%20Women%20and%20Domestic%20Violence%20Feb%202003.doc> – Accessed 6 July 2006 – Attachment 21).

Secondly, country information indicates that Muslim women are particularly at "risk of being targeted by the police" and Hindu communalist groups. Especially noteworthy, in this respect, are reports of sexual violence against Muslim women during wider instances of communal violence, and the failure of state police to pursue or prosecute offenders. The communal clashes which took place in Gujarat in 2002 provide a case in point. In the context of these clashes, the relevant report indicated that Hindu "mobs...gang-raped and sexually mutilated Muslim women and girls" and, in some cases, "pregnant women's bellies were cut open and foetuses were pulled out before the women were killed" (Human Rights Watch 2003, *Human Rights Watch World Report 2003: India*, Human Rights Watch website  
<http://www.hrw.org/wr2k3/pdf/india.pdf> – Accessed 7 July 2006 – Attachment 24; 'Gujarat Muslim women "rape victims"' 2002, *BBC News* online, 16 April  
[http://news.bbc.co.uk/2/hi/south\\_asia/1933521.stm](http://news.bbc.co.uk/2/hi/south_asia/1933521.stm) – Accessed 7 July 2006 – Attachment 25). In other, equally graphic, accounts:

Girls and women were reportedly dragged naked before their families and thousands of attackers. They were then raped, often gang-raped, beaten, had rods violently pushed into their vaginas, had breasts cut off and wombs slashed open by swords. Many of them were then cut into pieces or burned to death. The victims included young girls and old women, pregnant women and babies ('Gujarat authorities fail Muslim women' [Undated], Amnesty International in Asia and the Pacific website [http://asiapacific.amnesty.org/apro/APROweb.nsf/pages/svaw\\_gujaratMuslimWomen](http://asiapacific.amnesty.org/apro/APROweb.nsf/pages/svaw_gujaratMuslimWomen) – Accessed 7 July 2006 – Attachment 26).

In reports of the violence, Indian police in Gujarat refused “to file rape charges against individuals involved in Hindu violence against Muslim”, behind claims that “mob violence [could not] be separated into specific crimes” ('India: Police won't let Muslim women file rape charges' 2002, Look Smart website, sourced from *The Washington Post*, 3 June [http://www.findarticles.com/p/articles/mi\\_qa3693/is\\_200208/ai\\_n9118448](http://www.findarticles.com/p/articles/mi_qa3693/is_200208/ai_n9118448) – Accessed 6 July 2006 – Attachment 27).

According to detailed reports, police were equally guilty of their own excesses. In a report by the People's Union for Civil Liberties, for instance, Muslim women “complained” of police brutality during so-called “combing operations”. The People's Union for Civil Liberties reports as follows:

We have documented instances where discriminatory ‘combing’ has taken place, where police forces have selectively combed areas and *bastis* of the minority community alone. This arbitrary combing has taken place despite the fact that it was the minority community that was under attack. Some of their excesses are listed below.

- Pulling women from their homes, sometimes dragging them by the hair.
- Abusing, using curse words with religio-sexual connotations.
- Beating women, including old, widowed women; sometimes so severely that medical treatment was required.
- Hitting pregnant women on their stomachs with butts of guns.
- Violating the right to practice religion by bursting into homes during prayer timings and treating the Quran Sharif with disrespect.

Various women in oral and written complaints to the Commissioner of Police have identified many police personnel involved in these atrocities, but no FIRs have been registered, nor has any action been initiated. (Ref: Neema Kuwawala's testimony on Baranpura, testimonies and accounts from Rain Basera, from Wadi Tai Wada, etc.) Table 5.1 shows that women from almost 15 *bastis* suffered police atrocities.

### **Anger at the Role Played by the State Machinery, Especially the Police**

Women were very angry about police bias during the violence. Many of the women were witnesses to police inability and sometimes unwillingness to protect them. The brutal actions of the police during “combing operations” affected many women. The testimony of Kaushal Bano Mansuri of Bawamanpura on the “combing operations” speaks for itself: “I was putting my child to sleep at 9 pm on March 23. Suddenly I found lots of policemen in my house. They did not find our men at home. They started giving us *gaalis*. Put 2 *dandas* on me, one on my hand, the other on my stomach, and then they saw I was pregnant [9 months] and hit me in the thigh. They were all saying Kanani, Kanani [DCP of the area]. They were his staff. Only today I have started moving around [since I was so badly injured]. I had to go the hospital. I went into the *dargah* and hid there. I told them I was *pet se*. They still said ‘We have to hit her.’ My *saas* [mother-in-law] also said that I am pregnant. They said, ‘We have to kill it before that happens.’”

Above all, women ask for safety and justice. Naseem Bano, a social worker of Rafai Mohalla, told PUCL members that she had told the Commissioner of Police, “‘You have to protect us. If we take *kanoon* [law] into our own hands we become *gunahgaar* [criminals], if we do not, we die (there is no protection).’ I told him ‘You cannot be *ek tarfa* [partisan]. You should catch them and you should catch us [do not be selective/one-sided in whom you arrest]’” (People’s Union for Civil Liberties 2002, ‘Chapter 5. Women’s Experiences: February 27 – May 10, 2002, Vadodara’, Violence in Vadodara: A Report, 26 June [http://www.onlinevolunteers.org/gujarat/reports/pucl/vv\\_chapter5.pdf](http://www.onlinevolunteers.org/gujarat/reports/pucl/vv_chapter5.pdf) – Accessed 7 July 2006 – Attachment 28).

The third type of information relates to the willingness of Indian governments to defer to the authority of Muslim Personal Law in matters relating to women. The enactment of the *Muslim Women (Protection of Right on Divorce) Act* 1986, limiting the liability of a husband to pay maintenance to the period of *iddat*, is indicative. Other notorious examples include suggestions made by the Chief Minister of Uttar Pradesh in 2005 that a ruling laid down by the clerics “that a woman raped by her father-in-law cannot remain married to her husband” “should not be questioned” (Uma, S. 2005, ‘Muslim women’s right to maintenance in India’, *The Daily Star* online edition, Issue No. 175, 30 January <http://www.thedailystar.net/law/2005/01/04/vision.htm> – Accessed 4 July 2006 – Attachment 8; “Protest against Indian rape fatwa’ 2005, *BBC News* online, 1 July [http://news.bbc.co.uk/2/hi/south\\_asia/4640905.stm](http://news.bbc.co.uk/2/hi/south_asia/4640905.stm) – Accessed 7 July 2006 – Attachment 29; Sharma, K. 2005, ‘Shah Bano re-enacted’, *The Hindu* online edition, 10 July <http://www.hindu.com/mag/2005/07/10/stories/2005071000300300.htm> – Accessed 4 July 2006 – Attachment 30).

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