DANIAL LATIFI AND ANR. A

v.

UNION OF INDIA

SEPTEMBER 28, 2001

[G.B. PATTANAIK, S. RAJENDRA BABU, D.P. MOHAPATRA, B
DORAISWAMY RAJU AND SHIVARAJ V. PATIL, JJ.]

Muslim Law :

Muslim Women (Protection of Rights on Divorce) Act, 1986: C

Constitution validity—Act excluded Muslim divorced woman from the provisions of Section 125 Cr.P.C.—Further, under S.3 Muslim divorced woman was entitled to reasonable and fair provision and maintenance within the period of iddat by her former husband—Held: The Act is constitutionally valid—Reasonable and fair provision extending beyond the iddat period must D *be made by the husband within the iddat period—Liability of Muslim husband to pay maintenance to his divorced wife is not confined to iddat period—A divorced Muslim woman, who has not remarried, may proceed against her relatives for her maintenance—If relatives unable to pay maintenance State Wakf Board to pay such maintenance—The Act does not offend Arts. 14, 15 and* E *21—Constitution of India, 1950 Arts. 14, 15 and 21—Code of Criminal Procedure, 1973, S.125.*

Interpretation of Statutes:

Rule of construction—Provisions of a Statute—Possibility of two F *constructions—Preference of—Held: That construction, if permissible, which makes the Statute effective and operative has to be preferred—Whereas that construction which renders the Statute ultra vires or unconstitutional has to be rejected.*

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Words & Phrases :

"Divorce woman": and "iddat period"—Meaning of—In the context of S.2(a) of the Muslim Woman (Protection of Rights on Divorce) Act, 1986.

"Maintenance:, "provision" and "mahr"—Meaning of—In the context H

A *of S.3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.*

The Petitioners filed a writ petition before this Court challenging the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

B **On behalf of the petitioners it was contended that the Act was un-Islamic, unconstitutional and it undermined the secular character which was the basic feature of the Constitution; that there was no rhyme or reason to deprive the Muslim women from the applicability of Section 125 of the Code of Criminal Procedure, 1973 and consequently the Act must be**
C **held to be discriminatory and violative of Articles 14 and 21 of the Constitution.**

On behalf of the respondents it was contended that a reasonable and fair provision and maintenance for the divorced Muslim woman had been provided under Section 3 of the Act; that personal law was a legitimate
D **basis for discrimination; that the Act was good enough to take care of the vagrancy of Muslim divorced woman; that the interpretation of the Act should be in consonance with the Muslim Personal Law; that the social ethos of the Muslims should be borne in mind while interpreting the Act; that the Act resolved all issues and, therefore, the Act was not invalid or**
E **unconstitutional.**

Dismissing the petition, the Court

HELD : 1. In interpreting the provisions where matrimonial relationship is involved, one has to consider the social conditions prevalent
F **in the Indian society. In Indian society, whether one belongs to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Indian society is male dominated both economically and socially and women are assigned, invariably, a dependent role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though**
G **highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body , and her investment in the marriage is her entire life - a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a**
H **relationship of this nature breaks up, in what manner one could compensate**

her so far as emotional fracture or loss of investment is concerned, there can be no answer,. It is a small solace to say that such a woman should be compensated in terms of money towards her livehood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who were likely to inherit the property from her or the Wakf Boards. Such an approach appears to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints. Bearing this aspect in mind, one has to interpret the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 in question. [435-B-G]

2. The provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provisions for maintenance. 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. Reasonable and fair provision may include provision for her residence, her food, her cloths and other articles. The Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3); but nowhere the Parliament has provided that reasonable and fair maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time. [439-A-D]

3.1. The provisions of the Act depriving the divorced Muslim woman of a right to maintenance from her husband providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125

A of the Code of Criminal Procedure, 1973. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code, a divorced Muslim woman has obviously been unreasonably discriminated against and has got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions *prima facie*, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and discrimination on the ground of religion as the act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. [442-E-H]

D 3.2. It is well settled that on a rule of construction a given statute will become '*ultra vires* or 'unconstitutional' and, therefore, void, whereas on another rule of construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that Legislature does not intend to enact unconstitutional laws. The latter interpretation should be accepted and, therefore, this interpretation results E in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way. [443-A-B]

4. While upholding the validity of the Act, the conclusions are summed F up as follows :

(a) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife, which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period in terms of G Section 3(1)(a) of the act.

(b) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period. [444-G-H]

H (c) A divorced Muslim woman who has not remarried and who is not

able to maintain herself after the *iddat* period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(d) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India. [445-A-B]

Mohd Ahmed Khan v. Shah Bano Begum, **[1985] 2 SCC 556**; *Bai Tahira* **v.** *Ali Hussain Fidaalli Chothia*, **[1979] 2 SCC 316**; *Fuzlunbi* **v.** *K. Khader Vali*, **[1980] 4 SCC 125**; *Aga Mahomed Jaffer Bindaneem* **v.** *Koolsom Bee Bee*, **241A 196**; *Olga Tellis* **v.** *Bombay Municipal Corporation*, **[1985] 3 SCC 545** and *Maneka Gandhi* **v.** *Union of India*, **[1978] 1 SCC 248, referred to.**

Arab Ahmadhia Abdulla **v.** *Arab Bail Mohmuna Saiyadhbhai*, **AIR (1988) (Guj) 141**; *Ali v. Sufaira*, **[1988] 3 Crimes 147**, *K. Kunhashed Hazi* **v.** *Amena*, **(1995) Crl. L.J. 337**; *K. Zunaideen* **v.** *Ameena Begum*, **(1998) II DMC 468**, *Karim Abdul Shaik* **v.** *Shenaz Karim Shaik*, **(2000) Crl. L.J. 3560**, *Jaitunbi Mubarak Shaikh* **v.** *Mubarak Fakruddin Shaikh*, **(1999) M.L.J. 694** and *Kaka* **v.** *Hassan Bano*, **II (1998) DMC 85 (Pun) (FB), approved.**

Umar Khan Bahamami **v.** *Fathimnurisa*, **(1990) Cr. L.J. 1364**; *Abdul Rashid* **v.** *Sultana Begum*, **[1992] Cr.L.J. 76**; *Abdul Haq* **v.** *Yasima Talat*, **(1998) Cr. L.J. 3433** and *Md. Marahim* **v.** *Raiza Begum*, **(1993) 1 DMC 60, overruled.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 868 of 1986.

Under Article 32 of the Constitution of India.

WITH

W.P.(C) Nos. 996, 1001,1055, 1062, 1236, 1259, 1281/86, TC. (C) No. 22/87, 86, 68/88, T.P. (C) No. 276-77/87, Crl. A. No. 702/90, SLP (Crl.) Nos. 655/88, 596-97/92, W.P. (C) No. 12273/84 SLP (Crl.) No. 2513/94, Crl. A. Nos. 508, 843/95, 102-103/89, 292/90, SLP(Crl.) Nos. 2165/96, 3786, 2462/99.

Harish N. Salve, Solicitor General, Ms. Indira Jaising, Y.H. Muchhala,

A N.N. Goswami, Dr. A.M. Singhvi, Sona Khan-In person in W.P. (C) No. 868/86, Ms. K. Hingorani, N. H. Hingorani, Aman Hingorani, Ms. Priya Hingorani, Ms. Kamini Jaiswal, Ms. Anitha Shenoy, Sanjoy, Ghose, Ms. Anuja Mirchandani, Ms. Malini Poduval, Ms. Lansinglu Rongmei, Surya Kant, Sona Khan, K.M.K. Nair, S.C. Patel, Rajesh Prasad Singh, Petition in-person for T.C. (C) No. 22/87, Gopal Singh, Sushil Kr. Jain, A. Mishra, Anjali Doshi, Rani Chhabra, Bhaskar Y. Kulkarni, K.C. Dua, E.M.S. Anam, A.K. Sanghi, Badar D. Ahmed, Parijat Sinha, Anees Ahmed, Shakeel Ahmed, Mushtaq Ahmed, Ms. Lily Isabel Thomas, Ranjit Kumar, Binu Tamta, A.A. Khan, C.V. Subba Rao, Indra Sawhney, W.S.A Quadri, Amitesh Kumar, Ms. Sushma Suri, B.K. Prasad, V.B. Joshi, M. Mohsin Israily, T.N. Singh, Sueshta Bagga, Surya Kant, Respondent in-Person in W.P. (C) No. 12273/84, C.N. Sree Kumar, Ajit Pudussery, K. Sarada Devi, T.C. Sharma, Rajiv Sharma, Ms. Neelam Sharma, N.R.Choudhary, J.P.Pandey, Somnath Mukherjee, Avijit Bhattacharjee, Ms. Aparna Bhat, Rakesh Prasad, Syed Saif Mahmood, P.C. Sen, S.M. Jadhav, Gaurav Jain and Ms. Abha Jain for the appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 [hereinafter referred to as 'the Act'] is in challenge before us in these cases.

The facts in *Mohd. Ahmed Khan* v. *Shah Bano Begum & Ors.*, [1985] 2 SCC 556, are as follows.

The husband appealed against the judgment of the Madhya Pradesh High Court directing him to pay to his divorced wife Rs.179/- per month, enhancing the paltry sum of Rs.25 per month originally granted by the Magistrate. The parties had been married for 43 years before the ill and elderly wife had been thrown out of her husband's residence. For about two years the husband paid maintenance to his wife at the rate of Rs.200/- per month. When these payments ceased she petitioned under Section 125 CrPC. The husband immediately dissolved the marriage by pronouncing a triple talaq. He paid Rs.3000/- as deferred *mahr* and a further sum to cover arrears of maintenance and maintenance for the *iddat* period and he sought thereafter to have the petition dismissed on the ground that she had received the amount due to her on divorce under the Muslim law applicable to the parties. The important feature of the case was that the wife had managed the matrimonial home for more than 40 years and had borne and reared five children and was incapable of taking up any career or

independently supporting herself at that late stage of her life - remarriage was an impossibility in that case. The husband, a successful Advocate with an approximate income of Rs.5,000/- per month provided Rs.200/- per month to the divorced wife, who had shared his life for half a century and mothered his five children and was in desperate need of money to survive.

Thus, the principle question for consideration before this Court was the interpretation of Section 127(3)(b) CrPC that where a Muslim woman had been divorced by her husband and paid her *mahr*, would it indemnify the husband from his obligation under the provisions of Section 125 CrPC. A Five-Judge Bench of this Court reiterated that the Code of Criminal Procedure controls the proceedings in such matters and overrides the personal law of the parties. If there was a conflict between the terms of the Code and the rights and obligations of the individuals, the former would prevail. This Court pointed out that *mahr* is more closely connected with marriage than with divorce though *mahr* or a significant portion of it, is usually payable at the time the marriage is dissolved, whether by death or divorce. This fact is relevant in the context of Section 125 CrPC even if it is not relevant in the context of Section 127(3)(b) CrPC. Therefore, this Court held that it is a sum payable on divorce within the meaning of Section 127(3)(b) CrPC and held that *mahr* is such a sum which cannot *ipso facto* absolve the husband's liability under the Act.

It was next considered whether the amount of *mahr* constitutes a reasonable alternative to the maintenance order. If *mahr* is not such a sum, it cannot absolve the husband from the rigour of Section 127(3)(b) CrPC but even in that case, *mahr* is part of the resources available to the woman and will be taken into account in considering her eligibility for a maintenance order and the quantum of maintenance. Thus this Court concluded that the divorced women were entitled to apply for maintenance orders against their former husbands under Section 125 CrPC and such applications were not barred under Section 127(3)(b) CrPC. The husband had based his entire case on the claim to be excluded from the operation of Section 125 CrPC on the ground that Muslim law exempted from any responsibility for his divorced wife beyond payment of any *mahr* due to her and an amount to cover maintenance during the *iddat* period and Section 127(3)(b) CrPC conferred statutory recognition on this principle. Several Muslim organisations, which intervened in the matter, also addressed arguments. Some of the Muslim social workers who appeared as interveners in the case supported the wife brought in question the issue of '*mata*' contending that Muslim law entitled a Muslim divorced woman to claim

A provision for maintenance from her husband after the *iddat* period. Thus, the issue before this Court was: the husband was claiming exemption on the basis of Section 127(3)(b) CrPC on the ground that he had given to his wife the whole of the sum which, under the Muslim law applicable to the parties, was payable on such divorce while the woman contended that he had not paid the whole of the sum, he had paid only the *mahr* and *iddat* maintenance and had B not provided the *mata* i.e. provision or maintenance referred to in the Holy *Quran*, Chapter II, Sura 241. This Court, after referring to the various text books on Muslim law, held that the divorced wife's right to maintenance ceased on expiration of *iddat* period but this Court proceeded to observe that the general propositions reflected in those statements did not deal with the special C situation where the divorced wife was unable to maintain herself. In such cases, it was stated that it would be not only incorrect but unjust to extend the scope of the statements referred to in those text books in which a divorced wife is unable to maintain herself and opined that the application of those statements of law must be restricted to that class of cases in which there is no possibility D of vagrancy or destitution arising out of the indigence of the divorced wife. This Court concluded that these Aiyats [the Holy *Quran*, Chapter II, Suras 241-242] leave no doubt that the Holy *Quran* imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. The contrary argument does less than justice to the teaching of the Holy *Quran*. On this note, this Court concluded its judgment.

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There was a big uproar thereafter and Parliament enacted the Act perhaps, with the intention of making the decision in *Shah Bano's* case ineffective.

The Statement of Objects & Reasons to the bill, which resulted in the Act, reads as follows :

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> "The Supreme Court, in *Mohd. Ahmed Khan* v. *Shah Bano Begum & Ors.,* AIR (1985) SC 945, has held that although the Muslim Law limits the husband's liability to provide for maintenance of the divorced wife to the period of *iddat*, it does not contemplate or countenance the G situation envisaged by Section 125 of the Code of Criminal Procedure, 1973. The Court held that it would be incorrect and unjust to extend the above principle of Muslim Law to cases in which the divorced wife is unable to maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of *iddat* but H if she is unable to maintain herself after the period of *iddat*, she is

entitled to have recourse to Section 125 of the Code of Criminal Procedure. A

2. This decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests. B The Bill accordingly provides for the following among other things, namely:-

(a) a Muslim divorced woman shall be entitled to a reasonable and fair provision and maintenance within the period of *iddat* by her former C husband and in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to *mahr* or dower and all the properties given to her by her relatives, friends, husband and the husband's relatives. If the above benefits are not given to her at the D time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance, the payment of *mahr* or dower or the deliver of the properties;

(b) where a Muslim divorced woman is unable to maintain herself after E the period of *iddat*, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law in the proportions in which they would inherit her property. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate would direct the other F relatives who have sufficient means to pay the shares of these relatives also. But where, a divorced woman has no relatives or such relatives or any one of them has not enough means to pay the maintenance or the other relatives who have been asked to pay the shares of the defaulting relatives also do not have the means to pay the shares of the G defaulting relatives the Magistrate would order the State Wakf Board to pay the maintenance ordered by him or the shares of the relatives who are unable to pay."

The object of enacting the Act, as stated in the Statement of Objects & Reasons to the Act, is that this Court, in *Shah Bano's* case held that Muslim H

A Law limits the husband's liability to provide for maintenance of the divorced wife to the period of *iddat*, but it does not contemplate or countenance the situation envisaged by Section 125 of the Code of Criminal Procedure, 1973 and, therefore, it cannot be said that the Muslim husband, according to his personal law, is not under an obligation to provide maintenance beyond the B period of *iddat* to his divorced wife, who is unable to maintain herself.

As held in *Shah Bano's* case, 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* but if she is unable to maintain herself after the period of *iddat*, she is entitled to have recourse to C Section 125 CrPC. Thus it was held that there is no conflict between the provisions of Section 125 CrPC and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance to his divorced wife, who is unable to maintain herself. This view is a reiteration of what is stated in two other decisions earlier rendered by this Court in *Bai Tahira* v. *Ali Hussain Fidaalli Chothia*, [1979] 2 SCC 316, and *Fuzlunbi* v. *K. Khader* D *Vali & Anr.*, [1980] 4 SCC 125.

Smt. Kapila Hingorani and Smt. Indira Jaisingh raised the following contentions in support of the petitioners and they are summarised as follows :

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1. Muslim marriage is a contract and an element of consideration is necessary by way of *mahr* or dower and absence of consideration will discharge the marriage. On the other hand, Section 125 CrPC has been enacted as a matter of public policy.

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2. To enable a divorced wife, who is unable to maintain herself, to seek from her husband, who is having sufficient means and neglects or refuses to maintain her, payment of maintenance at a monthly rate not exceeding Rs.500/-. The expression 'wife' includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. The religion G professed by a spouse or the spouses has no relevance in the scheme of these provisions whether they are Hindus, Muslims, Christians or the Parsis, pagans or heathens. It is submitted that Section 125 CrPC is part of the Code of Criminal Procedure and not a civil law, which defines and governs rights and obligations H of the parties belonging to a particular religion like the Hindu

Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act. Section 125 CrPC, it is submitted, was enacted in order to provide a quick and summary remedy. The basis there being, neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves, these provisions have been made and the moral edict of the law and morality cannot be clubbed with religion.

3. The argument is that the rationale of Section 125 CrPC is to off-set or to meet a situation where a divorced wife is likely to be led into destitution or vagrancy. Section 125 CrPC is enacted to prevent the same in furtherance of the concept of social justice embodied in Article 21 of the Constitution.

4. It is, therefore, submitted that this Court will have to examine the questions raised before us not on the basis of Personal Law but on the basis that Section 125 CrPC is a provision made in respect of women belonging to all religions and exclusion of Muslim women from the same results in discrimination between women and women. Apart from the gender injustice caused in the country, this discrimination further leads to a monstrous proposition of nullifying a law declared by this Court in *Shah Bano's* case. Thus there is a violation of not only equality before law but also equal protection of laws and inherent infringement of Article 21 as well as basic human values. If the object of Section 125 CrPC is to avoid vagrancy, the remedy thereunder cannot be denied to Muslim women.

5. The Act is an un-islamic, unconstitutional and it has the potential of suffocating the muslim women and it undermines the secular character, which is the basic feature of the Constitution; that there is no rhyme or reason to deprive the muslim women from the applicability of the provisions of Section 125 CrPC and consequently, the present Act must be held to be discriminatory and violative of Article 14 of the Constitution; that excluding the application of Section 125 CrPC is violative of Articles 14 and 21 of the Constitution; that the conferment of power on the Magistrate under sub-section (2) of Section 3 and Section 4 of the Act is different from the right of a muslim woman like any other woman in the country to avail of the remedies under

A Section 125 CrPC and such deprivement would make the Act unconstitutional, as there is no nexus to deprive a muslim woman from availing of the remedies available under Section 125 CrPC, notwithstanding the fact that the conditions precedent for availing of the said remedies are satisfied.

B The learned Solicitor General, who appeared for the Union of India, submitted that when a question of maintenance arises which forms part of the personal law of a community, what is fair and reasonable is a question of fact in that context. Under Section 3 of the Act, it is provided that a reasonable and fair provision and maintenance to be made and paid by her former husband C within the *iddat* period would make it clear that it cannot be for life but would only be for a period of *iddat* and when that fact has clearly been stated in the provision, the question of interpretation as to whether it is for life or for the period of *iddat* would not arise. Challenge raised in this petition is *dehors* the personal law. Personal law is a legitimate basis for discrimination, if at all, and, therefore, does not offend Article 14 of the Constitution. If the legislature, as D a matter of policy, wants to apply Section 125 CrPC to Muslims, it could also be stated that the same legislature can, by implication, withdraw such application and make some other provision in that regard. Parliament can amend Section 125 CrPC so as to exclude them and apply personal law and the policy of Section 125 CrPC is not to create a right of maintenance *dehors* the personal E law. He further submitted that in *Shah Bano's* case, it has been held that a divorced woman is entitled to maintenance even after the *iddat* period from the husband and that is how Parliament also understood the ratio of that decision. To overcome the ratio of the said decision, the present Act has been enacted and Section 3(1)(a) is not in discord with the personal law.

F Shri Y.H.Muchhala, learned Senior Advocate appearing for the All India Muslim Personal Law Board, submitted that the main object of the Act is to undo the *Shah Bano's* case. He submitted that this Court has hazarded interpretation of an unfamiliar language in relation to religious tenets and such a course is not safe as has been made clear by *Aga Mahomed Jaffer Bindaneem* G v. *Koolsom Bee Bee & Ors.*, 24 IA 196, particularly in relation to Suras 241 and 242 Chapter II, the Holy *Quran*. He submitted that in interpreting Section 3(1)(a) of the Act, the expressions 'provision' and 'maintenance' are clearly the same and not different as has been held by some of the High Courts. He contended that the aim of the Act is not to penalise the husband but to avoid H vagrancy and in this context Section 4 of the Act is good enough to take care

of such a situation and he, after making reference to several works on interpretation and religious thoughts as applicable to Muslims, submitted that social ethos of Muslim society spreads a wider net to take care of a Muslim divorced wife and not at all dependent on the husband. He adverted to the works of religious thoughts by Sir Syed Ahmad Khan and Bashir Ahmad, published from Lahore in 1957 at p. 735. He also referred to the English translation of the Holy *Quran* to explain the meaning of 'gift' in Sura 241. In conclusion, he submitted that the interpretation to be placed on the enactment should be in consonance with the Muslim personal law and also meet a situation of vagrancy of a Muslim divorced wife even when there is a denial of the remedy provided under Section 125 CrPC and such a course would not lead to vagrancy since provisions have been made in the Act. This Court will have to bear in mind the social ethos of Muslims, which are different and the enactment is consistent with law and justice.

A B C

It was further contended on behalf of the respondents that the Parliament enacted the impugned Act, respecting the personal law of muslims and that itself is a legitimate basis for making a differentiation; that a separate law for a community on the basis of personal law applicable to such community, cannot be held to be discriminatory; that the personal law is now being continued by a legislative enactment and the entire policy behind the Act is not to confer a right of maintenance, unrelated to the personal law; that the object of the Act itself was to preserve the personal law and prevent inroad into the same; that the Act aims to prevent the vagaries and not to make a muslim woman, destitute and at the same time, not to penalise the husband; that the impugned Act resolves all issues, bearing in mind the personal law of muslim community and the fact that the benefits of Section 125 CrPC have not been extended to muslim women, would not necessarily lead to a conclusion that there is no provision to protect the muslim women from vagaries and from being a destitute; that therefore, the Act is not invalid or unconstitutional.

D E F

On behalf of the All India Muslim Personal Law Board, certain other contentions have also been advanced identical to those advanced by the other authorities and their submission is that the interpretation placed on the Arabic word '*mata*' by this Court in *Shah Bano's* case is incorrect and submitted that the maintenance which includes the provision for residence during the *iddat* period is the obligation of the husband but such provision should be construed synonymously with the religious tenets and, so construed, the expression would only include the right of residence of a Muslim divorced wife during *iddat*

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A period and also during the extended period under Section 3(1)(a) of the Act and thus reiterated various other contentions advanced on behalf of others and they have also referred to several opinions expressed in various text books, such as, -

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1. The Turjuman al-*Quran* by Maulana Abul Kalam Azad, translated into English by Dr. Syed Abdul Latif;

2. Persian Translation of the *Quran* by Shah Waliullah Dahlavi

3. Al-Manar Commentary on the *Quran* (Arabic);

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4. Al-Isaba by Ibne Hajar Asqualani [Part-2]; Siyar Alam-in-Nubla by Shamsuddin Mohd. Bin Ahmed BinUsman Az-Zahbi;

5. Al-Maratu Bayn Al-Fiqha Wa Al Qanun by Dr. Mustafa As-Sabai;

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6. Al-Jamil' ahkam-il Al-*Quran* by Abu Abdullah Mohammad Bin Ahmed Al Ansari Al-Qurtubi;

7. Commentary on the *Quran* by Baidavi (Arabic);

8. Rooh-ul-Bayan (Arabic) by Ismail Haqqi Affendi;

E
9. Al Muhalla by Ibne Hazm (Arabic);

10. Al-Ahwalus Shakhsiah (the Personal Law) by Mohammad abu Zuhra Darul Fikrul Arabi.

F On the basis of the aforementioned text books, it is contended that the view taken in *Shah Bano's* case on the expression '*mata*' is not correct and the whole object of the enactment has been to nullify the effect of the *Shah Bano's* case so as to exclude the application of the provision of Section 125 CrPC, however, giving recognition to the personal law as stated in Sections 3 and 4 G of the Act. As stated earlier, the interpretation of the provisions will have to be made bearing in mind the social ethos of the Muslim and there should not be erosion of the personal law.

On behalf of the Islamic Shariat Board, it is submitted that except for Mr. M. Asad and Dr. Mustafa-as-Sabayi no author subscribed to the view that the H *Verse 241* of Chapter II of the Holy *Quran* casts an obligation on a former

husband to pay maintenance to the Muslim divorced wife beyond the *iddat* period. It is submitted that Mr. M. Asad's translation and commentary has been held to be unauthentic and unreliable and has been subscribed by the Islamic World League only. It is submitted that Dr. Mustafa-as-Sabayi is a well-known author in Arabic but his field was history and literature and not the Muslim law. It was submitted that neither are they the theologists nor jurists in terms of Muslim law. It is contended that this Court wrongly relied upon *Verse 241* of *Chapter II* of the *Holy Quran* and the decree in this regard is to be referred to Verse 236 of Chapter II which makes paying '*mata*' as obligatory for such divorcees who were not touched before divorce and whose *Mahr* was not stipulated. It is submitted that such divorcees do not have to observe *iddat* period and hence not entitled to any maintenance. Thus the obligation for '*mata*' has been imposed which is a one time transaction related to the capacity of the former husband. The impugned Act has no application to this type of case. On the basis of certain texts, it is contended that the expression '*mata*' which according to different schools of Muslim law, is obligatory only in typical case of a divorce before consummation to the woman whose *mahr* was not stipulated and deals with obligatory rights of maintenance for observing *iddat* period or for breast-feeding the child. Thereafter, various other contentions were raised on behalf of the Islamic Shariat Board as to why the views expressed by different authors should not be accepted.

Dr. A.M.Singhvi, learned Senior Advocate who appeared for the National Commission for Women, submitted that the interpretation placed by the decisions of the Gujarat, Bombay, Kerala and the minority view of the Andhra Pradesh High Courts should be accepted by us. As regards the constitutional validity of the Act, he submitted that if the interpretation of Section 3 of the Act as stated later in the course of this judgment is not acceptable then the consequence would be that a Muslim divorced wife is permanently rendered without remedy insofar as her former husband is concerned for the purpose of her survival after the *iddat* period. Such relief is neither available under Section 125 CrPC nor is it properly compensated by the provision made in Section 4 of the Act. He contended that the remedy provided under Section 4 of the Act is illusory inasmuch as — firstly, she cannot get sustenance from the parties who were not only strangers to the marital relationship which led to divorce; secondly, wakf boards would usually not have the means to support such destitute women since they are themselves perennially starved of funds and thirdly, the potential legatees of a destitute woman would either be too young or too old so as to be able to extend requisite support. Therefore, realistic appreciation of the

A matter will have to be taken and this provision will have to be decided on the touch stone of Articles 14, 15 and also Article 21 of the Constitution and thus the denial of right to life and liberty is exasperated by the fact that it operates oppressively, unequally and unreasonably only against one class of women. While Section 5 of the Act makes the availability and applicability of the remedy as provided by Section 125 CrPC dependent upon the whim, caprice, choice and option of the husband of the Muslim divorcee who in the first place is sought to be excluded from the ambit of Section 3 of the post-*iddat* period and, therefore, submitted that this provision will have to be held unconstitutional.

C This Court in *Shah Bano's* case held that although Muslim personal law limits the husband's liability to provide maintenance for his divorced wife to the period of *iddat*, it does not contemplate a situation envisaged by Section 125 CrPC of 1973. The Court held that it would not be incorrect or unjustified to extend the above principle of Muslim Law to cases in which a divorced wife is unable to maintain herself and, therefore, the Court came to the conclusion that if the divorced wife is able to maintain herself the husband's liability ceases with the expiration of the period of *iddat*, but if she is unable to maintain herself after the period of *iddat*, she is entitled to recourse to Section 125 CrPC. This decision having imposed obligations as to the liability of Muslim husband to pay maintenance to his divorced wife, Parliament endorsed by the Act the right of a Muslim woman to be paid maintenance at the time of divorce and to protect her rights.

The learned counsel have also raised certain incidental questions arising in these matters to the following effect-

(1) Whether the husband who had not complied with the orders passed prior to the enactments and were in arrears of payments could escape from their obligation on the basis of the Act, or in other words, whether the Act is retrospective in effect?

(2) Whether Family Courts have jurisdiction to decide the issues under the Act?

(3) What is the extent to which the Wakf Board is liable under the Act?

The learned counsel for the parties have elaborately argued on a very wide canvass. Since we are only concerned in this Bench with the constitutional

validity of the provisions of the Act, we will consider only such questions as are germane to this aspect. We will decide only the question of constitutional validity of the Act and relegate the matters when other issues arise to be dealt with by respective Benches of this Court either in appeal or special leave petitions or writ petitions.

In interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society. In our society, whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Our society is male dominated both economically and socially and women are assigned, invariably, a dependant role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life — a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, in what manner we could compensate her so far as emotional fracture or loss of investment is concerned, there can be no answer. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who were likely to inherit the property from her or the wakf boards. Such an approach appears to us to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints. Bearing this aspect in mind, we have to interpret the provisions of the Act in question.

Now it is necessary to analyse the provisions of the Act to understand the scope of the same. The Preamble to the Act sets out that it is an Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected

A therewith or incidental thereto. A "divorced woman" is defined under Section 2(a) of the Act to mean a divorced woman who was married according to Muslim Law, and has been divorced by, or has obtained divorce from her husband in accordance with Muslim Law; "*iddat* period" is defined under Section 2(b) of the Act to mean, in the case of a divorced woman,-

B (i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

C (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy whichever is earlier.

Sections 3 and 4 of the Act are the principal sections, which are under attack before us. Section 3 opens up with a non-obstante clause overriding all D other laws and provides that a divorced woman shall be entitled to -

(a) a reasonable and fair provision and maintenance to be made and paid to her within the period of *iddat* by her former husband;

(b) where she maintains the children born to her before or after her E divorce, a reasonable provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid F to her at the time of her marriage or at any time thereafter according to Muslim Law; and

(d) all the properties given to her by her before or at the time of marriage or after the marriage by her relatives, friends, husband and any relatives of the husband or his friends.

G Where such reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made and paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and H maintenance, *mahr* or dower or the delivery of properties, as the case may be.

Rest of the provisions of Section 3 of the Act may not be of much relevance, which are procedural in nature. A

Section 4 of the Act provides that, with an overriding clause as to what is stated earlier in the Act or in any other law for the time being in force, where the Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim Law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order. If any of the relatives do not have the necessary means to pay the same, the Magistrate may order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order. Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them has not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board, functioning in the area in which the divorced woman resides, to pay such maintenance as determined by him as the case may be. It is, however, significant to note that Section 4 of the Act refers only to payment of 'maintenance' and does not touch upon the 'provision' to be made by the husband referred to in Section 3(1)(a) of the Act. B C D E F

Section 5 of the Act provides for option to be governed by the provisions of Sections 125 to 128 CrPC. It lays down that if, on the date of the first hearing of the application under Section 3(2), a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of Sections 125 to 128 CrPC, and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly. G

A reading of the Act will indicate that it codifies and regulates the obligations due to a Muslim woman divorcee by putting them outside the scope H

A of Section 125 Cr.P.C. as the 'divorced woman' has been defined as Muslim woman who was married according to Muslim law and has been divorced by or has obtained divorce from her husband in accordance with the "Muslim law". But the Act does not apply to a Muslim woman whose marriage is solemnized either under the Indian Special Marriage Act, 1954 or a Muslim woman whose marriage was dissolved either under Indian Divorce Act, 1969 B or the Indian Special Marriage Act, 1954. The Act does not apply to the deserted and separated Muslim wives. The maintenance under the Act is to be paid by the husband for the duration of the *iddat* period and this obligation does not extend beyond the period of *iddat*. Once the relationship with the husband has come to an end with the expiry of the *iddat* period, the responsibility C devolves upon the relatives of the divorcee. The Act follows Muslim personal law in determining which relatives are responsible under which circumstances. If there are no relatives, or no relatives are able to support the divorcee, then the Court can order the State Wakf Boards to pay the maintenance.

D Section 3(1) of the Act provides that a divorced woman shall be entitled to have from her husband, a reasonable and fair maintenance which is to be made and paid to her within the *iddat* period. Under Section 3(2) the Muslim divorcee can file an application before a Magistrate if the former husband has not paid to her a reasonable and fair provision and maintenance or *mahr* due to her or has not delivered the properties given to her before or at the time of E marriage by her relatives, or friends, or the husband or any of his relatives or friends. Section 3(3) provides for procedure wherein the Magistrate can pass an order directing the former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may think fit and proper having regard to the needs of the divorced woman, standard of life enjoyed by her F during her marriage and means of her former husband. The judicial enforceability of the Muslim divorced woman's right to provision and maintenance under Section (3)(1)(a) of the Act has been subjected to the condition of husband having sufficient means which, strictly speaking, is contrary to the principles of Muslim law as the liability to pay maintenance during the *iddat* period is unconditional and cannot be circumscribed by the financial means of the G husband. The purpose of the Act appears to be to allow the Muslim husband to retain his freedom of avoiding payment of maintenance to his erstwhile wife after divorce and the period of *iddat*.

A careful reading of the provisions of the Act would indicate that a H divorced woman is entitled to a reasonable and fair provision for maintenance.

It was stated that 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. Reasonable and fair provision may include provision for her residence, her food, her cloths, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the *iddat* period, the husband is bound to make and pay a maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but no where the Parliament has provided that reasonable and fair provision and maintenance is limited only for the *iddat* period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

The important section in the Act is Section 3 which provides that divorced woman is entitled to obtain from her former husband 'maintenance', 'provision' and '*mahr*', and to recover from his possession her wedding presents and dowry and authorizes the magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced 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 wordings of Section 3 of the Act appear to indicate that the husband has two separate and distinct obligations : (1) to make a 'reasonable and fair provision' for his divorced wife; and (2) to provide 'maintenance' for her. The emphasis of this section is not on the nature or duration of any such 'provision' or 'maintenance', but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, 'within the *iddat* period'. If the provisions are so read, the Act would exclude from liability for post-*iddat* period maintenance to a man who has already discharged his obligations of both 'reasonable and fair provision' and 'maintenance' by paying these amounts in a lump sum to his wife, in addition to having paid his wife's *mahr* and restored her dowry as per Section 3(1)(c) and 3(1)(d) of the Act. Precisely, the point that arose for consideration in *Shah Bano's* case was that the husband has not made a 'reasonable and fair provision' for his divorced wife even if he had paid the amount agreed as *mahr* half a century earlier and provided *iddat* maintenance

A and he was, therefore, ordered to pay a specified sum monthly to her under Section 125 CrPC. This position was available to Parliament on the date it enacted the law but even so, the provisions enacted under the Act are 'a reasonable and fair provision and maintenance to be made and paid' as provided under Section 3(1)(a) of the Act and these expressions cover different things, *firstly*, by the use of two different verbs — "to be made and paid to her within B the *iddat* period", it is clear that a fair and reasonable provision is to be made while maintenance is to be paid; secondly, Section 4 of the Act, which empowers the magistrate to issue an order for payment of maintenance to the divorced woman against various of her relatives, contains no reference to 'provision'. Obviously, the right to have 'a fair and reasonable provision' in her favour is C a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as 'maintenance'; thirdly, the words of the Holy *Quran*, as translated by Yusuf Ali of '*mata*' as 'maintenance' though may be incorrect and that other translations employed the word 'provision', this Court in *Shah Bano's* case dismissed this aspect by holding that it is a distinction D without a difference. Indeed, whether '*mata*' was rendered 'maintenance' or 'provision', there could be no pretence that the husband in *Shah Bano's* case had provided anything at all by way of '*mata*' to his divorced wife. The contention put forth on behalf of the other side is that a divorced Muslim woman who is entitled to '*mata*' is only a single or one time transaction which does not mean payment of maintenance continuously at all. This contention, E apart from supporting the view that the word 'provision' in Section 3(1)(a) of the Act incorporates '*mata*' as a right of the divorced Muslim woman distinct from and in addition to *mahr* and maintenance for the *iddat* period, also enables 'a reasonable and fair provision' and 'a reasonable and fair provision' as provided under Section 3(3) of the Act would be with reference to the needs F of the divorced woman, the means of the husband, and the standard of life the woman enjoyed during the marriage and there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended to reverse the decision in *Shah Bano's* case, actually codifies the very rationale contained therein.

G

A comparison of these provisions with Section 125 CrPC will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal H and legitimate claim to support is satisfied. If that is so, the argument of the

petitioners that a different scheme being provided under the Act which is equally or more beneficial on the interpretation placed by us from the one provided under the Code of Criminal Procedure deprive them of their right loses its significance. The object and scope of Section 125 CrPC is to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that object being fulfilled, we find it difficult to accept the contention urged on behalf of the petitioners.

Even under the Act, the parties agreed that the provisions of Section 125 CrPC would still be attracted and even otherwise, the Magistrate has been conferred with the power to make appropriate provision for maintenance and, therefore, what could be earlier granted by a Magistrate under Section 125 CrPC would now be granted under the very Act itself. This being the position, the Act cannot be held to be unconstitutional.

As on the date the Act came into force the law applicable to Muslim divorced women is as declared by this Court in *Shah Bano's* case. In this case to find out the personal law of Muslims with regard to divorced women's rights, the starting point should be *Shah Bano's* case and not the original texts or any other material — all the more so when varying versions as to the authenticity of the source are shown to exist. Hence, we have refrained from referring to them in detail. That declaration was made after considering the Holy *Quran*, and other commentaries or other texts. When a Constitution Bench of this Court analysed Suras 241-242 of Chapter II of the Holy *Quran* and other relevant textual material, we do not think, it is open for us to re-examine that position and delve into a research to reach another conclusion. We respectfully abide by what has been stated therein. All that needs to be considered is whether in the Act specific deviation has been made from the personal laws as declared by this Court in *Shah Bano's* case without mutilating its underlying ratio. We have carefully analysed the same and come to the conclusion that the Act actually and in reality codifies what was stated in *Shah Bano's* case. The learned Solicitor General contended that what has been stated in the Objects and Reasons in Bill leading to the Act is a fact and that we should presume to be correct. We have analysed the facts and the law in *Shah Bano's* case and proceeded to find out the impact of the same on the Act. If the language of the Act is as we have stated, the mere fact that the Legislature took note of certain facts in enacting the law will not be of much materiality.

In *Shah Bano's* case this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a

A divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth on behalf of the Muslims organisations who are interveners before us is that under the Act vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others. If for any reason the B interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of *iddat* once the Talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board. This Court in *Olga Tellis* v. C *Bombay Municipal Corporation*, [1985] 3 SCC 545, and *Maneka Gandhi* v. *Union of India*, [1978] 1 SCC 248, held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the 'right to live with dignity'. Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband D under the provisions of Section 125 CrPC until she may re-marry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divoced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of *iddat* and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock E at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to F have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions G prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging H to the Muslim religion. It is well settled that on a rule of construction a given

statute will become 'ultra vires' or 'unconstitutional' and, therefore, void, whereas another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that Legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way.

The learned counsel appearing for the Muslim organisations contended after referring to various passages from the text books to which we have adverted to earlier to state that the law is very clear that a divorced Muslim woman is entitled to maintenance only upto the stage of *iddat* and not thereafter. What is to be provided by way of *Mata* is only a benevolent provision to be made in case of divorced Muslim woman who is unable to maintain herself and that too by way of charity or kindness on the part of her former husband and not as a result of her right flowing to the divorced wife. The effect of various interpretations placed on Suras 241 and 242 of Chapter 2 of Holy *Quran* has been referred to in *Shah Bano's* case. *Shah Bano's* case clearly enunciated what the present law would be. It made a distinction between the provisions to be made and the maintenance to be paid. It was noticed that the maintenance is payable only upto the stage of *iddat* and this provision is applicable in case of a normal circumstances, while in case of a divorced Muslim woman who is unable to maintain herself, she is entitled to get *Mata*. That is the basis on which the Bench of Five Judges of this Court interpreted the various texts and held so. If that is the legal position, we do not think, we can state that any other position is possible nor are we to start on a clean slate after having forgotten the historical background of the enactment. The enactment though purports to overcome the view expressed in *Shah Bano's* case in relation to a divorced Muslim woman getting something by way of maintenance in the nature of *Mata* is indeed the statutorily recognised by making provision under the Act for the purpose of the 'maintenance' but also for 'provision'. When these two expressions have been used by the enactment, which obviously means that the Legislature did not intend to obliterate the meaning attributed to these two expressions by this Court in *Shah Bano's* case. Therefore, we are of the view that the contentions advanced on behalf of the parties to the contrary cannot be sustained.

In *Arab Ahemadhia Abdulla and etc.* v. *Arab Bail Mohmuna Saiyadbhai & Ors. etc.*, AIR (1988) Guj. 141; *Ali* v. *Sufaira*, (1988) 3 Crimes 147; *K.*

Kunhashed Hazi v. *Amena*, (1995) Crl.L.J. 3371; *K. Zunaideen* v. *Ameena Begum*, (1998) II DMC 468; *Karim Abdul Shaik* v. *Shenaz Karim Shaik*, (2000) Cr.L.J. 3560 and *Jaitunbi Mubarak Shaikh* v. *Mubarak Fakruddin Shaikh & Anr.*, 1999 (3) Mh.L.J. 694, while interpreting the provision of Sections 3(1)(a) and 4 of the Act, it is held that a divorced Muslim woman is entitled to a fair and reasonable provision for her future being made by her former husband which must include maintenance for future extending beyond the *iddat* period. It was held that the liability of the former husband to make a reasonable and fair provision under Section 3(1)(a) of the Act is not restricted only for the period of *iddat* but that divorced Muslim woman is entitled to a reasonable and fair provision for her future being made by her former husband and also to maintenance being paid to her for the *iddat* period. A lot of emphasis was laid on the words "made" and "paid" and were construed to mean not only to make provision for the *iddat* period but also to make a reasonable and fair provision for her future. A Full Bench of the *Punjab and Haryana High Court in Kaka* v. *Hassan Bano & Anr.*, II (1998) DMC 85 (FB), has taken the view that under Section 3(1)(a) of the Act a divorced Muslim woman can claim maintenance which is not restricted to *iddat* period. To the contrary it has been held that it is not open to the wife to claim fair and reasonable provision for the future in addition to what she had already received at the time of her divorce; that the liability of the husband is limited for the period of *iddat* and thereafter if she is unable to maintain herself, she has to approach her relative or Wakf Board, by majority decision in *Umar Khan Bahamami* v. *Fathimnurisa*, (1990) Cr.L.J. 1364; *Abdul Rashid* v. *Sultana Begum*, (1992) Cr.L.J. 76; *Abdul Haq* v. *Yasima Talat*, (1998) Cr.L.J. 3433; *Md. Marahim* v. *Raiza Begum*, (1993) (1) DMC 60. Thus preponderance of judicial opinion is in favour of what we have concluded in the interpretation of Section 3 of the Act. The decisions of the High Courts referred to herein that are contrary to our decision stand overruled.

While upholding the validity of the Act, we may sum up our conclusions:

(1) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period in terms of Section 3(1)(a) of the Act.

(2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to *iddat* period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after *iddat* period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

In the result, the writ petition Nos. 868/86, 996/86, 1001/86, 1055/86, 1062/86, 1236/86, 1259/86 and 1281/86 challenging the validity of the provisions of the Act are dismissed.

All other matters where there are other questions raised, the same shall stand relegated for consideration by appropriate Benches of this Court.

V.S.S. Petition dismissed.