

"That leave be granted to introduce a Bill further to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954."

The Motion was adopted.

SHRI DIGVIJAY SINH : I introduce the Bill.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—

Contd.

[English]

MR. DEPUTY-SPEAKER : Now we take up further consideration of the following motion moved by Shri G. M. Banatwalla on 10th May, 1985, namely :—

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

Shri G.M. Banatwalla.

15.44 hrs

SHRI SOMNATH RATH *in the Chair*].

SHRI G. M. BANATWALLA : Sir, I have already moved that the Bill further to amend the Criminal procedure Code be taken into consideration.

I had started by making a submission that the recent judgment of the Supreme Court is in conflict with the rules of the Muslim Personal Law and, therefore, the necessity has come to restore the rule of the Muslim Personal Law.

Section 125 of the Cr. P.C. provides that in the unfortunate event of a divorce, the ex-husband shall be responsible to provide maintenance to the divorced lady till she re-marries or till her death.

Now, as I had already submitted in the House earlier when this particular

proposition was being debated in 1973, and when the Criminal Procedure Code was being revised, it had been made amply clear by the entire Muslim community that the provisions were in conflict with the provisions of the Muslim Personal Law. The deputationists met the then Prime Minister, our late Prime Minister, Shrimati Indira Gandhi. On her instruction the matter was re-opened in this House and an amendment was incorporated in the form of clause (b) of sub-section (3) of Section 127 by reopening the section once again in the House. It was provided that where all the dues have been given to the divorced woman then, the personal laws of the various communities shall apply. The purpose which was made very clear in the House was to protect the Muslim Personal Law. That was the intention of the Legislature. That was the intention of the Parliament. The matters went on for certain time. But in the course of time, as I was pointing out last time, despite the clearcut protection given to the personal law, the Supreme Court held in Bai Tahira Vs. Ali Hussain case, AIR 1979, SC 362, that the muslim divorced woman can continue to claim maintenance till remarriage or death if the sum stipulated by the personal law is not sufficient to do the duty for maintenance. A few other cases also followed. Then we had the recent judgment in Mohd. Ahmed Khan Vs. Shah Banu Begum and others, Criminal Appeal, No. 103 of 1981. A bench of five judges of the Supreme Court went even further to hold that the right will be available to the divorcee under Section 125 and it is unaffected by the provisions of the Muslim Personal Law applicable to her. The Supreme Court, in fact, in this recent judgment, held that if there is a conflict between the Muslim Personal Law and Section 125 and 127 of the Criminal Procedure Code, then—in the event of that conflict—the Muslim Personal Law will stand, you may say, abrogated or cancelled or whatever term it might be, and the Criminal Procedure Code will prevail. That was the stand taken.

Now, as you would realise, the Supreme Court Judgment wholly sets

[Shri G. M. Banatwalla]

at naught the very intention of this Parliament in incorporating Clause (b) to sub-section (3) of Section 127. As such, the decision represents a serious encroachment on the Muslim Personal Law. It is a step towards the abrogation of *Shariat* in India. I will presently show that this unfortunate judgment undermines the very foundation of Islamic society which gave the highest place to all considerations of humanity and justice. It is manifestly clear that the Supreme Court has handed down the judgment in wholesale disregard of the intentions of this very Parliament.

When the hon. Minister of State, Shri Ram Niwas Mirdha moved the amendment to add clause (b) to sub-section (3) of Section 127, he categorically stated in the Lok Sabha, and I quote from col. 317 of the Lok Sabha debates dated 11th December 1973, as follows :

"As I said, under the customary or personal law of certain communities, certain sums are due to a divorced wife. Once they are paid, the Magistrate's order giving maintenance could be cancelled. Now, whether the maintenance should be reasonable or unreasonable is not the point."

Similarly, in the other House also a still more categorical assurance was given by the hon. Minister of State, when he stated :

"There is no intention to interfere with the personal laws of the Muslims through the Criminal Procedure Code."

This particular point has been made very clear by the then Minister of State, Shri Ram Niwas Mirdha, as I said. Therefore, when the Criminal Procedure Code was being adopted by this House, when the revised one was being adopted by this House, it was a clear intention of this House to protect the Muslim Personal Law and see that it is not

abrogated through the Criminal Procedure Code. Not only this intention of our Parliament is set at naught by the Supreme Court, but it is the Muslim Personal Law itself which is sought to be abrogated. Not only the Parliament, but even two Judges of the Supreme Court had felt that the decisions in Tahara Bi's case and others were not correctly decided, and so they had recommended an appeal in Mohd. Ahmed Khan Vs. Shah Banu Begam to a higher Bench, to a larger Bench, by their order dated February 3, 1981. Justice Murtaza Fazl Ali and Justice A. Varadarajan said in the Order :

"In our opinion they are not only in direct contravention of the plain and unambiguous language of Section 127 (3) (b), of Cr.P.C. 1973 which far from overriding the Muslim Law on the subject protects and applies the same in case where a wife has been divorced by the husband and the dower specified has been paid and the period of *iddat* has been observed.

The decision also appears to us to be against the fundamental concept of divorce by the husband and its consequences under the Muslim Law which has been expressly protected by Section 2 of the Muslim Personal Law, (*Shariat*) Application Act, 1937, an Act which has not been noticed by the aforesaid decisions".

So, Sir, you will find that not only the intention of the Parliament was violated by the present Supreme Court Judgment, but even two judges of the Bench had also upheld that the clear meaning of clause (b) of sub-section (3) of Section 127 is to protect the application of the Muslim Personal Law.

Despite all this mass of evidence, the Supreme Court has made a clean sweep to hold that the rule of Muslim Law is not protected by Section 125 or Section 127 of the Cr. P. C. The

decision is unusual. It is a flagrant disregard of the history of Sections 125 and 127 of the Criminal Procedure Code, of the intention of the Parliament, of the plain meaning of the words used in Section 127 (3) (b) and of the ordinary rules of interpretation of Statutes.

Sir, under the Muslim Personal Law, the situation is and has been accepted by all jurists down the ages without any difference whatsoever and who have unanimously upheld the point that in the unfortunate case of divorce, the responsibility of the husband is to give maintenance for the period of *iddat*, which is, generally speaking, three months after divorce or in case the woman is pregnant, till delivery and so on and not for the life. Here, I may draw the attention of this House to the Mulla's Principles of Mohammedan Law, 18th Edition at page 301, para 209. He says :

"After divorce, the wife is entitled to maintenance during the period of *iddat*".

Now that the Supreme Court has raised the question, Yes, she is entitled to maintenance during the period of *iddat*. But where is it that she is not entitled to maintenance even after the period of *iddat*? But, Sir, here the matter is also very clear. I may point out Thayabji's Muslim Law, 4th Edition at pages 268 and 269, para 304. He says :

"On the expiration of *iddat*, after *Talaq*, the wife's right to maintenance ceases, whether based on the Muslim Law or order under the Criminal Procedure Code." So, it is very clear whether you speak of the Muslim Law or whether you speak of the order under the Criminal Procedure Code, the right ceases. Sir, as I said, on the same page, several cases have been mentioned by him. I refer to the famous Tahir Bi's case and so on and so forth. The Supreme Court has taken a particular liking for Dr. Tahir Mahmood whom the Supreme Court considers

very progressive. The Supreme Court in its recent judgement has quoted repeatedly from the works of Dr. Tahir Mahmood. I may not agree at several places. But let us see what Dr. Tahir Mahmood himself has to say. This is the book entitled Muslim Law of India by Dr. Tahir Mahmood. At page 132, he refers to the decision of the Supreme Court in Zohra Khatoon's case and others. He says :

"These decisions, in our opinion, are not correct. They overlook the history of section 127 of the Code, the intentions of the Legislature, the plain meaning of the words used, and of the ordinary rules of interpretation of statutes. The reasoning in both the confused judgments, we respectfully submit, indicates confused thinking and ignorance of certain principles of Muslim law."

16.00 hrs

So, we find that this supreme Court in its judgement has relied upon Dr. Tahir Mahmood's words. We find that this expert also, expert in the eyes of the Supreme Court, has so stated about the whole matter.

In view of the recent judgment on Shahbanu's case, my Bill also needs a further-amendment because the Bill that I have taken up was introduced earlier after the judgment of the Tahira Bis' case.

In view of the recent judgment, another amendment is also needed in my Bill of which I had given notice and that is that

"We have to state that in Section 125 of the Cr. P.C. 1973 hereinafter referred to as the principal Act.

- (i) After part (b), the following proviso shall be inserted namely,

[Shri G. M. Banatwalla]

“provided the explanation of the term “wife” shall not apply to Muslims;

- (ii) After sub-section (5), the following sub-section shall be inserted and shall be deemed always to have been inserted”

and so on.

This is because while in *Tahira bis* case, the Supreme Court held that

“If the amount of dower that has been paid to the divorcee is not sufficient to do the duty of maintenance then the husband would be liable to pay maintenance till she remarries.”

but now in *Shahbanu's* case, the Supreme Court went even further and said “nothing doing.” If the principles of Muslim law are in conflict with Section 125 of the Cr. P. C. then the Muslim husband will be liable to pay maintenance till the divorcee remarries or dies. Hence this new amendment of which I have given notice is necessitated by this recent judgment.

The Supreme Court in its enthusiasm has gone a step further to observe that the holy Koran itself provides maintenance to divorcee and that maintenance can be extended to period till remarriage. They have quoted some verse out of context. The commentaries with respect to this verse from Koran are available. Down the ages, each and every jurist without exception, has given the explanation of the plain Arabic words as to what they mean and, therefore, it is extremely clear—I do not want to take up the time of this House by reading out to you the opinions of the jurists one after the other and where the Supreme Court has erred with respect to these Arabic words and all that—but the opinion is that the responsibility for the maintenance is for the period of *iddat*. Therefore, the judgment is entirely in

defiance of the unanimous opinion of the Muslim jurists down the ages. The entire Muslim opinion is, therefore, shocked at the unwarranted manipulation of the text of divine revelation to force from them meanings in accordance with the pre-conceived purposes of the so-called reformers.

One must agree to one particular thing, and that is, the purpose of Section 125 is to prevent vagrancy. That is an important thing. One owes duty to the society. Vagrancy must be protected against, must be provided for. But what I submit before the House, and we have been submitting also, is that, in the Muslim law, there are sufficient provisions to take care of a person who is indigent, any person—a man or a woman, a wife or a divorcee, an old man or an old woman, a child or any person. Look at this in Tyabji's Muslim law; you will find a whole chapter over there with respect to maintenance. I must, therefore, submit that the question of vagrancy has been taken care of by the Muslim Personal Law. I share in the concern of the court and of everybody, of all, to prevent vagrancy and destitution. But, as I have submitted, the Islamic law takes full cognizance of this aspect. Islam has its own ideology, distinct in its foundation and scope. The Islamic ideology stands for social justice and humanity. Accordingly, it promotes a particular system and a distinct discipline. Provisions for vagrancy and destitution are a question with a larger dimension, and it can hardly be met with ingenious exercise of our judges taking upon themselves the role of social and cultural engineers to shape the inadequate law to conform to the needs of the society. Even the legal modernisms, which is contained in Section 125 of the Criminal Procedure Code, in calling a divorced woman a wife and, therefore, making it obligatory for the husband to maintain her till she remarries, really hopelessly fails to provide a complete satisfactory answer to the grave problem of vagrancy and destitution. On this problem of vagrancy, I must say that there is a misunderstanding of the entire concept with respect to the Muslim law. As I said,

there is a whole chapter in the Muslim Personal Law with respect to maintenance of any destitute. The entire confusion today arises because of the concept that a girl, on her marriage, passes over to the husband's family and has nothing to do with her parents' family. Sir, I quote from Tyabji's Muslim Law ; this is from page 58 :

"To say that there is no obligation on the members of her natural family to maintain her after her marriage, even if she is divorced, is to disregard the principles of the Muslim law of marriage, divorce and maintenance."

A question is put when a lady is a divorced, thrown on the foot path, who will maintain her. But Sir, as I said the whole answer is there. The Muslim Personal Law is even better in taking care of the vagrant than this restricted Section 125 of the Cr. P.C. What does Cr. PC Section 125 say ? It says that the vagrant divorced women are to be provided for by her ex-husband. But supposing the ex-husband is also indigent. Then nothing, the whole Law stops over there. The society washes its hands off and that woman is thrown on the foot path. That is Section 125 about which a lot is being said. But the Muslim Law does not leave woman vagrant in this manner. The Muslim Law, as I was pointing out, provides for a woman to maintain her ties with her parental family after marriage. Further, as I said, there is a whole chapter about maintenance. The obligation to maintain any destitute, any vagrant man, woman, child, old person, anybody is specifically laid down in the Muslim Law. That should be made applicable because it is comprehensive. It envisages every situation, not just one solitary situation thought of by the Criminal Procedure Code for which a lot of hullabaloo is being made. This Tayabji's Muslim Personal Law gives an entire chapter on maintenance. It is Chapter-8, the whole of which is devoted on maintenance. I quote from Page-259, Para 291 :

"The obligation to maintain a necessitous Muslim rests—(a)

under Hanafi law, first on the children, then on the father, then on the mother, then jointly on grand-parents and grandchildren, and then an collaterals ;"

and so on and so forth, the whole thing goes. You, therefore, find that nobody is thrown on the road. Section 125 of your Criminal Procedure Code really throws a woman on the road. Because it says that the ex-husband and the ex-husband alone shall provide for the maintenance of the divorced lady. Under the situation when the ex-husband himself is a destitute, nothing is said. But we have a full law on the subject. We have a superior law on the subject, I submit. Why should a woman be deprived of a superior law where it is clearly mentioned as to on whom the responsibility is laid in case of vagrancy. On this person, if this person is not in a position to maintain, on the next person, if that next person also is not in a position to maintain, the other next person. The entire scheme is there as per the inheritance scheme mentioned here and nobody is thrown as a vagrant. Let there be no doubt about that. On the contrary, I must submit before this House that Section 125 is an affront to womanhood. Section 125 says that a divorced lady will be considered a wife. What a wonderful legal modernism that a divorced lady will be considered a wife ! The ex-husband must provide maintenance till she remarries ! And what is the condition laid down ? I invite the attention of this House to sub-sections 4 and 5 of this Section 125 and if you read that, it is very clear that the ex-husband shall provide maintenance to the divorced lady on the condition that even after divorce she shall live with him. A shame, an affront to womanhood in our country. You give a paltry amount to a lady and then say that in exchange for this paltry maintenance you will have to live with me ; otherwise, the order of maintenance will be cancelled. This Section 125 (4) and (5) stand as an affront to the womanhood, as I said, of our country.

The Muslim Personal Law is very clear, Irrespective of whether a woman

[Shri G. M. Banatwalla]

is a vagrant or not, she stands in her own right to get her maintenance for the period of *iddat*. It is not that the woman is a vagrant or a destitute and, therefore, out of pity, the ex-husband gives some maintenance to that divorced lady. What a concept of maintaining people in our society ! We have under the Muslim Personal Law provisions that say that irrespective of whether a woman is a vagrant or not, irrespective of whether she is a destitute or not, she has a right for maintenance till the period of *iddat*, and after the period of *iddat*, just as I read out to you from Tayyabji's Muslim Law, the entire scheme is there as to by whom she is going to be maintained. (*Interruptions*) ...I have just read out to you, The whole Chapter VIII is there. The particular paragraph also I just read out which deals with the obligation to maintain a necessitous Muslim, necessitous Muslim, irrespective of who or she may be.

Your law thinks only of a divorced lady. Then there may be a necessitous person. Muslim law thinks of not only a divorced lady but any person who is a destitute and has this whole scheme as to who is responsible for the maintenance.

Therefore, I was submitting that it is in the interests of the Muslim women that I come to you that there is a superior law to protect them and to protect their rights and a law that upholds the dignity of the woman, not coming and cringing and asking for doles because she is a destitute. Under the Muslim law she stands in her own rights. (*Interruption*)

From where to bring more power of expression—I do not know. I was telling that there is one Mr. X who has divorced his wife. What happens to that divorced lady ? A very good question. We must all see to it that she is not thrown on the footpath. My submission is that the Muslim Personal Law takes care of the situation. For a period of three months, which is called '*Iddat*' the responsibility remains with the

ex-husband and after the period of three months the responsibility of maintenance of a destitute woman lies on all the blood relations which are mentioned here and which are enforceable at law.

Sir, I was pointing out that the situation is there as to how and who will be maintaining. The entire scheme is mentioned over there. Both under the Shia law and Sunni law, as far as the Muslims are concerned, it is incorporated in this Chapter 8 of Tyabji's book and particularly in this para 291 which I have just quoted.

Mr. Chairman, Sir, a question can come...

SHRI PIYUS TIRAKY : Sir, I want to seek a clarification. An 'X' who has divorced has got the liberty to get married after three months. So, he is allowed to divorce three times a year because for three months he has to maintain a divorced wife.

SHRI G.M. BANATWALLA : Sir, you know how mis-informed the hon. Member is. There is no question of divorcing three times a year. I do not know what he means.

SHRI EBRAHIM SULAIMAN SAIT : It is like imagination running wild.

SHRI G.M. BANATWALLA : That is the whole trouble that we are very much ill-informed and mis-informed. I do not know from where this question of divorcing three times a year comes. (*Interruptions*). That also shows the ignorance of the Muslim law. It is considered 'haram'. Sir, I would not like to go into all these extraneous things. I was talking about the vagrancy with which the Supreme Court was concerned.

I must also further point out to this House that the Supreme Court has taken upon itself the construction of the meaning of the various '*ayats*' that are there in the Quran. As I said

they have wrongly interpreted the whole thing. How could the text be so interpreted? The Supreme Court cannot, as I was just telling you, ascribe to the ancient text its own pre-conceived ideas which have not been held by the jurists all throughout.

There is a Privy Council case : *Baqar Ali vs Anjuman* (30 IA 94) where in their Lordships held that :

"it would be extremely dangerous to accept as a general principle that new rules of law are to be introduced because they seem to the lawyers of the present day to follow, logically from ancient texts however authoritative, when the ancient doctors of the law have not themselves drawn those conclusions."

It is most unfortunate that our Supreme Court departed from the traditions of the Court. This is the first case in which there has been such a serious departure from the traditions of the courts themselves because of which I am forced to urge upon the Government also that the Muslim Personal Law should be entrusted to 'Shariyat Courts' presided over by Muslims so that they know the true spirit. Mr. Chairman, Sir, the question that arises is : why there can be so much of objection for the ex-husband to continue, to maintain? But as I said this is against the very concept of 'talaq' or the concept of divorce. As I said, on the one hand, if you create difficulties in the face of genuine divorces the result will be the development of more vices in the society and the people might try to get rid of their wives through various other nefarious objectionable methods like burning of wives and so on and so forth to get rid of them. We do not want in our society these wholesale vices. So we suggest that this system as envisaged by the Muslim Personal Law is the best one under the present situation.

As I said, I stand here in the interest of the woman themselves. It is

in the interest of the women that provisions should exist for divorce. When divorce genuinely is found necessary, it is in the interest of the women to see that unnecessary obstacles are not created which would result in several vices being imported into the society. The Muslim Personal Law provides for every conceivable situation. Therefore, all is in the interest of all the people, much so the women.

Let me draw your attention to some of extracts of Syed Amir Ali, who in his famous treatise 'The Spirit of Islam' had said the following and I quote—

"But the Teacher who in an age when no country, no system, no community gave any right to woman, maiden or married, mother or wife, who, in a country where the birth of a daughter was considered a calamity, secured to the sex rights which are only unwillingly and under pressure being conceded to them by the civilised nations in the twentieth century, deserves the gratitude of humanity. If Mohammed had done nothing more, his claim to be a benefactor of mankind would have been indisputable. Even under the laws as they stand at present in the pages of the legists, the legal position of Moslem females may be said to compare favourably with that of European women."

He goes to explain further and I quote—

"As long as she is unmarried she remains under the parental roof, and until she attains her majority she is, to some extent, under the control of the father or his representative. As soon, however, as she is of age, the law vests in her all rights which belong to her as an independent human being."

[Shri G. M. Banatwalla]

"She is entitled to share in the inheritance of her parents along with her brothers, and though the proportion is different, the distinction is founded on the relative position of brother and sister. A woman who is *sui juris* can under no circumstances be married without her own consent, "not even by the Sultan". On her marriage she does not lose her individuality. She does not cease to be a separate member of society."

He further elaborates and I quote :

"A Moslem marriage is a civil act, needing no priest, requiring no ceremonial. The contract of marriage gives the man no power over the woman's person, beyond what the law defines, and none whatever upon her goods and property. Her rights as a mother do not depend for their recognition upon the idiosyncrasies of individual judges. Her earnings acquired by her own exertions cannot be wasted by a prodigal husband, nor can she be ill-treated with impunity by one who is brutal. She acts, if *sui juris*, in all matters which relate to herself and her property in her own individual right, without the intervention of husband or father. She can sue her debtors in the open courts, without the necessity of joining a next friend, or under cover of her husband's name. She continues to exercise after she has passed from her father's house into her husband's home, all the rights which the law gives to men. All the privileges which belong to her as a woman and a wife are secured to her, not by courtesies which "come and go" but by the actual text in the book of law."

Sir, I may summarise what I have been telling this House. The recent judgment of the Supreme Court is in flagrant violation of the Muslim Personal Law. One or two verses that have been wrongly picked up from the Koran, are totally misinterpreted against the unanimous view of all the Muslim jurists. I come to the House not to add any new thing, but to restore the opinion of this very House, which they had incorporated in Clause (b), Sub-Section (3) of Section 127, so that the traditional Muslim Personal Law continues to exist. The question of vagrancy has already been taken care of. If a woman is made dependent on their ex-husbands by changing all this position, there would be untold vices with which the society will be affected, and the entire Muslim opinion in the country is shocked. About Shariat the Government has received thousands and thousands of telegrams and memoranda and letters. There is the Muslim Personal Law Board, which reflects all shades of opinion, with respect to the different schools of thought among the Muslims and their unanimous resolution is also there. I must make it extremely clear that no Muslim can ever subscribe to such gross violation of the *Shariat*. I, therefore, appeal to this House that in the interest of women themselves, the Government should accept the provisions that I have brought and which take care of all the angles and which I commend to this House. (ends)

MR. CHAIRMAN : Motion moved :

"That the Bill, further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

SHRI MOOL CHAND DAGA
(Pali) : I beg to move :—

"That the Bill be circulated for the purpose of eliciting opinion thereon by 15 November, 1985."

SHRI BRAJA MOHAN MOHANTY :
I beg to move :—

"That the Bill be circulated for the purpose of eliciting opinion thereon by 31 March, 1986."

[Translation]

*SHRI E. S. M. PAKEER MOHAMED (Mayuram): Mr. Chairman, Sir, the Code of Criminal Procedure (Amendment) Bill, 1985 has been introduced by hon. Member Janab Banatwalla.

The parent Act was brought into force in 1898. In 1973 the parent Act was amended. Section 488 in the parent Act did not effectively clarify the position about maintenance allowance to divorced women and children. Hence the Government replaced this Section 488 by a new Section 125. In order to ensure that new Section 125 does not offend the susceptibilities of Muslims in our country who have their own Muslim Personal Law, the Government *suo motu* incorporated Section 127(3)(b).

Sir, our Constitution embodies the concept of secularism. We have taken oath/affirmation in the name of that Constitution and become Members of this House. The inclusion of Section 127(3)(b) in 1973 is positive proof of the ruling Congress Party's commitment to secularism.

Legislature, Executive, Judiciary and Press are the corner-stones on which the superstructure of democracy has been built. We cannot afford to abrogate the individual's fundamental right to go to a Court of Law. The Supreme Court has interpreted Section 127(3)(b) and this interpretation is contrary to the provisions of Muslim Personal Law. This has caused confusion in the minds of Muslims in our country. Here, I would like to point out that our Hon. Speaker was compelled to condemn on the floor of this House when the issue of an individual taking the Holy Koran to High Court in Calcutta was raised.

I applaud the laudable objective of my hon. friend in bringing forward

this Bill. I support the intention behind this Bill. I would like to assure him that the Central Government would soon bring an amendment incorporating the intentions of Shri Banatwalla. I request him to repose his faith in our young Prime Minister and his inherent capacity to solve intractable problems like the Punjab tangle. I would also appeal to him to withdraw this Bill because the future wellbeing of Muslims in the country is safe and secure in the hands of our Prime Minister. India is the second country in the world having the largest number of Muslims. The Central Government committed to secularism will not hesitate to remove any misgivings arising out of such judgments. The hon. Member is aware of the fact that the Government of India on several occasions have resorted even to amending the Constitution of India in order to overcome the hurdles placed by the judgments of Courts. This House is sovereign, reflecting the hopes & aspirations of the people of India comprising of different ethnic, racial and religious groups. India's concept of diversity in unity has been highly acclaimed by many nations of the world. I would like to assure my hon. friend Shri Banatwalla that the interests of our Muslim brethren and their Personal Law will not be trifled with by such judicial pronouncements. The Government of India headed by Shri Rajiv Gandhi will endeavour to protect the interests of Muslims in India and to uphold the provisions of Muslim Personal Law. In this background, I assure him that the Government will bring forward an amendment and he should have no reservation to withdraw his Bill.

With these words I conclude my speech.

*SHRI K. RAMA CHANDRA REDDY(Hindupur): Mr Chairman, Sir, hon. Banatwalla in his hour long speech brought many things to the notice of this august House. This was sober and

*The speech was originally delivered in Tamil.

*The speech was originally delivered in Telugu.

[Shri K. Rama Chandra Reddy]

thoughtprovoking speech. But, Sir, I am not in agreement with his views and hence cannot support this Bill. There are many reasons for my disagreement. After centuries of subjugation and neglect, now the women are free. They enjoy liberty. This amending Bill of Shri Banatwalla is only a retrograde step. In no way it will help the women. "Women do not deserve liberty" said Manu. But fortunately the era of Manu has gone. Gone are the days of medieval period when women were deprived of freedom. Now the times have changed and women are proving their mettle in every walk of life. They are competing with men in all fields. They are enjoying equality in all spheres. It is strange to see this kind of amendment in the context of modern times.

Sir, this Bill very much reflects the psychology of medieval period. In those days women were considered to be a source of pleasure. They had never recognised the merits of any woman. They did not recognise her as one who deserves an equal treatment. Now, this Bill also reflects the same view and the same mentality. That is the reason, Sir, why I oppose this Bill. In the modern era, a woman is no more an instrument of pleasure. She enjoys equal status. She is being treated with dignity. The relationship between husband and wife is on equal footing. The wife is in a position to guide her husband. Keeping in tune with the changed circumstances a provision was made in Section 125 of the Criminal Procedure Code to provide a maintenance of an amount of Rs. 500/- or below to the wife if she is deserted or humiliated or divorced by her husband. This provision in Cr. P.C. is in tune with the present times. Now this Bill which seeks to amend these provisions in Cr. P.C. is nothing but a retrograde step. While moving his Bill Shri Banatwalla mentioned certain points in support of his argument. But while doing so he forgot the fact that this Section 125 of Cr. P.C. does not contravene at all the Muslim Personal Law in any manner. It is just an amendment to remove a lacuna.

Shri Banatwalla said that the Muslim Personal Law has taken enough care of destitute women who have no means of livelihood. If it is so then this provision serves as complimentary to the Muslim Personal Law. In no way it is against Muslim Personal Law. He says that a woman who is deserted or divorced by her husband will be taken care of by her father or mother or brother.

This is the protection offered under Muslim Personal Law to such women. Now this provision adds one more way of protecting such women. This is an additional protection offered in addition to the existing Muslim Personal Law. This section applies to such husbands who are rich enough and capable of maintaining their wives and yet refuse to do so. This section comes into force with immediate effect. This section forces the husband to provide a maintenance of Rs. 500 or less to his deserted wife. This is the correct position and it is amply clear that it in no way contravenes the Muslim Personal Law. It is only complimentary to Muslim Personal Law. While advancing his argument to amend the Cr. P.C., Shri Banatwalla has said that a divorced wife is entitled to a maintenance of Rs. 500 or less only when she stays with her husband. This is not the correct position. His information is not all correct. He misunderstood this legal provision. If the court issues a decree making it obligatory on the part of wife to stay with her husband for receiving the maintenance, and in case she refuses to stay with her husband and thus violates the condition mentioned in the decree, then only she forfeits her claim for compensation. To say that it is a condition applicable in all cases uniformly is not at all correct. Shri Banatwalla should kindly note this difference, Sir, I am not able to understand why Muslims should feel hurt if the Supreme Court confers one more benefit on their women. During *Iddat* a Muslim woman stays with her husband for 3 months following divorce. This period of 3 months is prescribed to see whether she is pregnant or not. It should not be misunderstood that she is entitled to

maintenance for only 3 months and not after that. I think it is a gross misinterpretation of *Iddat*. I don't understand what is the harm if wealthy Muslims who are capable of maintaining their wives are compelled to do so until their deserted wives marry again. It should not be difficult for them to do so.

Sir, Shri Banatwalla's Bill to amend the Cr. P.C. is a retrogressive move. Its intention is to put the clock back. Hence I cannot support this Bill and request Shri Banatwalla to withdraw it. With these words I conclude my speech. Thank you.

[English]

SHRI SHARAD DIGHE (Bombay North Central): Mr. Chairman, Sir, Shri Banatwalla wants to amend the code of criminal procedure so far as Sections 125 and 127 are concerned. According to him, the occasion arose because of a judgment of the Supreme Court in *Tahira Vs Ali Hussain* reported in AIR 1979, Supreme Court, Page 362. It was held that in spite of the Muslim Personal Law, under the criminal procedure code, even a Muslim husband is bound to pay maintenance to the divorced wife when an order is made under Sections 125 and 127 of this Code and because there is paragraph (b) of clause 3 of Section 127 which excludes a case where a woman has been divorced by her husband and that she has received whether before or after the date of said order the whole of the sum which under any customary or personal law applicable to the parties was payable on such divorce. So, according to Mr. Banatwalla, by virtue of this paragraph in clause 3, Muslim husbands ought not to be compelled to pay maintenance under Section 125 or 127 or the criminal procedure code, and he maintains that such an assurance was given when debate on this particular Bill took place in Rajya Sabha and Lok Sabha, that this particular clause will safeguard the Muslim personal law as far as this is concerned.

Now, he has also made clear that after this judgment, there was also

another judgment of the Supreme Court which has been reported in AIR 1985 July Issue on page 945 wherein not only the similar decision was given but a further and more comprehensive view was expressed.

Therefore, according to Mr. Banatwalla this is an inroad on the Muslim law made by the Supreme Court by giving this judgment and also, according to him this goes against very contrary to—the intention of Parliament in passing this particular Section 127 at that time. For this purpose, he wants to amend Article 125 and 127. Of course, this has been the consistent position of the Congress party, that in spite of the fact that there is Article 44 in the Constitution giving a Directive Principle to frame a common civil code, it shall not be undertaken unless the lead is taken by the Muslim community itself. I think, when last time hon. Member Mr. Banatwalla moved a Bill to delete Article 44 a similar expression was made on behalf of the Government.

Therefore, we shall have to see whether these Supreme Court judgments are really in any way affecting or creating inroads on the Muslim Personal Law or not and from that point of view this amendment will have to be considered.

I may also say that not only these two judgments, but there was also a third judgment in 1980 which was given by the Supreme Court in the same way, though not as comprehensive as the judgment of Chief Justice Chandrachud given in 1985.

SHRI N. VENKATA RATNAM :
Tell the page number please.

SHRI SHANKAR DIGHE : It was reported in AIR 1980 Supreme Court Page No. 1730 and the name of the case is *Faztunbi Versus K. Khadarvali*.

So, there have been three consistent judgments of the Supreme Court on this point and it is not for the first time

[Shri Shankar Dighe]

that in 1985 a comprehensive judgment has been given. In fact, as the hon. Member Mr. Bantawalla has made clear, the first two judgments were existing and when this matter came in before the Division Bench of two Judges they felt differently from those decisions and therefore caused this matter to be placed before a larger bench, through the Chief Justice of India. So, it is arising out of this that the third judgment has been given in this particular matter.

Now, the matter has been fully discussed in the last judgment which hon. Member Mr. Banatwalla has cited, to which I have also referred. Now, the first aspect of the matter is whether these provisions for maintenance are in any way in conflict with the Personal Muslim Law; or whether they have been independently framed for the whole of India as such. Now, all the hon. Members know that it is not for the first time in 1973 that this provision was made in the form of the Code of Criminal Procedure. But the first Code of Criminal Procedure which was framed in 1872 contained somewhat similar provision in the form of Section 488 of that Code. While framing Section 488 it was the intention at that time of the Government that some remedy should be provided to those who are, from that point of view, the weakest sections of society. Therefore, apart from the Civil Law, Personal Law of every religion, say, Hindu Law, Muslim Law, Christian Law, Parsi Law, it was thought necessary to have some provision in the Criminal Law. This is not a Civil Law at all. It is not only the Muslim Law which speaks about maintenance of wives, divorced women, children, parents, etc., but also every religious law has laid down certain provisions for maintenance. Even then a special provision of maintenance was made in the Criminal Law. It was thought fit to provide a special remedy apart from the Civil Law on maintenance. Special remedy, or I should say, summary remedy or expeditious remedy to children, wife, divorced women or even to parents was provided if they are neglected or they are not maintained. Supposing, the wife is not

maintained by the husband though he is capable to maintain her children are not maintained by the father though father is capable to maintain them; parents are not maintained, then it was thought fit to have some summary remedy, special remedy apart from the civil law or the Personal law. And it is from this point of view that this provision has been made. This aspect has to be first considered. Therefore, at that time also this provision of maintenance under Muslim Law was there. The provision regarding *mohar* to be paid upto a particular period was existing. The custom was being followed and respected by everybody, but even then it was thought fit to pass this law and to make a special provision, a summary provision, an expeditious provision for wives, children and parents. Therefore, a special provision was made that a person can go to a Magistrate not through a civil court where it may take more time but to a Magistrate's court, make an application under Section 488 and have a summary remedy. Of course, the limit was put that not more than Rs 500 would be given in that case. It was further provided that if the order is not respected, then the same Magistrate can issue a warrant. It was done in order to see that not only the order was to be passed summarily in an expeditious manner but even the execution of that order was thought in an expeditious way. Over and above that, if the person does not pay that, he would be sent to jail. So, an effective remedy, summary remedy was provided under the Criminal Law Code which is quite separate from the Civil Law or Personal Law. In 1973, this whole code was replaced by another code and Section 488 and 489 were replaced by Sections 125 and 127. Practically verbatim everything was kept. Certain amendments were made considering the experience and the further difficulties. From this point of view, what I say is that this is not the first time that any provision was made for the maintenance of wife, etc., at that time also it applied to all people irrespective of their religion, irrespective of their personal law and, therefore, just as a Hindu, Parsi or Christian, a Muslim was bound under

Section 488 to pay the maintenance under the orders of the magistrate. Therefore what I say is that Section 125 is a part of the Criminal Procedure Code and not a civil law which defines and governs the rights and obligations of the parties belonging to particular religions. It is a secular section, it is not a section applying to any particular religion. It does not exempt any religion from that point of view... *(Interruptions)*.

SHRI AZEEZ SAIT : Why don't you read Section 127 (3) (b) ?

SHRI SHARAD DIGHE : I will read everything at the proper time. Therefore, it was the subtle law for a long time with Section 483 which has now been replaced by Section 125. At that time also it applied to all religions and from that point of view, as I said, this was a secular section... *(Interruption)*

SHRI G. M. BANATWALLA : I will just clarify one thing because this is a debate, so that you can take care of that point during what you are saying .. *(Interruption)*

AN HON. MEMBER : Let him finish first.

SHRI G. M. BANATWALLA : If he is yielding, I will say. Because he is a lawyer in his own right, he can explain to me also. You have referred to Section 488 of the earlier Cr.P.C. regarding maintenance to be provided for wife, etc. Agreed. We never came and took objection to that because under the Muslim law the same thing is provided, and you did not come in conflict with Muslim Personal Law. So, why should we unnecessarily come in conflict with you ?

17 03 hrs.

[SHRI N. VENKATA RATNAM
in the Chair]

The Muslim Personal Law was maintained and Section 488, insofar as it

relates to the wife's maintenance, to that extent it did not come into conflict with the Muslim law and, therefore, we did not make any hullabaloo about it. But in 1973, this Section 488, as you have rightly pointed out, was replaced by Section 125 with the legal modernism that the word 'wife' shall include a divorced lady. Now here, a new point was introduced which was in conflict with the Muslim Personal Law. We approached Shrimati Indira Gandhi and she accepted our point of view... *(Interruptions)*

MR. CHAIRMAN : Let him complete. It is not a matter of discussion, it is a matter of debate.

SHRI G. M. BANATWALLA : Yes, Sir, we have come with open mind before the House. Let him debate it out.

SHRI SHARAD DIGHE : I was only on this point that the principle of paying or the principal of making a special summary provision under the Criminal Procedure Code has been recognised as far back as 1874, and till this day, or at that time particularly, it was not challenged by any religion on that count. As you rightly said, it was not in conflict; therefore you did not challenge. Very well. I accept that argument. Then in 1973 this provision had been added. And as you said in Rajya Sabha as well as in Lok Sabha certain statements had been made by the then Minister who was in charge, Mr. Ram Niwas Mirdha.

Let us now consider whether this particular section or this particular provision is in conflict with the Muslim Personal Law, which has been stated by my learned friend, Shri Banatwalla, and which was also discussed by the Supreme Court in its judgment of 1985.

The custom of paying Mehr, according to my submission, and as also discussed by the Supreme Court in the 1985 judgment, is different from the conception of maintenance under the Criminal Procedure Code. My friend

[Shri Sharad Dighe]

will agree that Mehr is not in consideration of divorce. It is in consideration of marriage. So, what is paid in consideration of marriage cannot be stated or taken as in consideration of divorce. As I know a little about the Muslim Law, according to me, this Mehr is also paid into parts generally—prompt payment and deferred payments. Prompt payment is made on demand of 'Mehr' is fixed at the time of marriage. But prompt payment is made on the demand of the wife and deferred payment is made on dissolution of the marriage either by death or by divorce. So, the whole concept of paying Mehr is absolutely different from a maintenance paid to wife under the Criminal Procedure Code. Mehr is not paid on dissolution of marriage, but part of it is paid promptly on demand; and then part can be paid on dissolution of marriage.

Dissolution of marriage also may take place due to death. Or Mehr may not be paid at all. I do not know all the details, but as far as I have read it means this. Therefore, this is quite different from what is contemplated under Section 125 or 127 of the Criminal Procedure Code.

Mehr, as I said, is paid in consideration of the marriage or as it is stated it is by way of respect to wife. Therefore, that amount is paid, whereas the amount under the Criminal Procedure Code is for neglecting the wife, it is intended to maintain her when he neglects his wife, even though he is capable of maintaining her.

Then during the wedlock also he is bound to pay. And even after he has divorced her, he is bound to pay under this section till she re-marries. That is the scheme of this Act. Under this Act, when the wife refuses to live with the husband, and there is sufficient cause for it, then also the husband is bound to pay and that has been there from the beginning.

If husband marries another wife or if husband keeps a mistress, then also it is held to be a sufficient cause

for not living with the husband and she can claim or insist upon maintenance. Is it the position with respect to 'Mehr'? These are quite different things. This is absolutely a different scheme altogether. This is to protect women, those who are being neglected or not given social justice. If husband keeps a mistress, then she can go away and stay away elsewhere and say I want maintenance. The husband marries another wife. There also she can insist. Is it the idea under the Muslim law under Mehar? There, admittedly, 4 wives are allowed and then there is no question of marrying another wife. Therefore, the position of first wife asking for maintenance does not come under the Muslim Personal Law. That is absolutely a different personal law and different scheme for paying to wife as far as Mehar is concerned till or during the period of Iddat or the further period if she is pregnant etc. Therefore I say that this section and these provisions and the judgment given under these provisions are quite different and are under absolutely different scheme altogether. Therefore, as I was saying, really speaking, the Supreme Court which has interpreted Section 125 and Section 127 of the Criminal Procedure Code has not had inroads as far as the Muslim Personal Law is *Iddat*, all these are absolutely different schemes, different ideas. What was sought to be provided under Criminal Procedure Code was a summary, special remedy, under special circumstances to a wife, to children, to parents, and special remedy was also provided, so that the amount can be expeditiously recovered. Now these things are extensively discussed in the judgment also. Then as far as the obligation of a Muslim husband to pay maintenance is concerned, on that point also several extracts from Quran have been cited in this judgment. Though Mr Banatwalla says that they are not authoritative and more authoritative interpretations are elsewhere, the fact remains that, before the Court, Muslim parties were representing the matter. Several other interveners were there. Not only that. A Muslim lady reformer had also taken part at the time of hearing,

for which a mention has also been made in the judgment itself. Therefore, it may be assumed that before this highest court of our country, authoritative books were cited and arguments were advanced, so that, which books and which interpretations were authoritative have been fully considered. It has been stated in paragraph 15 of that judgment as follows. There are certain Arabic versions from the Quran and the English versions has also been given side by side. I will only refer to certain parts of them. I quote :

Ayat No. 241

For Divorced Women
Maintenance should be provided
On a reasonable scale.
This is a duty on the righteous.

Ayat No. 242

Thus doth God
Make clear His Signs
To you : in order that
you may understand.

Further on, it is stated :

“Those of you, who shall die and leave wives behind them, should make a will to the effect that they should be provided with a year's maintenance and should not be turned out of their homes. But if they leave their homes of their own accord, you shall not be answerable for whatever they choose for themselves in a fair way; Allah is All-Powerful, All-wise. Likewise, the divorced women should also be given something in accordance with the known fair standard. This is an obligation upon the God-fearing people.”

These are some of the translations incorporated in the Judgment on which the learned Judges have relied upon to show that to pay maintenance to a wife or to pay maintenance even to a

divorced wife is not foreign or absolutely alien to this Muslim Personal Law, but the idea is also there that maintenance should be paid and women should be respected, they should be looked after and their proper maintenance has to be paid. Therefore, what I say is that even the idea of paying maintenance is not foreign in any way to Muslim Personal Law and as I stated, the scheme of payment of maintenance is different from the scheme under the Criminal Procedure Code. Of course, what I say is that it is practically the internal affairs of the Muslim community. They should come together and decide. If any amendment is necessary according to the opinion of the Muslim community, I may go forward and say that it should be done and there is no reason to oppose such an amendment. But real Muslim opinion will have to be found but because as far as this Judgment is concerned, I see on record that some Muslim organisations have also represented and they are also of the opinion that certain things should be decided in a particular manner and the interpretation of this should be in a particular manner. Even after the judgment also we have been reading in the newspapers that some conferences are being held to demand that no such amendment should be made to annul this Judgment of the Supreme Court which has been reported in 1985. Therefore, what I submit is, a very interesting debate has been raised by the hon. Member, Mr. Banatwalla. A point for discussion has been raised not only before this Parliament, but I should say, this is a point for discussion for the whole country. In the whole country debates should go on to find out whether really any amendment is necessary in view of this Judgment and if the whole Muslim community feels or a very substantial majority feels that it has to be done, then I will appeal to the Government that they should consider this from that point of view and as per our commitment, if any inroad is to be made in the Muslim Personal Law, their consensus has to be developed. Unless the lead is taken by the Muslim community, nothing should be done. The same commit-

[Shri Sharad Dighe]

ment should be followed in this case also and therefore, from this point of view I will appeal to the Government that they should consider this matter carefully, get the Muslim community's opinion on this point and if it is found that something has to be done, then serious consideration may be given. Till that time, I will appeal to the mover of the Bill, Mr. Banatwalla that he should not press this Bill at this stage but leave it to the Government to consider the vast majority opinion of the Muslim community and then act, accordingly. That is my submission, as far as this Bill is concerned.

17.21 hrs.

SHRI AZEEZ SAIT (Dharwad South): Mr. Chairman, Sir, I have heard the discussion which is very interesting. First of all, we have to accept the concept of secularism. Secularism demands respect of each other's religion. But while my hon. friend was addressing the House, he was of mixed opinion. Ultimately, I welcome the last part of his speech. I would rather not like to go into details of his speech.

Sir, our friends have been talking about the judgement of the Supreme Court. This is the real matter which concerns us. Quranic version has been referred to in the judgement. It is from Sura-e-Baqara which not only deals with divorces but also about the share of property by his children after death of that person. In a just passing passage, it has mentioned about divorce also. I quote Sura e-Baqara. It is version 240 :

“Those of you
Who die and leave widows
Should bequeath
For their widows
A year's maintenance
And responsibility;
But if they leave
(The responsibility),
There is no blame on you

For what they do
With themselves,
Provided it is reasonable
And God is exalted in power
wise.”

Version 241 says :

“For divorce woman
Maintenance (should be provided)
On a reasonable (scale)
This is a duty
On the righteous.”

These are the two verses quoted from the Sura-e-Baqara. But what I would like to bring to your notice is that the learned Judges should have also taken note of Sura e-Talaq. It is very clear; it means divorce. I do not have much time to go into details; nor would I take too much time of the House. The Supreme Court judges have not gone into Sura-e-Talaq and Hadis. I have also brought it to the notice of the Law Minister. Some of our friends have been talking about maintenance. The *iddat* is there which is to make sure that the divorced woman is not pregnant. If she is pregnant, the maintenance will continue till the delivery of the child. The boy or girl born during the period of *iddat* is also entitled a share in the property of his or her father. For that purpose, the *iddat* is mentioned. Now a question is asked, what will happen to the divorced woman for her future maintenance. The Quran has dealt with it. It is the responsibility put on the parents—father, mother—brothers, sisters, aunt and likewise. She will not be thrown out of the street or the road. But Section 125 says that the maintenance should be until she is married or died.

Section 125 says that a wife even if she is divorced is entitled for maintenance and to stay with her ex-husband. The relationship should be understood.

She had no relationship before the marriage. There will be no relationship after being divorced. After divorce, she becomes unknown person. Suppose the divorced wife has got two or three children, there is enough of shariat law by which she is entitled to get maintenance for a girl up to 14 years of age and for a boy up to 18 years of age. The daughter has to be looked after by the grand-mother and if he is a son, he is entitled to be looked after by his father. If the divorced woman gets married, daughters will be looked after by the mother if the daughters are minor.

I have got the details and I would like to bring to your kind notice the various Acts and Shariats pertaining to this divorce matter.

"Shariat Act 1937 (Act xx of 1937) came into force from 7-10-1937. Section 2. Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land), regarding intestate succession, special property of females including personal property inherited or obtained under contract or Gift or any other provision of Personal law, marriage, dissolution including *Talaq*, *Ila Zihar*, *Lian khula*, *mubarat* and Maintenance. Dower, guardianship, Gifts, Trust and Trust properties and Wakf (other than charities...) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*)."

"Chapter IV Principles of Mohammedan Law :

(Eighteenth Edition by M. Hidayatullah) :

Section 33 : Sources of Mohammedan Law ;

There are four sources (i) The Koran, (ii) Hadis, viz.,

Precepts, actions and sayings of Prophet Mohamed, (iii) Ijamaas viz., concurrence of opinion of Prophet Mohamed and his disciples (iv) Qiyas.

While applying Personal Law, Holy Koran shall be the basis. The courts of justice shall not interpret Holy Koran as now done by the Supreme Court. The authors quoted by and referred to by the Supreme Court are not the Exponents of great antiquity of Mohammedan Law : Like Abu-Hanifa and his two disciples. Abu-yusuf and Imam Mohamed.

(3) Section 36. New Rules of law are not to be introduced and if they do it, they will be under the Wrath of God. Surai Nisa Aiat No. 13 & 14. Translation. There are the limits (imposed by Allah) and His Messenger...(14) and who disobeys Allah and His Messenger and transgresses His limits. He will send him to shameful doom (Hell).

So transgression or violation of the limits enshrined in Holy Koran are desiderated. But the judgment of the Supreme Court is not in consonance with the Holy Quran.

(4) The interpretation of Ayat No. 241 and 242 of Surai Bakkar (Cow) of Holy Quaran ought not to have been made by the Supreme Court. But in conjunction and with reference to Surai Talaq therein, which should have been looked into, Surai Talaq has come down to explain the position of *Talaq* and the *Iddat*, its period and the responsibility "of the husband to maintain his wife during *Iddat*. Thereafter, the husband cannot be saddled with the responsibility of maintenance."

"Thereafter the husband cannot be saddled with the responsibility of Maintenance,

(5) *Ayat-6 of Surai Talaq* : Lodge your divorced wives where you dwell during the period of

[Shri Azeez Sait]

Iddat according to your means. Don't harass them so as to straighten life for them. If they are pregnant, then spend (Maintain) for them (wives and child) till they bring forth the children. If they give suck (sucking from breast) for your child, give them their due payment. This Ayat shows that during *Iddat* either for three menstrual periods or during pregnancy, the husband is bound to maintain their divorced wives. After delivery, the word employed is *Ujur-hunna* (Ujarat charges) which ordains to pay them their charges. Therefore, the husband is not bound to maintain his wife after the *Iddat*.

"The Supreme Court has not been enlightened about the effects of divorce. They are in Section 336 of Muslims Mohamadan Law."

SHRI EDUARDO FALEIRO (Mormugao): What is it that you are reading?

SHRI AZEEZ SAIT: This is Shariat law.

SHRI EDUARDO FALEIRO: What has the Supreme Court done?

SHRI AZEEZ SAIT: The Supreme Court has not taken this into consideration.

I was submitting to the hon. House that the Supreme Court has dealt with only Sura Baqara & not with Sura Talaq and Hades. Inserting Section 127 (3B) after Section 125 was introduced in the Cr.P.C. was done at the instance of the late Prime Minister on the representation made by the Muslim MPs and Muslim Ulama's. It was done to safeguard the personal law not only of the Muslims but also of all other religious minorities like Persians, Christians, Jews, and so on. When we have accepted the secular character and when every

community is allowed to enjoy their religious rights, on certain flimsy grounds people unconcerned with religion just speak whatever they want. Here there is one relevant thing which I want to bring to the notice of the House. We are thankful and grateful to the Prime Minister and Law Minister for this. Recently there was a case in the Calcutta High Court seeking banning publication of the Holy Quran. Then what prompted the Law Minister or the Prime Minister to see that it was sorted out? That means, the Quran is not an ordinary publication like anything else. It is a sacred book: it is an accepted fact that it is a book of God. Therefore, the Law Minister himself took all the trouble to go to Calcutta and he did not allow the judge to sit in judgment over the Holy Quran. I wonder how Members go on interpreting the Quran without knowing the full text. If they have known what Shariat is, if they have known what Hadees is, if they have known what the Quran is, then I would welcome their remarks, without fully knowing these, they go on talking, mixing up all the issues. We do not say that *Mehr*, which is given as consideration at the time of marriage, becomes a part of maintenance at the time of divorce. The *Shariat* is the outcome of the Quranic version. We cannot separate the Quran and the *Shariat* to enable the law to say that this law is acceptable. Therefore, I thank Mr. Banatwalla for having brought forward this Bill for the consideration of this House. There cannot be two opinions on this. Two plus two make only four and not five or three. The Quran is the sacred book of the Muslims, not only of the Muslims but of every other community.

Today the immoral acts that we find in the society arise mostly out of pictures and cinemas.

I would like to point out that 1400 years ago, there was no respect for a girl.

She used to be buried alive. It is only Prophet Mohammad who brought a sense of love to the girl and made her

to live with respect. Therefore, I appeal to the Law Minister that having known all these things and if he agrees, we should know what a Talaq is. It has not been quoted or taken consideration of in the Supreme Court. The purpose of amending Section 127, 3(b) by the Law Minister is not known. So it has become relevant that the Law Minister restore and assure this House that he will bring a comprehensive thing and see that this is implemented. This is a burning issue with the Muslims for a few days. For the last few months it has become a topic of the talk. There should be a judgement. Criminal law Sections 125 and 127 are not properly read and Talaq is taken consideration followed by Hadees, I don't think this is democratic. There is something wrong somewhere. Whatever undone to law is done by the Supreme Court should be rectified by the Government and bring out a law where every community feels happy. Thank you Sir.

MR. CHAIRMAN : We have still a large number of speakers here. So, I put it to the House whether to extend time for this or not. The allotted time is over.

SHRI V. SOBHANADREESWARA RAO : There is a show in the Central Hall about the Mercenary training.

SHRI AZEEZ SAIT : The discussion can continue on the next available day also.

SHRI G.M. BANATWALLA : Next available Friday, we can sit. But let us have a full fair and discussion as much time needed as may be taken.

MR. CHAIRMAN : We may extend by one hour. But today the House will adjourn at 6 p.m.

[Translation]

SHRI MOOL CHAND DAGA (Pali) : Mr. Chairman, Sir, the decision in Shah Bano's Case has thrown new light on the subject and forced the people to ponder.

If there is a helpless woman...

(Interruptions)

[English]

MR. CHAIRMAN : Mr. Daga, did I call you ? I am surprised, Sir,

SHRI EDUARDO FALBEIRO : It is his fundamental right to speak on every Bill.

MR. CHAIRMAN : Mr. Daga, I have no dispute. You can continue.

[Translation]

SHRI MOOL CHAND DAGA : Mr. Chairman, Sir, if a Muslim decides to repeat the word *talaq* thrice, it would result in divorce to his wife. What would the helpless woman do in such a situation ? Mention has been made about *Mehar*, but I fail to understand what this *Mehar* signifies. To my mind *Mehar* means an amount of Rs. 50 or 100 given in consideration of marriage. You would excuse me for saying this. The Indian Muslims are poor and a suffering lot, I want that their economic condition should improve. This is the first time when the Muslim women have come out of *burqa* and have been raising their voice. Mother India is proud of these women who have come out of *burqa* and are recounting their tale of woe. These women have formed an organisation and are raising their voice. I fail to understand how Rs. 100 are given as *Mehar* in consideration of marriage. Can a helpless woman sustain herself merely with a few rupees given to her as *Mehar* ? But this is the opinion of great man from Bombay. Another Muslim brother has given a good advice that her relations would look after her, and that also in the present age. I know how many of them look after those women who have been thrown out of their houses. This Bill is in conflict with the Criminal Procedure Code. The question is of securing to these women, the citizens of India, their rights. We shall stick to what the great law giver Manu said about them,

[Shri Mool Chand Daga]

"A woman does not deserve independence." India is fortunate that our late Prime Minister, Indira Gandhi, ruled over 70 crore people of the country not for a year or two but for full 15 years. I do not know what he expected from us. Banatwalla Sahib, in this scientific age in 1985 we want to respect not only your religion but every other religion also. Religion is in the realm of mind or of heart. Have you heard the speeches of those women who have expressed their views about it at various places? Who wants to interfere in your Muslim law? As the Member who spoke before me was trying to put it, Sections 125 and 127 of the Criminal Procedure Code—which was Section 488 earlier—dealt with the issue of maintenance. If you go thorough them thoroughly, where do we come into conflict with your Muslim law?

I would like to ask you one question. You talk of *Shariat* quite often. There is a provision in *Shariat* that if a person commits theft, his hands should be chopped off; if he commits rape, he should be stoned to death in public; do you abide by those laws now? The Indian Penal Code provides for punishment for these crimes; why do you not apply Muslim law there? Previously, the land ownership rights were shared by father and daughter, but now father has the sole right. You are well aware that at present the Muslims are governed by different laws in different countries.

We do not want to come in conflict with any personal law but we want to identify one another so as to reform our society. "*Sare Jahan se Achcha Hindustan Hamara*", and we belong to that country. What are the reasons for the Supreme Court judgement? When a judge makes a judgement, he not only dispenses justice but functions as a reformer also. According to you, the relatives of a divorced woman will help her. You will excuse me, you are more intelligent and learned than I. I would appeal to you to visit my city along with me and hear the woes of those Muslim women, of whom you say that

their relatives would help them. You will come to know about their plight. So, please take a pragmatic view. Section 125 is quite clear, where is the controversy?

[English]

"If any person having sufficient means declare..."

[Translation]

How many have sufficient means? A lawyer had good practice, and when he was on the threshold of old age, he asked his wife to leave him. If a woman who is already 59 years of age, is divorced where will she go? It is not necessary that any of her relatives who is alive should be ready to help her?

[English]

"If any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
 - (d) his father or mother, unable to maintain himself or 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....."

[Translation]

How does it infringe the Muslim Law? Shri Ram Niwas Misra said a

good thing and it was praised but you take section 127. It deals with the issue of maintenance. And when this issue is raised, a judge has to look into it. Section 127 says :

[English]

"(1) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit."

[Translation]

No distinction is made here between persons be he a Parsi or a Christian. It is a law for all the Indians and poverty is the only criterion. If you would have brought forward an amendment to the effect that Government should help those who had been turned out of their homes, I would have welcomed it. The Department of Social Welfare and the Social Welfare Board have been set up to look into these matters. It further says :

[English]

127 (2) and (3)

"Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order, or as the case may be, vary the same accordingly."

Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

- (a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;..."

Then (c) :

"the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof."

[Translation]

You may please print out a single word or sentence which is an infringement of the Muslim law. If you go through the latest judgement of the Supreme Court. You will find that the judges have taken great pains and have analysed the case after giving all the quotations. They have quoted from the Muslim law. I am quoting from what they have said and who knows there may be someone learned among you who may say something better. They have said this and I quote :

[English]

They have said in the judgement :

"According to Dr. Paras Diwan :

"When a marriage is dissolved by divorce, the wife is entitled to maintenance during the period of iddat...On the expiration of the period of iddat, the wife is not entitled to any maintenance under any circumstances. Muslim law does not recognise any obligation on the part of a man to maintain a wife whom he had divorced !"

Where should she go ?

[Translation]

Section 488 of the Criminal Procedure Code deals with the maintenance issue. You have been an eminent lawyer, whereas we may have taken up only small cases. We know the difficulties experienced in making both ends meet. He was an eminent lawyer who had a large income. While the court upheld that maintenance should be given, you took the plea that it was against the personal law.

[Shri Mool Chand Daga]

He has said it at the end of the judgement. You go through the judgement and ponder over it. He says that clause 19 empowers me with this right. If someone says that *Manu* has said that a woman should be treated as a slave. I would say leave apart *Manu* Maharaj. I should not come across even his ghost. After all, who will agree to these outdated ideas? Who will agree to the age old ideas in 1985 when science has progressed so much?

You know the heights attained by science at present. Air India Boeing 'Kanishka' crashed into the sea and you know the depth from which the wreckage is being salvaged. You are trying to go deeper than that and talk of your personal law. You see—

[English]

I am confining to the Supreme Court judgement, the last but one page :

"a large number of middle-aged women who are being divorced without rhyme or reason should not be thrown on the streets .."

[Translation]

They have written in the last paragraph of their judgement. If you read it you will come to know. They have referred to Article 44 of the constitution, and assured that so long as there is objection from the followers of any religion, we shall not do it. We have changed our common code and the right of succession also but we do not want to touch your personal law. At the end of the judgement, they have said :

[English]

"Before we conclude, we would like to draw attention to the Report of the Commission on Marriage and Family Laws, which was appointed by the Government of Pakistan by a Resolution dated August 4, 1955,

The answer of the Commission to Question No. 5 (page 1215 of the Report) is that :

"a large number of middle-aged women who are being divorced without rhyme or reason should not be thrown on the streets without a roof over their heads and without any means of sustaining themselves and their children."

[Translation]

If someone asks his wife to leave the house on a chilly night, what will her fate be, Banatwalla Sahib, about this they have written in the judgement :

(English)

"In the words of allama Iqbal, 'the question which is likely to confront Muslim countries in the near future, is whether the law of Islam is capable of evolution—a question which will require great intellectual effort and is sure to be answered in the affirmative.'"

18.00 hrs.

[Translation]

You have done a good job and I congratulate you for it. I am grateful to you because it has given the supreme institution of the country—the Indian Parliament—an opportunity to consider this matter.

[English]

MR. CHAIRMAN : Mr. Daga, are you concluding or will you continue.

[Translation]

SHRI MOOL CHAND DAGA : I would be grateful to you if you give me an opportunity next time.

[English]

MR. CHAIRMAN : All right. You continue next time.